

Murder Acquitted : Last Seen evidence  
Pros evidence does not applied to reason

830

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

**CRIMINAL JAIL APPEAL NO. D-459 OF 2010  
CONFIRMATION CASE NO. D-24 OF 2010**

**MUHAMMAD ADNAN V/S THE STATE**

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

**Composition of Bench**

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO

(D.B)

Date of last hearing (heard/reserved): 23-06-2020

Decided on: 02-07-2020

(a) Judgment approved for reporting

YES ✓

**C E R T I F I C A T E**

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: -

- (i) This slip is only to be used when some action is to be taken.
- (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
- (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

SGP, Kar-L (iii) 773-2000-4-2003-III

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD.

Cr. J/Appeal No. B - 459 of 2010.

Muhammad Adnan S/o Muhammad

Ali Arai, now confined in

central prison Hyderabad . . . . .

. . . Appellant.

Vs.

The State . . . . .

. . . Respondent.

CONTD.P.NO. 2.

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

Cr. Jail Appeal No.D-459 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE
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23-06-2020

Syed Tarique Ahmed Shah advocate for the appellant.  
Ms. Rameshan Oad, Assistant Prosecutor General.  
Complainant is present in person.

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Learned counsel for appellant has read out the entire evidence and has made his submissions. Learned Assistant Prosecutor General has also made her submissions on behalf of the State as well as the complainant, who is present in person and has expressed his full confidence and faith in her. Reserved for judgment.

  
JUDGE

JUDGE

Murder Acquitted - Last Seen evidence

833  
Pros evidence does not appeal to reason

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

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

Cr. Jail Appeal No.D- 459 of 2010  
[Confirmation Case No.24 of 2010]

Muhammad Adnan

Versus

The State

Appellant : Muhammad Adnan	Through Syed Tarique Ahmed Shah Advocate
Respondent : The State	Through Ms. Rameshan Oad, APG Sindh
Complainant : Allah Ditto	Present in person represented by Ms Ramesham Oad APG Sindh
Date of hearing	23.06.2020
Date of judgment	02.07.2020

JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J.**-This criminal jail appeal is directed against the judgment dated 11.12.2010, passed by learned Ist. Additional Sessions Judge, Badin, in Sessions Case No.38 of 2006 (Re: State V Muhammad Adnan and another), emanating from Crime No.16 of 2006, registered at Police Station Pangrio, under sections 302, 324, 459, 201, 34 PPC,



whereby appellant has been convicted u/s 302(b), 459 PPC and sentenced to death subject to confirmation by this court in the terms as mentioned in Point No.4 of the said impugned judgment, which is as under:-

“ POINT NO.4.

-----.

23. -----. Accordingly, the accused Muhammad Adnan is convicted under section 302(B), 459 PPC and sentenced to death subject to confirmation of death sentence by Honourable High Court of Sindh under section 374 Cr.P.C. He was further directed to pay compensation of Rs.200,000/- to the legal heirs of each deceased Ghulam Muhammad, Muhammad Iqbal and Sawan alias Biloo. In case of default, he shall suffer S.I for six months more and also pay fine of Rs.50,000/- each. In case of non-payment of fine he shall further suffer simple imprisonment for 6 months more.”

2. The facts of the prosecution case as stated in the F.I.R, registered at P.S Pangrio by complainant Allahditto Arain on 07.02.2006 are that, he is hari of Zamindar Wasim Gujar and resides with the maternal uncle of Wasim Gujar in Khoski town. His son Muhammad Iqbal also resides with Ghulam Muhammad. He and his son were available in town where Adnan S/o Muhammad Ali met and told them that Iqbal and Ghulam Muhammad Gujar have restrained him not to come in their Mohallah as there is complaint against him. Adnan also threatened that he will see them. It is further stated that on 07.02.2006 at 05:30 a.m. when the complainant reached in the street near the house of Ghulam Muhammad Gujar, he found Adnan having a hammer in his hand coming from the house; complainant told him to stop but he ran away. Thereafter, complainant went inside the house and found Muhammad Iqbal lying unconscious having injuries on his head and bleeding from ear; cook Sawan and Ghulam Muhammad Gujar were also lying unconscious having injuries on their persons. They were also bleeding from their respective ears and noses. Thereafter, the complainant narrated the facts to Muhammad Siddique and Mistri Muhammad Iqbal Bajwa who came at the vardat. Then complainant went to Police Post Khoski and recorded report at about 1215 hours which was subsequently incorporated in 154 Cr.P.C. book at P.S Pangrio.



