

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Cr. Appeal No.413 of 2024**

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Date	Order .with signature of Judge
Appellants:	Muhammad Juman & others through Ms. Baseerat Shafi, advocate.
Respondent:	State through Mr. Muhammad Ali Noonari, DPG.
Date of hearing:	<b>04.12.2024.</b>
Date of decision:	<b>13 .12.2024.</b>

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

**MUHAMMAD IQBAL KALHORO J:** Appellants have been convicted and sentenced u/s 302(b) PPC to suffer R.I. for life i.e. 25 years vide judgment dated 27.05.2024 rendered by learned I-Additional Sessions judge/MCTC Malir, Karachi in Sessions Case No.93/2001 bearing Crime No.28/2001 U/s 302, 324, 34 PPC of P.S. Sukhan.

2. Brief facts of the case are that on 23.03.2001, one Haji Noor Muhammad Baloch lodged a report to police, in which he stated that he was working as a contractor and resided at Bhains Colony, Karachi. According to him, near their village there was a cattle pen of buffaloes belonging to one Shoukat where 4/5 of his employees were working who used to play tape recorder at high pitch. For this, the complainant and other residents of the village complained to above said Shaukat and requested him to admonish his employees not to play the tape recorder. However, on 23.03.2001 when the complainant's younger brother Shah Muhammad was returning from the mosque after offering the prayer he found the above said persons again playing the tape recorder at high pitch. He thus restrained them, whereupon they came out from the cattle pen armed with hatchet, iron bars and lathies and stated that they had been told by Shaukat to kill whosoever objected to their playing of the tape recorder. They then caused injuries to Shah Muhammad and when complainant's another brother Muhammad Sharif went to rescue Shah Muhammad, he too was caused injuries, as a result both of them went unconscious. They were taken to Police Station and after obtaining a letter from there for treatment were admitted in Jinnah Postgraduate Medical Centre (JPMC), Karachi. The complainant further

mentions that besides him, the incident was witnessed by Ghulam Mustafa Qadri, Ibrahim and other residents of the village. Thereafter, complainant went to police station where SI Ghulam Mustafa Zardari lodged FIR of this incident against the accused.

3. The complainant initially lodged FIR, amongst others, u/s 324 PPC, however, on the next day viz. 24.03.2001 the injured Shah Muhammad succumbed to his injuries and died at the hospital, the formalities of which, as required u/s 174 Cr.P.C, were held and section 302 PPC was added in the FIR. In the investigation, on pointation of complainant and eyewitnesses, I.O arrested accused Muhammad Juman, Muhammad Chakar and Hidayatullah from Bundi Stop Gaddap under a relevant memo on 26.03.2001. On 28.03.2001 the other injured namely Muhammad Sharif also succumbed to his injuries and died at Agha Khan Hospital, Karachi. His dead body was brought at Jinnah Hospital for proceedings u/s 174 CrPC. On 01.04.2001, I.O. of the case arrested fourth accused namely Muhammad Iqbal in presence of complainant and other witnesses from Bhains Colony. On the same day, the accused, who are appellants here, during interrogation volunteered to produce crime weapons viz. two hatchets and an iron rod, which they had concealed in a nearby jungle. I.O. in their company went to the place and recovered crime weapons on the their pointation under relevant memo. Since no role was assigned to accused Shoukat Mohajir, who otherwise was named in the FIR, he was let off by the police during investigation.

4. After submission of Challan, a formal charge against appellants was framed to which they pled not guilty and claimed trial. As a result, prosecution examined 11 witnesses, who have produced all the relevant documents including FIR, memo of arrest and recovery, post mortem report etc. Thereafter, statements of appellants were recorded u/s 342 Cr.P.C in which they have denied the allegations and pleaded their innocence. All the accused have examined themselves on oath in terms of section 340(2) Cr.P.C. The accused then, vide judgment dated 26.07.2008 were convicted and sentenced to undergo life imprisonment with fine of Rs.100,000/- each and , in case of default, to suffer SI for one year more with benefit of section 382-B Cr.P.C. The accused filed Cr. Appeal No.187/2008 before this court and this court vide judgment dated 08.04.2008 set aside the conviction and sentence of the accused /appellants and remanded the case with directions to the trial court to rewrite the judgment in accordance with law. After remand of the

case, the accused have again been convicted and sentenced vide impugned judgment dated 27.05.2024. Hence this appeal.

