

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Criminal Jail Appeal No.310 of 2020**

Appellant : Muhammad Iqbal S/O Muhammad Ameen

Respondent : The State

For the appellant : Mr. Muhammad Hanif Noonrai advocate

For the state : Mr. Muntazir Hussain Mehdi  
Additional Prosecutor General.

Dates of hearing : 19.04.2023

Date of Judgment : 04.05.2023

**J U D G M E N T**

**AMIAD ALI BOHIO. I-**This criminal appeal has assailed the judgment dated 06.03.2020 passed by the court of Additional District & Sessions Judge -1, Karachi (East), in Sessions Case No. 1230 of 2018, vide crime No. 194 of 2018 for offences under Sections 302 and 34 PPC of Police Station Awami Colony, Karachi, vide which, the accused ("the appellant") has been convicted under section 302 (b) PPC and sentenced to imprisonment for life and to pay compensation amounting Rs. 200,000/- (Two Hundred Thousands Rupees Only) to legal heirs of the deceased. In case of default in payment of the fine, the appellant was ordered to suffer Simple Imprisonment (S.I), for additional six months. He was also extended benefit of Section 382(b) Cr.P.C.

2. As per contents of FIR, the prosecution story in verbatim of Asif Maqsood (complainant) is that, his neighbor Alam came to his home on 19.05.2018 at 2345 hours and informed him that four (4) persons with muffled faces caused knife injuries to the younger brother of complainant namely Nasir Maqsood at the factory gate and was taken to hospital. On this information the complainant went to M/S Jinnah Hospital and found the dead body of Nasir. The complainant, without disclosing the source of information, reported that he came to know that appellant Muhammad Iqbal had disputation with the deceased on some matter and quarreled with him on 10-04-2018. He further reported by levelling direct allegation that the appellant along with three unknown culprits committed murder of his brother Nasir by attacking with knife. The complainant lodged this FIR on 20.05.2018 at 2200 hours.

3. I.O during investigation obtained the CCTV footage of the earlier incident dated 10.04.2018, when the appellant quarreled with deceased Nasir and after completing the usual investigation, submitted challan against the accused for above offence. The

trial court frame charge against the appellant framed for offences under section 302 & 34 PPC, to which, he pleaded not guilty And claimed trail.

4. At trial, the prosecution examined the complainant Asif Maqsood at Ex. 04, P.W-02, Alam Zaib at Ex. 05, P.W-03, Asif Khan at Ex.06, P.W-04, Dr. Shahzad Ali at Ex.07, P.W-05, Muhammad Naeem at Ex.11, P.W-06, Asghar Ali at Ex.14, P.W-07, PC Nadeem Akhtar at Ex.16, P.W-08, Kashif Sarwar at Ex.19, P.W-09, Muzafar Iqbal (security in charge in Mill AGI factory) at Ex.21 and P.W -10, I.O Muhammad Shiraz at Ex.22. Thereafter, prosecution side was closed at Ex.31.

5. The statement of the accused was recorded under section 342 Cr.P.C at Ex.32, wherein, he denied the allegations of prosecution and claimed himself to be innocent. Neither had he examined himself under section 340 (2) Cr.P.C nor, he led any evidence in his defence but has admitted the incident, dated 10.04.2018. Furthermore, he stated that both of them scuffled, as two to three persons including the appellant tried to advance ahead of him and bypass the queue.

6. The trial Court after hearing counsel for both parties and examination of the evidence, passed the impugned judgement.

7. Learned counsel for the appellant has contended that there was a delay of more than 23 hours from the occurrence, whereas distance between the place of incident and PS Awami Colony is of 04 kilometers; the complainant has failed to depose the source of information on the basis of which he implicated the appellant for committing murder of his brother by causing knife blows; both mashirs of recovery of churri (knife) are police officials, which is in violation of section 103 Cr.P.C and the prosecution has failed to produce entries of departure and return at PS at the time of alleged recovery and also failed to produce the entry in register No.19, in order to prove safe custody of sealed parcel containing blood stained churri. Furthermore, a delay of three days was caused to deliver the parcel to Chemical Examiner. In support of his contention he has relied upon 2019 PCr.LJ 172 (Re: Allah Ditta versus The State and another), 2018 S.C.M.R 772 (Re: Muhammad Mansha versus The State), 2018 Y.L.R 2264 (Re: Tanveer alias Chand versus The State), 2018 Y.L.R Note 246 (Re: Ashfaque Ali versus The State), 2018 Y.L.R 2394 (Re: Muhammad Imran Afridi versus The State), 2018 M.L.D 1220 (Re: Sikander alias Sani versus The State), S.B.L.R 2018 Sindh 1580 (Re: Muhammad Islam versus The State) and P.L.J 2018 Cr.C. 843 (DB) (Re: Allah Ditta versus State, etc.).

