

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

***Crl. Appeal No. S- 93 of 2019.***

Appellants: Rajib Gadehi s/o Hajji Gadehi and  
Rasheed Gadehi s/o Ghulam Shabir  
Gadehi, through Mr. Habibullah G.  
Ghouri, and Mr. Sajid Hussain  
Mahessar, Advocates.

The State: Through Mr. Mr. Aitbar Ali Bullo, Deputy  
Prosecutor General.

Date of hearing: 25-05-2023.  
Date of judgment: 10-07-2023.  
Date of Announcement: 14-07-2023

**Judgment**

**Zulfiqar Ali Sangi, J.** This criminal appeal is directed against impugned judgment dated 05.10.2019, passed by learned 2<sup>nd</sup> Additional Sessions Judge, Mehar, in Sessions Case No.428/2016, arisen out of Crime No.105/2016, registered with P.S K.N. Shah for the offence under sections 302, 147, 148, 149, 504, 337-A(i), 337-A(ii), 337-F(i) PPC, whereby the appellants were convicted and sentenced to suffer rigorous imprisonment for **life** under Section 302 (b) P.P.C and to pay compensation of Rs.100,000/- each to the legal heirs of deceased Ghulam Akbar alias Ali Akbar and in default whereof to suffer simple imprisonment for six months more. The appellants were also convicted for an offence punishable under Sections 148 P.P.C. to suffer R.I. for six months and pay a fine of Rs.10,000/- each and in default hereof to undergo S.I. for one month. The benefit of section 382-B Cr.P.C. was extended to the appellants.

2. The facts of the prosecution case are that on 26.06.2016, complainant Faqeer Muhammad Gadehi appeared at Police Station K.N Shah and lodged F.I.R stating therein that his cousin Ghulam Akbar alias Ali Akbar s/o Ghulam Rasool Gadehi use to cultivate lands. On 26.06.2016, he along with his cousin Ghulam Akbar, Ghulam Mustafa and Rasool Bux were present at the lands of Ghulam Akbar, it was 5:00 pm time they saw accused Ghulam Shabbir armed with a gun, Rajib armed with a hatchet, Fida Hussain, Rasheed, Liaquat Ali all armed with Danda all by caste Gadehi r/o

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village Meer Hassan Gadehi Taluka K.N. Shah arrived at the land and on arrival accused abused the complainant party on which Ghulam Akbar restrained them not to abuse, on that accused got annoyed. Accused Rajib caused the blunt side of the hatchet blow to Ghulam Akbar which hit him on his head, whereas the remaining accused caused blows with Lathi, as well as the back side of the hatchet, and butt blows of the gun to Ghulam Akbar on his head, back and other parts of body. In the meanwhile witnesses beseeched the accused and rescued the Ghulam Akbar, on that accused left the scene of offence while abusing. After the departure of the accused complainant brought the injured Ghulam Akbar to the police station and after getting a letter shifted the injured to Taluka Hospital K.N Shah, wherefrom injured was referred to CMC Hospital Larkana for further treatment. Thereafter complainant appeared at the police station and lodged an F.I.R of the incident. During treatment injured, Ghulam Akbar alias Ali Akbar succumbed to his injuries.

3. On completion of the usual investigation, the police submitted a challan of the case against the appellants, showing the rest of the accused as absconders. At trial, the charge was framed against the appellants, to which they pleaded not guilty and claimed trial. Consequently, the prosecution examined its witnesses in the following sequence:

- (i) *Complainant Faeer Muhammad at Ex.6.*
- (ii) *PW Ghulam Mustafa at Ex.7*
- (iii) *Medical Officer Dr. Arbab Ali Shah at Ex.9.*
- (iv) *Medical Officer Dr. Abdul Hameed Shaikh at Ex.10.*
- (v) *Tapedar Mushtaq Ahmed Channa at Ex.11.*
- (vi) *Mashir Gul Muhammad Gadehi at Ex.12.*
- (vii) *ASI Imam Bux Khoso was examined at Ex.13.*
- (viii) *P.W Kouro Khan at Ex.14.*
- (ix) *I.O of the case ASI Sikander Ali at Ex.15.*

