

## IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Rasheed Ahmed Soomro

1. **Cr. Jail Appeal No.D- 315 of 2012**  
**(Confirmation Case No.D-16 of 2012)**

Soomar Bheel

Versus

The State

2. **Cr. Jail Appeal No.D- 326 of 2012**

Khamiso Bheel

Versus

The State

Appellant : Soomar Bheel in Cr. Jail Appeal No.D-315 of 2012	Through Mian Taj Muhammad Keerio, Advocate
Appellant : Khamiso Bheel in Cr. Jail Appeal No.D-326 of 2012	Through Ms. Nasira Shaikh, Advocate
Respondent : The State	Through Ms. Rameshan Oad, A.P.G. Sindh
Complainant : Jafar	Through Mr. Waseem Hussain Jafri, Associate of Mr. Mumtaz Alam Laghari Advocate
Date of hearing	09.06.2020
Date of judgment	16.06.2020

J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J.-** By this single judgment we  
intend to dispose of the aforementioned two criminal jail appeals and

confirmation reference as the same relate to one and the same incident and have been filed against the same judgment passed by the trial court.

2. By means of instant Criminal Jail Appeals, both appellants have assailed the Judgment dated 20.10.2012, passed by learned IInd Additional Sessions Judge, Hyderabad, in Sessions Case No. 636 of 2008, whereby they have been convicted for an offence punishable under section 302(b) r/w section 34 PPC and sentenced in the following manner (1) appellant Soomar Bheel sentenced to death as Ta'zir and (2) appellant Khamiso Bheel sentenced to suffer imprisonment for life as Ta'zir. Vide said judgment appellant Soomar Bheel was also directed to pay compensation of Rs.200,000/- whereas appellant Khamiso Bheel was directed to pay compensation of Rs.100,000/- to the Walis / legal heirs of the deceased in terms of section 544-A Cr.P.C. In default thereof, both appellants / accused were ordered to suffer S.I for six and three months more, respectively. Both appellants however, were extended the benefit of Section 382-B Cr. P.C.

3. The prosecution case in brief is that on 17.10.2008, complainant Jafar and P.Ws Muhammad Ashraf, Mehboob and deceased Muhammad Hanif were on their way, by foot, via katcha path to irrigate their lands and as soon as they reached near mango garden of Mooso Gaho at about 2230 hours, accused Soomar Bheel armed with hatchet and three others (one of them per statements of witnesses u/s 164 Cr.P.C., was Khamiso Bheel), duly armed with pistols and hatchet respectively, with open faces emerged and accused / appellant Soomar Bheel gave hatchet blows to Muhammad Hanif on his face and head, who after sustaining injuries fell down and died on the spot; whereas remaining accused stood pointing their weapons at complainant party and after committing offence they all fled away. As regard the motive, it was stated that deceased was murdered due to demand of his outstanding amount of Rs.1,50,000/- from accused / appellant Soomar Bheel.

4. After usual investigation, police submitted challan before the concerned court and after completing necessary formalities, learned trial court framed the charge against accused / appellants, to which they pleaded not guilty and claimed trial.



5. The prosecution in order to prove its case examined 07 PWs and exhibited numerous documents and other items. The statements of the accused / appellants were recorded under section 342 Cr.P.C whereby they claimed false implication. They did not examine themselves on oath or call any witness in support of their defence case.

6. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellants as stated above.

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

8. Learned counsel for the appellants in both appeals have argued the matter almost on the same lines and have contended that there was a two day unexplained delay in lodging the FIR which had lead to the case being cooked up by the police and the complainant in order to falsely implicate the accused, that it was doubtful that the eye witnesses were even present at the scene, that the post mortem report could not be relied upon as it had not been put to the accused at the time of the accused recording their S.342 Cr.PC statements, that there was no evidence of any motive, that applicant Khamiso had not even been nominated in the FIR and played no active role in the murder, that the identification of the appellants as the persons who committed the murder could not be safely relied upon as it was a night time incident and for any one of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of their contentions the appellants placed reliance on the cases of **Usman alias Kaloo V The State** (2017 SCMR 622), **Mian Sohail Ahmed and others V The State and others** (2019 SCMR 956), **Haroon Shafique V The State and others** (2018 SCMR 2118), **Hakeem and others V The State** (2017 SCMR 1546), **Muhaiyimad Jamail and 3 others V The State** (2010 MLD 1586), **Muhammad Saleem V Mullan alias Nooruddin and 3 others** (2019 MLD 1732), **Bangul V The State** (2019 PCr.LJ 1351) and **Mehmood Ahmad and 3 others V The State and another** (1995 SCMR 127).