3. After usual investigation the police submitted the challan before the concerned court and after completing necessary formalities, learned trial court framed charge against the accused/appellant as well as co-accused Amir Bux, to which they pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 15 PWs and exhibited numerous documents and other items. The statements of both the accused were recorded under section 342 Cr.P.C whereby they claimed false implication. Appellant Adnan also stated that in fact murders were committed by one Wasim Gujar in order to usurp the land of deceased Ghulam Muhammad and while taking undue advantage of his being mentally retarded involved him in this false case. Both accused; however, did not examine themselves on oath nor call any witness in support of their defence case.

5. Learned trial court after hearing the learned counsel for the parties and assessing the evidence available on record convicted and sentenced the appellant as stated above; however, acquitted co-accused Amir Bux.

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 appellant has contended that the appellant is innocent and has been falsely implicated in this case; that the FIR has been delayed by almost 7 hours which had given the complainant the chance to cook up a false case collusion with the police and Zamander Wasim Gujar who wanted to take over the deceased Ghulam Muhammed's lands and thus wanted to murder Ghulam Muhammed and falsely implicate him in this case, that there is no eye witness to the incident and the case is based on last seen evidence which cannot be safely relied upon as the concerned PW's were hari's of Zamindar Wasim who wanted to steal deceased Ghulam Muhammed's land and all the PW's were related to the deceased and were interested witnesses, that the alleged dying declaration of Sawan is a weak piece of evidence and cannot be safely relied upon; that the recoveries were foisted on the appellant, that the evidence against the appellant is shaky and full of contradictions but the learned trial court has not appreciated the same



and that for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Abdul Jabbar and another V The State** (2019 SCMR 129), **Nazir Ahmad V The State** (2018 SCMR 787), **Muhammad Ameer and another V Riyat Khan and others** (2016 SCMR 1233), **Usman alias Kaloo V The State** (2017 SCMR 622), **G. M. Niaz V The State** (2018 SCMR 506), **Muhammad Ashraf alias Acchu V The State** (2019 SCMR 652), **Zafar V The State and others** (2018 SCMR 326), **Mehmood Ahmad and 3 others V The State and another** (1995 SCMR 127), **Nadeem Ramzan V The State** (2018 SCMR 149), **Mubeen alias Haji Muhammad Mubeen V The State** (2006 YLR 359) and **Mst. Zahida Bibi V The State** (PLD 2006 Supreme Court 255).

8. On the other hand the learned Assistant Prosecutor General Sindh on behalf of the State as well as the complainant Allahditto Arain, who is present in person and has expressed his full confidence and faith in learned A.P.G to argue the instant case on his behalf also, after going through the entire evidence of the prosecution witnesses as well as other record of the case has supported the impugned judgment. In particular she has stressed the importance of the last seen evidence, the medical evidence, the dying declaration of deceased Sawan and the recoveries and has contended that the prosecution has proved its case against the appellant beyond a reasonable doubt and as such the appeal should be dismissed and the confirmation reference answered in the affirmative. In support of her contentions, she placed reliance on the cases of **Ghazanfar Ali @ Pappu and another V The State** (2012 SCMR 215), **Iftikhar Ahmad V The State** (2019 SCMR 1224), **Nasir Mehmood and another V The State** (2015 SCMR 423), **Nasir Shah V The State** (2006 SCMR 1796), **Takdir Samsuddin Sheikh V State of Gujrat and another** (2012 SCMR 1869) [Supreme Court of India], **Muhammad Bux V The State** (2015 YLR 519) and **Nadir Shah V The State and others** (2012 PCr.LJ 588).

9. 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.

10. In our view after our reassessment of the evidence based on the evidence of the PW's including MLO's and police and IO, recovery of hammer and positive chemical reports we are satisfied that the prosecution has proved beyond a reasonable doubt that on 07.02.2006 at the house of deceased Ghulam Muhammed, Muhammed Iqbal, and Sawan were all murdered by being beaten to death by a hammer.

11. The only issue therefore, in our view, left before us is whether it was the appellant or some other third party who murdered all the deceased by hammer blows.

