

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.D- 122 of 2016.  
[Confirmation case No.25 of 2016]

Present.  
Mr. Justice Naimatullah Phulpoto.  
Justice Mrs. Kausar Sultana Hussain.

Date of hearing: 06.04.2021.  
Date of judgment: 14.04.2021.

Appellant: Qadir Bux son of Sobho by caste Shar  
through Mr. Omparkash H. Karmani,  
Advocate.

The State: through Mr. Shahzado Saleem Nahiyoon,  
D.P.G.

## J U D G M E N T

**NAIMATULLAH PHULPOTO, J:-** Appellant Qadir Bux was tried by learned IInd Additional Sessions Judge, Mirpurkhas for offence u/s 302 PPC. On conclusion of the trial, vide its` judgment dated 11.11.2016, appellant was convicted u/s 302(b) PPC as Tazir and sentenced to death for committing qatl-e-amd of Ms. Zeenat (daughter of complainant). Appellant was also ordered to pay the compensation of Rs.3,00,000/- (three lac) to the legal heirs of deceased in terms of Section 544-A Cr.P.C. In case of default thereof, he was ordered to suffer SI for one year more. However, death sentence awarded to the appellant was subject to confirmation by this Court in terms of Section 374 Cr.P.C.

2. Brief facts of the prosecution case as reflected in the impugned judgment are as follows:-

***“Complainant Munawar son of Balouch Khan Shar lodged FIR on 12.05.2008 at 1330 hours with PS Dilbar Khan Mahar, stating therein that he is residing in the lands of***

**Rasool Bux Rahu and is hari on the lands of Noor Muhammad. With complainant, Qadir Bux and his uncles Islam and Imdad both sons of Shadman are also residing. Qadir Bux is addict of intoxication. About two months back, accused Qadir Bux in drunken condition had abused the persons upon which his uncles Imdad and Islam and complainant had ousted him from their village, upon which the accused told them that he will kill whoever met him. Today at about 1230 hours, complainant and others were present in their house and his daughter namely Mst. Zeenat had gone to bring water from the Well situated at about two acres away on the western side of the village. Meanwhile, they heard cries of Mst. Zeenat from Well side. Upon which complainant, Islam, Manoo son of Shadman and others went running there and saw that accused Qadir Bux having hatchet in his hand was inflicting sharp sided hatchet blows on the body of Mst. Zeenat. Complainant party raised hakals but in their sight, accused had caused sharp sided hatchet blows on the right side of body of Mst. Zeenat. Accused on seeing the complainant and others ran away with his hatchet. Complainant and others went near to Mst. Zeenat and saw that she was died having sustained sharp edged hatchet blows on his body and blood was oozing. Complainant shifted the dead body of Mst. Zeenat to his house where leaving the PWs Islam and Manoo on the body, he went to P.S and lodged report.”**

It was recorded on 12.05.2008 at 1330 hours vide Crime No.04 of 2008 u/s 302 PPC at P.S. Dilbar Khan Mahar.

3. After usual investigation challan was submitted against the accused u/s 302 PPC.
4. Trial Court framed charge against the accused at Ex.6, to which, he pleaded not guilty and claimed to be tried.
5. At the trial, prosecution examined in all 10 PWs who produced numerous documents. Thereafter, prosecution side was closed at Ex.20.
6. Trial Court recorded the statement of accused u/s 342 Cr.P.C. at Ex.21 in which he claimed false implication in this case and denied the prosecution allegations. However, appellant neither examine himself on Oath nor led any evidence in his defence in disproof of the prosecution allegations.
7. Learned trial Court after hearing the learned counsel for the parties, assessment of the evidence available on record, found the appellant guilty and convicted him and sentenced to death as stated

above and made Reference to this Court for confirmation of the death sentence. It is in these circumstances, the present appeal has been filed.

8. We have heard Mr. Omparkash H. Karmanai, learned counsel for the appellant, Mr. Shahzad Saleem Nahiyoon, learned D.P.G. for State. Notice was issued to the complainant but he did not appear, and perused the entire evidence available on record.

9. The facts of this case as well evidence produced before the trial Court find an elaborate mention in the judgment passed by the trial Court and therefore, the same may not be reproduced here so as to avoid duplication and un-necessary repetition.