9. On the other hand learned APG appearing on behalf of the State as well as the learned counsel for the complainant fully supported the impugned judgment and in particular contended that any delay in lodging the FIR stood explained, that the eye witnesses were reliable, trust worthy and confidence inspiring and that they had correctly identified the appellants as committing the murder, that the medical evidence supported the eye witness evidence, that the recoveries supported the prosecution case and as such the appeals against conviction should be dismissed and that the impugned judgment should be upheld and the confirmation reference in respect of appellant Soomar Bheel be answered in the affirmative. In support of these contentions learned A.P.G placed reliance on the cases of **Muhammad Akram alias Akrai V The State** (2019 SCMR 610), **Kanwar Anwaar Ali, Special Judicial Magistrate: In the matter of Criminal Miscellaneous Application No.183 of 2019 in Criminal Appeal No.259 of 2018**, decided on 22<sup>nd</sup> February, 2019 (PLD 2019 Supreme Court 488), **Sikandar V The State and another** (2006 SCMR 1786) and **Abdul Khalique V The State** (2020 SCMR 178).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. In our view after our reassessment of the evidence based on the evidence of the PW eye witnesses, PW MLO's, PW police witnesses and IO, recovery of hatchet and positive chemical reports we are satisfied that the prosecution has proved beyond a reasonable doubt that on 17.10.2008 at 2230 hours at Katchi Patri Kunnar Plant near mango garden Tando Jam Muhammed Hanif was murdered by a person causing him hatchet blows.

12. The only issue therefore, in our view, left before us is whether it was the appellants or some other third party who murdered the deceased by hatchet blows.

13. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellants beyond a reasonable doubt and that the appellants Soomar Bheel and Khamiso Bheel with



common intention murdered Muhammed Hanif (the deceased) and hereby uphold the convictions and sentences in the impugned judgment against both the appellants for the following reasons;

(a) In our view there has been no lengthy unexplained delay in lodging the FIR. The incident took place at 10.30 pm according to the evidence of the eye witness PW's whose evidence is considered later in this judgment. Thereafter the complainant and the two other eye witnesses were detained for about 2 to 3 hours by the appellants before they were released. The place of incident according to PW 4 Qadir Bux who was the IO who inspected the place of incident was about 13/14 KM's from the PS and according to PW 5 Nizamuddin the police had already been informed about the incident before 11.30am the next day and the body had already been dispatched to the hospital where the complainant went to receive the same and thereafter registered the FIR and thus we find that any delay in registering the FIR has been adequately explained. Thus, there was no time to cook up a false story between the complainant and the police. In this respect reliance is placed on the cases of **Sikander** (supra) and **Abdul Khalique** (Supra). Even otherwise no enmity between the complainant and the appellants has come on record and thus he had no reason to implicate the appellants in a false case. Furthermore, the appellant Soomar Bheel is specifically nominated in the FIR with a specific role which was confirmed by the eye witnesses during their evidence.

