

Conviction on last seen evidence

143

CERTIFICATE OF THE HIGH COURT OF SINDH, KARACHI

Cr Jail Appeal No. 385 of 2022

Saeed-ur-Rahman

Vs

The State

HIGH COURT OF SINDH

Composition of Bench.

S.B.

Mr. Justice Muhammad Karim Khan Agha

Date of hearing: 08-10-2024

Decided on : 15-10-2024

Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment \*/Order is based upon or enunciates a principle of law  
\*/decides a question of law which is of first impression/distinguishes/. Over-rules/  
reverses/explains a previous decision.

\* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first  
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the  
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

# IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Jail Appeal No. 385 of 2022

Saeed Ur Rehman s/o  
Ghulam Rehman  
Male, Muslim, Adult,  
Presently Confined in Central  
Prison & Correctional Facility, Karachi.....Appellant.

VERSUS

The State.....Respondent.

Session Case No. 1031/2021  
FIR No. 227/2021  
U/S 302/34 PPC  
PS: Shah Latif Town, Karachi.

## CRIMINAL APPEAL UNDER SECTION 410 Cr.P.C.

Being aggrieved by and dis-satisfied with the impugned judgment dated **11.05.2022** passed by the Learned Additional District & Session Judge, Court No. I Malir, Karachi in **Session Case No. 1031/2021** where by the present appellant was sentenced to suffer as under:-

*For what have been discussed above, I am fully satisfied that prosecution had proved the charge against accused Saeed ur Rehman son of Ghulam Rehman and I convict him for offence under section 302 PPC for causing Qatle-e-Amd of Shahzad ali son of Asif Ali. Since there is no ocular evidence or confession of accused in this case, therefore instead of Death Sentence accused is sentenced for imprisonment for life. The accused shall also pay fine of Rs. 20, 00,000/- (twenty Lac) and in default of payment he shall further undergo simple imprisonment of 06 months. Accused is informed that he may prefer appeal against his conviction and thus, certified copy of the judgment is also provided to him free of cost.*

*A photocopy of the impugned judgment dated:  
11.05.2022 is enclosed herewith as Annexure "A"*

## FACTS

The facts of the prosecution case are appearing in FIR ate that on 22.02.2021 at night time inside the house of complainant street No. 01, Dhani Parto Goth, Razzaque Abad Malir, Karachi, the present accused namely Saeed ur Rehman son of Ghulam Rehman along with other co-accused in furtherance of their the present accused gave Ax (Kulhari) blows to brother of complainant namely Shahzad Ali son of Asad Ali aged about 31 years who got injuries on his face he succumbed to death on the spot, hence the instant FIR was registered.

On the basis of the facts mentioned above the case was tried against the present appellant and subsequently the Learned Additional District &



145

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha*

### CRL. JAIL APPEAL NO.385 OF 2022

Appellant: Saeed-ur-Rehman s/o. Ghulam Rehman  
through Mr. Habib-ur-Rehman Jiskani,  
Advocate.

Respondent: The State through M/s. Muhammad Iqbal  
Awan, Addl. Prosecutor General, Sindh and  
Mumtaz Ali Shah, Assistant Prosecutor  
General Sindh.

Date of Hearing: 08.10.2024

Date of Announcement: 15.10.2024

### J U D G M E N T

Mohammad Karim Khan Agha, J: Appellant Saeed-ur-Rehman was tried in the Model Criminal Trial Court/I<sup>st</sup> Additional Sessions Judge, Malir Karachi in Sessions Case No. 1031 of 2021 in respect of Crime No. 277 of 2021 registered under Section 302, 34 P.P.C. at P.S. Shah Latif Town, Karachi and after a full-fledged trial vide judgment dated 11.05.2022 he was convicted under section 302 P.P.C. and sentenced to suffer imprisonment for life. He was also directed to pay fine of Rs.20,00,000/- and in default of payment he shall further undergo simple imprisonment of six months more. Benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the case, as per FIR lodged by complainant Shahzeb Khan s/o. Asad Ali through his S.154, Cr.P.C. statement recorded on 22.02.2021, are that on 22.02.2021 at night time inside the house of complainant's brother appellant alongwith other co-accused in furtherance of their common intention gave Axe (Kulhari) blows to brother of complainant namely Shahzad Ali aged about 31 years who got injuries on his face and mouth and succumbed to death on the spot, hence the instant FIR was registered.