10. Un-natural death of deceased Ms. Zeenat aged about 13/14 years is not disputed. Eye witnesses as well as lady Doctor stated that Ms. Zeenat aged about 13/14 years died her un-natural death. Evidence of Dr. Tulsi (PW-10) is relevant to prove the un-natural death of deceased. She has deposed that on 12.05.2008, she received the dead body of baby Zeenat daughter of Munawar Shar through SIP Sher Khan Leghari, for conducting her postmortem examination and report. Doctor conducted the postmortem examination. Doctor was of the opinion that deceased was subjected to sexual intercourse and she died due to injury on vital organs and excessive bleeding and shock as a result of injury caused by some sharp cutting weapon. Probable time that elapsed between injuries and death was 5 to 10 minutes. Trial court has failed to record finding regarding sexual intercourse with deceased. However, trial court has held that deceased died her un-natural death. Finding of the trial court that deceased died her un-natural death requires no interference. As regards to the sexual abuse, we will discuss this aspect of the case later on.

11. In order to prove its` case, prosecution examined complainant Munawar (PW-1). He has deposed that present incident occurred on 12.05.2008. At the time of incident, he was hari of one Rasool Bux and was residing in the lands of said landlord. Accused / appellant was also residing in the lands of said Rasool Bux alongwith his uncles. He has further deposed that accused is addict of the narcotics. His uncles prevented him several times but he did not

mend his ways. It is stated that accused was disobedient to his uncles and he was ousted from the village by his uncles. Complainant has stated that uncles of the accused namely Imdad, Islam and Mithoo are his cousins and accused / appellant is son of the elder brother of the complainant. deceased aged about 11/12 years was his daughter. On the day of incident, she went to bring water from the Well at the distance of about 2-00 acres from the village. It was 12-00 noon or 12-30 p.m. At that time, the complainant was present in his house. He heard the cries of his daughter, came out of the house and went to the Well alongwith PWs Islam and Mithoo and other villagers and saw accused / appellant who was inflicting hatchet blows to Ms. Zeenat. Accused did not listen the complainant party and committed murder of Ms. Zeenat and ran away. Complainant saw that his daughter was lying dead then he brought the dead body to hospital, went to the police station and lodged FIR against the accused.

In the cross examination complainant denied the suggestion that accused Qadir Bux is mentally sick. Complainant denied the suggestion that he had committed the murder of daughter when she was found in objectionable condition with some person. Complainant has clearly stated that efforts were not made to catch hold the accused as he had already committed the murder of his daughter and complainant apprehended that he might be murdered by accused. It is also denied that complainant has falsely deposed against the appellant.

Islam (PW-2) is also the eye witness of incident. He deposed that on 12.05.2008, he alongwith complainant and his younger brother Mithoo were present in the house, present incident took place at 12-30 p.m. Deceased girl was his niece. She was killed in his presence by appellant Qadir Bux who is his nephew by means of hatchet. PW Islam has deposed that appellant is addict. He advised him several time to mend his ways but without any result. He further deposed that appellant committed the murder of Ms. Zeenat and succeeded in running away. In cross examination he has denied the suggestion that deceased was found in objectionable condition with someone then she was killed by the complainant party.

Mithoo (PW-3) was also the eye witness of the incident. He had also seen appellant while committing the murder of Ms. Zeenat at 12-00 noon. It is stated that appellant was addict.

Abdul Rahim (PW-4) had acted as mashir of place of incident, clothes of deceased and inquest report and he produced the said mashirnamas. ASI Ali Bux (PW-5) had registered an FIR and handed over it to SIP Sher Khan Leghari for investigation.

Investigation was carried by SIP Sher Khan Leghari (PW-9). He has deposed that on 12.05.2008, he received FIR No.4/2008 u/s 302 PPC from ASI Ali Bux of PS Dilbar Khan Mahar. Thereafter, he accompanied with the complainant went to his house where he was shown the dead body of deceased Zeenat aged about 13/14 years. He inspected the dead body of deceased and prepared such mashirnama in presence of mashirs Muhammad Ibrahim and Abdu Rahim. He also prepared inquest report in their presence. I.O went to the place of incident which was shown to him by the complainant in presence of same mashirs. He collected the blood stained earth and sealed it for chemical examination and prepared such mashirnama. He has also shifted the dead body of Ms. Zeenat from house of the complainant to Civil Hospital Mirpurkhas where he got postmortem examination of the deceased and then returned dead body to complainant for funeral ceremony. On the same day he recorded the statements of PWs Islam and Mithoo u/s 161 Cr.P.C. PC Ali Khan came at PS alongwith clothes of deceased and produced before I.O which he had taken in presence of the same mashirs. Prepared such mashirnama.