(b) The key witnesses in this case in our view are eye witnesses PW 1 Jaffer who is also the complainant, PW 2 Muhammed Ashraf and PW 3 Mehboob Ali. We shall consider the evidence of these eye witnesses in turn below;

(i) **Eye witness PW 1 Jaffer** is also the complainant in this case. According to his evidence on 17.10.2008 he along with eye witnesses PW 2 Muhammed Ashraf, PW 3 Mehboob and the deceased were all going for irrigating their lands. He by charger light which he was carrying saw 4 persons out of whom he recognized the appellants. **He saw appellant Soomar Bheel hit the deceased on his head with a hatchet who died on the spot.** He and PW 2 Muhammed Ashraf and PW 3 Mehboob were then held hostage by the appellants and their co-accused for about two to three hours. He, like PW 2 Muhammed Ashraf and PW 3 Mehboob, was a natural witness and **not a chance witness** as he and the other two PW's were local landlords who lived in the same village and each had adjoining land in that area where they were going as at 11pm it was their turn for irrigation water as per their rotational turn. **He knew the appellants** as they used to be laborers for the deceased prior to the incident and their faces were not muffled and as such there was no requirement of an identification parade. With regard to the aspect of light it has come in evidence that the appellants were seen and identified by charger light from 10 to 15 feet **and that even otherwise since the**



eye witnesses were detained for 2 to 3 hours by the appellants they would have been able to get a good look at the appellants from close up for a prolonged period of time who they knew anyway and as such would have been easily able to recognize and correctly identify the appellants. Thus, based on the particular facts and circumstances of this case neither the lighting nor the correct identification of the appellants is at issue. He had no enmity with the appellants and had no reason to falsely implicate them in this case. His eye witness statement under S.161 Cr.PC was also taken without delay being within two days of the incident. He was not shattered during cross examination. It was his uncle who was murdered and as such he would have no interest in substituting the appellants with the real murderer as he would want justice for his uncle and as such no question of substitution arises. He also **corroborates the evidence of eye witnesses PW 2 Muhammed Ashraf and PW 3 Mehboob in all material respects.** In the FIR and his evidence he has narrated the motive for appellant Soomar Bheel murdering the deceased. Namely that the deceased wanted appellant Soomar Bheel to repay RS150,000 which the appellant was avoiding to pay. We find no reason to disbelieve his evidence which we find reliable, trust worthy and confidence inspiring and find that he has correctly identified the appellant Soomar Bheel as the person who murdered the deceased by hatchet whilst appellant Khamiso Bheel was present with a pistol at the time of the murder and who held them captive for two to three hours after the murder and who was correctly identified in court.

(ii) Eye witness PW 2 Muhammed Ashraf corroborates the evidence of PW 1 Jaffer in all material respects except that he has no blood relationship with the deceased. He is also not related to PW 1 Jaffer or PW 3 Mehboob and is an entirely independent and disinterested witness. In his evidence he states that he saw appellant Soomar Bheel hit the deceased on the head with a hatchet and that the deceased died on the spot. He also states in his evidence about being taken hostage by the appellants and their co-accused and appellant Soomar's motive for the murder. The same considerations apply to him as for PW 1 Jaffer as discussed above.

(iii) Eye witness PW 3 Mehboob corroborates the evidence of PW 1 Jaffer and PW 2 Muhammed Ashraf in all material respects except that he has no blood relationship with the deceased. He is also not related to PW 1 Jaffer or PW 2 Muhammed Ashraf and is an entirely independent and disinterested witness. In his evidence he states that he saw appellant Soomar Bheel hit the deceased on the head with a hatchet and that the deceased died on the spot. He also states in his evidence about being taken hostage by the appellants and their co-accused and appellants Soomar's motive for the murder. The same considerations apply to him as they do for PW 1 Jaffer as discussed above.



(c) It is settled law that we can convict if we find the direct oral evidence of one eye witness to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan V The State** (2006 SCMR 1857). Furthermore, the supreme court in the case of **Niaz-Ud-Din V The State** (2011 SCMR 725) held as under in respect of the ability of the court to uphold a conviction for murder even based on the evidence of one eye witness provided that it was reliable and confidence inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which matters at P.734 Para 11 as under;

*"11. The statement of Israeel (P.W.9) the eye-witness of the occurrence is confidence inspiring, which stands substantiated from the circumstances and other evidence. There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that "even in a murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable." The reason being that it is the quality of evidence and not the quantity which matter. Therefore, we are left with no doubt whatsoever that conviction of Niaz-ud-Din was fully justified and has rightly been maintained by the High Court."*

In this case we find 3 eye witnesses to be fully corroborative and reliable, trust worthy and confidence inspiring especially in terms of correctly identifying the appellant Soomar Bheel as the person who committed the murder of the deceased and appellant Khamiso Bheel as aiding and abetting him with common intention in the murder. Never the less by way of abundant caution we will consider below whether any corroborative /supportive evidence is available in respect of the direct oral eye witness evidence.