4. The Prosecution closed its side vide Ex.16. The statements of appellants under Section 342 Cr.P.C. were recorded at Ex.17 and 18, in which they denied all the allegations of prosecution leveled against them and claimed innocence. They did not examine themselves on oath in terms of Subsection (2) of Section 340 Cr. P.C., but examined three witnesses, namely, Ahmed, Sikander Ali and Muhammad Paryal in their defence in disproof of the charge. After the conclusion of the trial, the learned trial Court passed the impugned judgment and awarded

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conviction to the appellants, as stated above. The appellants have preferred instant appeal against the said judgment.

5. Learned counsel for the appellants has argued that the judgment passed by the trial Court is perverse and liable to be set aside; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellants. They next argued that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court, as it consists of interested and related witnesses and it is insufficient to warrant conviction of the appellants. They further added that material contradictions appeared in the statements of the prosecution witnesses on crucial points, but those have not been taken into consideration by the learned trial Court while passing the impugned judgment. Learned counsel further contended that there is inconsistency in ocular and medical evidence and that the PW Rasool Bux who is the eyewitness of the incident was not examined by the prosecution therefore, adverse inference as provided by Section 129 (g) of Qanun-e-Shahadat can be drawn against the prosecution that he was not supporting the case of the prosecution, therefore, he was not put into the witness box. Learned counsel further contended that the impugned judgment suffers from misreading and non-reading of evidence. They also added that the defence has created so many doubts in the prosecution case and benefit of which may be extended in favour of the appellants by setting aside the impugned judgment and ordering their acquittal.

6. Learned D.P.G. appearing for the State opposed the appeal on the grounds that the prosecution has fully established its case by producing trustworthy ocular as well as medical and circumstantial evidence against appellants; that there are no major contradictions in the evidence of prosecution witnesses; that all the witnesses are natural and have no strong motive to falsely implicate the appellants as such, the appellants were rightly convicted based on such evidence.

7. I have heard learned counsel for the parties and have gone through the material available on the record with their able assistance.

8. The meticulous perusal of the evidence brought on record is entailing that the case against each appellant is on different footings therefore their case is discussed separately. Firstly the case of appellant

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Rajib is taken into consideration. The case of the prosecution is mainly based on the evidence of two eye-witnesses who gave ocular account, and the medical evidence given by two doctors one examined Ali Akbar when he was in injured condition and the other who conducted the postmortem after his death. Oral/direct evidence produced by the complainant Faqeer Muhammad and his version was fully supported by PW Ghulam Mustafa. They in one line deposed that on 26.06.2016 at about 5:00 pm they along with their cousin Ghulam Akbar, Puphat Rasool Bux, were available at the land of Latif Gadehi which was in their possession on harapship basis where they were busy in the work. As per their evidence, five culprits came from the southern side and were identified as Ghulam Shabbir Gadehi armed with a gun, Rajib Gadehi armed with a hatchet both sons of Haji Gadehi, Fida Hussain s/o Achar Gadehi armed with danda, Rasheed s/o Ghulam Shabbir Gadehi armed with danda and Liaquat s/o Ali Bux Gadehi armed with a danda. Ghulam Akbar was busy in de-silting work on the land. The accused persons started hurling abusive language and asked Ghulam Akbar as to why he was de-silting on land on which Ghulam Akbar restrained them from using abusive language, accused got annoyed and **accused Rajib caused a hatchet blow to Ghulam Akbar on his head from a blunt side** thereafter all accused caused blows to Ghulam Akbar with danda and from the blunt side of hatchet. After the accused went away, the injured was shifted to Police Station K.N Shah where head constable Imam Bux Khoso was available, who saw the injuries of injured Ghulam Akbar in the presence of Mashirs Ghulam Hyder and Gul Muhammad both by caste Gadehi, thereafter a letter was issued by police for medical treatment of injured and was shifted to Taluka hospital KN Shah. The condition of the injured did not improve at KN Shah Hospital, hence he was referred to CMC Hospital Larkana on the same day and on 27.06.2016 Ghulam Akbar passed away at 7:25 am. Thereafter, after necessary formalities including the postmortem, the dead body was handed over to the complainant party. A.S.I Sikandar Ali inspected the place of the vardat and collected blood-stained earth and did pen work on the spot. Both the eye-witnesses have fully supported the case, as has been discussed above against appellatant Rajib for causing the blunt side of the hatchet to the deceased. It is a settled principle of law that the sole evidence of a material witness i.e an eye-witness is always sufficient to establish the

