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ORDER SHEET

IN THE HIGH COURT OF SINDH CIRCUIT COURT  
HYDERABAD.

*Jud*  
Cr. Appeal No. D — 229 of 2019.  
Confirmation Case No.55 of 2019.

DATE

ORDER WITH SIGNATURE OF JUDGE[S]

08.02.2023.

FOR HEARING OF MAIN CASE.

M/s Riazat Ali Sahar and Asif Ali Talpur advocates for appellant.

Mr. Shahid Ahmed Shaikh, Additional P.G. for the State.

Mr. Aijaz Shaikh Advocate for complainant.

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We have heard learned counsel for the appellant and learned A.P.G. as well as  
learned counsel for the complainant

Reserved for Judgment.

A.

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain

Cr. Jail Appeal No.D- 229 of 2019  
[Confirmation Case No.55 of 2019]

Sardar Ali

Versus

The State

Appellant Sardar Ali	through Mr. Riazat Ali Sahar Advocate
Respondent the State	through Mr. Shahid Ahmed Shaikh, Additional Prosecutor General, Sindh
Complainant Mumtaz Kumbhar Channa	through Mr. Aijaz Shaikh along with Mr. Kamran Baig, Advocate
Date of hearing	08.02.2022
Date of judgment	21.02.2023

**JUDGMENT**

**MOHAMMAD KARIM KHAN AGHA, J.**-This criminal jail appeal is directed against the judgment dated 09.12.2019, passed by the learned Sessions Judge, Dadu, in Sessions Case No.57 of 2019 (re: The State V Sardar Ali), emanating from Crime No.20 of 2019, registered at Police Station A-Section, Dadu, under sections 302 and 504 PPC, whereby the accused / appellant Sardar Ali S/o Muhammad Sulleman Mangsi has been convicted u/s 302(b) PPC and sentenced to death subject to confirmation by this Court. He



was also directed to pay Rs.500,000/- as compensation amount payable to the legal heirs of deceased Ghulam Shabbir.

2. The facts of the prosecution case in brief are as under:

*"That on 29.01.2019 at 1745 hours, complainant Mumtaz Kumbhar Channa lodged FIR at police station A-Section, Dadu, stating therein that he is contractor by profession and his elders were doing the business of Kumbharko, his elder brother Ghulam Shabbir aged about 58 years was employee of Education Department and was posted as teacher in Dhani Bux Main School Primary Machhi Market Dadu and his children were also studying in the same school. Some time ago, the left arm of one Sardar Mangsi was fractured from the wrist in unknown accident who got treatment from one unknown private Qumbhar and it was not healed properly and accused Sardar Ali Mangsi came to his brother Ghulam Shabbir for treatment of his said arm who refused him for treatment and advised him to get treatment from Nawabshah Hospital, on which accused asked to his brother Ghulam Shabbir that he is rich person, having lot of money, his brother is contractor by profession and he may be asked to give him one lac rupees for treatment, on which his brother Ghulam Shabbir refused upon which accused Sardar Ali Mangsi became annoyed. On 28.01.2019, his brother Ghulam Shabbir as usual along with his children left the house and went to the same school. The complainant after getting lunch left the house and in the street met his relatives namely Abdul Razzaque son of Ghulam Rasool and Ghulam Jeelani son of Ghulam Mustafa and Shah Jehan son of Ahmed Mustafa Kumbhar Channa who he was busy in chitchatting when at about 1-30 p.m they saw that his brother Ghulam Shabbir along with his children was coming towards his house, who reached in common street Kumbhar Muhalla near Iqra School, Dadu and they saw one Sardar son of Muhammad Sulleman by caste Mangsi r/o village Gul Muhammad Mangsi Taluka Dadu having big knife (Chhuro) come behind him while running. The accused while abusing caused Chhura blows to his brother Ghulam Shabbir from his back side with intention to commit his murder, who due to receiving injuries fell down on the ground, on which; his children raised cries, they have also issued challenges to the accused, on which; accused ran away towards eastern side. Then they saw that blood was oozing from the back side of Ghulam Shabbir and was in serious condition. Thereafter, they arranged conveyance and were going towards Civil Hospital, Dadu but in the way injured succumbed to his injuries and died. Then they informed to police where police reached and after completing all the formalities and after conducting post mortem, the dead body was handed over to them for burial purpose and they after completing burial and funeral ceremony and condolence, complainant appeared at Police Station and lodged his FIR against the accused."*