3. After completion of investigation I.O. submitted report under S.173 Cr.PC against the accused and two others however the charge was only framed against the accused as the other accused had been placed in column No.2 of the charge,

sheet on the basis that there was hardly any evidence against them except their names appearing in the FIR. The accused plead not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 6 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he admitted many of the allegations made against him but denied the murder of the deceased. After appreciating the evidence on record the trial court convicted the appellant and sentenced him as stated earlier in this judgment hence, the appellant has filed this appeal against his conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that there was no eye witness to the murder; that the last seen evidence is not sufficient to convict the appellant without corroboration from an unimpeachable source of which there is none; that the appellant did not confess to the murder before a judicial magistrate and no recovery was made from him and thus for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Hashim Qasim V. The State** (2017 SCMR 986), **Rahat Ali V The State** 2010 SCMR 584) and **Muhammad Asif V The State** 2017 SCMR 486).

7. On the other hand learned Additional Prosecutor General Sindh appearing on behalf of the State has fully supported the impugned judgment. In particular he has placed reliance on the last seen evidence which was corroborated by the medical evidence and recovery of the murder weapon (hatchet) and has prayed for the dismissal of the appeal. In support of his contentions he has placed reliance on the cases of **Mst. Gul Nissa V Muhammad Yousuf** (PLD 2006 SC 556), **Akhtar V The State** (2020 SCMR 2020) and **Fayyaz Ahmad V The State** (2017 SCMR 2026).

8. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the



appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

9. At the outset based on my reassessment of the prosecution oral evidence, medical evidence including post mortem report, blood recovered at the crime scene along with hatchet and blood stained relli I find that the prosecution has proved beyond a reasonable doubt that on the night of 21/22-02-2021 Shahzad Ali (the deceased) was murdered by hatchet blows inside the Godown cum house of Shahzade Ali situate at street No.1 Dhani Parto Goth Razzakabad Malir Karachi.

10. The only question left before me therefore is whether it was the appellant who murdered the deceased at the said time, date and location?

11. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted keeping in view that each criminal case is based on its own particular facts, circumstances and evidence for the following reasons and uphold his conviction;

(a) Although the FIR was registered with promptitude and the appellant was named in the FIR as the person who murdered the deceased this allegation has been made against the appellant on the basis of **hearsay evidence** as there was no eye witness to the murder and as such the case is based on **circumstantial evidence** which the court must view with great care and caution. In this respect reliance is placed on the case of **Azeem Khan V Mujahid Khan** (2016 SCMR 274) which held as under;

*"In cases of circumstantial evidence, the Courts are to take extraordinary care and caution before relying on the same. Circumstantial evidence, even if supported by defective or inadequate evidence, cannot be made basis for conviction on a capital charge. More particularly, when there are indications of design in the preparation of a case or introducing any piece of fabricated evidence, the Court should always be mindful to take extraordinary precautions, so that the possibility of it being deliberately misled into false inference and patently wrong conclusion is to be ruled out, therefore hard and fast rules should be applied for carefully and narrowly examining circumstantial evidence in such cases because chances of fabricating such evidence are always there. To justify the inference of guilt of an accused person, the circumstantial evidence must be of a quality to be incompatible with the innocence of the accused. If such circumstantial evidence is not of that standard and quality, it would be highly dangerous to rely upon the same by awarding capital punishment. The better and safe course would be not to rely upon it in securing the ends of justice."*

(i) Likewise in the case of **Fayyaz Ahmed V State** (2017 SCMR 2026) the great care and caution in which circumstantial evidence needed to be scrutinized was emphasized especially when dealing with a capital case in the following terms;

*"To believe or rely on circumstantial evidence, the well settled and deeply entrenched principle is, that it is imperative for the Prosecution to provide all links in chain an unbroken one, where one end of the same touches the dead body and the other the neck of the accused. The present case is of such a nature where many links are missing in the chain.*

*To carry conviction on a capital charge it is essential that courts have to deeply scrutinize the circumstantial evidence because fabricating of such evidence is not uncommon as we have noticed in some cases thus, very minute and narrow examination of the same is necessary to secure the ends of justice and that the Prosecution has to establish the case beyond all reasonable doubts, resting on circumstantial evidence. "Reasonable Doubt" does not mean any doubt but it must be accompanied by such reasons, sufficient to persuade a judicial mind for placing reliance on it. If it is short of such standard, it is better to discard the same so that an innocent person might not be sent to gallows. To draw an inference of guilt from such evidence, the Court has to apply its judicial mind with deep thought and with extra care and caution and whenever there are one or some indications, showing the design of the Prosecution of manufacturing and preparation of a case, the Courts have to show reluctance to believe it unless it is judicially satisfied about the guilt of accused person and the required chain is made out without missing link, otherwise at random reliance on such evidence would result in failure of justice".*

*It may also be kept in mind that sometimes the investigating agency collects circumstantial evidence seems apparently believable however, if the strict standards of scrutiny are applied there would appear many cracks and doubts in the same which are always inherent therein and in that case Courts have to discard and disbelieve the same." (bold added)*

**(b) Turning to the circumstantial evidence in terms of last seen evidence. The test for last seen evidence has been set out in the following cases in the following terms;**

(i) In **Fayyaz's case** (Supra) at P.2030 at Para 7 it was held as under regarding last seen evidence;

**"The last seen evidence is one of such categories of evidence. In this category of cases some fundamental principles must be followed and the Prosecution is under legal obligation to fulfill the same, some of which may be cited below:-**

(i) There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the Prosecution.



