

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

Cr. Appeal No.S-13 of 2008

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

06.02.2023.

Ms. Nasira Shaikh, Advocate for appellant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.

The complainant has already shown his full faith and confidence in
learned A.P.G. I have heard the learned counsel for the appellant as well as
learned A.P.G. Reserved for judgment.

Hafiz Fahad

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-13 of 2008

Abdul Ghani Khaskheli

Versus

The State

Appellant : Abdul Ghani S/o Jumoon Khaskheli	through Ms. Nasira Shaikh, Advocate
Respondent : The State	through Ms. Sana Memon, A.P.G. Sindh
None present for complainant	Vide order dated 17.10.2022, complainant appeared and shown his full faith and confidence in learned A.P.G.
Date of hearing	06.02.2023
Date of judgment	13.02.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-This criminal jail appeal is directed against the judgment dated 27.02.2008, passed by the learned IIInd Additional Sessions Judge, Badin, in Sessions Case No.122 of 1999 (re: The State V Abdul Ghani and another), emanating from Crime No.41 of 1999, registered at Police Station Tando Ghulam Ali, under sections 302, 34 PPC, whereby the appellant has been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life. He was also directed to pay fine of Rs.50,000/- and in case of default thereof he was also to undergo S.I for 10 months more. If the fine is recovered, the same shall be paid to the legal heirs of deceased. The appellant was awarded benefit of section 382-B Cr.P.C. Whereas the co-accused Ashique alias Poonro was acquitted of the charge.

2. The facts of the prosecution case as stated in the F.I.R, are as under:-

"That complainant is residing with his father namely Muhammad Uris. His real mother died about 25 years back, therefore, his father contracted second marriage with Mst. Mehroo and there were five children out of the said wedlock. One Ghani son of Jumoon Khaskheli resides adjacent to their house towards eastern side. About one month back accused Abdul Ghani Khaskheli came at their house at about 9:00 p.m. but his father and complainant restrained him to not visit their house, therefore, Ghani was annoyed. About three days back to this incident, the exchange of hot words was made between Muhammad Uris and Ghani thereafter the father of complainant told him that he will shift to Tando Muhammad Khan. On the day of the incident i.e. 31.05.1999 at 4:15 p.m. the father of complainant namely Uris along with his wife Mst. Mehroo, younger sister Shamim and four children left the house taking fan for Tando Muhammad Khan. Complainant tried to stop him but he proceeded, therefore, complainant, his brother-in-law Muhammad Moosa son of Ali Muhammad Khaskheli went behind them, when they reached in the street in front of house of Muhammad Siddique Bhurgri at 4:30 p.m. they saw running to accused Ghani duly armed with hatchet and Ashique Ali alias Poonro empty handed, within the sight of P.Ws, accused Ghani caused sharp side hatchet blow to the father of complainant Muhammad Uris on back side of head, who fell down. Mst. Mehroo started running towards northern side of street but accused Ghani caused sharp side hatchet blow to her on the left side over her ear, who also fell down; again accused caused hatchet blow to Mst Mehroo on left side shoulder as well as third injury on right side shoulder. Complainant and P.Ws raised cries and hakals; then accused ran away towards the eastern side of street. Complainant party saw that both Muhammad Uris and Mst. Mehroo were dead. Thereafter, complainant lodged the report."

3. After usual investigation police submitted the challan against accused Abdul Ghani (appellant) and Ashique alias Poonro before the Court concerned and after completing necessary formalities, learned trial Court framed charge against them, to which they pleaded not guilty and claimed trial.
4. At trial, the prosecution in order to prove its case examined 09 P.Ws and exhibited numerous documents and other items. The statements of both accused were recorded under section 342 Cr.P.C whereby they denied the allegations leveled against them and claimed their false implication by the complainant party; however, they did not examine themselves on oath nor lead any defense evidence to disprove the prosecution case.
5. Learned trial Court after hearing the learned counsel for the parties and evaluating the evidence available on record convicted and sentenced the appellant Abdul Ghani Khaskheli, however, acquitted co-accused Ashique alias Poonro, as set out in the earlier part of this judgment.

