

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

Criminal Jail Appeal No. S-245 of 2019.

Appellant : Ali Mir Shah through Mr. Abdul Rehman Dahri
associate-advocate of Mr. Hameedullah Dahri
advocate.

Respondent : The State through Mr. Muhammad Noonari,
Deputy Prosecutor General, Sindh.

Date of hearing : 21.04.2022

Date of judgment : 21.04.2022

J U D G M E N T

ZULFIQAR AHMED KHAN, J: Appellant Ali Mir Shah was tried by learned IInd. Additional Sessions Judge, Badin in Sessions Case No. 175 of 2006, arising out of Crime No.221/2006 registered at Police Station, Badin for offence under Section 302, PPC, whereby the appellant was convicted under section 302 (b), PPC and sentenced to suffer imprisonment for life due to mitigating circumstances in the case with direction to pay compensation of Rs.1,00,000/- to the legal heirs of deceased, as required under section 544(A), Cr.P.C. In case of default thereof, he shall suffer simple imprisonment for one year more. However, benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. Relevant facts of the prosecution case that complainant Usman Shah lodged FIR at PS Badin on 14.10.2006 at 1730 hours alleging therein that his sister Mst. Naseema aged about 18 years, who was married with his cousin Ali Mir Shah (the appellant) about two years ago and had given birth to one daughter aged about one year and she was also pregnant of five months. His cousin Ali Mir Shah due to annoyance with his parents was residing in their house along with his wife Mst. Naseema since last about three months. Ali Mir Shah used to quarrel with his wife Mst. Naseema on petty matters. On the day of incident, in the morning time, they were present in the house, when Ali Mir Shah asked Mst. Naseema to accompany him to Badin, but she refused and

Ali Mir Shah left for Badin alone. It is stated by complainant that at about 3.00 p.m as soon as Ali Mir Shah on return from Badin entered in the house, he was having hatchet in his hand. At that time, complainant, his brothers Sikandar, Muhammad Shah and other house inmates were present in the house. Ali Mir Shah on coming, asked his sister Mst. Naseema that she had not accompanied him to Badin and saying so, he caused hatchet blows to Mst. Naseema on her head, neck and right arm. She fell down while raising cries. They gave hakals to accuse Ali Mir Shah, but he ran away along with the hatchet. They saw that Mst. Naseema had expired due to receiving injuries. Thereafter, complainant arranged for vehicle, took dead body of deceased to civil hospital, Badin and leaving the body there, his brothers Sikandar and Muhammad Shah went to police station and lodged the FIR as stated above. The police after registering the case, took up investigation and on completion of the investigation, presented challan against the accused in the court of law.

3. The trial Court framed charge against accused as Ex.3, to which, he pleaded not guilty and claimed to be tried.

4. At the trial, prosecution in order to prove the charge against accused examined PW-1 complainant Usman Shah at Ex.5, who produced FIR as Ex.5/A, PW-2 Muhammad Shah at Ex.6, he produced his statement recorded u/s 164, Cr.P.C at Ex.6/A, PW-3 Sikandar Shah at Ex.7, he produced his statement recorded u/s 164, Cr.P.C. at Ex.7/A, PW-4 WMO Dr. Rasheeda was examined at Ex.8, she produced post mortem report of deceased Mst. Naseema Bibi at Ex.8/A, PW-5 Abdul Khair Shah at Ex.9, he produced memo of dead body, inquest report, memo of place of incident, memo of cloths of deceased, memo of arrest of accused and memo of recovery of hatchet at Exs. 9/A to 9/E respectively, PW-6 Wahid Dino Shah was examined at Ex.11, PW-7 ASI Khuda Bux at Ex.12, PW-8 Tapedar Muhammad Sharif was examined at Ex.13, he produced sketch of place of incident at Ex.13/A and PW-9 DSP Nazeer Ahmed Abro at Ex.14, he produced letter addressed to Mukhtiarkar (Revenue), Badin dated 18.10.2006, letter addressed to Civil Judge & Judicial Magistrate, Badin dated 27.10.2006, notice dated 27.10.2006 issued by the Civil Judge & Judicial Magistrate, Badin-I to accused, chemical examiner's report, letter issued to WMO Civil Hospital, Badin dated 14.10.2006, and dead body examination form at Ex.14/A to Ex.14/F respectively. Thereafter, prosecution side was closed vide statement at Ex.15.

5. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.16, in which accused claimed innocence and denied the prosecution allegations. Accused also examined himself on oath at Ex.17 and so also two DWs namely Ali Akbar and Bachal Shah at Exs. 18 and 19 respectively in his defence. Thereafter learned defence counsel closed the side of accused vide his statement at Ex.20.

6. After hearing the learned counsel for the respective parties and examining the evidence available on record, through its judgment dated 31.10.2009 convicted and sentenced the appellant as stated supra.

7. Learned advocate for appellant contends that appellant being innocent has been falsely implicated in this case due to matrimonial affairs between them and all the witnesses are related inter-se because the complainant and PWs are real brothers while deceased was their sister. He further contends that no independent witness has been cited in this case when all PWs have stated that there were number of houses of different communities in their village and peoples also came there at the time of incident, but no any independent person has been cited as witness in the case. Learned counsel further contends that there is contradiction and inconsistency in the evidence of complainant and PWs, as complainant and PW Sikandar Shah have stated that they reside in separate houses in one hedge, whilst PW Muhammad Shah stated that there were only two huts in their houses. Per learned counsel, complainant and PW Sikandar Shah stated in their statements that at the time of incident, deceased was available in the house of Sikandar, whilst PW Muhammad Shah stated that she was available in the house which was used for cooking. Learned counsel for appellant further contends that complainant and PW Muhammad Shah stated that they were available in the house at 10.00 a.m, when accused asked their sister to accompany him, but PW Sikandar Shah stated during cross examination that they left the house at 8.00 a.m and returned 1.30 p.m. Per learned counsel, both the mashirs have not supported the arrest and recovery from accused, therefore, he prayed that appellant be acquitted from the charge.