8. Learned Additional Prosecutor General has contended that the Trial Court has considered the evidence brought on record and he supports the impugned judgment. According to him, prosecution witnesses corroborated the incident and have

established the motive which connects the appellant for committing the above offence. Lastly, he has prayed for dismissal of the appeal. He has relied upon 2006 S.C.M.R 1438 (Re: Mst. Peeran Bi through L.Rs. versus Abdul Jabbar and others).

9. From perusal of the record, it appears that there is delay of more than 23 hours in lodging of FIR, for which, no plausible explanation has been given. The complainant is not eye witness of the occurrence but has lodged the FIR on the basis of information given to him by P.W Alam Zaib, who claims to be eye witness, that four (4) culprits with muffled faces committed the above offence and while lodging the FIR, complainant Asif Maqsood implicated the appellant and referred an incident dated 10.04.2018 when the appellant quarreled with the deceased and his brother. In this incident deceased Nasir was beaten with iron rod and subsequently, the appellant was dismissed from service by the company. The complainant mentioned in FIR, as well as, deposed in evidence that the appellant with 3 unknown accomplices committed murder of his brother but the source of this information is not disclosed by the complainant. Thus, the appellant is being involved as one of the culprits on the basis of information without disclosure of its source. Moreover, the complainant has implicated the appellant on the basis of second-hand information which was provided to him by factory employees (names not disclosed) and during his evidence, he conveys that the appellant committed the above offence on account of his dismissal from service after quarrel dated 10.04.2018 but specifically deposed during his cross-examination that the factory employees informed him about the commission of murder by the appellant. He also admitted that on the basis of such disclosure by the factory employees, he implicated the appellant in this case. It is worthwhile that neither the complainant deposes the names of such factory employees nor, I.O took efforts to record the statement of the said factory employee. Hence, being the independent piece of evidence, the prosecution had failed to prove its case against the accused by withholding material evidence which is a clear violation of the provision of Article 129 (g) of Qanun-e-Shahdat Order, 1984. The above provision referred in case of "Nasrullah alias Momin and another Versus The State" (2023 PCr LJ 589) the reliance was placed on the case of "Muhammad Shah Khesro and another v. The State and others" 2006 PCr.LJ, wherein, it was held as under:

"Article 129(g)- Withholding of evidence-Presumption-  
--if the best a piece of evidence is available with a party  
and the same is withheld by him, then it is presumed  
that the party has some evil motive behind it is not  
producing that evidence".

10. P.W Alam Zaib, the only eye witness of occurrence, who had seen and identified the appellant when, the appellant along with 3 companions who boarded on bus from its front gate and on their directions, P.W Alam Zaib alighted from the bus and witnessed the occurrence of causing Knife blows by the appellant and one another person, from outside of bus. Alam Zaib further deposes that another company employee was seated in the bus at the time of occurrence. P.W Alam Zaib also overheard that, the mentioned company employee inquired from accused person as to why they were causing churri blows to, the deceased, Nasir; to whom, the appellant replied that due to, the deceased, Nasir he was terminated from his service. The statement of P.W Alam Zaib does not appeal to a prudent mind that despite he had seen the appellant at the place of occurrence while committing the above offence, as well as, overheard his conversation with a factory employee, sitting in the rear seat of bus; he did not disclose this information to the complainant. The prosecution's mainstay was on the testimony of P.W Alam Zaib, who being the eye witness of occurrence, intimidated brother of deceased (Nasir Maqsood) namely Asif Maqsood (complainant / P.W- 1). As per statement of P.W Alam Zaib, he had seen accused Iqbal and another person causing churri blows to deceased Nasir. But, during cross-examination, P.W Alam Zaib contradicted the complainant's statement that he had informed him about the involvement of four culprits with muffled faces in the offense. However, he acknowledged that he had not revealed the identity of the accused/appellant to the complainant. Accordingly, the integrity of P.W Alam Zaib becomes doubtful particularly, when he failed to disclose the name of such important and independent witness. He further deposed that this fact was not mentioned in his statement under section 161 Cr.P. Hence the same is an improvement without any corroboration. Lastly, he admitted, during cross examination, that it is not mentioned in his statement u/s 161 Cr.P.C that two accused were causing churri blows to the deceased, while two accused were standing beside them. The above evidence of P.W Alam Zaib without corroboration could not be relied upon, hence his evidentiary integrity is doubtful. According to him he witnessed the act of causing churri blows and overheard the mentioned conversation between the appellant and company employee from outside of the bus and such evidence could not be easily accepted as held by august Supreme Court of Pakistan in the case of "Abdul Jabbar alias Jabbari versus The State" (2017 SCMR 1155). Whereas, the complainant unequivocally deposed that P.W Alam Zaib informed him that four persons with muffled faces caused knife blows to his brother Nasir. Evidence of other factory employee admittedly available was withheld, therefore, the above contradictory evidence of P.W Alam Zaib was required to be held with extra care and caution about its intrinsic value and reliability. In this regard, I fortify my view from a case of the Apex Court reported as "Hahsim Qasim vs. The State (2017 SCMR