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guilt of the accused if it is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers the quality of evidence and not its quantity to prove the charge. The accused can be convicted if the Court finds direct oral evidence of **one eye-witness** to be reliable, trustworthy and confidence-inspiring. In this respect, reliance is placed upon the cases of **Muhammad Ehsan v. The State (2006 SCMR 1857)** and **Niaz-Ud-Din v. The State (2011 SCMR 725)**. Further, the Supreme Court in the case of **Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)** also held that "even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable." There can be no denial of the legally established principle of law that it is always the **direct evidence** which is material to decide a **fact (charge)**. The failure of direct evidence is always sufficient to hold a criminal charge as 'not proved' where direct evidence holds the field and stands the test of it being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can safely be placed on the case of **Muhammad Ehsan vs. the State (2006 SCMR-1857)**.

9. The ocular account so furnished by the above two eye-witnesses is further substantiated by the medical evidence. **Dr Arbab Ali** who examined the injuries of deceased Ghulam Akbar before his death and deposed that, on 26.06.2016 he was posted as a Senior Medical officer at Taluka Hospital KN Shah. On that day injured Ghulam Akbar s/o Ghulam Rasool by caste Gadehi aged about 35 years r/o village Mir Hassan Gadehi was brought before him by his relatives along with a police letter. The injured was brought before him in the evening shift at 5:52 pm. He examined the injured and found four injuries on his person; the duration of the injuries was about 2 to 3 hours. All the injuries were caused by hard and blunt substances. The injured was admitted in hospital and was referred on the same day to CMC Hospital Larkana for further treatment and investigation. Injury No.1 was kept reserved while Injury No.2 was declared as ghyr-jaifah-damiyah falling u/s 337A(i) PPC and the injuries No.3 & 4 were declared as other hurts falling under section 337-L (ii) PPC for which he issued a provisional medical certificate on 27.06.2016. **PW Dr. Abdul Hameed Shaikh** who conducted the postmortem of the

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deceased was examined and deposed that on 27.06.2016 he was posted as Casualty Medical Officer at Taluka Hospital KN Shah. On that day he received police letter No.940/16 dated 27.06.2016 of Police Station K.N Shah for conducting a postmortem of deceased Ghulam Akbar s/o Ghulam Rasool Gadehi. The dead body was arrived at the hospital at 10:20 am. Postmortem of the dead body of the deceased was started at 11:10 am on 27.06.2016 and finished at 12:30 pm. The Dead body of the deceased was aged about 35 years, average built, he was a young male Muslim along with clothes, he was having clothes of loincloth, (dhoti), without any shirt, romal cloth with pink and white lines which were bloodstained. He found four injuries on the person of the deceased. He opined that death had occurred due to damage to the brain (head injury) caused by hard and blunt substances. As per his evidence injury No.1 to 4 were caused by hard and blunt substances and anti-mortem in nature. **Injury No.1 was sufficient to kill a person in the ordinary course of nature.** They were cross-examined but nothing favourable to appellant Rajib has come on the record. They are independent witnesses having no relation to any of the party.

