

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-18 of 2015

[Sher Muhammad versus The State]

Appellant : Through Mr. M. Sachal R. Awan advocate

Complainant : Through Mr. Imtiaz Ali Channa advocate

The State : Through Ms. Rameshan Oad Assistant P.G

Date of hearing : 23.04.2024

Date of decision : 26.04.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- Appellant has challenged the Judgment dated 10.01.2015 passed by the learned 1st Additional Sessions Judge Dadu in Sessions Case No. 783 of 2011 (Re: The State versus Sher Muhammad), outcome of Crime No.60 of 2011 registered at P.S Khudaabad District Dadu under Section 302 PPC, whereby he has been convicted and sentenced under Section 302(b) PPC to suffer rigorous imprisonment for life with further directions to pay Rs.1,00,000/- as fine to the legal heirs of deceased Haji Safar and in case of non-payment of fine he has to further suffer S.I for six months.

2. The brief facts of the case are that on 11.11.2011 at about 1100 hours complainant Haji Mevo Lund appeared at P.S Khudaabad and stated that he has four sons namely (i) Haji Saffar aged about 40/45 years [deceased] (ii) Sher Muhammad [accused], (iii) Nabi Bux and (iv) Ghulam Nabi, out of them Sher Muhammad is his eldest son; that about two years back wife of accused Sher Muhammad Mst. Khanzadi died her natural death, however, accused Sher Muhammad was suspicious that his brother Haji Saffar had committed her murder as such dispute arose between them and they

were not on visiting terms with each other; that on 10.11.2011 after having dinner he was chitchatting with his son Nabi Bux and grandson Muhammad Juman S/o Nabi Bux in the house of his son Haji Saffar, who went to Survey No.142 in order to fetch the chaff from outside the house, when at about 10:00 pm they heard noise on which they rushed outside the house and saw on the torch light that accused Sher Muhammad inflicted sharp edge side of hatchet to Haji Saffar on his neck, who fell down; they gave hakals to accused Sher Muhammad who then escaped away towards northern side alongwith hatchet; then they found that Haji Saffar died at the spot; then he (complainant) left the PWs with dead body and went to arrange the conveyance and subsequently the dead body was brought at PS Khudabad at 0500 hours wherefrom the same was shifted to Civil Hospital Dadu for postmortem. After completion of all formalities he lodged the aforesaid FIR.

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court 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 four (04) 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 by the complainant. However, he neither examined himself on Oath nor led any evidence in his defense. After completion of all legal formalities, the learned trial Court convicted and sentenced the appellant as stated in opening paragraph of this Judgment, hence appellant has preferred this Jail Appeal.

5. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of a land dispute and hence the FIR was delayed by a day which gave the complainant time to cook up a false case against him; that the eye witnesses did not witness the incident and as such their evidence should be discarded; that the prosecution deliberately

failed to produce the best evidence and that the hatchet was foisted on the appellant by the police at the time of his arrest and as such for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt.

6. Learned APG and learned counsel for the complainant fully supported the impugned judgment. In particular, they contended that the eye witnesses evidence was trust worthy, reliable and confidence inspiring and could be safely relied upon; that the medical evidence supported the ocular evidence and that the murder weapon (hatchet) had been recovered from the appellant on his arrest and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions, they placed reliance on the cases of **AQIL versus The STATE [2023 SCMR 831]** as well as on an unreported judgment dated 29.03.2024 passed by Bench of this Court at Sukkur in Cr. Appeal No.S-26 of 2021

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

8. 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 Haji Saffer (the deceased) was murdered by a hatchet blow on 10.11.2011 at about 10pm at S.No.142 deh Phaka.

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

10. After my reassessment of the evidence on record, I find that the prosecution has **NOT** 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 one day. This delay has been explained by the complainant arranging to take the dead

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body to the PS for a medical certificate and then taking the dead body to the hospital for a post mortem and only after release of the dead body was the FIR lodged. Although I find that the delay in lodging the FIR has been reasonably explained the fact that it took the complainant 7 hours to transport the body to the PS which was only about 4 KM's away from the wardat puts me to some caution.

(b) I find that the entire prosecution case hinges on whether I believe the evidence of the eye witness whose evidence I shall consider in detail below;

- (i) **Eye witness PW 1 Mevo Khan. He is the complainant in the case and the father of the deceased and the accused.** According to his evidence on 10.11.12 he along with PW Nabi Bux and Muhammed Juman were at the house of the deceased when after having dinner the deceased went out to fetch animal feed. At about 10pm he heard cries of the deceased and on hearing such commotion they left the house and went to where the deceased was standing and on torch light from about 50 feet saw the accused hit the deceased with a hatchet blow on his neck who then fell down. On raising hakals the accused ran away. The deceased was dead and he then left to arrange transport to take the body of the deceased to the PS.

