

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

Criminal Jail Appeal No.S-105 of 2012

Date of hearing: 08.05.2023  
Date of decision: 08.05.2023  
Appellant: Hyder s/o Khan Muhammad Machhi,  
Through Mr. Sajjad Ali Gopang advocate.  
The State: Through Ms. Sana Memon, Assistant P.G.

JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- Dead body of Muhammad Hashim, father of complainant, was found on 26.04.2010 lying in an abandoned water course/ lake situated near Saeedpur College adjacent to the house of appellant and co-accused Khan Muhammad, Deh Dabgeero, Taluka Talhar. When such information was communicated to the complainant, he reached the place of incident and found injuries on different body parts of his father, caused by some sharp cutting weapon. Hence he leaving PWs Khamoon and Sukhio over dead body, appeared at PS Talhar and lodged FIR against unknown accused at about 1800 hours on the same day viz. 26.04.2010.

After registration of FIR, appellant, acquitted accused Mst. Marvi and Khan Muhammad, were arrested on 14.05.2010 on the basis of statement of PW Sukhio u/s 161 CrPC revealing that he had come to know about involvement of accused in the incident. After arrest of appellant, he led the police to hedges near his house and got recovered a hatchet and a churri used in the offence, both blood stained.

On 15.05.2010, co-accused Mst. Marvi was produced before Judicial Magistrate-I Matli for recording her statement u/s 164 CrPC. In her statement, she disclosed that deceased was murdered by her brother Hyder, appellant, and her maternal uncle Haroon with hatchet and knife respectively in the house where deceased used to reside with them, and that they had disposed of the dead body outside the house.

On the basis of such investigation, Challan was submitted in the Court where after usual formalities charge was framed against the appellant and co-accused, which they pleaded not guilty and claimed trial. In the trial, prosecution examined as many as 11 witnesses

including complainant Gul Hassan, PW Sukhio, Medico Legal Officer Dr. Aijaz Hameed, PW Juman, ASI Mehboob Alam, SIP Imtiaz Ali, SIP Ghulam Shabbir (second I.O.), Jahangir Bhayo Judicial Magistrate Matli, Tapedar Ghulam Mustafa, who produced all the necessary documents including FIR, post-mortem report, 161 CrPC statement of acquitted accused Marvi.

After the prosecution led its evidence, statements of accused were recorded u/s 342 CrPC, they denied the prosecution case and pleaded innocence. After that, learned trial Court vide impugned judgment dated 21.03.2012 has convicted and sentenced the appellant u/s 302 (b) PPC to undergo life imprisonment and pay Rs.50,000/- as compensation to the legal heirs of deceased and in case of default to suffer further RI for six months with benefit of section 382-B CrPC duly extended to him. Notwithstanding, the trial Court did not find any confidence inspiring evidence against co-accused Mst. Marvi and Khan Muhammad and acquitted them of the charge, and further kept the case against absconding accused Haroon on dormant file with NBW issued against him. It is this judgment which has been impugned by the appellant in this appeal.

Learned defence counsel has contended that the appellant is innocent and has been falsely implicated in this case. There is absolutely no evidence against him, and on the basis of misappreciation of evidence he has been condemned to life imprisonment.

Learned Assistant PG has not been able to controvert the contentions made in defence.

I have heard both the parties and perused material available on record. The prosecution, to support its case, has examined complainant Gul Hassan and PW Sukhio. Both these PWs are not the eye witnesses of the incident, and have disclosed in their evidence the discovery of dead body over the bank of one abandoned water course on the lands of Nadir Khowaja near the house of acquitted accused Khan Muhammad; rushing to place of incident after receiving such information and finding the deceased with multiple injuries on his body caused by some sharp cutting weapon. Complainant, in his evidence, has further disclosed that ultimately he came to know about involvement of appellant, Khan Muhammad, Haroon, and Marvi in the murder of his father. The same facts have been reiterated by PW Sukhio in his evidence at Ex.11.

However, both the witnesses have not disclosed the source through which they came to know about role of the appellant and other accused in the murder of the deceased. This fact: not disclosing the source they have, in fact, admitted in their cross examination. The evidence of other witnesses is indeed formal in nature. Medico Legal Officer's evidence is to the effect that the deceased had died unnatural death, which is not a disputed fact. PW-10 Ghulam Mustafa Tapedar has identified in his evidence the place where the dead body was found lying. A perusal of judgment shows that the trial Court found the appellant involved in the offence on the basis of recovery of a blood stained hatched from him and the confessional statement of co-accused Mst. Marvi, pinpointing a finger to the appellant's involvement in this case.

Insofar as recovery of hatchet is concerned, its recovery is not without a doubt. It was recovered after more than twenty days of the incident, and yet it was found stained with human blood, which is unbelievable, keeping in view the daily use of hatchets by the people in the countryside. Then it was recovered from a place, not in exclusive possession of the appellant. More so, although it was found with human blood and so has been opined in the Lab. report by the office of Chemical Analyzer. But admittedly no test of cross-match profile with blood of deceased was conducted to verify that human blood found on the hatched was, in fact, that of the deceased. Therefore, the recovery of the hatchet with blood, even if it is believed to be true, is inconsequential insofar as identification of appellant's role in the incident is concerned.

The next piece of evidence which has weighed with trial Court to convict and sentence the appellant is 164 CrPC statement of co-accused Mst. Marvi. She in her 342 CrPC statement has denied giving such a statement on the one hand, and on the other hand this very statement has not been confronted to the appellant in his 342 CrPC statement. It is settled law that if a particular incriminating piece of evidence is not put to the accused in his statement u/s 342 CrPC, the same would not be considered for recording conviction against him. Be that as it may, learned trial Court while relying upon it: exculpatory confession of co-accused has taken no pains to determine its evidentiary value. It is surprising to note that the very accused who has made such statement has been acquitted by the trial Court, although from her statement she appears to be an active accomplice. Yet on the basis of this very statement, the trial Court has convicted the appellant. The exculpatory

confession of an accused implicating the co-accused and exonerating himself or herself would be relied upon only when there is reliable supporting evidence aligning with the story revealed in such confession.

In the present case, prosecution has completely failed to bring on record any other evidence except recovery of a hatchet which has already been discarded. Exculpatory confession of Mst. Marvi which in view of lack of supporting evidence to confirm the same, and the fact that it has been retracted by the said accused in her 342 CrPC statement, and not put to the appellant in his 342 CrPC statement to seek his defense / explanation thereon, is inconsequential and cannot be read against the appellant. The prosecution case sans of such pieces of evidence is completely devoid of any other direct or otherwise evidence. Besides, there is no confidence inspiring circumstantial evidence either leading to culpability of the appellant. Therefore, appellant cannot be convicted and sentenced for the charge against him.

The case against the appellant is consequently held to be full of doubts. It is settled that for giving benefit of a doubt to an accused, multiple circumstances creating doubt are not necessary. If there is a single circumstance which shows that case against the appellant is not without a shadow of doubt, the benefit of which would be extended to him not as a matter of grace but as a matter of right. In view of discussion stated above, it is evident that the prosecution has failed to prove the case against the appellant beyond a reasonable doubt.

Accordingly, this appeal is allowed. The conviction and sentence awarded to the appellant vide impugned judgment dated 21.03.2012 passed by 1<sup>st</sup> Additional Sessions Judge Badin in Sessions Case No.185/2010 arising out of Crime No.77/2010, u/s 302, 201, 34 PPC, at PS Talhar is here set-aside. The appellant is acquitted of the charges and he shall be released forthwith if he is not required in any other custody case.

The appeal is accordingly disposed of.

J U D G E