(d) It is correct that we cannot relay on the post mortem report to convict the appellants as this was not put to them during the recording of their S.342 Cr.PC statements. However, in our view this is not particularly relevant as the evidence of PW 7 Dr.Wasif Khan who was the MLO who carried out the post mortem of the deceased states that that he found 3 incised wounds. One was to the scalp, one to the face and the other to the right submandibular region and that the cause of death was due to sharp cutting substances. **His evidence was not challenged on cross examination and clearly shows that the injuries/wounds which lead to the death of the deceased was caused by a weapon such as a hatchet and as such the medical evidence fully supports the prosecution oral eye witness evidence.**

(e) The hatchet being the murder weapon was recovered after being hidden in hedges **on the pointation of the appellant Soomar Bheel** immediately on his arrest from a place which only he could have known about and that the hatchet was blood stained. That likewise the pistol was recovered from its hiding place by the police on the



pointation of appellant Khamiso Bheel shortly after his arrest which hiding place only appellant Khamiso Bheel could have known about. Thus, in neither case were the recoveries of either the hatchet or the pistol foisted on the appellants by the police.

(f) Positive chemical reports showing that the blood gathered at the scene and on the clothes of the deceased was human blood.

(g) That all the PW's 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 appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). The evidence of the PW's provides a believable corroborated unbroken chain of events from the murder of the deceased by hatchet to the arrest of the appellants.

(h) It is well settled by now that police witnesses are as reliable as any other witness unless any ill will or enmity has been attributed to them which has not been done in this case. Like wise it is well settled that simply because a witness is related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99).

(i) Of course it is for the prosecution to prove its case beyond a reasonable doubt against the appellants which we find that they have done in this case however we have considered the defense case before reaching this conclusion. The appellants have taken the defense plea of false implication. They did not give evidence under oath or call any witness in support of their defense case. During their cross examination of the PW's they did not suggest that they were not at the scene when the crime was committed and have not suggested any enmity, ill will or reason as to why the complainant or any of the PW's would implicate them in a false case and as such we disbelieve the defense case of false implication especially in light of the motive which the appellant Soomar Bheel had for committing the murder and the overwhelming prosecution evidence against the appellants.

(j) We also find that the prosecution has asserted a motive for the appellant Soomar Bheel to murder the deceased and has proved the same through the FIR, the evidence of PW 1 Jaffer, PW 2 Muhammed Ashraf and PW 3 Mehboob who all give evidence that the appellant Soomar Bheel owed RS 150,000 to the deceased who was demanding the return of the same from him and appellant Soomar Bheel was not repaying the same. As such by murdering the deceased appellant Soomar Bheel could avoid repaying his debt to the deceased.

14. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other



corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against both the appellants beyond a reasonable doubt.

15. With regard to sentencing we note that the appellant Soomar Bheel brutally murdered the deceased who was unarmed at the time in order to avoid repaying a debt to him by causing him **numerous hatchet blows to the head and face and other vital parts of his body** and as such no leniency is justified in terms of sentencing for appellant Soomar Bheel. With regard to appellant Khamiso Bheel since he did not directly murder the deceased we are of the view that he has rightly been given the lesser sentence of life imprisonment by the learned trial court on account of his adding and abetting the murder and his common intention to commit the murder.

16. Thus, for the reasons discussed above the appeals against convictions are dismissed the impugned judgment and its sentences imposed therein are upheld and as such the confirmation reference in respect of appellant Soomar Bheel is answered in the affirmative.

17. The appeals and confirmation reference are disposed of in the above terms.