6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that the evidence against the appellant is shaky and full of contradictions but the learned trial Court has not appreciated the same; that the impugned judgment suffers from irregularities and illegalities and is not sustainable in law; that the PW's were not present and as such there evidence cannot be relied upon; that important PW's had been given up without explanation; that there was major contradictions in the evidence of the PW's which rendered it unreliable; that no motive had been proven and as such for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of her contentions she placed reliance on the cases of **Riaz Ahmed V The State** (2010 SCMR 846), **Muhammad Riaz and another V The State** (2008 PCr.LJ 318), **Amjad Ali and others V The State and others** (2008 PCr.LJ 194), **Abdul Sattar V The State and another** (2008 PCr.LJ 869), **Muhammad Razzaq V The State** (2008 PCr.LJ 376), **Ghulam Qadir and 2 others V The State** (2008 SCMR 1221), **Muhammad Nawaz and another V The State** (2009 PCr.LJ 506), **Muhammad Rafiq V The State** (2009 YLR 1279), **Lal Khan V The State** (2006 SCMR 1846), **Salah-ud-Din and another V The State** (2005 YLR 621), **Liaquat Ali V The State** (2008 SCMR 95), **Qaisar Ali alias Qasar V The State** (2009 PCr.LJ 43), **Allah Ditta V The State** (2006 PCr.LJ 84) and **Muhammad Ishaque V The State** (2007 SCMR 108).

8. Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has fully supported the impugned judgment. In particular she has contended that there are 4 eye witnesses all of whose evidence is reliable, trust worthy and confidence inspiring; that the medical evidence fully corroborates the prosecution evidence; that the hatchet used in the murder was recovered on the pointation of the appellant; that there are no material contradiction in the evidence of the PW's and such the prosecution had proved its case beyond a reasonable doubt and the appeal should be

dismissed. In support of her contentions, she placed reliance on the case of **Muhammad Sadiq V The State** (2022 SCMR 690).

9. I have considered the submissions of the parties and have perused the material available on record as well as the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports I find that the prosecution has proved beyond a reasonable doubt that Muhammed Uris and his wife Mst Muhrunisa (the deceased) received hatchets blow(s) which lead to their death on 31.05.1999 at about 4.30pm in the street of eastern side of the house of Muhammed Siddique Baurgri Ward No.2 Tando Ghulam Ali Town, Taluka Matli District Badin.

11. The only question left before me therefore is whether it was the appellant who murdered the deceased by hatchet blow(s) at the said time, date and location?

12. After my reassessment of the evidence I 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 with promptitude within 30 minutes of the incident and gave no time for the complainant party to cook up a false case against the appellant. The appellant is also named in the FIR with a specific role.

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

(i) **Eye witness PW 1 Ali Ahmed. He is the complainant and son of the deceased.** According to his evidence on the fateful day he followed the deceased and his family who were migrating to Tando Muhammed Khan due to threats given by the appellant in order to persuade them not to leave. When his father reached the house of Muhammed Siddique Burgri he saw the appellant give a sharp side hatchet blow to the neck of his father who fell down and his step mother tried to runaway but she was caught by the co-accused and the appellant gave her three hatchet blows and she fell down. The children cried and PW Ramzan and Sher Muhammed came there. The co-accused was empty handed

whilst the appellant ran away with the hatchet in his hand. His father and mother both died on the spot and he left to lodge the FIR leaving the other PW's over the dead bodies.

From the evidence it transpires that this witness is related to the deceased however no enmity or dispute has been proven between the eye witness and the appellant although there were differences between the deceased and the appellant and thus his 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), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness knew the appellant before the incident which occurred at 4.30pm in broad day light when there would have been sufficient light to easily identify the appellant. The incident occurred quite close to him 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 appellant. His presence at the scene of the incident is corroborated by PW 2 Muhammed Ramazan, PW 3 Sher Muhammed and PW 6 Shamin.

This eye witness was not a chance witness as he lived in the area with his father in an adjacent house and had every reason to attempt to dissuade his father from leaving the area as he and his family were leaving on the advice of the local nekmards due to his father's quarrel with the appellant. He gave his S.154 Cr.PC statement within 30 minutes of the incident which was not significantly improved on during his evidence. He named the accused in his FIR along with a specific role. He gave his evidence in a natural manner and was not dented at all during cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who hit and murdered both the deceased through hatchet blow(s).

I can convict on the evidence of this eye witness alone though it would be of assistance by way of 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 I 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 2 Muhammed Ramazan. The deceased lady was his sister. He had no enmity with the appellant. His evidence corroborates PW 1 Ali Ahmed's evidence in all material

respects with the incident taking place in day light at 4,30pm. He gave his S.161 Cr.PC statement on the same day and later his S.164 Cr.PC statement which were not materially improved from his evidence. The same considerations apply to his evidence as the evidence of PW 1 Ali Ahmed.

