

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL APPEAL NO. S-184 of 2015
ASIF ALI V/S THE STATE

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

COMPOSITION OF BENCH

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA
(S.B.)

Date of last hearing (heard/reserved): 22-11-2023

Decided on: 27-11-2023

(a) Judgment approved for reporting YES

[Signature]

C E R T I F I C A T E

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/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) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

(1)

PRESENTED ON 23-12-2015

Additional Registrar

23/12/15

7032
23/12/15

IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT

184

Criminal Appeal No. of 2015

Asif Ali S/O Haji Khan,
Muslim, adult, by caste Mughal
R/O Village Ali Dad Mughal,
Taluka and District
Tando Muhammad Khan

..... APPELLANT

VERSUS

The State

..... RESPONDENT

- Crime No.32 of 2013
- U/S 302 PPC
- P.S. Shaikh Bhirkio.

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Cr. Appeal No.S-184 of 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
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22.11.2023.

Mr. Karamullah Memon, Advocate for appellant.

Ms. Rameshan Oad, Asst. Prosecutor General, Sindh.

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I have heard the learned counsel for the appellant and learned A.P.G.

Reserved for judgment.

Hafiz Fahad

Mr. Karamullah Memon

Ms. Rameshan Oad

Mr.

Mr. Karamullah Memon

**HIGH COURT OF SINDH, CIRCUIT COURT
AT HYDERABAD**

**Criminal Appeal No.S-184 of 2015
[Asif Ali versus The State]**

Appellant : Through Mr. Karamullah Memon advocate
Complainant : None present
State : Through Ms. Rameshan Oad Assistant P.G
Date of hearing : 22.11.2023
Date of decision : 27.11.2023

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA J.- Through this appeal the appellant Asif Ali has impugned the Judgment dated 24.11.2015 passed by learned Sessions Judge, Tando Muhammad Khan (**Trial Court**) in Sessions Case No.10 of 2013 [**The State versus Asif Ali**], outcome of Crime No.32 of 2013 registered at P.S Shaikh Bhirkio for offence punishable under Section 302 PPC, whereby he has been convicted and sentenced u/s 302(b) PPC to suffer imprisonment for life with further directions to pay Rs.1,00,000/- as fine, payable to the legal heirs of deceased, and in case of default in payment thereof he has to further suffer simple imprisonment for two years, however, he has been extended benefit of Section 382-B Cr.P.C.

2. Complainant Allah Dino lodged the aforesaid FIR, alleging therein that his brother Rabdino Mughal aged about 35 years (**deceased**) had a camel cart; on 16.05.2013 he alongwith his nephew Fida Hussain Mughal, maternal cousin Basheer Ahmed and Asif Ali Mughal (**accused**) left the village at about 02:30 am on camel cart of brother Rabdino Mughal for work purpose and Rabdino Mughal also accompanied with them; that at about 03:00 a.m when they reached at link road, village Nawab Noor Ahmed Talpur, he, his nephew Fida Hussain and maternal cousin Basheer Ahmed alighted from camel cart to pass urine, meanwhile they saw that Rabdino and Asif Ali Mughal were exchanging hot words with each other; that accused Asif Ali Mughal caused blow wooden Eis (one of the

side sticks of bedstead) at the head of brother Rabdino with intent to commit his murder in their presence; that they gave hakals to Asif Ali, who on their hakals succeeded to ran away in sugarcane crop with wooden Eis; that thereafter they saw that blood was oozing from the injuries of Rabdino and he was dead, then they informed the police, who shifted the dead body to Civil Hospital Tando Muhammad Khan and also issued letter for postmortem.

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed the charge against the accused/appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined six (06) witnesses and exhibited numerous documents and other items. The statement of accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed his false implication by the complainant. However, neither he examined himself on oath nor led any evidence in his defence.

5. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated earlier in this judgment. Hence the appellant has filed this appeal against his conviction.