10. The ocular account supported by the medical evidence is further corroborated by the evidence of **PW-7 A.S.I Imam Bux Khoso** who was the duty officer who deposed that on 26.06.2016 he was posted at Police Station KN Shah as Head Constable. On the same day injured Ghulam Akbar appeared at Police Station in the injured condition he noted injuries on his person in the presence of Mashirs and prepared such Mashirnama and made such entry in roznamcha vide entry No.16 at about 17:30 hours. Thereafter the injured was referred to a medical officer for treatment and a certificate through a police letter. As per his evidence, one injury was on the left side of the head of injured and some other injuries were on the lower part of the body. On 27.06.2016 A.S.I Sikander Ali Gadehi informed him that the injured Ghulam Akbar passed away, and on that A.S.I along with him and other staff went to Taluka Hospital. After the postmortem the medical officer handed over the dead boy to him and then he handed over the same to Kouro Khan under proper receipt. **PW-5 Gul Muhammad Gadehi** (mashir) was also examined by the prosecution who deposed that on 26.06.2016 at about 5:00 pm quarrel took place between Ali Akbar and Ghulam Shabbir, on that day he along with co-

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Mashir Ghulam Hyder went to Police Station, injured Ali Akbar was present at Police Station and he had an injury on the left side of the front of his head, blood was oozing from the injury. HC Imam Bux inspected the injuries in their presence and prepared the mashirnama. On 27.06.2016 at about 7:00 am complainant Fakeer Muhammad informed him that Ali Akbar died, on that they went to Taluka Hospital KN Shah, where investigation officer A.S.I Sikandar requested them for acting as Mashir. Thereafter the I.O checked the dead body and there was one injury on the head of the body with stitching, there were some injuries on the left arm as well as the back of the dead body, A.S.I Sikandar prepared Mashirnama and they put their LTIs. Thereafter A.S.I. requested the complainant for pointing out the place of the incident and the same was inspected where A.S.I. Sikandar took the blood-stained earth and sealed it, prepared Mashirnama. On 27.06.2016 at about 6:00 pm complainant called him that he will hand over the last wearing clothes to the police on that he and Ghulam Hyder went to the Police Station where HC Imam Bux Khoso handed over the last wearing clothes of the deceased to A.S.I Sikandar, thereafter A.S.I prepared Mashirnama. On 29.06.2016 at about 6:30 pm he along with Ghulam Hyder came to Meer Hassan Mori meanwhile a police party also came there, police arrested the accused Rasheed and conducted his search nothing was recovered from him. Such Mashirnama was prepared. On 03.07.2016 at about noon, A.S.I Sikandar informed the complainant that the accused is prepared to produce the crime weapon and requested him to send the Mashirs. On that he along with Ghulam Hyder went to Police Station thereafter A.S.I Sikandar took the accused Rasheed in custody and proceeded along with them in a private vehicle when they reached the graveyard of Sakhi Shaikh Nihal, accused Rasheed signalled to stop the vehicle and then accused led them towards a tree of "Khabar" and took out one Danda from the said tree, A.S.I took the Danda in his custody, checked it, it was with blood stains, A.S.I sealed the Danda and prepared mashirnama. **PW-9 A.S.I Sikandar Ali Gadehi** was examined who conducted the investigation and narrated the same facts as narrated by the mashir Gul Muhammad. He was the author of the FIR and after the FIR investigated the case. What he did during the investigation that has been deposed by the PW Gul Muhammad. As per his evidence after completing the investigation accused were sent up for trial. All these witnesses crossed the test of

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cross-examination but their evidence was not shattered by the defence counsel.

11. The contention on behalf of the appellant Rajib that the crime weapon was not recovered from him, therefore, the case against him for causing injuries and death has not been proved has no force as non-recovery of a crime weapon is no ground to acquit the accused in view of the fact that all the prosecution witnesses supported the case of prosecution by deposing that the appellant directly caused the blunt side of hatched blow on the head of the deceased and their direct evidence is further supported by medical evidence as two doctors who examined the deceased had found the injury on the head and was declared to be caused by a hard and blunt weapon, further corroborated by the recovery of blood stain earth from the place of vardat. It is settled by now that where the charge was proved by other direct, natural and confidence-inspiring evidence, then non-recovery of the crime weapon was not fatal to the prosecution case. Reliance is placed on the case of **Sikander Teghani alias Muhammad Bux Teghani v. The State (2016 Y L R 1098)**.