(iii) Eye witness PW 3 Sher Muhammed. He is a brother of the deceased man. He had no enmity with the appellant. His evidence corroborates PW 1 Ali Ahmed's and PW 2 Muhammed Ramazan's evidence in all material respects except he says he saw the dead body of the deceased man and the appellant chase after the deceased lady who he saw the appellant hit with hatchet blows. Like eye witness PW 2 Muhammed Ramazan he gave his S.161 Cr.PC statement on the same day and his S.164 Cr.PC later and no material improvements were made during his evidence. The same considerations apply to his evidence as the evidence of PW 1 Ali Ahmed's and PW 2 Muhammed Ramazan's.

(iv) Eye witness PW 6 Shamin. She is the daughter of both the deceased. She was 10 years old at the time and the judge satisfied himself that she was mature enough to give evidence. Her evidence corroborates PW 1 Ahmed Ali, PW 2 Muhammed Ramazan and PW 3 Sher Muhammed's evidence in all material respects except in the case of eye witness Sher Muhammed where she saw her father being murdered by the appellant as well as her mother by hatchet blows. It is true that she gave her S.161 Cr.PC statement 4/5 days after the incident however in the light of the promptly lodged FIR and 3 other eye witnesses who gave their statements on the same day based on these fact and circumstances I still give some weight to her evidence especially as she was a natural witness travelling with her parents (the deceased) and had no enmity with the appellant, knew him, it was day light, she saw him from close range and would be unlikely to substitute the real murderer of her parents by implicating an innocent person. Her stating in her cross examination that it was correct that she was not present during the incident following her detailed evidence in chief on the incident I find to be a typo.

Thus, based on my believing the evidence of the 4 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)

(c) That it does not appeal to logic, commonsense or reason that a real son, brother, sister, daughter would let the real murderer of there parents/siblings get away scott 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)

(d) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased man died from a blow to his head from a sharp cutting instrument whilst the deceased lady died from three wounds caused by such instrument i.e a hatchet as described by all the eye witness PW's.

(e) That it has not been proven through evidence that any particular police PW's had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case, for instance, by planting the hatchet on him and in such circumstances it has been held that the evidence of the police PW's 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).

(f) 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 time the appellant quarreled with the male deceased to the nekmards advising the male deceased to leave the village which he was attempting to do with his family to his son trying to dissuade him to the attack of the deceased by the appellant with a hatchet which blows as per medical evidence caused their death to the arrest of the appellant to the recovery of the hatchet on his pointation.

(g) The fact that the co-accused was acquitted is of no help to the appellant as the evidence against the appellant actually murdering the deceased was far more compelling and explicit where as the co-accused according to all the evidence was unarmed and did not strike the deceased at all.

(h) It is true that an eye witness was dropped however in a case where the prosecution has already called 4 compelling eye witnesses based on the particular fact and circumstances of this case I do not consider the dropping of an eye witness to be of much consequence since the prosecution was satisfied that it had proved its case through the 4 eye witnesses which it had already called and the prosecution is not obliged to call all eye witnesses just for the sake of it which would unnecessarily prolong the trial.

(i) Although the hatchet used in the murder according to PW 9 Nazar Muhammed who was the IO was recovered on the pointation of the appellant at a hidden place however I give little weight to this recovery as the Mashir of recovery in his evidence in chief states that he was present when the hatchet was recovered from the hidden place by the appellant and then in cross examination states that he was not present.

(j) The appellant's claim that Meare as named in the charge is a different person from Mehrunissa as is named in the evidence I find of no substance especially as in the charge it states Meare wife of Uris who was her husband who was murdered along with her by the appellant as they were leaving the village. Even other wise the Supreme Court has recognized that in rural areas people are often referred to by their short names, alias or by their nick names. I have no doubt that Meare and Mehrunissa are one and the same person. In this respect reliance is placed on the case of **Ghulam V State** (PLD SC 2022 806)

(k) 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 caste doubt on or dent the prosecution case. The defence case is simply one of false implication simplicitor. The appellant did not give evidence on oath and did not call any DW or take any particular defence during the trial through cross examination. Thus, for the reasons mentioned above I disbelieve the defence case in the face of 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.

13. Thus, based on the above discussion I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction and sentence and dismiss the appeal.

14. The appeal is disposed of in the above terms.