

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No. S - 666 of 2022

(Chanessar v/s The State)

Before

Mr. Justice Nisar Ahmed Bhanbhro

Appellant: Chanessar
Through Mr. Qamar Abbas Ali Abassi and Ms.
Kulsoom Advocates

The State: Through Mr. Rashid Ali Gabol
Assistant Prosecutor General, Sindh.

Date of hearing & Order 04-05-2025

Date of Reasons: 07 -05-2025

J U D G M E N T

Nisar Ahmed Bhanbhro J.- The Appellant / Convict Chanessar, through instant appeal, has attacked the judgment dated 18-10-2022 passed by the Court of Learned Additional Sessions Judge-I/MCTC Malir (**Trial Court**) in Sessions Case No 1237 of 2021 Re "The State Versus Chanesar", whereby the appellant was convicted for the charge of an offence punishable under section 302 PPC and sentenced to suffer Rigorous Imprisonment (RI) for life, with the benefit of section 382-B Cr.P.C.

2. Facts germane to prosecution story as narrated in FIR lodged on 15.07.2007 by complainant Soomar are that complainant along with his family members including son in law Chanessar had been working at Ashique Farm situated at Plot No 119 Gadap Road Karachi. It is alleged that about two days ago complainant's son in law Chanessar had fought his wife Radha (daughter of complainant). In the intervening night between 14/15.07.2007 complainant party went to sleep, Chanessar and Radha also slept at some distance. In the morning at about 0600 hours when complainant woke up, he found throat of his daughter Radha cut while her husband was not available. The complainant alleged that

Chanessar had killed Radha. The statement was incorporated into 154 CrPC Book by in charge of Gadap Police Station.

3. Investigation took its course, Investigation Officer inspected the place of incident, recorded 161 CrPC statements of prosecution witnesses, secured blood stained earth. IO sent bloodstained earth, bloodstained clothes for forensic analysis. On completion of investigation, IO submitted report under section 173 CrPC before the concerned Magistrate under section 512 CrPC as nominated accused could not be arrested.

4. Accused Chanessar remained fugitive from law for a period of 14 years and he was arrested in year 2021, therefore, a fresh report under section 173 CrPC was filed before concerned magistrate. Learned Magistrate on taking cognizance of case and completion of formalities sent up the case before the Court of Learned Sessions Judge, Malir for disposal in accordance with law, and was ultimately made over to the Learned Trial Court.

5. In compliance to requirement of section 265-C-Cr.P.C police papers were supplied to the accused, he was indicted for Charge, to which he pleaded not guilty and claimed Trial. In order to prove the charge of murder, prosecution examined PW-1 Chanessar son of Soomar, PW-2 PI Khalid Kharal, PW-3 Zulfiqar Hyder, PW-4 Hirji, PW-5 Mohammad Saleh Soomro, PW-6 Dr Zakia Khursheed, PW -7 Mohammad Ismail. Thereafter, learned DDPP for State closed side of prosecution evidence vide statement at Ex.27.

6. Statement of accused under section 342 Cr.P.C was recorded at Ex.28, wherein he denied prosecution allegations, professed innocence. He did not examine himself on oath under section 340(2) Cr.P.C., or any witness in defence.

7. Learned Trial Court after hearing the Prosecution and Defense convicted the appellant and sentenced him to suffer RI for Life with benefit of Section 382 - B CrPC.

8. Mr. Qamar Abass Ali, Learned Counsel for the appellant contended that the prosecution has failed to prove its case beyond shadow of doubt. There are glaring contradictions and improvements in the prosecution story. He contended that the incident has taken place in the night in the house of complainant but none witnessed accused committing the murder. He contended that there was no eye witness of the alleged incident. He contended that prosecution was burdened to

prove the case beyond shadow of doubt and benefit if any accruing due to prosecution failures is to be resolved in favor of accused. The witnesses in the case are set up and interested and the motive as alleged has not been proved. He placed reliance upon the case of Rehmatullah Vs. The State (2024 SCMR 1782). He prayed for acquittal of the appellant/convict.

