

Eye witness Believed

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**HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.D-02 of 2020

Confirmation Case No.02 of 2020

Cr. Jail Appeal No.D-04 of 2020

Confirmation Case No.02 of 2020

[Beeko versus The State]

Before:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Khadim Hussain Tunio

Appellant: Through Mr. Muhammad Saad, Advocate.

Complainant: Through Mr. Ghulamullah Chang, Advocate.

State: Through Mr. Shawak Rathore, D.P.G

Date of hearing: 26.10.2023

Date of Decision: 02.11.2023

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J:- Appellant was charged and tried by the Model Criminal Trial Court-I, Hyderabad (Trial Court) in Sessions Case No.576 of 2018 [Re: The State versus Beeko S/o Naag Ji] outcome of Crime No.194 of 2018 registered at P.S Pabban / Tando Jam Hyderabad under Sections 302, 337-F(vi) and 324 PPC and vide Judgment dated 13.01.2020 he was convicted and sentenced to death under Section 302(b) PPC with directions to pay compensation of Rs.1,00,000/- to the legal heirs of deceased under Section 544-A Cr.P.C; accused has also been convicted and sentenced under Section 337-F(vi) for seven (07) years with direction to pay Rs.30,000/- as damman to injured Shrimati Radha.

2. The brief facts of the case are that complainant Jai Sindh lodged the above FIR by stating therein that he is farmer at the lands of Mukadar Khan Muhammad Kamboh and he has three sons and three daughters; that his son Vikash Kolhi is aged about 11/12 years was a

student of 4th class; that one Beeko S/o Naag Ji Kolhi, who belongs to his caste has vegetable push cart at Shaikh Bhirkio road; that his son Vikash after school timing was working with Beeko on salary; that about 10/12 days ago his son had refused to work with Beeko as such so many times Beeko had demanded his son for work but he refused; that on 12.10.2018 at about 09:00 pm night his son Vikash went to jungle/forest for call of nature (latrine) with his mother and after some time hue and cry raised as such he and his relatives Bharoo Kolhi and Bheemlo Kolhi ran towards and saw that Beeko, armed with hatchet, caused hatchet blow on the head of his son and also at the right hand of his wife Shrimati Radha and then escaped away by taking benefit of darkness; and he also saw that blood was oozing from the injuries; that they took both the injured and went to P.S Shaikh Bhirkio and obtained letter for treatment and then went to Tando Muhammad Khan Hospital, where his son Vikash succumbed to injuries and died, then police of P.S Shaikh Bhirkio came and completed the necessary formalities and postmortem was also conducted then he came to know that this incident comes within the jurisdiction of P.S Pabban Hyderabad, then police of P.S Shaikh Bhirkio handed over the dead body to them for burial; that he then sent the dead body of his son with his relatives to Digri graveyard Mirpurkhas and after burial lodged the subject FIR against accused/appellant to have committed murder of his son on account of refusal to work with him.

3. After registration of FIR investigation was conducted and on its completion challan was submitted before the concerned Magistrate, who took cognizance of the matter and sent the R&Ps to learned Sessions Judge, who entrusted the same for proceedings to trial Court, where copies were supplied to accused persons at Ex.01 and the formal charge was framed against him at Ex.02, to which he pleaded not guilty and claimed trial vide his plea at Ex.02/A.

4. In order to prove the case, prosecution examined eight (08) witnesses who exhibited and acknowledged the certain documents. The statement of accused under Section 342 Cr.P.C was recorded wherein he denied the allegations of prosecution witnesses, however,