ASI Muhammad Urs (P.W-6) conducted further investigation of the case. He had dispatched blood stained earth and clothes of the deceased to the chemical examiner for analyses and report. Positive report was received. On conclusion of the investigation, challan was submitted against the accused, in which he was shown s absconder. SIP Rajab Ali (PW-8) arrested the absconding accused / appellant on 08.11.2013 at Sim Nala in presence of the mashirs ASI Damo Mal and PC Kirshan Lal. ASI Damo Mal (PW-7) had acted as mashir of arrest of accused and produced such mashirnama at Ex.16/A.

12. Mr. Omparkash H. Karmani, learned advocate for the appellant argued that prosecution had failed to prove its` case against the appellant, that all the PWs are closely related to the deceased and interested. It is further contended that motive as set up by prosecution in the FIR has not been established at trial. Lastly, it is submitted that death sentence may be converted into imprisonment for life as the prosecution has failed to prove its` motive at trial. Reliance is placed upon the case reported as Mst. Nazia Anwar v. The State and others (2018 SCMR 911).

13. Mr. Shahzado Saleem Nahiyoon, learned D.P.G. argued that the prosecution has proved its` case against the appellant, ocular evidence was corroborated by medical evidence; however, he has frankly stated that motive as set up by the prosecution in the FIR has not been proved at the trial therefore, conceded for reduction of sentence of death to imprisonment for life.

14. Bearing in mind the above evidence, let us now examine the evidence of eye witnesses. Complainant has deposed that on 12.05.2008 at 12-00 Noon or 12-30 P.M, he was sitting at his house. Suddenly, he heard cries of his daughter Zeenat, went running there and saw that accused was inflicting sharp side hatchet blows upon his daughter Ms. Zeenat. P.W-2 Islam was the eye witness of incident, he has deposed that on the relevant day, he, complainant and his younger brother PW Mithoo were present in the house when they heard cries, they went to the place of incident, where they saw that appellant was inflicting hatchet blows to Ms. Zeenat. Eye witness Mithoo has also deposed that he had seen the appellant while causing multiple blows of hatchet upon Ms. Zeenat. Ocular evidence was supported by medical evidence. All the eye witnesses have deposed that appellant after committing the murder of Ms. Zeenat ran away. PWs could not rescue the deceased because appellant was armed with hatchet and he had issued threats to eye-witnesses. Prosecution had succeeded to prove that appellant had committed the murder of Ms. Zeenat on the day of incident by means of hatchet. All the PWs were cross examined at length but nothing favourable to the accused came on record. All the eye witnesses including the father of deceased were natural witnesses being the resident of house in front of which occurrence had taken place as well. They had no enmity to falsely implicate the appellant


in this case. Testimony of the eye witnesses cannot be discarded because of their relationship inter se as well as with the deceased. Moreover appellant is also closely related to the complainant. **It is a settled principle of law that mere relationship between the witnesses and the deceased is not enough to discard their evidence. It is duty and obligation of the court for requiring corroboration of interested witnesses then it must first ascertain whether he saw the occurrence and was in a position to identify the accused and whether he should be believed without corroboration.** The witnesses have faced lengthy cross-examination but their veracity cannot be shaken by the defence counsel. Reliance can be placed on the case of Anwar Shamim and another v. The State (2010 SCMR 1791). Trial court has rightly held that the prosecution has proved its` case against the appellant. Finding of the trial court in this regard requires no interference by this court. In the view of above discussion, we have no hesitation to hold that appellant had committed the murder of daughter of the complainant on 12.05.2008. Prosecution has proved its case.

15. As regards to the quantum of sentence, in the end of FIR it is mentioned that appellant was addict and was bad character. Father of the deceased and uncles of appellant ousted him from the village. On the day of incident, appellant saw the deceased girl at the Well and killed her. Motive as set up in the FIR has not been established at trial for the reasons that:-

- (a) Motive was against the father of deceased and uncles but prosecution failed to satisfy us as to why the daughter of complainant was killed by appellant. Prosecution has no reply.
- (b) Other eye witnesses namely Islam and Mithoo have also not mentioned about the motive, which was set up in the FIR.
- (c) Investigation Officer has clearly replied that he did not interrogate or investigate about the motive as set up in the FIR.
- (d) Lady Doctor has opined that deceased girl was subjected to the sexual intercourse but evidence of the eye witnesses is silent on this crucial aspect of the case.