- (ii) The proximity of the crime scene plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.
  - (iii) The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.
  - (iv) There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.
  - (v) Additionally there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.
  - (vi) The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person.
- Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.**
- (vii) The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.
  - (viii) The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder."(Bold added)
- (ii) In the later case of **Muhammed Abid V State** (PLD 2018 SC 813) which delved further into the doctrine of "last seen together" evidence it was held as under at P.817 Para 6:

"The foundation of the "last seen together" theory is based on principles of probability and cause and connection and requires 1. cogent reasons that the deceased in normal and

ordinary course was supposed to accompany the accused. 2. proximity of the crime scene. 3. small time gap between the sighting and crime. 4. no possibility of third person interference 5. motive 6. time of death of victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. **There must be something more establishing connectivity between the accused and the crime"** (bold added).

(c) **Returning to the case in hand.**

- (i) The S.154 Cr.PC statement which lead to the lodging of the FIR was made with promptitude. Any slight delay is explained by the complainant being informed about the incident who then rushed to the hospital where he found his brother dead on account of hatchet cuts to his face and mouth and then recorded his S.154 Cr.PC statement at the hospital. Thus any slight delay in lodging the FIR has been fully explained. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).
- (ii) Admittedly, the complainant's **evidence PW 1 Shahbaz Khan** is based on hearsay as regards the murder but he does specifically name the appellant as murdering the deceased by hatchet and did personally see the hatchet injuries on the face and shoulders of the deceased at the hospital. He made no material improvements in his evidence from his S.154 Cr.PC statement. The complainant is also the related to the accused and as such would have no reason to implicate him in a false case as there was no ill will or enmity between them and would have every reason to try and save him from any culpability. He confirms the presence of PW 3 Ghulam Rehman who is the father of the accused at the hospital.
- (iii) **PW 3 Ghulam Rehman** is an important witness. He is the father of the accused. According to his evidence his son/accused was annoyed with his sister's marriage to the deceased and had sent his wife and children away to his village as he thought his son had already made up his mind to murder the deceased. **Two days** prior to the incident his son/accused told him that he will go for two days and reside at the Godown of the deceased. **After one day** the accused and the deceased returned to his house and told him that **they were going to spend the night at the Godown. On 21-02-2021** he received a call from the deceased father stating that both the accused and the deceased were at the Godown. **After that** he received a call from the deceased stating that the accused is trying to fight and quarrel with him. **At about 2300 hours** he received a call from the accused that he is with the deceased and he advised him to go to sleep. **At 9am the next morning** he received a call from his youngest son that the accused had come home and had gone to the first floor with the deceased mobile and that his shalwar is was blood stained. He went to the accused/son and found that the deceased mobile was lying on the accused/son's kot and that blood was on the accused white shalwar. He secured both mobile phones and asked where the deceased was. The accused/his son attacked him and he retaliated which lead to the accused/son locking



himself in the washroom which he tried to escape from but fell from the roof during his attempted escape. He went down stairs and found that his son/accused was bleeding from his head and had a fractured leg as proven by subsequent medical evidence. His son/accused admitted killing Shezade/deceased so the witness told his other son PW 4 Usman to go and see if the deceased was still alive. PW 4 Usman informed him that the deceased had been killed by hatchet blows.

- (iv) The time line is important as from the evidence of PW 3 Ghulam Rehman who was the father of the deceased and the accused at 11pm on the fateful day the accused was with the deceased and the accused was apparently acting strangely. By 9am at the latest the deceased was dead which leaves a maximum gap of 9 hours from the deceased being last heard from whilst he was in the company of the accused. The accused and the deceased had every reason to be with each other as they were related to each other and were staying at their Godown. The accused also had a motive to kill the deceased as he disapproved of the wedding with his sister as per the FIR and PW 3 Ghulam Rehman and PW 4 Usman who was also his brother. Importantly neither the father nor the brother of the deceased had any reason to implicate the accused who was their real son/brother in this false case who both gave their evidence in a straightforward manner and were not dented during cross examination and whose evidence I find to be trustworthy reliable and confidence inspiring and whose evidence I believe and rely on.