neither he examined himself on Oath nor produced any witness in his defense. Where-after the trial Court after hearing the learned counsel for the parties vide Judgment dated 13.01.2020 awarded death and seven years sentence to accused, as mentioned supra, and sent reference to this Court under Section 374 Cr.P.C for confirmation of death sentence or otherwise, against which appellant preferred appeal through jail authorities so also through his counsel. As such we prefer to decide the appeals, against same judgment, as well as reference through this single judgment.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant argued that impugned judgment is result of misreading and non-reading of evidence; that there was a delay in lodging the FIR which gave the time for the complainant to cook up a false case against the accused based on enmity; that there were contradictions in the evidence of the prosecution witnesses and as such their evidence could not be safely relied upon; that the eye witnesses could not have seen the appellant as it was too dark and as such his correct identification is in doubt; that there was a delay in sending the alleged murder weapon (hatchet) and that based on any or all of the above reasons the appellant should be acquitted of the charge. In support of his arguments he has placed reliance on the case law reported as **Muhammad Aslam v. The State** (2022 P.Cr.L.J 314), **Muhammad Usman and another v. The State and others** (2020 P.Cr.L.J 1048), **Ghulam Hyder through Superintendent, Central Prison v. The State** (2020 YLR 2411), **Amir Muhammad Khan v. The State** (2023 SCMR 566), **Jahanzeb Khan v. The State** (2023 P.Cr.L.J 186), **Muhammad Hashim Shah and others v. The State and others** (2023 YLR 1768), **Hazoor Ahmed and another v. The State and another** (2019 P.Cr.L.J Note 2), **Khursheed Ahmad v. The State** (2020 MLD 649), **Sajjan Chachar v. The State** (2022 P.Cr.L.J Note 83), **Sahib alias Karo v. The State** (2020 P.Cr.L.J Note 67), **Master Muhammad**

Naseem v. The State (2022 YLR 469), Abdul Aziz Ansari and others v. The State (2023 YLR 1012), Hameed Gul v. Tahir and 2 others (2006 SCMR 1628), Wahid Bux alias Bhutto v. The State (2018 P.Cr.L.J 1417), Muhammad Javaid v. The State (2016 P.Cr.L.J 18), Muhammad Akram and 4 others v. The State (2002 YLR 853), Abdul Rehman alias Abdul v. The State (2007 YLR 99) and Ghulam Yasin v. The State (2014 YLR 1283).

7. On the other hand learned D.P.G, duly assisted by complainant's counsel, vehemently opposed the appeal and argued that prosecution has proved its case against the accused beyond any shadow of doubt by producing confidence inspiring eye witness evidence, that there was no material contradictions in the eye witness evidence which could be safely relied upon; that the hatchet was recovered on the pointation of the appellant and since this was a particularly brutal murder of an innocent young child the appeal be dismissed and the sentence of death be maintained. In support of their arguments they have placed reliance on the reported cases of **SAJID MEHMOOD versus The STATE** (2022 SCMR 1882), **SHAMSHER AHMAD and another versus The STATE** (2022 SCMR 1931) and **MUHAMMAD NADEEM alias Deemi versus The STATE** (2011 SCMR 872).

8. We have heard the arguments of the learned counsel for the appellant, learned Deputy Prosecutor General Sindh and learned counsel for the complainant and gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

9. Based on our reassessment of the evidence of the PW's especially the medical evidence and other medical reports, tapedar's evidence/sketch and recovery of blood at the crime scene and recovery of hatchet we find that the prosecution has proved beyond a reasonable doubt that Vikash (the deceased) was murdered by hatchet and Mrs Shirmati Radha was injured by hatchet on 12.10.18 at about 2100 hours 200 feet from the complainants house near the land of Ashraf Lund.

10. The only question left before us therefore is whether it was the appellant who murdered the deceased and seriously injured Mrs Radha by hatchet at the said time, date and location?

11. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) That the FIR was lodged within a day of the incident however such delay has been fully explained by the complainant and PW 5 Borro in thier evidence. This is because after the stabbing of his son and wife they went straight to the PS for a letter for medical treatment as corroborated by PW ASI Abdul Hakeem who also exhibited the concerned entry, the complainant then took his wife and son to hospital at Tando Muhammed Khan (TMK) where his son died en route as corroborated again by the evidence of PW ASI Abdul Hakeem with the concerned entry being exhibited, the complainant then was with his injured wife at hospital whilst she was receiving medical treatment for her injured hand as corroborated by the medical evidence and while the post mortem of his son was being carried out. As such any delay in lodging the FIR has been fully explained and is not fatal to the prosecution case based on the particular facts and circumstances of this case. In this respect reliance is placed on the case of **MUHAMMAD NADEEM alias Decmi versus The STATE** (2011 SCMR 872).

(b) That the appellant is named in the FIR with a specific role.