986)”. Thus, the evidence of company employee sitting inside of the bus at the time occurrence, being independent and important evidence, was not brought on record and I.O failed to explain as to why he did not record statement of the said company employee and company bus driver. It is observed that investigating officer was duty bound to collect the material evidence and his failure is to be taken as a circumstance belying the prosecution case as held in 2021 YLR 1870 (Re: Qamar Sultan vs. state) wherein, the principle enunciated while giving benefit of doubt to an accused as laid down by the august Supreme Court of Pakistan in the case of “Muhammad Mansha v. The State” (2018 SCMR 772) was referred as under:

“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)”.

The reliance was also placed upon the case “Muhammad Akram v. The State” (2009 SCMR 230) wherein, the Honorable Supreme Court of Pakistan has held as under:

“It is an axiomatic principle of law that in case of doubt, the benefit there of must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Triq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances which creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as

a matter of grace and concession but as a matter of right”.

11. To consider the motive, the prosecution has examined the security in-charge of the factory P.W- 09 Muzafar Iqbal who was shown CCTV and deposed that deceased Nasir Maqsood and the appellant were scuffling with each other and the appellant picked an iron bar and was attempting to hit the same to Nasir. Whereas, the complainant alleged in FIR that the appellant has beaten his brother with an iron rod. P.W Muzaffar Iqbal has also deposed during cross examination that employees of factory usually fight with each other. It is a well settled law that motive is always considered to be double edged weapon. The reliance in this regard can be placed upon 2017 YLRN 180, wherein it is held as under:

“As far as motive in this case is concerned although it is an admitted fact that both the parties were having previous criminal litigation, however, at the same time it has direct nexus with the ocular account. Moreover, motive is always considered to be a double edged weapon and it could be one of the reasons for false implication and at the same time it could be a reason for commission of the occurrence. In a salutary judgment rendered by august Supreme Court of Pakistan in the case of Sahib Masih and others v. The State (1982 SCMR 178) following guideline was laid down:-

“---S.8---Motive A double-edged weapon--  
-Could prompt false implication and revenge in form of aggression---Mere presence of motive, held, not sufficient in determining instinct worth or consistency of the statements of eye-witnesses.”

12. To consider the circumstantial evidence with regard to the recovery of churri /knife used by the appellant for committing the above offence, I.O made no efforts to associate private person/s, without any plausible explanation, which could have been arranged as admittedly two factories employees were available there at the place of arrest. In such circumstances the provision of section 103, Cr.P.C is attracted as held in case of “Ameer Bux vs state”, (2023 PCrLJ 462 Karachi High Court-Sindh) that when the availability of private persons around the place of recovery could not be ruled out then omission to take independent mashirs could not be brushed aside lightly .

13. Similarly, the appellant after his arrest, produced churri on 25.05.2018. Whereas, Investigation Officer delivered the churri to chemical examiner with delay of three days on 28.05.2018 but no such entries of I.O departure from PS and return at PS were produced. He also failed to explain whereabouts of sealed churri during that period of three days and also no entry in Register No. 19 has been produced by I.O. It is held in case "Muhammad Sohail vs state" (2023 YLR 704) that such omission with regard to delay in sending the weapon to the expert was fatal to prosecution case. The reliance in this regard is also place upon the case "Ameenullah vs state" 2019 PCr.LJ Note 96.

14. Pursuant to the above discussion, I am of the considered view that the prosecution has failed to prove its case against the appellant beyond any reasonable doubt. Consequently, the appeal in hand is allowed and the conviction and sentence awarded to the appellant vide impugned judgment dated 06.03.2020 are set *a-side*. Consequently, the appellant is acquitted and he is ordered to be released forthwith, if his custody is no more required in any other criminal case/crime.

Appeal allowed

**J U D G E**