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ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Jail Appeal No.S-159 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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30.04.2024.

Mr. Muhammad Saad Qureshi, Advocate for appellant.

Mr. Shahid Ahmed Shaikh, Addl. Prosecutor General, Sindh.
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I have heard the learned counsel for the appellant and learned A.P.G. It is noted that complainant Manthar has appeared in person and stated that he did not want to engage his counsel and reposed his full faith and confidence in learned A.P.G. Reserved for judgment.

JUDGE

Hafiz Fahaa

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HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-159 of 2015

[Shah Muhammad @ Porho versus The State]

Appellant : Through Mr. M. Saad Qureshi advocate

Complainant : In person

The State : Through Mr. Shahid Ahmed Shaikh
Additional Prosecutor General Sindh

Date of hearing : 30.04.2024

Date of decision : 07.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA I.- Appellant has challenged the Judgment dated 05.11.2015 passed by the learned Sessions Judge Matiari in Sessions Case No.90 of 2013 (*Re: The State versus Shah Muhammad alias Porho*), outcome of Crime No.53 of 2013 registered at P.S Saeedabad under Section 302 PPC, whereby he was convicted and sentenced to suffer imprisonment for life with further directions to pay fine of Rs.50,000/- and in case of failure in payment thereof he has to further suffer S.I for six months, however benefit of Section 382-B Cr. P.C was extended to him.

2. The brief facts of the case are that complainant Manthar appeared at Police Station Saeedabad and stated that his sister Mst. Hakim Zadi is married with Shah Muhammad alias Porho and from said wedlock she has two sons namely Waseem Raja aged about 12/13 years, Ahmed aged about 10 years and two daughters; that usually Shah Muhammad alias Porho used to fight with his wife and children and three days back from the date of incident he threw out his wife and children from the house, as such his sister Mst. Hakim Zadi alongwith her children came and started residing with him (complainant); that on 23.06.2013 his nephew Waseem Raja went outside the house for playing but he did not return till evening,

hence he alongwith Wahid Bux and Ghulam Hussain went for his search; that when they reached at the house of Shah Muhammad alias Porho they found him holding hatchet at the door of room and Waseem Raja was found being in pool of blood on the cot lying inside the room; that accused Shah Muhammad alias Porho told them that he has killed Waseem Raja by inflicting hatchet blows and will also kill them, if came near to him; that thereafter they raised cries which attracted the Mohallah people and on seeing them accused fled away; that then they entered in the room and found Waseem Raja having hatchet injuries on forehead and right side of neck he was dead; that thereafter police was informed and dead body was shifted at RHC Saeedabad. Finally subject FIR was lodged.

3. After usual investigation police submitted the challan and the learned trial court after completing necessary formalities framed the charge against the appellant to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined six (06) witnesses, who exhibited numerous documents and other items. Then statement of accused under Section 342 Cr.P.C was recorded whereby he denied the allegations leveled against him and claimed his false implication due to enmity, that the deceased was killed by dacoits and that he had attempted to lodge an FIR. However, he neither examined himself on Oath nor led any evidence in his defense.

5. After hearing the parties and assessing the evidence on record the trial court convicted and sentenced the appellant as stated in the opening paragraph of this Judgment, hence appellant has preferred this Appeal.

6. Learned counsel for the appellant has contended that the appellant is innocent and has falsely been implicated in this case due to enmity with complainant party; that there is a 5 hour unexplained delay in lodging the FIR which enabled the complainant party to consult and cook up a false case against him; that alleged incident is

