

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

Cr. Appeal No.D-54 of 2018

[Confirmation Case No.09 of 2018]

[Khushi Muhammad vs. The State]

DATE

ORDER WITH SIGNATURE OF JUDGE

BEFORE:

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
JUSTICE MRS. KAUSAR SULTANA HUSSAIN**

Appellant : Through Mr. Aziz Ahmed Leghari advocate

The State : Through Mr. Nazar Muhammad Memon A P G

Date of hearing: 07.02.2023

Date of judgment: 22.02.2023

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: Appellant has impugned the Judgment dated 25.04.2018 passed by learned Ist Additional Sessions Judge Mirpurkhas in Sessions Case No.155 of 2012 [**Re: The State versus Khushi Muhammad**], outcome of Crime No.58 of 2012 registered with Taluka Mirpurkhas Police Station for offence punishable under Section 302 PPC, whereby he was convicted under Section 265-H(ii) Cr.P.C and awarded death sentence as Tazir under Section 302(b) PPC subject to confirmation by this Court with directions to pay Rs.5,00,000/-as compensation to Complainant.

2. The allegation against the appellant/accused, per FIR, is that he had caused Qatl-i-Amd of his wife namely Valahi and four children namely Abdul Karim, Aqib, Sabahi and Eidhan. After registration of aforesaid FIR Investigation Officer conducted investigation and then submitted challan before the learned Magistrate concerned, who took the cognizance and sent the matter to learned District Judge for trial. The copies of the case were supplied to accused at Ex.01 and Charge was framed at Ex.03, to which he pleaded not guilty and claimed trial, vide his plea at Ex.03/A. In order to prove its case, prosecution examined 10 witnesses, which include Complainant, MLO, Investigation Officer and mashirs at Ex.05 to 17, who exhibited and recognized certain documents at Ex.05/A to 17/E, then prosecution closed its side at Ex.18. The statement under Section 342 Cr.P.C of appellant/accused was recorded at Ex.19, wherein he denied the allegations. Appellant did not examine himself on Oath, however, he examined two defense witnesses at Ex.20 to 21. Finally the learned trial Court after hearing the

arguments of the parties awarded death sentence to appellant through impugned judgment and also sent reference to this Court under Section 374 Cr.P.C for confirmation of death sentence. We therefore, decide the fate of captioned appeal as well as reference by this single judgment.

3. Learned counsel for the appellant, inter-alia, contended that impugned judgment is entirely against the norms of law; that Complainant is not the eyewitness of the alleged incident; that Complainant himself admitted that in fourteen years of married life her deceased daughter never complained maltreatment by her husband/appellant; that there is no motive/reason of the appellant behind the alleged incident; that even alleged eye-witness Raheem Khan admitted in his cross-examination that accused was living with his wife and children happily; that though the alleged eye-witnesses are claiming that they reached at the place of incident when appellant was strangulating his wife, yet they did not take any effort to save her, which makes the prosecution case highly doubtful; that allegation against the appellant is that he caused death of five persons, but it does not attract prudent mind that when a person was killing someone in his house, why other victims did not leave the house in order to save themselves; that there is improvement in the evidence of alleged eyewitnesses, which is not permissible under the law; that there are material contradictions in the statements of prosecution witnesses; that alleged eye-witness Raheem Khan falsely implicated the appellant as he wanted to marry with deceased Valahi, as such he was not in good terms with the appellant; that it is natural phenomena that when someone is being murdered he/she makes resistance, however, there are no marks of injuries on the dead bodies; He lastly prayed for acquittal of appellant. In support of his arguments he relied on the reported cases of (i) MUHAMAMD ASHRAF alias ACCHU versus The STATE [2019 SCMR 652] (ii) Mian SOHAIL AHMED AND OTHERS versus The State [2019 SCMR 956] (iii) TARIQ MEHMOOD versus The State [2019 SCMR 1170], (iv) WAJAHAT versus GUL DARAZ and another [2019 SCMR 1451], (v) ABDUL LATIF versus NOOR ZAMAN and another [2021 SCMR 1428] and (vi) SHAUKAT HUSSAIN versus The STATE [2022 SCMR 1358].

4. Complainant had effected appearance on 05.08.2021 and vide Order of even date he, while stating that being poor person he cannot engage his own counsel, reposed confidence on learned State Counsel to proceed this case on his behalf.

5. Learned Additional P.G vehemently opposed the appeal and argued that motive is duly established, as learned defense counsel himself suggested the

prosecution witnesses that there were illicit relations of wife of deceased with Raheem Khan; that prosecution case is fully supported by the eyewitnesses; that ocular evidence is fully supported by the medical evidence; that there are no contradictions in the depositions of prosecution witnesses and they remained consistent despite lengthy cross-examination; that appellant had committed murder of five innocent persons, as such he is not liable for any leniency. He prayed for dismissal of appeal. He relied upon the reported cases of (i) MUHAMMAD ABBAS versus The STATE [PLD 2020 SC 620], (ii) MUHAMMAD UZAIR JAMAL versus The STATE [2020 SCMR 1862] and (iii) MUHAMMAD IMRAN versus The STATE [2021 SCMR 69].

6. We have heard the learned counsel for the appellant as well as learned Additional P.G and have also perused the material available on record.

7. First of all we have to see whether deceased persons died by natural death or otherwise. In this regard we have perused the evidence of WMO Dr. Farzana Shah, who had examined the dead bodies of deceased Eidhan, Sabahi and Mst. Valahi. She deposed that on 29.06.2012 she was posted as Senior Women Medical Officer at Civil Hospital Mirpurkhas and on said date ASI Nazeer Ahmed had brought the dead bodies of above said deceased persons, which were identified by Sain Bux and Muhammad Rafique. First of all she examined the dead body of deceased Eidhan, then Sabhai and lastly Valahi. Opinion of WMLO in respect of dead bodies is reproduced below one by one:

a) **EIDHAN:**

Opinion: From the external and internal examination of deceased I am of the opinion that such type of injuries to the great vessels and larynx and trachea leading to asphyxia and death because of throttling.