5. Learned defence counsel has argued that names of appellants are not mentioned in FIR; place of incident is disputed in that some witnesses have said that it was outside the cattle pen of Shoukat Mohajir and some have revealed that it was inside cattle pen, and yet some have stated it was in the hut of some widow; the witnesses have contradicted each other and their presence at the spot is also doubtful as one of the witnesses has stated that they had come at the place of incident together and others have not supported him on this score; that no specific role has been assigned to any of the appellants; the appellants are not employees of Shoukat Mohajir but they are labourers who were working in the area on daily wages and were arrested in this case; that there is no independent person as a witness in this case except members of the one and same family; that recovery of alleged crime weapons is doubtful and the same has been foisted upon them, and as a matter of fact nothing was recovered from them; all the accused were arrested from their homes and after arrest, no identification parade was held to verify whether they are the same accused or not. She has relied upon the case law reported in PLD 1969 Lah. 257, 1995 SCMR 1350, 1979 P.Cr.LJ 493, PLD 1994 Kar. 122, PLD 1981 SC 142, 1973 SCMR 263, 1973 SCMR 12, 1973 P.Cr.LJ 649, 1991 SCMR 331, 1985 SCMR 160, 1976 P.C.LJ 52, NLR 1986 Cr. 967, 2005 P. Cr. L.J. 1232, 2015 SCMR 840, 2017 SCMR 344, 2008 SCMR 1221, 2009 SCMR 916, 1996 P Cr. L J 510, 2019 MLD 1107, 2008 SCMR 1221, 1995 SCMR 1345, 2009 SCMR 230, 1999 SCMR 1220, 2009 SCMR 230, 1992 SCMR 1134, 1995 SCMR 1377, 1995 SCMR 1345 and P. Cr. L.J. 1999 Lahore page 2032 to support her arguments.

6. On the other hand learned DPG has supported the impugned judgment.

7. I have considered submissions of the parties and perused material available on record. In this case, prosecution has examined three eyewitnesses, complainant, Noor Muhammad, Muhammad Ibrahim and Ghulam Mustafa. They are the residents of same area/village and living nearby the cattle pen of Shoukat Mohajir, the place of incident, as such their presence there is natural and cannot be doubted. As per their evidence, this incident took place on 23.03.2001, the motive of the offence is playing of tape recorder by the

appellants at high pitch, which was objected by deceased Shah Muhammad, when he was returning home after offering prayer. But the appellants got angry and inflicted on him fatal injuries, when his brother Muhammad Shafiq came to rescue him, he was also assaulted by them. The incident took place in a broad day light and the appellants being employees of Shoukat Mohajir were identified by the witnesses, by face, as they have been working in the same area. According to their evidence, deceased Shah Muhammad on hearing playing of Tape Recorder on high volume restrained the appellants but they did not stop and on the contrary attacked upon him with iron rod and hatchets causing him serious injuries. When his brother Muhammad Sharif, being attracted on his cries, reached the place of incident to save him, they also attacked him with the same weapons causing him serious injuries. This incident was witnessed by complainant, P.W. Ghulam Qadir, Muhammad Ibrahim and Ghulam Mustafa, out of whom three witnesses as named above have come forward and given evidence against the appellants. In their lengthy cross-examination, not a single contradiction worth mentioning has come on record to give its benefit to the accused. All the witnesses are unanimous over the fact that appellants were identified by them as they were already known to them. In fact, the complainant in cross examination has revealed that he had given names of accused in FIR, who even otherwise living and working in the same area, which is a small village, cannot be presumed to be strangers to him.

8. Learned defence counsel during her arguments could not point out to any material contradiction in evidence of these three eyewitnesses except that one witness namely Muhammad Ibrahim in cross examination has revealed that he arrived at the spot alongwith P.W. Haji Noor Muhammad, Ghulam Mustafa and Ghulam Qadir; whereas P.W. Ghulam Mustafa in cross examination, to a suggestion, has admitted that P.W. Noor Muhammad was already present at spot when they reached there. This discrepancy is not material in nature, nor on the basis of such minor variation, prosecution evidence, which otherwise inspires confidence, can be discarded. It is settled that only material contradiction, which goes to the root of the case, has to be taken into account and its benefit dished out to the accused. Except, such a small discrepancy, learned defence counsel has failed to point out to any slightest variation in the evidence of these three eyewitnesses, insofar as the main features of the incident and the manner, the incident unfolded before