6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. It is also noted that the complainant was served with the notice, however, he chosen to remain absent. Since the appellant had been already been in custody for a considerable period of time and the interest of the complainant could be looked after by the learned APG in the interest of justice, I proceeded with this old appeal of 2015 and have decided the same through this judgment.

8. Learned counsel for the appellant contended that he is innocent and has been falsely implicated in this case by the complainant and PWs as the deceased wanted to marry with the sister of appellant due to which complainant party was annoyed; that there was a delay in 17 hours in lodging the FIR; that the so called eye witnesses had falsely implicated the

appellant and as such their evidence could not be safely relied upon; that there are material contradictions in the evidence of the witnesses which rendered their evidence unreliable; that the camel cart was not seized in which the appellant and the complainant party were riding at the time of the incident; that there are material contradictions in the evidence of the witnesses which rendered their evidence unreliable; that though alleged witnesses were present at the place of incident, however, they did not try to rescue the deceased, which makes the prosecution case highly doubtful; that all the private PWs are close relatives of complainant as such they are interested witnesses and as such based on 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 record.

9. Learned Assistant P.G vehemently opposed the appeal and prayed for its dismissal by arguing that appellant is nominated in FIR with specific role of causing death of an innocent person; that prosecution witnesses have fully supported the version of FIR and there is no contradiction in their evidence; that medical evidence supports the ocular evidence; that parties are known to each other as such there is no question of mistaken identity; that death of deceased is admittedly unnatural, therefore, it does not attract to a prudent mind that complainant party left the real culprit and implicated the appellant in this case. In support of her arguments she has relied upon the reported cases of **MAZHAR ELLAHI versus The STATE** [2020 SCMR 586] and **NASIR AHMED versus The STATE** [2023 SCMR 478].

10. I have heard the learned counsel for the appellant as well as learned A.P.G and have also perused the material available on record.

11. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports and recovery of blood at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Rabdino Mughal (the deceased) was murdered by being hit over the head with a wooden implement on 16.05.2013 at about 0300 hours at link road village Nawab Noor Ahmed Talpur, taluka Tando Muhammed Khan.

12. The only question left before me therefore is whether it was the appellant who murdered the deceased by hitting him over the head with a wooden implement at the said time, date and location?

13. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

- (a) That the FIR was lodged within a day of the incident however such delay has been fully explained by the complainant Allah Dino and PW 2 Bashir Ahmed in their evidence. This is because after the accused hit the deceased over the head with the wooden implement which caused his death they immediately called the police which lead to PW 5 Muhammed Ismail who was the IO arriving at the scene who inspected the dead body before transporting it to hospital for post mortem. After the post mortem of the deceased the deceased's body was released to the complainant who buried the body expeditiously as per Muslim ritual and then immediately lodged the FIR. Thus any delay in lodging the FIR has been fully explained. Even otherwise as per evidence of PW 5 Muhammed Ismail he had received a call from the complainant at 3.45 am that the appellant had murdered the deceased by hitting him over the head with a wooden patti which lead him to reach the place of vardat at 04.10am and inspect the dead body and as such the police already knew about the incident and name of accused within a few of hours of the incident. As such any delay in lodging the FIR has been fully explained and is not fatal to the prosecution case based on the particular facts and circumstances of this case. In this respect reliance is placed on the case of **Muhammed Nadeem alias Deemi versus The State** (2011 SCMR 872).
- (b) That the appellant is named in the FIR with the specific role of murdering the deceased by hitting the him over the head with a wooden patti.
- (c) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether I believe their evidence whose evidence I shall consider below;
 - (i) **Eye witness PW 2 Allah Dino. He is the brother of the deceased.** According to his evidence on 16.05.2013 he, the accused, PW Bashir Ahmed, Fida Hussain and the deceased went to Nawab Noor Ahmed for work of chaff by camel cart and reached there at about 0300am when he, PW Bashir Ahmed and Fida Hussian got down from the cart to urinate leaving the deceased and the accused behind. They were urinating about 15 paces away from the camal cart when they saw the accused and the deceased exchange hot words. They gave them hakals. He saw the accused cause injury to head of deceased with wooden patti who then made his escape good by running through the head high sugar cane crop. The deceased was dead and they then informed the police who arrived at the vardat.