12. In our view after our reassessment of the evidence we find that the prosecution has **NOT** proved its case against the appellant beyond a reasonable doubt that the appellant murdered all 3 or any of the deceased by hammer and hereby set aside the convictions and sentences in the impugned judgment against the appellant for the following reasons;

(a) In our view there has been no lengthy unexplained delay in lodging the FIR. The incident took place at 5.30am according to the evidence of the PW 1 Allah Ditto and PW 2 Mohammed Hanif. Thereafter a report was made promptly at police check post in Khoski which was close by and thereafter the complainant had to arrange the transportation of the dead and injured to hospital and thereafter he lodged the FIR. Thus, under these circumstances we do not consider the delay in lodging in the FIR to be fatal to the prosecution case although such delay coupled with the other issues which we shall discuss below **might** have lead to the concoction of a false case against the appellant. In this respect reliance is placed on **Nair Ahmed's case** (Supra)

(b) **Admittedly there is no eye witness to the murders.** In our view the **key** pieces of evidence in this case are the last seen evidence of PW 1 Allah Ditto who is also the complainant in this case, PW 2 Mohammed Hanif and PW 10 Nazir Ahmed **and** the dying declaration of Sawan which pieces of evidence we shall examine in turn. Before considering the last seen evidence although we appreciate that the proximity in time of when the accused was last seen with the deceased is of importance as was held in the case of **Muhammed Abid V State** (PLD 2018 SC 813) however in our view what is more significant is whether we believe the evidence of those PW's who gave last seen evidence.

(i) **Last seen witness PW 1 Allah Ditto** is also the complainant in



this case. The deceased Iqbal was his son and he was a hari of Waseem and Ghulam Muhammed. According to his evidence on 07.02.2006 at 5.30am he and his cousin Hanif went to the house of deceased Ghulam Muhammed to inform him about a sugar cane trolley being ready. **He saw appellant Adnan come out of the house of Ghulam Muhammed with a hammer in his hand who ran away after he gave him a warning.** He then went inside the house and found the dead bodies of Ghulam Muhammed and the seriously injured and unconscious Iqbal and Sawan. In our view he was a **chance witness** and had no reason to be present at 5.30am at the house of Ghulam Muhammed. In this respect reliance is placed on **Usman's case** (Supra). This in our view makes his evidence doubtful, Further doubt is caste on his evidence by the fact that it was 5.30am in the morning and it was dark and not daylight and there was no source of light so how was it possible for him to recognize Adnan from a long distance via a fleeting glance when he only knew him as a person from the local community. The complainant was also related to the deceased and was an interested witness who according to his own FIR had enmity with the appellant who had warned him to stay away and as such further doubts are created over the reliability of his evidence. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99). It does not also appeal to logic, reason, commonsense and natural human conduct that when he entered the house on finding his badly injured son (Iqbal) he did not immediately transport him to hospital for treatment so that his life could be saved but instead waited until 9am which was nearly 3.30 hours later. A father would have been expected to immediately take his seriously injured son to hospital without any delay. In this respect reliance is placed on **Muhammed Asif V State** (2017 SCMR 486). Thus, we have grave doubts about the presence of PW 1 Allah Ditto who is the complainant at the time of his apparent last seen evidence and we will need to find strong independent corroborative/supportive evidence from an unimpeachable source which appears to be lacking in this case as we will come to later in this judgment.

(ii) Last seen witness PW 2 Muhammed Hanif fully corroborates the last seen evidence of PW 1 Allah Ditto however the same considerations apply to him as for PW 1 Allah Ditto. He even states in his evidence that when the complainant went to the PS at 7.30am the sun was still not ripe which confirms that at 5.30am when the incident occurred it was dark with no source of light.

(iii) Last seen witness PW 10 Nazir Ahmed. According to his evidence on 07.02.2006 at 5am he was proceeding with Malik Noor Muhammed to attend a wedding ceremony in the Punjab when he on the way they passed near the house of Ghulam Muhammed where he saw Adnan with a hammer (without blood on it despite it later being recovered blood stained) in his