9. Mr. Rashid Ali Gabol Learned Assistant Prosecutor General, Sindh contended that the incident has taken place in the house of complainant, the parties are known to each other being relatives, question of mis-identification or wrong identification of the accused does not arise, the accused was assigned the specific role of causing throat cut injuries to the deceased which finds support from medical and ocular account. The motive stands established. He prayed for maintaining the conviction and sentence.

10. Heard Learned Counsel for the parties, examined evidence and perused material on record with their able assistance.

11. The careful examination of the prosecution evidence leads to an irresistible conclusion that the incident is unseen and accused Chanessar's involvement in the case has not been fortified through confidence inspiring ocular account. In the FIR recorded on the very day of incident complainant Soomar stated that his family went to sleep in the night between 14/15.07.2007 and when woke up in the morning at about 0600 hours found neck of deceased Radha cut and she had died. He stated in the FIR that Chanessar husband of deceased Radha was not present in the house and had fled away. Motive for the incident was described as an altercation that took place two days ago. Soomar complainant in the case died and prosecution examined PW 1 Chanessar son of Soomar (brother of deceased Radha), he deposed that on the eventful night he was on duty at Haji Abdul Kareem Gabol and when he returned back home in the morning, he found his sister murdered. Prosecution examined another witness PW - 4 Hirji, he deposed that in the night there was fight between Radha and accused Chanessar. In the morning he went to the hut of Radha on the shouting of his father in law Soomar and found Radha dead, whereas Chanessar had absconded away. From the evidence of prosecution witnesses, it can be safely concluded that there is no direct evidence against the accused Chanessar to say that any witness saw him committing the murder of deceased Radha. It is quite surprising that deceased was done to death in the house by sharp cutting weapon but none saw the commission of murder. There are improvements and material contradictions in the statements

of prosecution witnesses. The minute scrutiny of evidence of prosecution witnesses PW 1 and PW 4, which makes their presence at the place of incident doubtful. Qua medical evidence, it corroborates the version of the complainant as stated in the FIR but the same is of no assistance in this case as medical evidence by its nature and character cannot recognize a culprit in case of an un-witnessed incident. The eyewitness account produced by the prosecution is unreliable and untrustworthy as observed above, therefore, the appellant's conviction cannot sustain on the basis of medical evidence alone, more particular when no recovery has been effected from the person of accused.

12. This view is fortified from the judgment of Honorable Supreme Court of Pakistan in the case of Muhammad Akhtar and others Versus the State reported in 2025 S C M R 45 wherein it has been held as under:

"12. The statements of complainant/ PW. 14, PW.16 Muhammad Akhtar and the injured witness (PW.15) are suffering from dishonest improvements and material contradictions rendering their testimony doubtful.

13. The infirmities in the case of the prosecution and the contradictory statements of the prosecution witnesses, which are also suffering from dishonest improvements, have created reasonable doubt in the case of the prosecution. According to settled principle of law, benefit of reasonable doubt has to be extended in favour of accused.

13. In another case of Muhammad Riaz and others Versus The State reported in 2024 SCMR 1839 Honorable Supreme Court of Pakistan has held as under:

"13. From the above-stated facts and circumstances, it is abundantly clear that in this particular case, the prosecution version is burdened/ loaded with major discrepancies, which create serious doubts about its authenticity. The prosecution version with regard to the manner of killing, the medical evidence and the recoveries, contradict each other on material points creating serious cracks in the prosecution version. The prosecution has failed to bring on record any convincing material to establish that it was the appellants who had committed the occurrence. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has faded up the evidence to procure conviction then the Court can come forward for the rescue of the accused persons.

14. No doubt both the eye witnesses PW1 Chanessar and PW4 Hirji being brothers and the legal heirs of the deceased are the competent witnesses and their evidence cannot be discarded on account of enmity alone or by tagging them as interested witness, but it is the axiomatic principle of law that the evidence of interested witness has to be examined with huge caution and care. In the facts and circumstances of the present case, Prosecution was burdened to establish the presence of witnesses at the place of occurrence beyond shadow of doubt which they failed and dented the prosecution case and benefit of the same ought to go in favor of the accused.

