

IN THE HIGH COURT OF SINDH, KARACHI

*Criminal Appeal No. 491 of 2022 alongwith
Confirmation Case No. 07 of 2022*

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellants: Anjum Aijaz son of Channan Khan &
Sarfaraz alias Munna son of Channan Khan
through Mr. Muhammad Farooq and
Ms. Farha Alvi, advocates.

Respondent: The State through Mr. Muhammad Iqbal
Awan, Additional Prosecutor General, Sindh

Date of hearing: **02.05.2023**

Date of decision: **05.05.2023**

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- The appellants Anjum Aijaz and Sarfaraz alias Munna both sons of Channan Khan have challenged the vires of judgment dated 16.08.2022, passed by the learned Judge, Model Criminal Trial Court / 1st Additional Sessions Judge, Karachi-West in Sessions Case Nos. 2060 and 2113 of 2019 emanating from FIR No. 305 of 2019 of P.S. Saeedabad, Karachi-West registered under sections 302/34 PPC. Through the impugned judgment, appellants were convicted, for committing murder of deceased Ali Asghar, under section 265-H(ii) Cr.P.C. and sentenced to death in pursuance of section 302(b) PPC. They were also directed to pay fine of Rs.100,000/- (Rupees one lac) each, in default whereof to undergo R.I. for one year. They were further directed, under section 544-A Cr.P.C, to pay Rs.200,000/- (Rupees two lacs) as compensation to the legal heirs.

2. On 23.07.2019, at approximately 1410 hours, Nasir Ali, the complainant, got an FIR lodged recounting the events that on 22.07.2019, whilst he was within the confines of his residence, his nine-year-old daughter, Kaneez Fatima, arrived home and relayed to him that her brother, Ali Asghar, was involved in a physical altercation with a group of individuals. Prompted by this information, Nasir Ali ventured outside and bore witness to the presence of three persons, identifying

them as Anjum, Awais, and Munna. The narrative elucidates that Anjum restrained Ali Asghar, while Awais and Munna wielded shards of glass, with which they repeatedly and violently assailed the young boy. Nasir Ali's cries for help attracted the attention of nearby residents, whose arrival prompted the accused to escape hastily. Ali Asghar, grievously injured, was transported by his father to Arain Hospital via an auto-cab. Owing to the severity of his injuries, he was subsequently referred to Civil Hospital; however, the victim succumbed to his wounds on his way to the Civil Hospital.

3. Subsequent to the filing of the FIR, the apprehension of the accused transpired, and the investigative process ensued. The investigating officer then submitted a challan against the three accused. Consequently, they were arraigned before the 1st Additional Sessions Judge of Karachi-West. During the trial, the prosecution summoned a total of seven witnesses, namely: PW-1 Nasir Ali, the complainant; PW-2 Mst. Nosheen, the deceased's mother; PW-3 Iqbal Alam and PW-4 Jehandad, both eye-witnesses; PW-5 Sub-Inspector Muhammad Ejaz; PW-6 Dr. Noor Muhammad; and finally, PW-7 Inspector Jan Muhammad, the investigating officer. Each witness presented various documents and artefacts as evidence, whereupon the accused's statements were recorded in accordance with Section 342 Cr.PC. All accused individuals proclaimed their innocence, asserting that they had been falsely implicated; however, none elected to testify under oath or proffer exculpatory evidence. The presiding judge ultimately acquitted the juvenile offender, Awais, whilst convicting appellants Anjum Aijaz and Sarfaraz, known also as Munna, sentencing them to capital punishment.

4. Learned counsel for the appellants has asserted that both the appellants are innocent and have been falsely implicated in the present case; that the prosecution's evidence contains numerous contradictions overlooked by the trial court, and that the co-accused, Awais, was acquitted based on the same evidence; that no confessional statement of the appellants was recorded nor was any identification parade conducted; that the appellants maintained their innocence even before the police; that the prosecution gave up two eye-witnesses of the incident namely Taj Ali and Safar who did not support the prosecution

case; that the investigation officer failed to collect the CDR and CCTV footage from the place of incident to prove the presence of the appellants; that the FIR has been lodged with a delay of one day for which no plausible explanation has been given. Learned counsel further argued that the appellants should receive benefit of doubt as a right. In support of their contentions, they have cited the case law titled Sarfaraz and another v. The State (2023 SCMR 670) and Amir Muhammad Khan v. The State (2023 SCMR 566).

5. On the contrary, learned Additional Prosecutor General Sindh has contended that prosecution has examined as many as seven witnesses who have all supported the prosecution case; that no suggestion of false implication was put to any of the witnesses during cross-examination; that no motive for such false implication has been established or even raised; that the prosecution evidence is coherent and consistent and the judgment rendered by the trial Court does not call for any interference, however on our query, he has admitted that this is not a case of death, rather one of life imprisonment. In support of his contentions, he has cited the case of Azhar Hussain and another v. The State and others (2022 SCMR 1907), Muhammad Ehsan v. The State (2006 SCMR 1857) and Imran Ashraf v. The State (2001 SCMR 424).