hand and Amir Bux (acquitted co-accused) and Adnan was telling Amir Bux not to disclose what they had done to any other person. When the van reached the hospital Adnan and Amir Bux also entered the van and sat with them and both Adnan and Amir Bux were continuously talking about the incident. We completely disbelieve the evidence of this witness for the following reasons (a) He was a chance witness, (b) He produced no wedding invitation or any evidence that he attended a wedding in the Punjab nor did he produce any bus or train ticket in support of his journey, (c) Malik Noor Muhammed who was accompanying him was on the list of witnesses but he was given up and as such the inference under Article 129 (g) Quannon-e-Shahdat Ordinance 1984 can be drawn that he would not have supported/corroborated his evidence, (d) it does not appeal to reason logic, commonsense and natural human conduct that Adnan would still be wandering around with a hammer in broad day light after committing such a brutal crime especially if he thought that he had been seen by PW 1 Allah Ditto and PW 2 Muhammed Hanif, (e) having committed such a heinous crime and apparently earlier told Amir Bux not to discuss it how possibly could appellant Adnan be discussing the entire incident on a crowded van for all and sundry to hear (f) if Adnan did discuss the incident on the bus then why did the witness not get off the bus and report the incident of 3 brutal murders to the police especially as he could have caught a later bus to the Punjab in order to attend the alleged wedding and (g) he did not even notice that Adnan had blood stained clothes which he must have had since he saw him outside the house just after the incident which contradicts PW 1 Allah Ditto and PW 2 Muhammed Hanif who in their evidence state that Adnan ran away from the house when they raised heckles.

(c) With regard to the dying declaration it is true that Sawan fully implicates appellant Adnan in the murders. However we also have some doubts about the authenticity and reliability of such dying declaration. This is because (a) a dying declaration is usually given and relied upon if a person faces imminent and certain death as it is presumed that he will not make a false statement before going to meet his maker yet in this case Sawan who made the dying declaration died approx 6 to 7 days after he made it and as such it is doubtful whether it could be termed as a dying declaration as his statement could relatively easily have been recorded before a magistrate under S.164 Cr.PC (b) even otherwise PW 11 Dr.Iqbal Ahmed who confirmed that Sawan was fit enough to give a dying declaration to IO PW 14 Abdul Qadir was related to the said IO and according to his evidence the IO recorded the dying declaration but according to the IO PW 14 Abdul Qadir in his evidence states that he did not record the dying declaration but instead it was recorded by his WHT which appears to be quite a **significant contradiction** over such an important piece of evidence. Even otherwise a dying declaration is regarded as a weak piece of evidence as it is not subject to cross examination. In this respect reliance is placed



on **Mst Zahida Bibi** (Supra). Thus, we give little, if any, weight to Sawan's dying declaration.

(d) The hammer was not recovered from Adnan when he was arrested on the same day of the incident. According to the prosecution Adnan led IO PW 14 Abdul Qadir to the hammer on his pointation which he had kept at his house. However this recovery is not supported by PW 6 Muhammed Nawaz who was the mashir. It again does not appeal to natural human conduct to keep the murder weapon being a hammer safely at home as some kind of a trophy which could subsequently implicate him in the offense when Adnan could easily have disposed of it.

(e) Other important recoveries allegedly made by IO PW 14 Abdul Qadir which would have linked Adnan to the scene of the crime such as the watches which allegedly belonged to the deceased Ghulam Muhammed (and have not been confirmed as either being taken or as being his by any PW) and the recovery of Adnan's CNIC card at the scene have also not been supported by the mashir and as such we place little reliance on the evidence of PW 14 IO Abdul Qadir who appears to have carried out a dishonest investigation.

(f) It is also simply not believable that Adnan who had gone to bludgeon to death the 3 deceased in Ghulam Muhammed's house would have left behind his CNIC card. The possibility of this being planted by the police in order to strengthen the case against him cannot be ruled out.

(g) It is also simply not believable that 3 grown men when being attacked by the appellant Adnan with a hammer were not able to put up any resistance and save at least one of their lives and force Adnan to flee from the house.

(h) In assessing the evidence before us we also have to consider the defense case. The appellant Adnan has been consistent throughout in his defense case in that he has been falsely implicated so that the real killer Wasim could take over Ghulam Muhammed's land. He cross examined throughout on this point and also raised this defense in his S.342 Cr.PC statement and as such we cannot dismiss the defense case out of hand.

13. The above discussion leads us to the conclusion that there are doubts in the prosecution case. It is a golden principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt and that any doubt must go to the benefit of the accused and in this case as mentioned above we find doubts in the prosecution case and as such the benefit must go to the appellant. In this respect reliance is placed on the case of **Tariq Pervez V/s. The State** (1995 SCMR 1345), wherein the Supreme Court has held as under:-

"It is settled law that it is not necessary that there should be many circumstances creating doubts. **If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit** not as a matter of grace and concession but as a matter of right."(bold added)

14. Thus, based on the above discussion we by extending the benefit of the doubt to the appellant acquit the appellant of the charge and allow the appeal. The impugned judgment is set aside and the confirmation reference is answered in the negative. Appellant Adnan shall be released from custody unless wanted in any other custody case.

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