3. After usual investigation, police submitted formal challan of the case before the concerned court. After completing necessary formalities, learned trial court framed charge against the accused, to which he pleaded not guilty and claimed trial.
4. At trial, in order to prove its case the prosecution examined 10 witnesses and exhibited numerous documents and other items. The statement of the accused / appellant was recorded under Section 342 Cr.P.C, in which he denied the allegations leveled against him and claimed his false implication in the commission of alleged crime. However, neither he examined himself on oath in disproof of the prosecution case nor led any evidence in his defense.
5. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the accused / appellant, as set out earlier in this judgment vide impugned judgment, hence the appellant has preferred this appeal against his conviction.
6. The evidence produced before the trial court finds an elaborate mention in the impugned judgment, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
7. Learned counsel for the appellant has contended that the appellant is innocent of any wrong doing and that he has been falsely implicated in this case by the complainant party; that there was a delay of 28 hours in lodging the FIR which enabled the complainant to cook up a false case against the appellant in collusion with the police; that none of the eye witnesses was present at the scene of the incident and have falsely implicated him at the behest of the complainant who are all his relatives; that there are material contradictions in the PW's evidence which renders their evidence unreliable; that PW's, even if they were present, are all related and interested as such their evidence cannot be safely relied upon; that the ocular evidence is contradicted by the medical evidence; that the alleged Churra (big



knife) has been foisted upon the appellant; that the medical evidence cannot be relied upon to convict the appellant as it was not put to the appellant during the recording of his S.342 Cr.PC statement and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions learned counsel for the appellant has placed reliance on the cases of **Muhammad Imran V The State** (2020 SCMR 857), **Muhammad Shah V The State** (2010 SCMR 1009), **Ali Bux and others V The State** (2018 SCMR 354), **Fayyaz alias Fiazi V The State** (2017 SCMR 2024) and **Muhammad Sharif and other V The State and others** (2019 SCMR 1368).

8. On the other hand, learned Additional Prosecutor General Sindh as well as the learned counsel for the complainant have fully supported the impugned judgment and contended that the delay in lodging the FIR has been fully explained; that the evidence of the eye witnesses to the incident was reliable and confidence inspiring and they had fully implicated the appellant in the murder of the deceased in a brutal manner; that the eye witnesses were corroborated by the medical evidence; that police recovered crime weapon/churra at the pointation of the appellant; that the chemical report relating to the bloodstained earth secured from the place of incident, bloodstained clothes of the deceased and the recovered churra were all positive; that the prosecution had proved the motive for the murder and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and as such his appeal should be dismissed. Learned APG was of the view that the sentence ought to be reduced from the death penalty to life imprisonment however learned counsel for the complainant differed with the learned APG on this count and contended that there were no mitigating factors in this case to warrant a reduction in sentence and as such due to the brutal nature of the crime the death penalty be maintained. In support of their contentions they placed reliance on the cases of **Sajid Mehmood V The State** (2022 SCMR 1882), **Abbas Ali and another V The State** (2021 SCMR 349), **Azhar Hussain and another V The**



**State and others** (2022 SCMR 1907), **Ashfaq Ahmed V The State** (2007 SCMR 641), **Muhammad Mansha V The State** (2001 SCMR 199), **Muhammad Akbar alias Bhola and others V The State and others** (2019 SCMR 2036), **Muhammad Hayat and 2 others V The State** (2015 YLR 1326[Federal Shariat Court]), **Muhammad Ismail V The State** (2017 YLR 39) and **Ghulam Hyder Mallah & another V The State** (SBLR 2013 Sindh 902 [High Court of Sindh (Karachi)]).

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. Based on our reassessment of the evidence of the PW's and blood recovered at the crime scene we find that the prosecution has proved beyond a reasonable doubt that on 28.01.2019 at 1330 hours at common street of Kumbhar Muhalla near Iqra School Dadu deh Dadu Ghulam Shabir (the deceased) was murdered by being attacked with a big knife after being verbally abused which caused him a serious injury from which he died a few minutes later en route to hospital.

11. The only question left before us therefore is whether it was the appellant who murdered the deceased by a big knife (churri) at the said time, date and location?

12. At the outset we have excluded all the medical evidence and that of the tapedar including his sketch since none of it was put to the appellant during the recording of his S.342 Cr.PC statement and it is well settled by now that in such a situation such evidence cannot be relied upon to convict the accused. None the less after our reassessment of the evidence we 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 must be decided on its own particular facts and circumstances for the following reasons;