(c) We find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether we believe their evidence whose evidence we shall consider in detail below;

(i) **Eye witness PW 3 Jai Singh. He is the complainant and father of the deceased.** According to his evidence the deceased after school used to work with the accused on his vegetable cart for about a year but then stopped working for him but the accused for about 2 to 3 days came to his house and asked the deceased to come back to work for him but the deceased refused. In the night time the deceased and his other children were in their house when the deceased went with his mother to relieve himself outside the house as there was no inside toilet. He heard cries and came out of his house. Baroo and Bhamblo also joined him. He identified the accused on torch light and saw the accused give two hatchet blows to the deceased; one to his head and one to his back. He saw his wife (PW 4 Mrs Radha) trying to help his son and saw the accused give her a hatchet blow which hit her hand. The accused fled and he and Barro arranged a rickshaw to take his son to hospital.

The witness is the father of the deceased however he had no proven enmity or ill will towards the accused. Rather the accused had enmity with the deceased who refused to work for him any longer and thus the complainants mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371) and **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

It is clear from this eye witnesses evidence that **he knew** the accused **before** the incident and that he saw him on **torch light** from relatively close range and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the accused. His presence at the scene is corroborated by PW 4 Radha and PW 5 Baroo. It is true that the police did not recover any torch but we must also consider the ground realities and the particular facts and circumstances of each case. If you live in the interior of Sindh in a small house which does not even possess an inside bathroom where there is heavy load shedding almost every adult sleeps with a torch or phone with a torch in it at their bedside and of course would not go outside in the dark without one. We cannot simply ignore the prevailing environment based on the particular facts and circumstances of each case.

This eye witness was not a chance witness as he lived in the same house as his family which included the deceased who was his son and his wife (PW 4 Mrs Radha). It would be quite natural for him to come outside his house to see what was happening if he heard cries in the night. He gave his S.154 Cr.PC statement with relative promptitude which was not significantly improved on during his evidence. He named the accused in his FIR along with the other eye witnesses with the specific role of hitting the deceased and his wife with a hatchet before escaping under cover of the dark. He gave his evidence in a natural manner and was not dented at all during cross examination and as such we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the accused.

We can convict on the evidence of this sole eye witness alone though it would be of assistance by way of abundant caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this eye witness to be of good quality and believe the same. In

this case however there is more than one eye witness.

- (ii) **Eye witness PW 4 Mrs Radha. She is the mother of the deceased and the wife of the complainant.** According to her evidence the deceased worked with the accused for more than a year before stopping. On 12/10/18 at about 9pm she and the deceased went to attend to a call of nature outside their house because they had no washroom in their house. Whilst her son was attending to his call of nature she saw the accused by her torch who she saw hit the deceased over the head with a hatchet and she cried out for him not to kill her son. She then ran to save her son and put her hand in the way of a hatchet blow which hit her on the hand instead of the deceased. On her cries the complainant and PW 5 Baroo and Bhemlo reached the scene. Her son was seriously injured so he was taken to hospital where he died.

She corroborates the evidence of the complainant in all material respects. She saw the accused who she knew and recognized under torch light. It was quite natural for her to have a torch with her as she had gone outside with her son to answer a call of nature at night. It does not appeal to logic, commonsense or reason that she would have gone out in the dark with her son without some source of light as they would not be able to see where they were going. Again she is not a chance witness as she is living with her family in a house 200 feet from the incident which includes the deceased (her son) and the complainant (her husband). It is also quite natural that she would accompany her 12 year old son outside the house in the dark whilst he was answering a call of nature as he might have been scared. She was injured by the hatchet of the accused as is supported by the medical evidence in an attempt to save her son which is the natural thing for a mother to do. She had no enmity or ill will with the accused to falsely implicate him in this case. She knew him from before and she saw him from a short distance on the light of a torch and as such there is no case of mistaken identity and no need for an identification parade. She gave her Section 161 Cr.PC statement with promptitude which was not materially improved on during the course of her evidence. She, like her husband the complainant, gave her evidence in a straight forward and natural manner and was not dented during cross examination and as such the same considerations apply to her evidence as to PW 3 Jai Singh who is her husband and the complainant in this case. We find her evidence to be reliable, trustworthy, and confidence inspiring and believe the same and place reliance on it.