8. Conversely, learned Deputy Prosecutor General Sindh half heartedly opposed the appeal on the ground that though there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of the appeal.

9. I have heard the learned counsel for the respective parties and perused the entire evidence minutely with their assistance.

10. Following points are framed for my determination :-

(i) Whether death of deceased Mst. Naseema Bibi daughter of Hajjan Shah wife of accused Ali Mir Shah occurred unnatural as a result of receiving hatchet injuries on 14.10.2006 at 1500 hours?

(ii) Whether accused Ali Mir Shah caused injuries to deceased Mst. Naseema Bibi with hatchet with intention to kill her who died as a result of receiving hatchet injuries, hence he is guilty of the offence of Qatal-e-Amd punishable under section 302 PPC?

(iii) What offence, if any, has been committed by the accused?

11. My findings on the above points are as follows:-

Point No.1. In negative.

Point No.2. In negative.

Point No.3. Appellant is acquitted from the charge.

REASONS.

12. The most alarming aspect of the case is that according to the complainant, PW-2 Muhammad Shah and PW-3 Sikandar Shah who are brothers, the incident took place at about 3.00pm and victim died at the spot and they took the dead body to the hospital and arrived in hospital at 5.30pm, but as per the report of the MLO, she started post mortem at 9:15pm whilst the dead body arrived at the hospital at 8:00pm, thus there is serious discrepancy in their story, fatal to the case of the prosecution. Another troubling aspect of the case is that the MLO in her examination has admitted that rigor mortis was visibly present in the body and it is established position having supported by the **Book of Medical Jurisprudence and Toxicology with A Concise Medical Dictionary**, that usual duration of rigor mortis is 24 to 48 hours in winter and 18 to 36

hours in summer. As the incident took place in winter and dead body already showed signs of rigor mortis, it suggests that the death must have taken place any time in the past 24 to 48 hours, which contradicts prosecution's story. Another alarming aspect of the case is that MLO did not mention time of the death as well as she did not indicate that what was the gap between the incident and death, as she only has mentioned time of death as "4.00pm (as stated by the relatives of the deceased)" meaning thereby she neither bother to find out what was the exact time of the death nor chose to mention it in the post mortem, this unholy alliance with prosecution is confidence bulldozing, least to say. In all the cases, benefit will naturally go to the accused. PW-1 Usman Shah and PW-3 Sikander Shah stated that the deceased was five months pregnant and she was keeping roza at the time of incident, however, during the course of post mortem, this aspect as to whether the victim was five months pregnant was not substantiated and her stomach was found with semi digested food material, meaning thereby probably she was not even fasting. Also it is strangely troublesome to note that PW-8 who is concerned Tapadar, did not mention when he visited the place of incident as he only signed on the Sketch on 16-5-2009 when he stood for examination-in-chief on 18-5-2009, which was nearly two and half years after the incident. He also admitted that he has not mentioned that the place of incident was situated in the jurisdiction of concerned police station or not. The glaring discrepancies do not come to an end here. PW-9 Nazer Ahmed who was I.O of the case stated that he received the FIR at about 4:00 or 4:30pm and he proceeded with the investigation after having made entry in the Roznamcha. A perusal of the FIR reflects that it was registered on 14.10.2006 at 1730 (i.e.5:30pm), it is thus unbelievable as to how he could have commenced the investigation even before the FIR was registered. In his cross examination he admitted that he did not produce copies of diaries of the departure and arrival. He also

stated that he saw the body in the mortuary, whereas none of the witnesses had mentioned that the body was ever left in the mortuary. According to the PWs-1, 2 and 3, the burial took place sometime in the night of 14-10-2006 as admitted by the PW-5 Abdul Khair Shah, however, PWs-5 and 6, both become hostile and could not support the version of the prosecution that the hatchet was recovered in their presence or the accused was arrested in their presence.

13. As seen from the foregoing, this case is marred with endless discrepancies, illegalities and many questions remain un-answered. When asked in his statement under section 342 Cr.P.C, the appellant stated that the marriage between him and the deceased was in-exchange to his sister having been married to the brother of the deceased. He also stated that since the complainant party left out his sister, they were bent upon seeking return of his wife, and when she was did not chose to go back, they murdered her cold-blooded in their own house and put blame on the appellant, which the prosecution failed to prove. In the given circumstances, where there are discrepancies in witnesses statements, medico-legal evidence and where the post mortem report does not support the version of the prosecution, it would be advantageous to focus on the evidence led by the dead body that speaks the truth with impartial scientific knowledge advancing justice as it is said that while witnesses may chose to utter whatsoever words, or say things which could have multiple meanings, but in a mortality case it is only the dead body that never lies and provides un-biased truth to decipher the cause of death (A Dead Body Never Lies by Rohayu Binti Shahr, Adnan and Fatin Amin by Penguin Random Books) which shows that the victim had died at least 24 to 48 hours ago before MLO put her on the stretcher for post mortem, which simple truth shadows entire story narrated by the prosecution witnesses that the victim died 4 hours before

the post mortem. Resultantly, I had no hesitation in allowing the instant appeal and set-aside the judgment dated 31.10.2009. The appellant is acquitted from the charge and he shall be released forthwith, if not required in another custody case.

Above are the reasons of my short order dated 21.04.2022.

JUDGE