- (a) That it is true that the FIR was lodged after a delay of 28 hours which in some cases might be fatal to the prosecution case however we find that the delay in lodging the FIR has been adequately explained. Firstly, the priority was to take the seriously injured deceased to hospital in order to save his life rather than lodge the FIR. That although the deceased died en route to the hospital the complainant informed the police about the incident from the hospital who arrived at the hospital and carried out the legal formalities. Then, after post mortem, the body was taken for burial and the complainant informed the police that he would lodge the FIR after the funeral for which arrangements needed to be urgently made. True to his commitment the complainant lodged the FIR the very next day straight after the burial of the deceased. **Even otherwise** at P.57 of the paper book there is a departure entry of PW 8 IO Huzoor Bux on 28.01.2019 at 13.45 which has noted that the complainant contacted the police and informed them that the deceased had been attacked by the accused with a big knife and was oozing blood and he had taken him to hospital and asked for the police to come. The entry notes that the police left to carry out post mortem. Entry No.17 is PW 8 IO Huzoor Bux's arrival back to the PS on the same day at 1600 hrs by reference to entry number 14 whereby it is stated that he returned from the hospital after carrying out legal formalities on dead body of the deceased which he handed over for post mortem and the complainant told him that he would come to PS tomorrow after burial to lodge FIR. Thus, what made up the bones of the FIR was already reported to the police within 15 to 30 minutes of the incident which included the name of the accused, the weapon used and brief details on the attack on the deceased who died. These events as recorded in the entries are corroborated by PW 8 Huzoor Bux in his evidence as well as the complainant. As such we find that there was no time to cook up a false case against the accused as the facts of the incident including name of the accused and weapon used had already been relayed to the police by the complainant who noted them down vide the above referred entries within 15 to 30 minutes of the incident and as such based on the particular facts and circumstances of this case for the reasons mentioned above we find the delay in lodging the FIR by the complainant inconsequential.
- (b) That the appellant is named in the FIR with a specific role.
- (c) Although we have excluded the medical evidence based on the ocular evidence of the eye witnesses and the police witnesses, S.174 report, recovery of the churri and other documents on record we have no doubt that the deceased died on account of a single wound to his



back caused by a big knife (churri). This fact has never been in dispute. What has been in dispute is who the murderer was. It is the case of the prosecution that it was the appellant where as the defence of the appellant is that it was some unknown person.

- (d) We find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether we believe their evidence and if so whether they have been able to accurately identify the appellant as the person who murdered the deceased by a blow to the back with a big knife whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Mumtaz. He is the complainant and elder brother of the deceased.** His evidence in chief is set out below for ease of reference;

*"I am complainant of this case and contractor by profession. My elder brother Ghulam Shabbir aged about 58 years was employee of Education Department who was posted in Government Primary School Fish Market as teacher and his children were also getting education from said School. About some time back the left arm of accused Sardar Ali Magsi was fractured from the wrist who got treatment from one unknown private Qumbhar and it was not healed properly. Accused Sardar Ali Magsi approached to my brother Ghulam Shabbir for treatment of his said arm who refused him for treatment and advised him to get treatment from Nawabshah Civil Hospital, on which; accused asked to my brother Ghulam Shabbir that you are rich person, having lot of money, your brother is contractor by profession and he may be asked to give him one lac rupees for treatment, on which my brother Ghulam Shabbir refused him, hence; accused Sardar Ali Magsi became annoyed. On 28.1.2019 as per routine my brother along with his children proceeded to his school situated at Fish Market. On 28.1.2019 after taking lunch, I came out from my house, my relative Abdul Razzak son of Ghulam Rasool, Ghulam Jeelani and Shah Jehan s/o Ahmed Mustafa were standing in the street of Kumbhar channo and were talking with each other. At about 1-30 p.m we saw my brother Ghulam Shabbir along with his children was coming from School towards house, when he reached in common street near Iqra School, we saw accused Sardar Ali son of Muhammad Sulleman Magsi while coming having big knife (chhuro) in his hand. Accused Sardar with intention to commit*



**Qatel of my brother Ghulam Shabir caused (chhuro) blow at the back side of my brother Ghulam Shabbir, who after sustaining (chhuro) injuries fallen down.** The children of my brother raised cries, we rushed towards my brother and raised hakals to accused Sardar Ali Magsi who along with big knife (chhuro) made his escape good from the scene of occurrence towards eastern side. We saw the blood was oozing from the wounds and my brother Ghulam Shabbir was writhing. **We arranged the transport and shifted the injured brother to Hospital, but on the way, he succumbed to the injuries and died. We intimated to police about the incident.** The police also reached at the hospital. After completing legal formalities, the post mortem was conducted thereafter dead body was handed over to us. I after completing funeral and burial ceremonies, on 29.1.2019 went to Police Station A-Section, Dadu where I lodged the FIR against accused Sardar Ali Magsi. Police obtained my signature thereon after read over its contents to me. I produce FIR at Ex.8/A, it is same, correct and bears my signature. I showed the place of incident to Investigating Officer. FIR was registered by ASI Huzoor Bux. On 29.1.2019, police inspected the place of incident. On 30.1.2019, I produced last worn blood stained cloths of deceased Ghulam Shabbir before ASI Huzoor Bux who secured the same. Accused produced in the Court is same. The cloths produced in Court in sealed parcel are same." (bold added)

This eye witness is related to the deceased however **no enmity or dispute has been proven** between the eye witness and the appellant and thus the eye witnesses 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), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness is not a chance witness as he lived with his brother (deceased) in a house not far from the incident. In this respect reliance is placed on a case law of **Sajid Mehmood** (Supra). He **knew the appellant before** the incident which occurred at about 1.30pm in broad day light. The incident went on for a few minutes and the eye witness was close to the incident and would have got a good look at the appellant who he already knew. Thus, there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. His presence at the scene of the incident is corroborated by PW 2 Shah Jehan and PW 3 Ghulam Jeelani.