un-witnessed one; that all the witnesses are set-up/managed; that deceased was son of appellant and he was killed by dacoits during resistance but appellant was implicated in this case by the complainant on account of admitted home disputes between husband and wife; that nothing incriminating was recovered from the appellant and that there are material contradictions in the evidence of prosecution witnesses and thus for any or all of the above reasons the appellant should be acquitted by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of (i) AMIN alias MUHAMMAD AMIN BROW vs. The STATE [2001 P Cr.L.J 845], (ii) KHURSHID and others vs. The STATE [2005 YLR 627], (iii) MUHAMMAD NADEEM vs. The STATE [2013 P Cr.L.J 701], (iv) JAMSHED and another vs. The STATE [2016 P Cr.L.J Note 110], (v) MEHBOOB ELLAHI and another vs. The STATE [2019 YLR 2144], (vi) RAFQAT ALI alias PHAKOO and others vs. The STATE [2021 P Cr.L.J 360], (vii) Mst. FAREEDA and another vs. The STATE [2021 YLR 1828], (viii) SARDAR MUHAMMAD vs. The STATE [2023 P Cr.L.J 964], (ix) MUHAMMAD SHABAN alias SHABANI and another vs. The STATE [2023 YLR 926], (x) MUHAMMAD ARSHAD alias ACCHA vs. The STATE and another [2023 P Cr.L.J Note 8], (xi) SANAULLAH and others vs. The STATE [2023 P Cr.L.J 717], (xii) DAD MUHAMMAD vs. The STATE [2023 YLR 1595], (xiii) AMIR MEHMOOD vs. The STATE [2024 YLR 309], (xiv) NAWAB KHAN vs. The STATE and 2 others [2024 YLR 457], (xv) MUHAMMAD HANIF vs. The STATE [2024 YLR 222], (xvi) MUHAMMAD RAHIM vs. The STATE [2024 P Cr.L.J 42], (xvii) RUSTAM ALI SHAR vs. The STATE [2024 P Cr.L.J 68] and (xviii) LIAQUAT ALI alias BAO vs. The STATE [2024 YLR 372].

7. The complainant present in person showed his full faith and confidence over learned Additional P.G to proceed with this case on his behalf.

8. Learned Additional Prosecutor General Sindh supported the impugned judgment by arguing that accused is nominated in FIR

with specific role; that any delay in lodging the FIR has been explained; that witnesses have fully supported the prosecution case and there is no material contradiction in their evidence and despite lengthy cross-examination they remained consistent; that ocular evidence is supported by the medical evidence and the hatchet was recovered from the appellant on his arrest within a day of the incident and as such the prosecution has proved its case against the appellant beyond a reasonable doubt and the appeal be dismissed. In support of his contentions he placed reliance on the cases of (i) AMANULLAH vs. The STATE [2023 SCMR 527], (ii) QASIM SHAHZAD and another vs. The STATE [2023 SCMR 117] and (iii) SAJID MEHMOOD vs. The STATE [2022 SCMR 1882].

9. I have heard the learned counsel for the appellant as well as learned APG, have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence and blood recovered at the crime scene, I find that the prosecution has proved beyond a reasonable doubt that Waseem Raja (the deceased) was murdered by hatchet blows on 23.06.2013 at 5pm at the accused home situated in Deh Raho.

11. The only question left before me therefore is who murdered the deceased by hatchet blows at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons:

- (a) That the FIR was lodged after a delay of five hours. However I find that this delay has been adequately explained. The complainant entered the house and then on finding the dead body of the deceased arranged for it to be transported to hospital then he called the police and after the post mortem was completed and the body returned to him the FIR was lodged and as such this slight delay in lodging the FIR has

been adequately explained and as such is not fatal to the prosecution case as the complainant would have had no time to cook up a false case against the appellant. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

- (b) That the appellant is named in the relatively promptly lodged FIR with the specific role of murdering his son/deceased by hatchet.
- (c) Admittedly there is no eye witness to the murder or even last seen evidence.
- (d) I find that the entire prosecution case hinges on whether I believe the evidence of the witnesses who reached the house of the appellant where the dead body of the deceased was lying and that his father/appellant was outside his house with a hatchet stained in blood whose evidence I shall consider in detail below;

- (i) **Witness PW 1 Manthar Khan. He is the complainant in the case and related to the accused and the deceased.** According to his evidence this incident took place on 23.06.2013. The accused use to fight with his wife and children. Three days prior to this incident accused ousted his wife and children after beating them from his house. Thereafter, my sister Hakim Zadi (wife of accused) with her children started living in our house. On the day of incident deceased Waseem Raja went out from the house for playing but he did not return till evening. I alongwith my cousin Ghulam Hussain and friend Wahid Bux went in search of the deceased when we reached at the door of the house of accused we saw accused Shah Muhammad having hatchet was present in his house. Accused restrained us from entering into the house and he told us that he had murdered his son Waseem Raja. He also issued threats to us. We raised hue and cry on which neighbors came and on seeing them the accused by climbing over the hedge ran away alongwith hatchet. When we entered in the room of the house of accused we found Waseem Raja/deceased lying dead having hatchet injuries on his forehead and neck. We immediately took away dead body of deceased to Saeedabad Hospital and informed the police. After postmortem examination dead body was handed over to us. Thereafter I registered FIR at PS Saeedabad.