15. Reliance in this regard is placed on the judgment of Honorable Supreme Court of Pakistan in the Case of Abdul Qadeer Versus the State reported in 2024 SCMR 1146, wherein it has been as under:

22. All the above circumstances have created reasonable doubt in the case of the prosecution but benefit of same has not been extended to the petitioner by the courts below. According to settled principle of law even if a single circumstance creates a reasonable doubt in a prudent mind about the guilt of an accused he/she shall be entitled to such benefit not as a matter of grace and concession but as of right.

23. According to settled principles of law the prosecution has to stand on its own legs and if it fails to prove its case beyond reasonable doubt, the entire edifice of the prosecution would crumble down.

16. The accused was convicted for the charge mainly for the reason that he remained fugitive from law for a period of about 14 years. The reason so assigned for awarding conviction was not sufficient. It is the quality of evidence that brings the charge home. It is for the prosecution to prove the charge beyond shadow of doubt. Actions if any on the part of accused will not discharge the prosecution burden to prove charge. To bring guilt of the accused home, the prosecution is required to adduce the evidence, which without a second thought convincingly depicts a picture of the offence surrounding the neck of the accused. The proof beyond reasonable doubt should be of such a nature that requires no hesitation in making a decision as to the guilt of the accused to face off the presumption of innocence attached thereto. Unless the Court is satisfied and convinced that burden of proof has been successfully discharged after a thorough and impartial examination of evidence on record, the burden of proof cannot be shifted to other side. In the present case there are major inconsistencies in the prosecution evidence that were overlooked by the Learned Trial Court, which demonstrated that the

prosecution failed to prove its case against the appellant beyond any reasonable doubt.

17. It is settled exposition of law that conviction cannot be recorded based on mere assumptions and presumptions, surmises and conjectures. If a single circumstance creating reasonable doubt in the prudent mind appears in the prosecution case, it would be sufficient to discredit the prosecution case, the existence of multiple circumstances was not required. Under the criminal trial, prosecution has to stand on its legs. Prosecution is duty bound to prove its case beyond shadow of doubt through confidence inspiring oral or documentary account, which if they fail would make its case doubtful. The Benefit of doubt if any in the prosecution case would tilt in favor of the accused being the blue-eyed child of criminal law. The crux of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as a matter of right and not as that of grace this principle of law has been repeatedly reiterated the courts of the Country.

18. Reliance in this regard is placed on judgment of Honorable Supreme Court in the case of Rehmatullah and 2 others Versus the State reported in 2024 S C M R 1782 wherein it has been pleased as under:

13. We have, therefore, come to this irresistible conclusion that the circumstantial evidence produced in this case is not worthy of reliance and the prosecution has miserably failed, to prove its case against the appellants beyond the shadow of doubt. It is by now well settled that even a single circumstance, which creates reasonable doubt in the prosecution evidence, is sufficient to discard the prosecution case whereas the instant case is replete with number of circumstances, which have created serious doubts about the prosecution story.

19. The case laws relied upon by the Learned Counsel for the Appellant though are relevant for the purposes of this case but narrating the principles highlighted herein above, need not be reproduced and discussed for the sake of brevity.

20. For what has been discussed herein above, I am of the considered opinion that the prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt, the Learned Trial Court has failed to appreciate the evidence in accordance with the parameters and guidelines settled by Honorable Apex Court, there is serious misreading and non-reading of the evidence requiring

interference by this Court. Case for indulgence by this Court under its appellate Jurisdiction in favor of accused is made out. Consequently the Criminal Appeal No.S-666 of 2022 Re Chanesar Versus the State is allowed and the impugned dated 18.10.2022 passed by the Court of Learned Additional Sessions Judge - I Malir / MCTC Malir in sessions case No 1237 of 2021 Re The State v. Chanessar (Crime No 48 of 2007 of Police Station Gadap City for offence under section 302, PPC) is hereby set aside. The Appellant Chanessar is acquitted of the charge and he shall be released forthwith if not required for incarceration in any other case.

21. These are the reasons for short order dated 04.05.2026, whereby the instant appeal was allowed and appellant was acquitted of the charge.

JUDGE

Approved for reporting