He reported the incident to the police within 15 to 30 minutes on the same day naming the accused and the attack by big knife on the deceased which we have already alluded to earlier in this Judgment. He gave his S.154 Cr.PC statement one day after the incident after the burial of his brother which was not significantly improved on during his evidence. He named the appellant in his FIR with a specific role (as with the police entries made within 15 to 30 minutes of the incident) along with the other eye witnesses. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who murdered the deceased by big knife.

We can convict on the evidence of this eye witness alone though it would be of assistance by way of 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 we find the evidence of this eye witness to be of good quality and believe the same. **In this case however there is more than one eye witness.**

(ii) **Eye witness PW 2 Shah Jehan.** His evidence corroborates **PW 1 Mumtaz's** evidence in all material respects. He is named in the FIR as an eye witness. He is not a chance witness as he lives very nearby to the complainant in the same mohalla, he had no enmity with the accused, he knew the accused, he gave his S.161 Cr.PC statement with promptitude which was not materially improved upon during his evidence. He corroborates the motive for the murder. Namely, the deceased refusal to give the appellant RS one lac for medical treatment. The same considerations apply to his evidence as the evidence of **PW 1 Mumtaz**. We believe his evidence and rely upon the same especially with regard to the correct identification of the appellant as the person who murdered the deceased by churri.

(iii) **Eye witness PW 3 Ghulam Jeelani.** He is a neighbour and does not appear to be related to the complainant or the deceased in any event his evidence corroborates the evidence of PW1 Mumtaz and PW 2 Shah Jehan in all material respects including the motive and the same considerations apply to him as to PW 1 Mumtaz and PW 2 Shah Jehan.



Thus, based on our believing the evidence of the 3 eyewitnesses 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)

- (e) That it does not appeal to logic, commonsense or reason that real relatives would let the real murderer of their other real relative get away scott free and falsely implicate innocent persons by way of substitution. In this respect reliance is placed on the case of **Muhammad Ashraf V State** (2021 SCMR 758).
- (f) That the murder weapon namely the blood stained churri was recovered from the appellant on his own pointation which was hidden in a place which neither the police nor the complainant party would have known about. Namely, it was buried in a grave yard
- (g) That the blood on the Churri as per chemical report was human blood and the Churri was large as was described by the eye witnesses.
- (h) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case for instance by foisting a churri 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 we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).
- (i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we 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 appellant got annoyed with the deceased for refusing to give him money for medical treatment to the appellant attacking the deceased with the churri to the deceased falling down injured and later dying en route to hospital to the arrest of the appellant to the recovery of the murder weapon (big churri) on his pointation.
- (j) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we 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 that the murder of the deceased was



caused by an unknown person and not the appellant and perhaps by PW 1 and PW 2 due to some dispute but no evidence was ever put forward to support such defence. For example no alibi witness was produced. In effect the defence was one of mistaken identity. The appellant however did not give evidence on oath or call any evidence in support of his defence case that the complainant party had a fight amongst themselves. Thus, for the reasons mentioned above we disbelieve the defence case of mistaken identity and false implication 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.

13. Thus, based on the above discussion we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for he was been convicted and maintain the same.

14. With regard to sentencing we find that there are no mitigating factors in this case. The fact that certain pieces of evidence were not put to the appellant is not a mitigating circumstance especially when the prosecution has proved its case to the hilt through ocular and other supportive and corroborative evidence. From the evidence the appellant was angry with the deceased for not lending him RS one lac for medical treatment as a result of which he went armed with a big knife, which is not carried in ordinary course, with the premeditated intention of murdering the deceased which he did by striking him down in broad day light in a busy street in front of a school. He may have only given one blow to the deceased with his big knife but this is out weighed by the aggravating circumstance of him murdering a father in cold blood in front of his young children in a most brutal fashion which not only deprived them of a father but which also must have highly traumatized them. The Supreme Court has held that sentencing is not a mechanical process and that all relevant factors need to be considered including aggravating and mitigating circumstances and the consideration of deterrent or reformation. We therefore find in the lack of mitigating circumstances and the presence of only aggravating circumstances that by way of deterrence the appropriate sentence is the death penalty. As such the death



penalty is maintained and the confirmation reference is answered in the affirmative.

15. The Appeal is dismissed and the confirmation reference is answered in the affirmative.