

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Appeal No.613 of 2023**

Date	Order .with signature of Judge
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Appellant:	Imtiaz Ali through Mr. Wazeer Hussain Khoso, advocate.
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Respondent:	State through Mr. Shoib Safdar, APG.
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Date of hearing	21.10.2024.
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Date of decision	29.10.2024.
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J U D G M E N T

MUHAMMAD IQBAL KALHORO J: Appellant was convicted and sentenced by learned Additional Sessions judge-I/Model Criminal Trial Court (MCTC) Thatta in S.C. No.367-A/2017 arising out of FIR No.106/2017 U/s 302, 109 PPC of P.S. Mirpur Sakro vide judgment dated 30.10.2023 to suffer S.I. for life u/s 302(b) PPC and to pay an amount of Rs.300,000/- as a compensation u/s 544-A Cr.P.C.

2. As per brief facts complainant Barad has alleged in the FIR that his family had a dispute over land with Yousif and others, who used to give him threats of murder. On the day of incident viz. 29.10.2017, his brother Nasrullah and Akhter Hussain had gone to Sakro city for purchasing some household articles on a motorcycle and he was present in house with his uncle Shahmir. At about 7.30 p.m. they heard cries, upon which they went outside of the house towards road, where they saw in the light that appellant Imtiaz was causing knife/dagger blows to his brother Nasrullah aged about 17/18 years, whom his another brother Akhter Hussain was trying to rescue. They rushed to the spot and saw that his brother Nasrullah had sustained one injury on his neck and other injury over ear on temporal region and he was profusely bleeding. Appellant meanwhile made his escape good alongwith knife. The complainant party took their brother to Sakro Shaikh Zaid Hospital in one of the vehicles which was plying on the road where the Doctors pronounced him dead.

3. After postmortem report, the body was brought in the village. After burial the complainant sought firsthand information of the incident from his brother Akhter Hussain, who revealed that they were waylaid by the appellant, who caused knife blows to Nasrullah and on their cries, he and P.W. Shahmir

had come to rescue them. After hearing that, the complainant went to P.S. and lodged the FIR.

4. After registration of FIR, in the investigation appellant was arrested on 31.10.2017 and on 02.11.2027 from a hedge inside his house, the crime weapon i.e. knife was recovered on his pointation. After his arrest, recovery and completion of investigation, the challan was submitted in the court which started trial against him as well as co-accused namely Muhammad Yousif and Ahtesham-ul-Haq, who were alleged to have instigated appellant to commit the crime. Vide judgment dated 10.08.2021 appellant was convicted and sentenced u/s 302(b) PPC to suffer RI for life, whereas the co-accused were acquitted on benefit of doubt. In the appeal before this court, said judgment was set-aside and the case was remanded to the trial court to hold de novo trial after framing the charge afresh.

5. When the appellant pleaded not guilty to the formal charge, the prosecution examined in all six witnesses including complainant, I.O. MLO, et al. who have produced all the relevant documents which included FIR, postmortem report, chemical report in regard to recovered knife containing blood stains and relevant memos etc. On culmination of prosecution evidence, statement of appellant was recorded u/s 342 Cr.P.C in which he has denied his role in the murder of deceased Nasrullah. He however declined to examine himself on oath or lead any evidence in defence claiming however that he has been falsely implicated in this case and has not committed the offence. The trial court however, did not agree with his stance and returned him guilty verdict through impugned judgment in the terms as stated above. Hence this appeal.

6. Learned defence counsel has contended that conduct of the witnesses is unnatural; they have contradicted each other on a number of points; appellant was alone whereas complainant party comprised four persons, neither they succeeded in catching him nor rescuing the deceased, hence the case is doubtful; that the evidence shows that handle of the knife was made of brass but the report of chemical examiner shows that handle of the knife examined was of iron; it is not clear as to how and in whose vehicle the body was taken to the hospital; the witnesses have deposed that when they kept the deceased in the vehicle, he was still moving, whereas postmortem report shows that deceased had died immediately which is sufficient to cast a doubt over the prosecution story; there is delay of 24 hours in registration of FIR; the prosecution is silent as

to who had informed the police to come to the hospital; the postmortem report shows that body was brought by the police but complainant party has claimed that body was brought to the hospital by them on some unknown vehicle; the matching of blood group of the deceased with the blood over the knife has not been carried out as such it is unclear whether the blood over the knife belonged to the deceased or not.

7. On the other hand, learned APG has supported the impugned judgment. Counsel for complainant has chosen to remain absent.