The duration between death and injuries instantaneous.

b) **SABHAI:**

Opinion: From the external and internal examination of deceased I am of the opinion that such type of injuries to the great vessels and larynx and trachea leading to asphyxia and death because of throttling.

The duration between death and injuries instantaneous.

c) **VALAHI:**

Opinion: From the external and internal examination of deceased I am of the opinion that death occurred due to compression of neck vessels and asphyxia death because of throttling.

The duration between death and injuries instantaneous.

8. We have also gone through the evidence of Dr Muhammad Zafar, who had examined the dead bodies of deceased Aqib and Abdul Karim. He deposed that on 29.06.2012 he was posted as Medical Officer at Civil Hospital Mirpurkhas and on said date dead bodies of aforesaid male deceased persons were brought by ASI Nazeer, which were identified by Sain Bux and Muhammad Rafique. Opinion of MLO in respect of dead bodies of above said two male deceased persons is reproduced below:

DECEASED AQIB AND ABDUL KARIM

Opinion: From the external and internal examination of deceased I am of the opinion that the deceased died due to compression of neck vessels and asphyxia caused by throttling.

The duration between death and injuries instantaneous.

9. Examination of dead bodies on 29.06.2012 has duly been supported by the evidence of PW Muhammad Rafique as well as ASI Nazeer Ahmed. Evidence of WMLO and MLO, supported by documentary evidence, establishes that all above said five persons did not die natural death, but their death had occurred due to compression of neck vessels and asphyxia caused by throttling i.e strangulation.

10. Now it is to be seen that who had caused their death. We have perused the evidence of Complainant. He stated that on 29.06.2012 he was available at his village, when Raheem Khan informed him on telephone that accused Khushi Muhammad killed his wife and four children by compressing their throats. On receiving such information he reached at the place of incident and saw the dead bodies, where Raheem Khan and Ali Khan and other villagers were also present. He then shifted the dead bodies to Civil Hospital and after completion of necessary formalities he buried the dead bodies and lodged the aforesaid FIR against his son-in-law accused Khushi Muhammad. Evidence of Complainant shows that he was not the eye witness of the incident, but he was informed about the incident by PW Raheem Khan.

11. Since the entire case of prosecution hinges around the evidence of eye witnesses, therefore, we have carefully gone through the evidence of eye witnesses. PW Raheem Khan deposed that on 29.06.2012 at about 03:30 am he was present at his home when he heard the noises from the house of accused, then he and Ali Khan rushed to the house of accused and saw that children of accused were lying dead and the accused was overpowering his wife by strangling her and

she also died in front of them and the accused escaped away. PW Ali Khan also deposed on similar lines. Both these witnesses were thoroughly cross-examined, but they remained consistent, as such they fully implicated the appellant with the commission of present crime. We find the evidence of these eyewitnesses to be reliable, trustworthy and confidence inspiring and we believe the same. There is no case of mistaken identity as they knew the appellant, whom they saw from close range.

12. The argument of learned defense counsel that, five murders have been alleged against the accused and it is not possible that when accused was committing murder of one person other four persons were waiting for their turn and did not try to escape away, carries no weight, as eye witnesses deposed that accused had already murdered his children and when they reached at the place of incident he was committing murder of his wife and she died on just their reaching over there. It is natural phenomena that a mother cannot leave her children to die at the hands of anyone and she tries level best to save her children. Even otherwise medical evidence shows that throats of deceased persons were compressed while they were sleeping. The arguments of learned counsel that eye witnesses did not try to save the deceased persons also carries no weight, as both eye witnesses had deposed that accused already caused death of his four children and he was compressing throat of her wife and she died in front of them and then accused escaped away.

13. In the statement DW-1 Gulab Khan, who is father of accused, deposed that his son/accused is suffering from mental disease, however, at the same time he deposed that at the time of incident the accused was present with him at their land for the purpose of irrigating their land. The statement of above DW has further amazed us when accused himself had not disclosed such facts in his own statement recorded under Section 342 Cr.P.C. Even if, it is believed to be true that accused was available at his lands alongwith his father, yet question arises that why he did not return back to his home where a shocking incident had occurred and why he did not take dead bodies to Hospital and/or lodge FIR of the incident. It also seems very astonishing that the Complainant, who is father and grandfather of deceased implicated the appellant in this case, who is his son-in-law by leaving the actual culprit(s). Such conduct does not appeal to common sense, logic or reason and is completely unnatural and cannot be believed.

14. Record reflects that ocular evidence is fully supported by medical evidence and neither any enmity has been established by the appellant with the Complainant for his alleged false implication in this crime nor he stated in his

statement recorded under Section 342 Cr.P.C that who had committed murder of his wife and children. The prosecution case is free from doubts, therefore, the learned trial Court has rightly passed the impugned judgment. We have also gone through the case laws cited by learned defense counsel and found the same distinguishable from the facts and circumstance of present case.

15. For what has been discussed above, we are of the view that appellant has failed to point out any illegality or irregularity in the impugned judgment so that the same requires interference by this Court. Consequently, the conviction and sentence awarded to the appellant by the learned trial Court through judgment dated 25.04.2018 passed in Sessions Case No.155 of 2012 [**Re: The State versus Khushi Muhammad**], is maintained and the captioned appeal is dismissed. The confirmation reference is answered in **affirmative**.

JUDGE

JUDGE

Sajjad Ali Jessar