

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-36 of 2017

[Raja @ Saleem versus The State]

Appellant	:	Through Mr. Muhammad Jameel advocate
Complainant	:	None present
The State	:	Through Ms. Rameshan Oad Assistant P.G
Date of hearing	:	14.05.2024
Date of decision	:	21.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, I.- Appellant has challenged the Judgment dated 12.01.2017 passed by the learned 1st Additional Sessions Judge Badin in Sessions Case No.147 of 2013 (*Re: The State versus Raja alias Saleem & another*), outcome of Crime No.188 of 2013 registered at P.S Badin under Section 302, 114, 504 and 34 PPC, whereby he has been convicted and sentenced to suffer imprisonment for life as Ta'zir with further directions to pay Rs.2,00,000/- as compensation to the legal heirs of deceased and in case of failure in payment thereof he has to further suffer R.I for six months, however benefit of Section 382-B Cr. P.C was extended to him.

2. The facts of the case are that on 06.08.2013 at about 1430 hours complainant Allahdad appeared at P.S Badin and lodged the subject FIR by alleging that he has four sons and five daughters, out of which Mst. Hakimzadi aged about 25 years had married with Raja alias Saleem S/o Natho Mugheri about 10/11 months back; that yesterday viz: 05.08.2013 he went to the house of accused Raja alias Saleem Mugheri for taking his daughter Mst. Hakimzadi on the eve of Eid on which Raja alias Saleem and his father Natho Mugheri told him that they will not allow his daughter and further told him that why he has come; that they also abused him and gave him pushes; that on such commotion neighbor cousin Muhammad Bachal S/o Mitho and others came there, while his daughter Mst. Hakimzadi

tried to save him; that meanwhile Raja alias Saleem brought hatchet and his father Natho instigated Raja alias Saleem to kill her and within the site of above witness Raja alias Saleem caused hatchet below to Mst. Hakimzadi with intention to commit her murder, as such she fell down while raising cries; that meanwhile Bachal and Muhammad Qassim raised hakals to which accused escaped away; thereafter he arranged the vehicle and was taking his daughter to hospital but she died in the way; that he brought the dead body at Civil Hospital Badin and informed the police and after completion of necessary formalities dead body was handed over to him, hence subject FIR.

3. After usual investigation police submitted the challan and the trial court after completing necessary formalities framed the charge against the accused persons to which they pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined seven (07) witnesses, who exhibited numerous documents and other items. Then statements of accused under Section 342 Cr.P.C were recorded whereby they denied the allegations leveled against them by the prosecution witnesses and claimed their false implication. However, they neither examined themselves on Oath nor led any evidence in their defense.

5. After hearing the parties and assessing the evidence on record the trial court convicted and sentenced the present appellant as stated in opening paragraph of this Judgment while acquitted the co-accused Natho, hence present appellant has preferred this Jail Appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

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7. Learned counsel for the appellant has contended that the appellant is innocent and that he has been falsely implicated in this case by the complainant and PW Bachal hence the delay in lodging the FIR; that the eye witnesses cannot be safely relied upon; that the medical evidence is contrary to the ocular evidence; that there are material contradictions in the evidence of the witnesses which renders their evidence unreliable; that the hatchet was foisted on the accused by the police and that for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the cases of (i) NADEEM RAMZAN vs. The STATE [2018 SCMR 149], (ii) YASEEN vs. The STATE [2023 P Cr.L.J Note 54 Sindh] and (iii) MUHAMMAD RAHIM vs. The STATE [2024 P Cr.L.J 42 Balochistan].

8. On the other hand Learned APG after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, she contended that the FIR was lodged promptly, the eye witness evidence was trustworthy reliable and confidence inspiring and was to be believed; that the murder weapon (hatchet) was recovered from the appellant on his arrest; that the medical evidence supported the ocular evidence and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of her contentions, she placed reliance on the cases MUHAMMAD RAFIQUE alias NEELA and another vs. The STATE and others [2020 SCMR 664] and (ii) MASKEEN ULLAH and another vs. The STATE and another [2023 SCMR 1568].

9. I have heard the learned counsel for the appellant as well as learned APG and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, the blood recovered at the scene of the crime I find that the prosecution has proved beyond a reasonable doubt that Mst.Hakim Zaidi (the deceased) was murdered by

hatchet on 05.08.2013 at about 10am at the house of the accused situated at village Manik Mugheri, deh Bakhoo taluka district Badin.

11. The only question left before me therefore is who murdered the deceased by hatchet at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) It is true that the FIR was lodged after one day however based on the particular facts and circumstances of the case I find that this delay in lodging the FIR has been explained and is not fatal to the prosecution case. This is because after the murder of the deceased the complainant had to arrange to take her body to hospital where the police completed legal formalities and thereafter a post mortem was performed and then after the release of the body he took it to his village and buried the same and thereafter he lodged the FIR and as such there was no time for the complainant to cook up a false case against the appellant. Even otherwise the police already knew of the murder as the complainant had called them to the hospital. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).
- (b) The appellant is named in the relatively promptly lodged FIR with the specific role of murdering the deceased by causing her hatchet blows. Even otherwise **no specific/proven enmity** has come on record between the appellant and the complainant or any PW which would motivate him/them to lodge a false case or give false evidence against the appellant.
- (c) The prosecution's case rests on the eye witnesses to the murder of the deceased whose evidence I shall consider in detail below;
 - (i) **Eye witness PW 2 Allahdad. He is the complainant and father of the deceased.** According to his evidence on 05.08.2013 he had gone to the house of the accused to bring his daughter/deceased who was married to the accused to his house as it was the eve of Eidul Fitar however the accused and his father co-accused Natho refused to allow him to take his daughter and abused him and pushed him around. On this commotion neighbors Bachal and Qasim came to the house. Accused Raja brought a hatchet and his father co-accused Natho instigated the accused to kill him. In the meantime his daughter/deceased intervened in order to save him and the accused gave numerous hatchet blows to the deceased who fell down whilst the

accused and his father made their escape good along with the hatchet. He brought his daughter to hospital but she expired en route.