6. We have heard the learned counsel for the appellants and the learned Additional Prosecutor General and have perused the record available before us.

7. The appellants, Anjum Aijaz and Sarfaraz alias Munna, stand accused of perpetrating this heinous act, allegedly motivated by a preceding altercation involving the victim. In evaluating the evidence against the appellants, the eyewitness accounts provided by PW-1 Nasir Ali, PW-3 Iqbal Alam, and PW-4 Jehandad emerge as particularly compelling. These testimonies, in conjunction with the medical evidence presented by PW-6 Dr. Noor Muhammad, form a coherent and consistent narrative of the appellants' involvement in the crime. The prosecution's case is strengthened by the unimpeachable testimonies of PW-3 Iqbal Alam and PW-4 Jehandad, both independent witnesses with no discernible motive to falsely implicate the appellants. As bystanders to the appalling incident, they observed the events as they unfolded, and their respective accounts corroborate the involvement of Anjum Aijaz

and Sarfaraz alias Munna in the heinous crime. Throughout the course of their cross-examination, the testimonies of PW-3 and PW-4 remained unwavering and consistent, lending further credence to their veracity. The defence counsel highlighted various contentions before us found in the testimonies of PW-3 Iqbal Alam and PW-4 Jehandad, the two independent witnesses. It is crucial to recognize that human testimony is inherently subject to minor discrepancies and inconsistencies due to the nature of human memory, perception, and recall. Over time, witnesses may recall events with slight variations, resulting from the complexity of the human cognitive process and the influence of external factors. It is essential, therefore, to approach the evaluation of testimonial evidence with a clear understanding of these limitations. The Hon'ble Supreme Court has acknowledged this fundamental aspect of witness testimony in various pronouncements. In **Muhammad Bashir v. The State (2023 SCMR 190)**, the Hon'ble Apex Court emphasized that minor contradictions in the statements of prosecution witnesses do not necessarily render their testimonies unreliable, particularly when the core substance of their accounts remains consistent and coherent. Another precedent, **Muhammad Abbas v. The State (2023 SCMR 487)**, reaffirmed this principle, holding that the evidence of prosecution witnesses should not be discarded entirely due to trivial discrepancies, provided the main narrative remains unshaken and that an accused could not seek to gain benefit from the same. The defence's assertion that these minor contradictions bear significant weight is, therefore, baseless and warrants little credence. It is the overall veracity and consistency of the testimonies that matter most in determining the guilt or innocence of the accused, focusing on immaterial inconsistencies to the detriment of the broader context of the case would undermine the pursuit of truth and justice. It is the court's responsibility to carefully weigh the evidence and assess the credibility of the witnesses and it must not be swayed by minor discrepancies, but should instead focus on the preponderance of evidence and the consistency of the core narrative.

8. The significance of medical evidence in this case cannot be understated, as it serves as a crucial link between the appellants and the heinous crime committed. The post-mortem examination conducted by PW-6 Dr. Noor Muhammad, detailing the cause of death as lacerations

on the victim's neck inflicted by a sharp cutting object, substantiates the prosecution's narrative and corroborates the eyewitness accounts of the appellants' use of glass shards as weapons. The gruesome and sadistic nature of the injuries inflicted upon the victim, evidenced by the star-shaped lacerations on his neck, underscores the sinister intentions of the appellants. The fact that these injuries were consistent with the use of broken glass shards, as recounted by the eyewitnesses, further corroborates the chilling account of the appellants' actions. Moreover, the chemical examiner's report, as documented in Ex. 13/F, further strengthens the case against the appellants by revealing that the glass pieces and stones recovered from the scene of the incident were stained with human blood. This critical piece of evidence connects the appellants to the crime, as it is in line with the eyewitness's testimonies describing the appellants' modus operandi. The fact that the seals on the parcels containing the incriminating evidence were found in perfect condition dispels any notion of tampering, ensuring the integrity and credibility of the evidence presented. It is also important to consider the conduct of the appellants throughout the trial, as their actions and responses provide insight into their culpability. Notably, Anjum Aijaz and Sarfaraz alias Munna failed to offer any plausible explanation for their alleged false implication in the case. The absence of any discernible motive for the witnesses to fabricate their testimonies raises serious doubts about the appellants' assertions of innocence. Additionally, the appellants did not present any evidence to counter the prosecution's case, which stands as a formidable edifice constructed on the basis of consistent eyewitness accounts, medical evidence, and the findings of the chemical examiner. The appellants' reluctance to challenge the prosecution's evidence head-on and provide exculpatory proof in their defense further undermines their claims of innocence. Their statements during the trial, characterized by stereotypical answers and a lack of substantive content, do little to bolster their case and their inability to present a coherent and convincing narrative that contradicts the prosecution's version of events demonstrates the weakness of their defense. In the absence of persuasive and credible counterarguments, the court is left with a preponderance of evidence pointing to the appellants' guilt. Not only this, the tragic demise of young Ali Asghar occurred in the presence of his own father, Nasir Ali. Replacing the

appellants with the true perpetrators without any justifiable rationale defies common sense and constitutes an exceedingly rare phenomenon. In this respect, reliance is placed on the case of **Imran Mehmood v. The State and another (2023 SCMR 795)**. It was also reiterated in *Imran Mehmood's* case by the Hon'ble Apex Court that mere relationship of a witness with the deceased is also not sufficient to discard otherwise credible evidence especially if their presence is established at the place of incident and appears to be natural.