Some of the replies of the Appellant in his S.342 Cr.PC statement **also corroborate** the evidence of PW 3 Ghulam Rehman and PW 4 Usman as are set out below for ease of reference;

**"Q.6. That on 21.02.2021 you called your father and asked him to sleep along with Shahzad Ali who was alone at Godown, what you have to say?**

**Ans: Yes I have spend one day and one night with deceased.**

**Q.7. That before this you even dropped your children including wife at their maternal house, so you could easily reside with Shahzad at his godown, what you have to say?**

**Ans: Yes.**

**Q.8. That on 21.02.2021 you also called your father at 2300 hours that you are alone with Shahazad at Godown and will spend night over there, what you have to say?**

**Ans. Yes.**

**Q.9 That you reside on the first floor of your father's house situated in Sector 16/A Shah Latif Town, what you have to say?**

**Ans. Yes.**

**Q.12. That such shirt of your father and your blood stained Shalwar were produced in evidence and are present in court today, what you have to say?**

**Ans. Yes.**

Q.13. That after this you escaped and hide in the washroom and its door was bolted from outside and while he was calling to police, you removed roof-bricks/tiles of the washroom and jumped from there to the backside open plot, what you have to say?

Ans. I did not jump but I slipped when my father was trying to fire on me with pistol.

*From the appellants own admissions he corroborates the prosecution case that he remained alone with the deceased on the fateful night in the Godown.*

- (v) PW 4 Usman Ghani is also an important witness. The accused is his real brother. According to his evidence the accused was annoyed with his sister's marriage to the deceased. On 22.02.2021 at about 9am the accused returned home with the deceased phone wearing a shalwar which was stained with blood. He told his father who both went upstairs to confront the accused. His father PW 3 Ghulam Rehman grabbed both the deceased and the accused mobile phones. The accused attacked his father and tore the front pocket of his fathers Qameez which lead to a fight between the father and the accused. The accused/brother bolted himself inside the washroom. The accused jumped from the first floor where he sustained an injury to his head and a fractured leg as proven by the medical evidence. His father asked him to check on the deceased as the accused had confessed to his murder. He went to the deceased nearby Godown where he saw the deceased with injuries on his face and hands. He returned home and informed his father that the deceased was dead.

This witnesses evidence corroborates that of his father in terms of the accused coming home with the deceased mobile phone, wearing a blood stained shalwar and after fighting with his father locking himself in the wash room from where he jumped and sustained injuries whilst landing on the ground. This witness is the real brother of the accused and had no reason to implicate him in a false case and who gave his evidence in a straightforward manner and was not dented during cross examination and whose evidence I find to be trustworthy reliable and confidence inspiring and whose evidence I believe.

#### **Corroborative evidence.**

- (vi) can be found in the medical evidence which ties in with the evidence of the PW's as to the cause of death and weapon used i.e hatchet.
- (vii) The recovery of the blood at the crime scene along with the hatchet (murder weapon) and blood stained relli which produced positive chemical reports. These were recovered by the police who had no enmity or ill will with the appellant and had no reason to falsely implicate him in this case for example by planting the hatchet at the crime scene and in such like cases it is well settled by now that the evidence of a police witness is as good as any other witness.



- (viii) The recovered mobile phone of the deceased from the accused also supports the prosecution case.
- (ix) The blood stained shalwar of the accused and the torn pocket of the Qameez of the father also support the prosecution case.

12. Hence, I find that in all respects the law in respect of last seen evidence has been met in respect of the accused especially as it has been proved that the time when the accused was last seen/heard from by the deceased was a few hours before the deceased death; that they were alone; that it was not unusual for them to be together as they were related to each other; that the appellant had a motive to kill the deceased due to his annoyance over the deceased marrying his sister; that the Godown where the murder took place was nearby the accused house; that the accused returned home with the deceased mobile phone and his own shalwar was stained in blood; that the murder weapon (hatchet) was recovered at the wardat along with blood stained earth and relli; that the accused injured himself by trying to escape by jumping from the roof which lead to him receiving head injuries and a broken leg (why would an innocent man do this?); that the appellants S.342 Cr.PC statement through admission virtually corroborates the doctrine of last seen evidence as given by the witnesses.

13. The appellant did not give evidence on oath and did not call any witness in support of his defence case. In fact he raised no defence.

14. Hence in the face of the reliable and trust worthy last seen evidence evidence I find that the prosecution has proved its case against the appellant beyond a reasonable doubt and dismiss his appeal.