Admittedly the eye witness was related to the deceased however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has **not been proven** in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State** (2009 SCMR 99) **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152) and **Ashfaq Ahmed v. The State** (2007 SCMR 641).

This eye witness knew the appellant before the incident as he was related to him as he was married to his daughter/deceased. It was a day light incident at 10am in the house of the accused and as such there is no case of mistaken identity and no need to hold an identification parade. He is not a chance witness as he was the father of the deceased who lived a short distance away and had come to collect his daughter for Eid celebrations. He gave his FIR based on the particular facts and circumstances of the case as discussed above with relative promptitude which was not materially improved on during the course of his evidence. The murder happened in the house of the accused and he has not denied his presence at the time of the murder. He had no ill will or enmity with the appellant to lead him to implicate the appellant in a false case. He gave his evidence in straightforward manner and was not damaged during a lengthy cross examination. I find his evidence to be reliable, trust worthy and confidence inspiring especially in relation to the identification of the appellant and believe the same and place reliance on it.

It is well settled by now that I can convict the accused on the evidence of a **sole eye witness** provided that I find his/her evidence to be trust worthy, reliable and confidence inspiring and in this case I have found the evidence of this eye witness to be trust worthy, reliable and confidence inspiring especially in respect of the correct identification of the appellant and as such I believe the same and place reliance on it. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shahzad and another v The State** (2023 SCMR 117). His evidence is also of good quality and it is settled by now that it is not the length of the evidence which is of importance but its quality.

There is however another eye witnesses.

- (ii) **PW 3 Bachal. He is the cousin of the complainant.**

According to his evidence he lives about 400 to 450 feet from the house of the accused which he

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rushed to when he heard the commotion as described by the evidence of PW 2 Allahbad who is the complainant. His evidence corroborates that of the complainant in all material respects. He witnesses the appellant hit the deceased numerous times with a hatchet from close range in this day light incident. He knew the accused from before and as such there is no need for an identification parade. He gave his S.161 Cr.PC one day after the incident which was not materially improved on during his evidence. He had no proven ill will or enmity with the appellant to lead him to implicate the appellant in a false case. He gave his evidence in straightforward manner and was not damaged during a lengthy cross examination. I find his evidence to be reliable, trust worthy and confidence inspiring especially in relation to the identification of the appellant and believe the same and place reliance on it and as such the same considerations apply to him as to the evidence of the complainant as discussed above especially in terms of him being a related witness with no proven enmity against the appellant.

Having believed the evidence of the two eye witness as to the murder of the deceased and the identification of the murderer I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"

- (d) That it does not appeal to logic, commonsense or reason that a father would let the real murderer of his daughter get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).
- (e) That the medical evidence and post mortem report fully support the eye-witness/prosecution evidence that the deceased died from receiving numerous hatchet injuries in the places which they claim she received them in their evidence. Even if there is some discrepancy in the medical evidence it is well settled by now that ocular evidence if found to be trust worthy, confidence inspiring and reliable (as it has been so found in this case) will prevail over the medical evidence. In this respect reliance is placed on the case of **Qasim Shahzad** (Supra)
- (f) That the appellant was arrested two days after the incident at his house and the murder weapon (hatchet) was recovered from him, which according to the chemical report was stained with human blood.

- (g) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case. For instance by foisting the hatchet on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO and other police witnesses who were not dented during cross examination.
- (h) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the complainant arriving at the accused house to take the accused wife/his daughter to the complainants house for Eid to the appellant forbidding this and abusing the complainant to the daughter of the complainant intervening to help her father and being stabbed by the appellant to the appellant running away and being arrested a few days later from his house with the murder weapon.
- (i) It is true that there was no independent mashir however it has now become a judicially recognized fact that in such like cases independent members of the public do not want to involve themselves and as such today the fact that there are no independent mashir's is not of huge significance especially when the eye witness evidence is believed. It is also in rural crime difficult to even find independent mashirs as in most villages most of the occupants are related to each other in one way or another.
- (j) That the murder of the deceased occurred in the house of the appellant which made his presence at the crime scene quite natural and the accused has not denied his presence at the house instead he claims without producing any evidence that the deceased was killed by some one else.
- (k) The fact that the appellant's father co-accused Nado was acquitted will be of no assistance to the appellant as the evidence against each of them is entirely different. Whereas co-accused Nado only allegedly instigated the appellant to murder the deceased the eye witness evidence is that it was the appellant alone who committed the murder of the deceased by causing her numerous hatchet blows.
- (l) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on

or dent the prosecution case. The defence case as set out by the appellant in his S.342 Cr.PC statement is that he has been falsely implicated in this case but he gives no explanation as to why. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed.**

Hafiz Fahad