The witness is the brother of the deceased however he had **no proven enmity or ill will** towards the accused, who was also his relative, and had no reason to implicate him in a false case and thus the eye witness' mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371) and **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness **knew** the accused **before** the incident and he saw him from close range and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the accused. The cross examination of the accused also suggests that he does not deny his presence at the scene of the incident but only that it was not him who did the murder and that he has been falsely implicated. Even if it was argued that it was too dark to see the incident (which I do not accept as the complainant was only 15 paces away and had traveled in the cart with the accused) I find that the case falls squarely within the judicial guidelines of last seen evidence as laid down in the cases of **Fayyaz Ahmed V State** (2017 SCMR 2026) and **Muhammed Abid V State** (PLD 2018 SC 813) as the complainant and the accused and the deceased all came together in the camel cart and the complainant had only left the cart for a few minutes a few paces away to urinate whilst the accused and the deceased were left alone by the cart.

This eye witness was not a chance witness as he lived next door to the deceased (who was his brother) and the accused and were all going to work together. His evidence has not been materially improved upon from his FIR and his presence at the scene is corroborated by PW 3 Bashir Ahmed. He did not give chase to the appellant as his first priority was attend to his injured brother and the appellant was armed whilst he was not and it would have been difficult to catch the accused in the sugar cane crop at night. He gave his evidence in a natural manner and was not dented at all during cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the accused.

I can convict on the evidence of this sole eye witness alone though it would be of assistance by way of abundant caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case

I find the evidence of this eye witness to be of good quality and believe the same.

In this case however there is another eye witness namely PW 2 Bashir Ahmed. His evidence corroborates the evidence of the complainant in all material respects. He, also knew the appellant from before and was riding along with him and the complainant in the camel cart. He is named in the FIR as an eye witness. He gave his section 161 Cr.PC statement with promptitude and also gave a Section 164 Cr.PC statement both of which fully implicated the appellant in the murder which were not materially improved on at the time of giving his evidence. He also was not a chance witness and gave his evidence in natural manner. He was not dented during cross examination and I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same and place reliance on it.

Thus, based on my believing the evidence of the eyewitnesses mentioned above what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of *Muhammad Waris v The State* (2008 SCMR 784) which held 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, common sense or reason that a brother (the complainant) would let the real murderer of his brother (deceased) 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 medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased died from being hit over the head by a wooden object.
- (f) That the appellant after his arrest confessed to the offence and on his pointation lead the police to the murder weapon (wooden patti) which he had hidden in a place which only he could have known about which was stained with blood which as per chemical report was found to be human blood.
- (g) That it has not been proven through evidence that the IO PW Muhammed Ismail had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case, for instance by foisting the wooden patti on him, and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such I rely on the police

evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

- (h) That through his cross examination of the witnesses the appellant does not appear to deny his presence at the crime scene at the relevant time.
- (i) That all the PWs 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 time the complainant, accused, deceased and PW Bashir Ahmed left their homes for work on a camel cart to them stopping to urinate to the complainant and PW Bashir Ahmed seeing the accused hit the deceased over the head with a wooden patti to the deceased dying on the spot to the accused running away and being arrested on the same day to the accused recovering the murder weapon (wooden patti) on his pointation.
- (j) 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 is simply one of false implication on account of enmity but this is only a bare allegation. No evidence has come on record to support this allegation and the appellant did not give evidence on oath or call any DW in support of his defence case. Thus I disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring eye witnesses and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

14. Thus, based on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eye witness evidence and other corroborative / supportive evidence mentioned above, 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 and as such his appeal is **dismissed**.