- (iii) **Eye witness PW 5 Baroo.** He is related to the complainant and the deceased. He is the complainant's neighbor whose house is only 5 feet from that of the complainant. According to his evidence at about 9pm he heard cries and came running out of his house. He saw the accused and the deceased and Mrs Radha who had

already been injured by the accused. He took both the injured to the PS for a hospital letter and then took them to TMK hospital where the deceased died. He was present when the accused was arrested after the incident and also when the accused lead the police to the hatchet which had been hidden in the maize on his pointation. He corroborates the presence of the complainant at the time of the incident and also had a light in his hand through which he was able to identify the accused who he had know from before. The same considerations apply to his evidence as to the complainant's evidence and PW 4 Mrs Radha's evidence and we believe his evidence and rely upon the same.

Thus, based on our believing the evidence of the PW eyewitnesses what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of *Muhammad Waris v The State* (2008 SCMR 784).

- (d) That it does not appeal to logic, common sense or reason that a father and mother would let the real murderer of their young son get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758)
- (e) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased died from two blows from a sharp cutting weapon (hatchet) to the head and back/spine and that PW 4 Mrs Radha received an injury from a similar instrument (hatchet) to her hand.
- (f) That after his arrest the appellant took the police on his pointation to a secret place where he had hidden/thrown the hatchet which no one else could have known about and was recovered on his pointation by the police. The hatchet was also found to be blood stained.
- (g) That the recovered hatchet was blood stained and the blood on the hatchet and blood recovered at the scene was found to be human blood through a positive chemical report.
- (h) That it has not been proven through evidence that any particular police witnesses had any enmity or ill will towards the appellant and had no reason to falsely implicate him in this case for instance by foisting the hatchet on him and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of *Mushtaq Ahmed V The State* (2020 SCMR 474).
- (i) That nearly all required police memo's and entries have been exhibited which fully support the evidence of the PW's and the prosecution case.
- (j) That it has not been denied that the deceased worked for the

appellant and that the appellant had stopped working for him. According to the FIR which was lodged relatively promptly the fact that the deceased had worked for the accused who was a vegetable vendor and had then stopped and had refused to return to work when requested by the accused is also narrated and thus the prosecution has proved the motive for the appellant murdering the deceased.

- (k) That through his cross examination of the witnesses the appellant does not appear to deny his presence at the crime scene at the relevant time.
- (l) That all the PWs are consistent in their evidence and even if there are some contradictions in their evidence we 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 time the deceased refused to continue working for the accused to the accused persistently asking the deceased to return to work in the face of the deceased's persistent refusal to the deceased mother accompanying her minor son outside the house in the dark so that he could relieve himself to the complainant and his wife seeing on torch light the accused hitting the deceased with hatchet blows to the deceased's mother receiving a hatchet blow all of which injuries were supported by medical evidence to the death of the deceased on account of his injuries to the accused recovering the hatchet from a hidden place which was blood stained which stains produced a positive chemical report.
- (m) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is simply one of false implication on account of enmity. The appellant however does not explain who the enmity is with. He did not give evidence on oath and did not call any DW in support of his defence case. Thus we disbelieve the defence case as an afterthought in the face of a reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

12. Thus, based on the above discussion we find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and hereby maintain his convictions.

13. With regard to sentencing we note that the motive for the murder has been asserted in the FIR and proven in that the accused was annoyed that the deceased refused to work for him any longer. The appellant murdered a

young boy of 12 years of age in a most brutal manner by hitting him with a hatchet over the head and on his back which cut his spine. He deprived a young boy of the chance to live a full and meaningful life and left the parents to suffer the mental agony of having their child killed before their eyes in a brutal way and see what ever dreams and hopes they had for their young school going child evaporate before their eyes. There are no mitigating circumstances in this case and only aggravating circumstances and thus we find that the imposition of the death sentence is fully warranted in this case and we maintain the same along with the other sentences imposed on the appellant in the impugned judgment.

14. As such the appeal is **dismissed** and the confirmation reference is answered in the **affirmative**.

Sajjad Jessar/P.A.