8. I have considered submissions of the parties and perused material available on record. As a first witness, prosecution has examined complainant namely Barad. In his evidence, he has reiterated the story revealed by him in the FIR that he was present in his house alongwith his uncle namely Shahmir. His brother Nasrullah and Akhter Hussain had already left for Sakro city for purchasing some household articles. When at 7.30 pm, they heard cries for help coming from the road. They rushed to the spot and saw in the light of passing by vehicles and a torch that appellant Imtiaz Ali was hitting knife blows to his brother Nasrullah and his another brother Akhter Hussain was trying to rescue him. When they came close, they saw two injuries on person of their brother, one injury on right side of neck and other on his right temple above right ear. He was lying on the ground and blood was oozing from his injuries. Meanwhile the accused managed to escape alongwith knife/dagger on seeing them. According to his version, they stopped a passing by vehicle and took his brother to hospital but he died. He informed the police about the incident, the police reached the hospital and after due formalities, the postmortem of deceased was conducted. The dead body was brought by them to the village thereafter and after funeral and enquiry from his brother Akhtar Hussain about the incident who narrated the above story, he appeared at P.S and registered FIR nominating appellant with the specific role of causing murder of his brother Nasrullah.

9. As a second witness, the prosecution has examined P.W. Akhter Hussain. He was with the deceased at the time of incident. He has narrated the same story that he and deceased who were on a motorcycle were way laid by appellant Imtiaz, who had a dagger/knife in his hand. He caused atleast two blows to the deceased on right side of his neck and right temple over the ear. As a result, his brother fell down. He cried for help which attracted complainant and his uncle Shahmir who came running from the home. Meanwhile the

appellant Imtiaz seeing them coming had escaped from the scene alongwith the knife/dagger. They stopped a passing by vehicle and took injured to hospital but he had died. According to him, they informed the police about the incident, in response they reached there and completed certain formalities in writing. After postmortem the dead body of deceased was handed over to them and after that FIR was registered by his brother. He has also given a detail of ensuing investigation which consisted of handing over blood stained clothes of deceased to the police by the Doctor, inspection of place of incident by the police on 31.10.2017, collecting blood stained soil from the spot and sealing the same, preparing memo of site inspection signed by him and P.W. Munir Ahmed, arrest of appellant Imtiaz in their presence on 31.10.2017, preparation of such memo and recovery of crime weapon on 02.11.2017 from inside house of appellant on his pointation in their presence.

10. P.W. Shahmir has been examined as P.W.3. He is also the eyewitness and has reiterated at Ex.20, the story narrated by the complainant and P.W.2 Akhter Hussain in their evidence. Prosecution has also examined MLO Dr. Muhammad Iqbal as P.W.4. In his evidence, he has confirmed that deceased had sustained two stab wounds i.e. (i) 4cm x 1.5 cm extending into the right thoracic cavity, 3cm from the mid line, on the right supraclavicular fossa; and (ii) incised wound 4cm x 1.8cm into bone exposed on the right temporal region of the head. He has observed in his evidence that duration between injury and death was immediate.

11. Thereafter the prosecution has examined Tapedar namely Haji Muhammad as P.W.5. he has deposed that he has prepared a sketch/site plan of place of incident on the directions by Mukhtiarkar Mirpur Sakro, on the pointation of complainant. According to him, the place of incident was village Muhammad Usman Channa situated in Survey No.800. He has produced the site plan/sketch in his evidence.

12. The last witness examined by the prosecution is I.O. of the case. In his evidence, he has stated that he received information of murder of deceased Nasrullah. After making relevant entry in daily diary, he went to Shaikh Zaid Hospital Sakro, inspected the dead body, prepared memo of inspection of dead body, which was signed by the mashirs. He wrote a letter to M.S for postmortem, he prepared inquest report and lash chakas form, he received the last worn clothes of deceased in presence of mashirs. After postmortem the dead

body was handed over to him under a receipt. He then handed over the body to the complainant Barad and obtained such a receipt from him. Next day, complainant came to P.S, where FIR was registered. He started investigation, in which he inspected place of incident on 31.10.2017 under relevant entry, and prepared memo of place of incident with signature of relevant mashirs. He collected blood stained soil from the spot in their presence, prepared such memo. He recorded statements of witnesses u/s 161 Cr.P.C during course of investigation. He wrote a letter to Mukhtiarkar for inspection of place of incident and preparing its sketch/site plan. He arrested appellant on 31.10.2027 from Sakro and Gharo road near Mehran Rice Mill under relevant entry and memo of arrest and on his pointation recovered crime weapon on 02.11.2017 from the hedge inside his house in presence of mashirs and prepared such memo. According to him, he then sent blood-stained soil, last worn clothes of deceased etc. to the office of chemical analyst for chemical analysis, the positive report of which he has produced in evidence. On culmination of investigation, he finally submitted the Challan.

13. Thereafter statement of appellant u/s 342 Cr.P.C was recorded in which he has denied the prosecution case simply without taking any defence.

14. With the assistance of the parties, I have gone through the evidence of the witnesses as stated above. The complainant and other witnesses have been subjected to a lengthy cross-examination, but no worthwhile contradiction has come on record to impair the above story. All the witnesses are consistent over the fact that appellant Imtiaz was armed with a knife/dagger and he caused two injuries to the deceased, one on right side of his neck called in medical terminology as supraclavicular fossa and the other on the right temporal region of the head. The seat of injury has been confirmed by the MLO who conducted the postmortem of deceased. None of the witnesses have waived or faltered while describing salient features of the case, which as far as P.W.Shahmir and the complainant are concerned are from hearing cries of help coming from the road, their rushing to the spot and seeing the appellant Imtiaz causing knife blows to deceased Nasrullah. This story has been further cemented by P.W.Akhter Hussain, who was with the deceased at the time of the incident.