them is concerned. All three witnesses have supported each other that incident took place due to playing of tape recorder at high pitch by the appellants which was objected by deceased Shah Muhammad and when he tried to stop the appellants, they in response attacked him as well as deceased Muhammad Sharif, who came to rescue him. Apart from revealing the main story, as it played out before their eyes, all the witnesses have confirmed that the injured were taken to Police Station first in a Datsun and after getting a letter for treatment from there, they were admitted in JPMC for treatment. However, next day, Shah Muhammad died in the Hospital, whereas injured Muhammad Sharif who was meanwhile referred to Agha Khan Hospital for better treatment died there on 28.03.2001. These witnesses who are also mashirs have confirmed that on 26.03.2001 appellants namely Muhammad Juman, Hidayatullah and Muhammad Chakar were arrested by the police from Bundi Stop Gadap under a relevant memo signed by them. They have also verified that fourth appellant namely Muhammad Iqbal was arrested on 01.04.2001 in their presence and on the same day, the accused led police party to an area in a jungle behind cattle pen from where on their pointation crime weapons as mentioned above were recovered by the police. Not only, on the main features of the case, these witnesses have espoused each other but on the allying facts also they have supported each other. Their evidence is further strengthened by medical evidence. P.W. Dr. Abdul Razak in his evidence has confirmed that on 23.03.2001 when he was posted as MLO at JPMC, injured Shah Muhammad and Muhammad Sharif were referred to him for treatment. On the person of injured Shah Muhammad, he found following injuries:-

- 1. Lacerated wound B.c.mx 1.c.m.Mid of perital region sclap deep bone exposed.*
- 2. Lacerated wound 4.c.m x 1.c.m mid of perital region near to injury No. 1.bone not exposed.*

Whereas, on the person of injured Muhammad Sharif, he found following injuries:-

- 1. LACERATED WOUND 3.c.m x 0.5.c.m and 1.5.c.m x 0.2.c.m mid prito occipital regin wound not exposed.*

The injuries described by the aforesaid medical officer proved fatal and subsequently the injured died in the hospitals. Dr. Muhammad Ismail P.W.5 has been examined by the prosecution at Ex.8. He in his evidence has confirmed that on 24.03.2001 when he was posted as MLO at JPMC, dead body of Shah Muhammad was brought by SI Ghulam Mustafa of P.S. Sukhan for postmortem which he conducted as per procedure. According to his opinion,

the deceased died due to cardio respiratory failure due to head injuries resulted by a hard and blunt object. He has produced postmortem report in his evidence to support his evidence.

9. In order to prove unnatural death of deceased Muhammad Sharif in Agha Khan Hospital, prosecution has examined P.W.9 Ayaz Ali as well as P.W.10 Dr. Atta Ali, who was posted in Neuro Surgery Ward in Agha Khan hospital. He has confirmed that on 23.03.2001 in the night time injured Muhammad Sharif was transferred to Agha Khan Hospital for treatment. He remained under his treatment. Although he was talking but due to his injuries he was restless and irritable. Later on, he developed sepsis and A.R.D.S. He remained on ventilator and expired on 28.03.2001. According to his evidence, the deceased remained under his treatment for five days, and he had issued his death certificate, which he has produced in his evidence. From evidence of all the doctors, it has been established that the deceased died out of injuries inflicted on them on the day of incident by the appellants. Nothing in this regard has been pointed out in defence to show that appellants died out of some other cause than articulated by the prosecution in the case. The evidence of these doctors is in synchronization with the evidence of eyewitnesses stating that injured were hit by the appellants by iron rod and hatchets.

10. Learned defence counsel in her arguments stated that doctors have opined to a suggestion in cross examination that hard and blunt weapon includes stone and a club (Danda), and therefore, in view of such revelation, prosecution case insofar as causing of injuries by iron rod and hatchets is concerned has become doubtful. I am afraid, her opinion is not spot on. For the reasons, the doctor's such opinion does not exclude iron rods or hatchets from the definition of hard and blunt substance, or that any injury caused by them would not be defined to have been caused by hard and blunt substance. It only proves that any injury caused by stone and clubs would also be defined to have been caused by hard and blunt substance. When the doctors say that the victims were hit by hard and blunt substance, it would actually support evidence of eyewitnesses stating that the victims were hit by the appellants with iron rods and hatchets. There is no contradiction in medical and oral account, nor any can be read in the disclosure of the doctors.

11. Apart from above evidence, the prosecution has examined Inspector Ghulam Murtaza who was posted as SIP on the day of incident when at about

8:30 pm. Complainant Haji Noor Muhammad had appeared at P.S. and revealed details of the incident. On his disclosure, this witness had recorded FIR and given a letter to him for treatment of the injured. Next day, he received information that Shah Muhammad had died in the hospital. He has confirmed that on such information he went to JPMC, examined dead body in presence of witnesses, prepared inquest report u/s 174 Cr.P.C, prepared memo of dead body in presence of same witnesses. Then alongwith witnesses he went to the place of incident which he inspected and prepared relevant memo duly signed by the witnesses. According to him, he had handed over police papers to SHO Zahid Panhwar on 24.03.2001 for further investigation. According to him, he had received telephonic call from SHO Muhammad Yakoob, the other IO, on 28.03.2001 that Muhammad Sharif had died at Agha Khan Hospital due to his injuries, hence he went there and conducted proceedings u/s 174 Cr.P.C in presence of witnesses.