12. So far as the contention that the witnesses are near relatives to the deceased and are interested therefore their evidence cannot be relied upon, the contention raised in this regard carries no force, as the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence wherein an innocent person was beaten to death brutally. The incident is day time incident and both the parties are known to each other as is evident from their evidence; therefore, there was no chance of mistaken identity of the appellant. Mere relationship of eyewitnesses with the deceased alone is not enough to discard the testimony of the complainant and witnesses. Reliance is placed on the case of **Zulfiqar Ahmed & another v. State (2011 SCMR 492)**.

13. The evidence of DW Ahmed, Sikander Ali, Muhammad Pariyal and Muhammad Urs produced by the appellant Rajib is carefully examined. They admitted the murder incident took place at the time and place as narrated by the complainant party. They also support that the deceased Ali Akbar received injuries from the hard and blunt weapons, however, only they disputed the involvement of the appellants in the present

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case. They did not join the investigation nor their statement u/s 161 Cr.P.C. or 164 Cr.P.C. was recorded. Even such a defence was not taken at the time of cross-examination of the prosecution witnesses. They were introduced as witnesses first time by the appellants when their statement under section 342 Cr. P.C. was recorded. In the statement under section 342 Cr. P.C. the appellants also not furnished an explanation in respect of the availability of these defence witnesses at the relevant time in the lands of the deceased. All these facts suggest that the evidence of the defence witnesses was managed and they are not true witnesses, therefore, their evidence is discarded.

14. Learned counsel for the appellant had pointed out some minor contradictions in the evidence which in my view are not sufficient to discard the evidence of two eye-witnesses who have fully supported the case of prosecution on every aspect. Their evidence is further supported by the medical evidence and the circumstantial evidence as discussed above. It is a settled principle of law that where in the evidence, the prosecution established its case beyond reasonable doubt then if there arise some minor contradictions which always are available in each and every case as no one can give evidence like a pen-picture, hence the same are to be ignored. The reliance is placed on the case of **Zakir Khan V. The State (1995 SCMR 1793)**.

15. For what has been discussed above, I have arrived at the judicious conclusion that the learned trial Court on being finding the present appellant/accused **Rajib s/o Haji Gadehi** as guilty of the murder of the deceased, has rightly convicted and sentenced him and thus has committed no illegality or irregularity while passing the impugned judgment which even otherwise is based on sound reasoning, therefore, it does not call for any interference by this Court. Resultantly, instant criminal appeal in respect of appellant **Rajib s/o Haji Gadehi** being devoid of merits is **dismissed**.


16. Turning to the case of appellant Rasheed Gadehi none of the prosecution witnesses deposed a single word against him in respect of his participation in the murder of the deceased, rather it is stated by them that all other accused also caused blows to the deceased. No specific injuries were assigned against any of the accused persons and only a specific injury was assigned against accused Rajib which was also declared fatal. The recovery of danda is also not helpful to the

prosecution as it was recovered after the arrest of the accused and which injury was caused by the appellant has not been proved by the prosecution. There is no evidence that the appellant Rasheed had shared common intention with the main accused who caused fatal injury to the deceased.

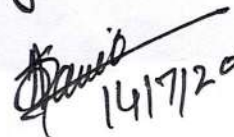
17. The overall discussion concluded that the prosecution has miserably failed to establish the guilt against present appellant Rasheed Gadehi beyond the shadow of any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there should not be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is always extended in favour of the accused not as a matter of grace or concession, but as a matter of right. In this respect, reliance is placed on the cases of **Muhammad Mansha v. The State (2018 SCMR-772)** and **Naveed Asghar and 2 others v. The State (PLD 2021 SC 600)**.

18. The sequel of the above discussion is that the learned trial Court has not evaluated the evidence in its true perspectives and thus arrived at an erroneous conclusion by holding the present appellant Rasheed Gadehi as guilty of the offence. Consequently, instant Criminal Appeal in respect of appellant Rasheed Gadehi is allowed; the conviction/sentence awarded to the appellant by way of impugned judgment could not be sustained, it is set aside and he is acquitted of the charged offence. The appellant is in custody and therefore directed to be released forthwith in the present case if he is no more required in any other custody case.

19. The instant Criminal Appeal is disposed of accordingly.

  
JUDGE  
15/07/2023.

Annexed by me.

  
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