9. Even if we are to disregard the testimonies of PW-3 Iqbal Alam and PW-4 Jehandad, the evidence provided by the complainant, PW-1 Nasir Ali, on its own, holds sufficient weight to establish the guilt of the accused. In the case of **Niaz-ud-Din and another v. The State (2011 SCMR 725)**, the Honb'le Apex court held that the solitary statement of the complainant alone could be enough to convict the accused, given that it is credible and reliable. In the present case, the presence of the complainant, Nasir Ali, at the scene of the crime was unequivocally affirmed and established by PW-3 and PW-4 in their respective statements. As such, the complainant's testimony, which provides a detailed account of the events that transpired, and the involvement of the appellants in the brutal attack on his son, Ali Asghar, serves as a crucial piece of evidence in securing their convictions. Consequently, even in the absence of the corroborative evidence of PW-3 and PW-4, the complainant's testimony alone possesses the necessary strength and credibility to substantiate the case against the appellants. It is crucial to note that it is not the quantity of evidence, rather the quality that plays a determinative factor in securing a conviction for any accused as established in the case of **Qasim Shahzad and another v. The State and others (2023 SCMR 117)**. As far as the identification of the appellants is concerned, it was argued at length by the defence counsel that no test identification parade was conducted. Suffice it to say that the parties were known to each other, the incident was a daytime incident and there was no question of mistaken identity as the accused had been recognized by the complainant on the spot and then nominated in the FIR by their names and parentage. Identification parade, in such a case, is not a necessity as was also seen in the case of *Qasim Shahzad* (supra).

10. Coming to the acquittal of the juvenile offender Awais, it is important to consider the same as an independent decision stemming from the unique circumstances related to his involvement in the case. This ruling should not be perceived as diminishing the strength of the prosecution's case against the remaining appellants, Anjum Aijaz and Sarfaraz alias Munna as the role assigned to Awais was that of mere presence with a shard of broken glass and his presence in itself was also doubtful in the light of the testimonies of PW-3 Iqbal Alam and PW-4 Jehandad. In the case of **Javed Ishfaq v. The State (2020 SCMR 1414)**, the Supreme Court underscored that the acquittal of one accused does not automatically imply the innocence of the other accused parties, as each individual's role in the crime must be assessed on its own merit. Thus, the separate assessment and subsequent acquittal of Awais does not impede the evaluation of the evidence against Anjum Aijaz and Sarfaraz alias Munna, nor can it cast doubt on the validity of their convictions. In such circumstances, it is important that any Court remains steadfast in its pursuit of justice, ensuring that each accused's guilt or innocence is determined based on the specific evidence and circumstances relating to their respective roles in the crime.

11. The final question needing determination before us is whether or not the sentence awarded to the appellants requires any consideration or re-evaluation. The crime committed by the appellants, Anjum Aijaz and Sarfaraz alias Munna, is undeniably heinous in nature, reflecting a callous disregard for human life. However, despite the severity of their actions, the Court must remain steadfast in its duty to satisfy the scales of justice, ensuring that the punishment meted out to the appellants is commensurate with their respective roles in the crime. The imposition of the death sentence upon both appellants may appear harsh, particularly when no specific injury is attributed to Sarfaraz, and Anjum Aijaz's role is limited to holding the deceased down during the attack. While the Court owes a duty to the legal heirs of the deceased and society at large to administer justice and deter future criminal conduct, it is essential to acknowledge that the accused have a right to be treated fairly and proportionately. The judicial system is designed to ensure that all individuals, regardless of their status or position, are treated fairly and equitably under the law. As such, it is incumbent upon

the courts to balance the interests of the victim's family, the accused, and society as a whole when determining the appropriate punishment for a crime. In upholding this responsibility, the judiciary safeguards the fundamental principles of justice and the rule of law, reinforcing public trust and confidence in the legal system. In this backdrop, the appropriate punishment for the appellants, considering their individual involvement in the crime, would be life imprisonment.

12. For what has been discussed above, this Court is of the view that the prosecution has proved the charge against the appellants beyond reasonable shadow of doubt, thus leaving no room for uncertainty. The decision made by the learned trial Court regarding the culpability of the appellants was just, proper and in conformity with the principles of administration of justice. However, for the reasons stated above, the sentence of death awarded to both the appellants is converted to life imprisonment. The fine amount, compensation to the legal heirs and the sentence in default thereof shall remain intact. Benefit of S. 382-B Cr.P.C is extended to them.

13. Consequently, captioned Cr. Appeal No. 491 of 2022 is disposed of in the above terms and Confirmation Case No. 07 of 2022 is answered in the negative.

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