12. Next witness examined by the prosecution is Sub Inspector Zahid who had conducted some of the investigation in the case. His evidence shows that he had arrested appellants Muhammad Juman, Hidayatullah and Chakar on pointation and disclosure of complainant Noor Muhammad from Bundi Stop Gadap. After him, investigation was transferred to SI Muhammad Yakoob, who has been examined as P.W.8 at Ex.11. According to his evidence, he had recorded statements of witnesses on 29.03.2001 and on 01.04.2001 complainant Noor Muhammad had informed him on phone that appellant Muhammad Iqbal was present at Road No.9 at Bhains Colony. Acting on such information, he alongwith witnesses went there and arrested the said appellant under a memo duly signed by the witnesses. He has confirmed that during interrogation, accused volunteered to produce crime weapons and he alongwith witnesses and appellants left P.S. and came at Peerano Goth in police mobile at the pointed place where appellants stopped the police and led them to a place where from two hatchets and one iron rod were recovered from inside the bushes. The same were seized under the relevant memo.

13. Learned counsel in her arguments has raised contention that names of applicants are not mentioned, hence their identity is doubtful, however, entire prosecution case shows that appellants were already known to the witnesses, atleast by face, and on various occasions due to their playing tape recorder at high pitch, complaints were made by the residents, including the complainant against them with Shoukat Mohajir, whose employees they were, but he never

took action against them. Resultantly, on the same controversy, on the day of incident before the eyes of witnesses, they attacked and murdered two persons. I.O. Zahid Hussain in his evidence has confirmed that he had arrested appellants on pointation of complainant Noor Muhammad, meaning thereby they were known to the complainant, and it was he who had identified and informed the police about them, and they at his instance, had been arrested. There is no chance of misidentification of the accused, not the least when the incident took place in a broad day light in the area where both parties had been living.

14. The other I.O. SI Muhammad Yakob has also confirmed in his evidence that he had arrested appellant Muhammad Iqbal on disclosure and pointation of complainant. Such evidence read with evidence of complainant and two eyewitnesses leave no room for making a guess that the appellants have been misidentified or they are not the actual culprits but have been substituted by the complainant party for real culprits. Besides, all the eye witnesses have identified the appellants in the Court to be the same culprits. The Supreme Court in the case of **Rafaqat Ali and others vs. The State (2016 SCMR 1766)** has held that identification of accused in the Court by the witnesses is equally valid, if their evidence inspires confidence, is consistent on all material particulars and there is nothing to suggest that the witnesses are deposing falsely. Here in the present case, all such prerequisites are fairly available in the evidence of the witnesses, hence, there is no room to doubt the identity of the accused.

15. Three appellants were arrested immediately after three days of the incident on 26.03.2001, whereas fourth appellant namely Muhammad Iqbal was arrested on 01.04.2001 after seven days of the incident. From them, the crime weapons were also recovered, which further strengthen the prosecution case against appellants. Not only the eye account but the medical evidence is also in conformity with what has been revealed in FIR and confirmed in the investigation. All the witnesses have described that all the four accused had jointly participated in the incident and committed murder of the deceased. In such circumstances, the contention that specific role has not been assigned to any of the appellant loses force and cannot be considered as a circumstance creating doubt over the role played by each accused. The accused acted jointly and have been co-jointly held responsible for murdering the deceased. Even otherwise, in a melee when four persons are hitting the two victims repeatedly



together, it is hardly possible for the witnesses to see which accused is hitting whom, and on which part of the victim.

16. The prosecution by examining the eyewitnesses, I.O, MLOs, etc. has produced all aspects of the incident and consequent investigation successfully for a consideration. The appellants have not succeeded in causing any dent in the prosecution case. Although the appellants have examined themselves on oath but no material to be considered in juxta position with the prosecution case has come on record. The memo of place of incident depicts that the spot is 25/26 paces away from the cattle pen where a hut of a widow is also situated. So when the witnesses describe compound of a hut or front of the cattle pen as a place of incident, they are not wrong, nor such disclosure makes the place of incident disputed. Hence the contention in defence that place of incident is disputed is discarded, not being valid.

17. In my view, learned trial court after examining all the pieces of evidence as discussed above and appreciating the defence put up by the appellants has rightly arrived at a conclusion holding the appellants as guilty and has convicted and sentencing them for committing an offence u/s 302(b) PPC. No material contradiction or discrepancy in the prosecution case has come except some minor ones which usually come on record due to lapse of period between the incident and the day when the evidence is recorded. Such minor discrepancies cannot be given much weight to hold the prosecution case as doubtful, which otherwise is founded on confidence inspiring evidence. Therefore, I find no merits in this appeal and dismiss the same.

The Appeal stands dismissed in the above terms and accordingly disposed of.

JUDGE