15. Learned defence counsel in the arguments stated that conduct of the witnesses was abnormal in that they were four persons against one person but they could not rescue the deceased. It may be stated that when exactly the

incident was happening, only P.W. Akhtar Hussain was with the deceased aged about 17/18 years and was sitting on the motorcycle. Appellant was armed with a knife. As soon as the deceased and P.W. Akhtar Hussain stopped the motorcycle at his instance, the appellant caused two knife blows to vital part of body of the deceased before they could put up any defence or even understand what was going to happen to them. Complainant and PW Shahmir had seen the incident from a certain distance and before they came close to the spot, the appellant Imtiaz had already made his escape good. This is exactly what complainant and P.W. Shahmir have revealed in their depositions.

16. It is not the case of prosecution that at the spot all the four persons were present together when the appellant had launched an attack upon the deceased. But that it was only deceased with P.W. Akhter Hussain riding on a motorcycle when the incident happened all of sudden. The deceased and P.W Akhter Hussain, it appears from prosecution story, were unaware that appellant after flagging them down on the road would suddenly attack upon the deceased with the knife. They were not expecting any assault from the appellant which, it seems from the facts, took place all of sudden, the victims were caught off-guard and therefore failed to put up any defence. Complainant and P.W. Shahmir had reached the spot only after hearing cries and had seen the appellant committing the crime from afar of the place of incident. Seen in such scenario, argument of learned defence counsel that conduct of the witnesses is abnormal does not appear to be sustainable. There were not four persons at the relevant moment in the close proximity of the spot, but there were only two persons, who too were riding the motorcycle and were unbeknown to what was coming in their way i.e. the sudden assault by the appellant.

17. Next the medical evidence is in complete synchronization with version of the eyewitnesses. There is not a slight difference between the medical account and oral version as far as local and death of deceased by a sharp cutting weapon is concerned. Learned defence counsel in his arguments has contended that MLO has opined that death of the deceased was immediate after the injuries, whereas complainant side has stated that when they moved the body of the victim in the car, it had movements and he died on the way. I have read the evidence of witnesses, nowhere it is stated that the deceased was alive till the hospital. More so, the complainant and eyewitnesses are not the experts to pronounce the actual time of death of the deceased to have either happened in the hospital or at the spot. Before them, the deceased was critically injured by

the appellant and was unconscious as far as their observation of him is concerned. Medical evidence shows that the deceased had not in fact gone unconscious but had died at the spot. But it could have only been confirmed by the MLO and not by the witnesses. The complainant and the eyewitnesses being lay men could not be expected to give or reveal an expert opinion about the exact time of death of the deceased at the hands of appellant. Therefore, even if they said that the body had movements in the car does not mean that they are giving a false account or there is inconsistency between oral account and postmortem report of the deceased viz-a-viz duration between injury and death. The medical evidence shows that the death was immediate and not instantaneous. Immediate death does not mean instant death but the death of the victim in a short while. The statement of the witnesses that the body had movements in the car is therefore not incongruous with the medical record. Aside from that, learned defence counsel has not pointed out to any material discrepancy or contradiction in the evidence of the witnesses to make the prosecution case doubtful.

18. After arrest of the appellant, the crime weapon was also recovered on his pointation from inside his house and that was found stained with blood. The crime weapon alongwith soil collected from the place of incident and clothes of deceased were sent to the lab. for chemical examination. The report of which has come in positive, which shows that all articles were soaked in human blood. Unimpeachable oral evidence of the witnesses is further supported not only by medical evidence but also by recovery of crime weapon from the appellant as well as positive chemical report denoting the crime weapon to be blood stained.

19. After the prosecution succeeded in discharging its burden to prove the case against the appellant, the appellant in his 342 Cr.P.C statement has not brought up any material for a consideration in juxtaposition with it. Appellant has simply denied the prosecution case which has been presented by the prosecution without material contradiction or circumstances which may lead to a view other than guilt of the appellant. Appellant was the only one seen at the spot causing fatal injuries to the deceased. No one else has been reported by the prosecution to be helping him at the time of occurrence, to think that the prosecution has acted with malice to throw a wider net to implicate as many persons from the accused party in the case as possible. The prosecution case is clear, specific and is based on evidence of the witnesses which inspire confidence.

20. Except pointing out to minor discrepancies which do come in the evidence of the witnesses when they are examined in the court after some time of the incident; nothing has been pointed out undermining the prosecution case. There is no reason for the complainant party to substitute a real culprit for the appellant in murder of their dear one. All the pieces of evidence including cross-examination point out to only one conclusion that is congruent with the guilt of the appellant.

21. I have seen impugned judgment, learned trial court has given solid and cogent reasons in support of findings of guilt against the appellant. I do not see any ambiguity or any fact or circumstance leading to a different conclusion than the one recorded by the trial court. I find no merits in this appeal and dismiss it accordingly.

The Criminal Appeal is accordingly disposed of alongwith pending application.

JUDGE

A.K