(e) Trial court has also recorded the statement of accused u/s 342 Cr.P.C in a very casual manner and question regarding motive was not put to the accused.

Scanned copy of the statement of appellant recorded u/s 342 Cr.P.C is pasted hereunder:-

(117) *Ex 21* 

IN THE COURT OF HIND ADDITIONAL SESSIONS JUDGE MIRPURKHAS.  
Sessions Case No.78/2008.

The State..... Versus..... Qadir Bux

My name is	Qadir Bux	F/Name	Sobho
Religion	Islam	Caste	Shar
Age about	years	Occupation	Cultivation
Residence	Deh 131 Tal: Sindhri District	Mirpurkhas.	

STATEMENT OF ACCUSED U/S 342 CR.P.C

Q. No.1. It is alleged that on 12.05.2008 at 1230 hours at the Nali of water situated two acres away in northern side of village of complainant Deh 131 Taluka Sindhri, you armed with hatchet, caused sharp sided hatchet blows on the arm and neck of Mst. Zeenat with intention to commit her murder and caused her injuries and due to that injuries she died. What have you to say?

Ans:- *NO. It is false.*

Q. No.2. Why the P.Ws have deposed against you?


Ans:- *They are infirm and one enemy of me.*

Q. No.3. Do you want to examine yourself on oath?

Ans:- *NO.*

Q. No.4. Do you want to lead defence evidence?

Ans:- *NO.*

*(Qadir Bux)* 



8/2

Q. No.5. Have you want to say anything else?

Ans:- *he has inquired and has been feeling  
in presence in the case. He is away for  
justice.*

*Signature*  
27/9/16

IInd Additional Sessions Judge,  
Mirpurkhas.

*Signature*

**CERTIFICATE.**  
*Certified that the above statement  
has been recorded by me. It contains  
the account of the witness as given by  
him and he admitted to be correct and  
true recorded. -*

*Signature*  
27/9/16

IInd Additional Sessions Judge,  
Mirpurkhas.

16. The quantum of sentence of appellant has engaged our serious attention and we have looked on this aspect of the case from different angles. In the FIR motive has been set up that appellant was addict of the narcotics. He was restrained by complainant and his uncles but without any result. Finding no other way, complainant party ousted the appellant from village. According to the prosecution case, appellant committed the murder of daughter of complainant on 12.05.2008 as he was ousted from village by complainant and uncles of appellant. In our view appellant had specific motive against the complainant and his uncles but it is not clear as to why appellant committed the murder of deceased girl. Investigation Officer had also failed to interrogate / investigate about the motive as set up in the FIR. Prosecution had failed to prove motive from some independent piece of evidence. Lady Doctor conducted the postmortem examination of the deceased and found her victim of sexual abuse. Chemical examiner's report at Ex.14/B shows that human sperms were detected. Such circumstances of the case have put us to a caution in the matter of appellant's sentence. Whole prosecution evidence is silent on this aspect of the case. We have no hesitation to hold that real cause of occurrence was shrouded in mystery and was completely suppressed by both the parties. Where the prosecution asserted a motive but failed to prove the same then failure on the part of prosecution may re-act against the sentence of death passed against the appellant on the charge of murder as held

in the case of Mst. Nazia Anwar v. The State and others (2018 SCMR 911). Relevant portion is reproduced as under:-

*“The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood and another v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Mumtaz v. The State and another (2012 SCMR 267), Muhammad Imran alias Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State (2013 SCMR 1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR 1602), Naveed alias Needu and others v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas and another v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035) and Qaddan and others v. The State (2017 SCMR 148).”*

17. For the above stated reasons / mitigating circumstances maintaining the death sentence would be unwarranted in the peculiar circumstances of this case and life imprisonment would be the appropriate imprisonment.

18. For what has been discussed above, instant Criminal Jail Appeal No.D-122 of 2016 is dismissed to the extent of appellant's conviction for offence u/s 302(b) PPC but the same is partly allowed to the extent of his sentence of death which is reduced to imprisonment for life. Appellant is ordered to pay compensation of Rs.3,00,000/- (three lac) to be paid to the legal heirs of deceased as directed by the trial Court. In case of default thereof, appellant shall suffer SI for six months more instead of one year. The benefit of Section 382-B Cr.P.C shall be extended to the appellant. Confirmation Reference No. 25 of 2016 made by trial Court for confirmation of death sentence is answered in **NEGATIVE** and death sentence is **NOT CONFIRMED**.

JUDGE

JUDGE