It would appear from his evidence that there is some enmity and/or ill will between himself and the accused as the accused had thrown the complainants sister and children (including

the deceased) out of his house who were now living with the complainant and as such I am put on caution as to his evidence.

From his evidence the deceased who was a 12 to 14 year old boy was living with him having been thrown out of the accused house along with his mother. The deceased went missing and as such the complainant went looking for him with PW Ghulam Hussain and PW Wahid Bux. Quite naturally one of their first ports of call was the house of the accused who was the father of the deceased. When they reached the house of the deceased at 5pm it was day light and he saw the appellant outside his house brandishing a hatchet saying that he had killed his son and warning them off. He would not let the complainant in side his house and threatened him with the hatchet. The complainant and the other PW's made a hue and cry and people from the neighborhood gathered which lead to the accused escaping along with the hatchet. Thereupon the complainant went into the house of the accused and found the accused son/deceased had been murdered by 2 hatchet blows. As discussed above the complainant lodged the FIR with relative promptitude and no material improvements have been made in it from his evidence. He knew the accused and it was a day light incident as such there is no case of mistaken identity and no need to hold an identification parade. He gave his evidence in a natural manner and was not dented despite a lengthy cross examination. **His evidence is corroborated in all material respects by PW 2 Ghulam Hussain and PW 3 Wahid Bux** who was an independent witness. Both of these PW's knew the accused from before and hence there was no case of mistaken identity and no need to hold an identification parade in this day light incident. Both these PW's are named as witnesses in the relatively promptly lodged FIR who gave their S.161 Cr.PC statements on the day after the incident which were not materially improved on during their evidence at trial. The both gave their evidence in a natural manner and were not dented despite a lengthy cross examination. None of these 3 witnesses claimed to have witnessed the murder of the deceased which they could have done in order to improve the prosecution case which I find gives their evidence greater weight in terms of its truthfulness. Thus, when the evidence of these three witnesses are read together I find their evidence to be trust worthy, reliable and confidence inspiring and I believe the same and place reliance on it.

- (e) The appellant does not deny his presence at the crime scene instead it is his defence that his son/deceased was murdered by dacoits. I find this defence to be completely unbelievable. If this was the case then why did he not let the three above mentioned PW's in his house and try to conceal the body of his dead son. Furthermore, if this was the case why had he not already gone and lodged the FIR to this effect. Such conduct does not appeal to logic, reason, commonsense or natural human conduct.

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- (f) Admittedly there was no last scene evidence but the deceased/son of the accused was found in the accused house and as mentioned above the accused has given no plausible explanation as to how his son/deceased died in his own house. It was also quite natural for the son/deceased to be visiting his father's house and hence the only reasonable inference that can be drawn was that he was murdered by his father perhaps after an argument especially as the son had already been scene alive that day when he went out to play. His dead body could not have been planted in his father's house.
- (g) The medical evidence and post mortem report fully support the eye-witness/ prosecution evidence that the deceased died from two incised wounds caused by a sharp cutting instrument such as an axe/hatchet which was in fact the murder weapon which was recovered from the appellant on his arrest the next day.
- (h) That the appellant was caught the next day on pointation and was arrested by the police with the blood stained hatchet (murder weapon) in his possession which lead to a positive chemical report.
- (i) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case. For instance by foisting the hatchet on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO who made the arrest and recovery of and from the appellant which is supported by mashirnama and other police witness who were not dented during cross examination.
- (j) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the deceased child going missing to him being found dead on the same day in the appellants house who refused to allow the witnesses inside his house in order to conceal the deceased body who he had murdered with a hatchet to the appellant then making his escape good to him then being arrested a day later with the murder weapon in his possession.
- (k) The motive for the murder appears to be a domestic dispute between the appellant and his family including the deceased who he had thrown out and use to beat up along with his mother.

- (1) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. As discussed above I find the defence case not believable. The appellant did not give evidence on oath or call a single defence witness in support of his defence case and as such I disbelieve his defence case in the face of reliable, trust worthy and confidence inspiring witness evidence and other supportive/corroborative evidence discussed above.

13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed**.

Sajjad Ali Jessar