This eye witness has suggested in his evidence that there was enmity between the deceased and the accused over the murder of the accused wife by the deceased however no evidence has come on record to prove this alleged enmity.

Instead it is an admitted position that the accused was working with his brothers in Saudi Arabia and were sending money to the complainant who used such money to purchase land for which he had not given the accused his share and as such it is the defence case that the complainant falsely implicated the accused in this case in order to usurp his share of the land.

The incident took place at 10pm at night when it would have been dark outside. The eye witness was related to the deceased so his identification if he was seen was possible although not easily so based on the darkness. The eye witness heard cries and then left his house and on this commotion allegedly saw the incident from 50 feet away. The distance between the crime scene and the house was 250 feet which means the eye witness after hearing the cries and commotion found a torch from the deceased's house then travelled 200 feet before witnessing the incident. As per the evidence of this eye witness which is supported by the medical evidence the deceased received only one hatchet blow which lead to his death. This chain of events indicates that even if the deceased cried out just before receiving the hatchet blow, rather than after receiving it, it would have

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been almost impossible for the eye witness to hear the cry, grab the torch and cover 200 feet and see the appellant hit the deceased with the hatchet as during this period the accused would have left the crime scene. He would not have waited around to be seen by anyone from the house. Furthermore, no torch was recovered from the eye witness and as such it would not have been possible for him to see the incident in the dark. As such I have grave doubts whether the appellant actually saw any body murdering the deceased and that he arrived at the crime scene after the murder had taken place. The 7 hours delay in transporting the body to the PS which was nearby also gave the complainant the time to make a false case against the accused who as alluded to above had a motive to falsely implicate the accused by grabbing his land. It does not also appeal to logic, commonsense and reason that the accused would be waiting outside the deceased's house in the dark at the time and date of the incident as the accused would not have known that the deceased would have left his house that night at all and even if he did leave his house that he would be alone so he could easily murder him.

As such based on the above discussion although I find that this eye witness was present in the house of the deceased at the time of the incident but he did not see the accused or any one else murder the deceased but instead arrived at the crime scene after the murder had already taken place and the murderer had already escaped from the crime scene.

(ii) Eye witness PW 2 Nabi Bux. He is the son of the complainant and brother of the deceased. He corroborates the evidence of PW 1 Mevo Khan in all material respects. His S.161 Cr.PC statement according to his evidence was not recorded which is contrary to the evidence of the IO who states that he recorded his S.161 Cr.PC statement 4 days after the incident and as such this delay in recording his S.161 Cr.PC statement even if it was recorded at all severely damages the evidentiary value of the evidence of this eye witness. Even otherwise the same discussion and considerations apply to him as to eye witness PW 1 Mevo Khan. Namely, I find that although this eye witness was present in the house of the deceased at the time of the incident but he did not see the accused or any one else murder the deceased but instead arrived at the crime scene after the murder had already taken place and the murderer had already escaped from the crime scene.

Thus, based on my disbelieving the evidence of two eye witnesses in respect of actually witnessing the murder as mentioned above what other supportive/corroborative material is there against the appellant?

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© Admittedly the medical evidence and post mortem report fully support the eye-witness/ prosecution evidence that the deceased died from an incised wound caused by a sharp cutting instrument such as a hatchet. However the medical evidence cannot indicate who actually caused the injuries.

(d) That the accused was arrested with the hatchet in his possession several days after the incident. This does not appeal to lodge, reason or commonsense or natural human conduct. If the appellant was the murderer normal conduct would have dictated that he disposed of the hatchet immediately after the murder rather than carry it around with him for numerous days. Thus, I find weight in the contention that the hatchet was foisted on the accused by the police at the time of his arrest.

(e) One of the best eye witnesses Muhammed Juman who is named in the FIR as an eye witness was given up by the prosecution without any explanation and as such under Article 129(g) Qanoon-e-Shahdat Ordinance 1984 the adverse inference can be drawn that this witness would not have supported the prosecution case.

11. Thus, based on the above discussion, by extending the appellant the benefit of the doubt to the appellant I find that the prosecution has NOT 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 he is acquitted of the charge, the appeal is allowed, the impugned judgment is set aside and the appellant shall be released unless he is wanted in any other custody case.


JUDGE

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

Criminal Jail Appeal No.S- 18 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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23.04.2024.

Mr. Altaf Sachal Awan, Advocate for appellant.
Ms. Rameshan Oad, A.P.G for State.
Mr. Imtiaz Ali Channa, Advocate for complainant.

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I have heard the learned counsel for appellant, learned A.P.G
and learned counsel for complainant. Reserved for judgment.

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