THE HIGH COURT OF SINDH, CIRCUIT COURT, AT HYDERABAD.

Before:
Mr. Justice Miran Muhammad Shah.

Criminal Jail Appeal No.S-374 of 2019

Appellants	:	1. Prem son of Amreshi @ Bacho Kachi Kolhi. 2. Hari Ram son of Radho Kachi Kohli. Through M/s Sajjad Ahmed Chandio and Omparkash H. Karmani, Advocates.
Respondents	:	The State. Through Mr. Shawak Rathore, D.P.G. Sindh.
Date of hearing	:	**21.05.2025.**
Date of Judgment	:	**23.07.2025.**

J_U_D_G_M_E_N_T

Miran Muhammad Shah, J:- Through this Criminal Jail Appeal, appellants namely Prem son of Amreshi @ Bacho Kachi Kolhi and Hari Ram son of Radho Kachi Kohli, have called in question the Judgment dated 29.10.2019 passed by the learned Ist Additional Sessions Judge/Model Criminal Trial Court, Tando Allahyar, in Special Case No.16 of 2019 (Re: The State vs Prem and others) arising out of crime / F.I.R No.48 of 2018, registered at P.S B-Section Tando Allahyar, for an offence under Section 302, 365,201 and 34 PPCC, whereby both appellants were convicted under Section 265-H(ii) Cr.PC, for committing an offence punishable under Section 302(b) PPC and awarded sentence to suffer Imprisonment for Life and to pay compensation of Rs.One Million each to the legal heirs of deceased Mitho, within the period of thirty (30) days. In case of default, the convicts shall suffer additional S.I for six (06) months. Both the accused persons were also convicted for committing an offence under Section 201 PPC and sentenced to suffer R.I for five (05) years and to pay fine of Rs.500,000/- each. Furthermore, both the appellants were also convicted for committing an offence under Section 365 PPC and sentenced to suffer R.I for five (05) years and to pay fine of Rs.500,000/- each and all the sentences are to run concurrently.

2. The brief facts of the prosecution case are that on 25.10.2018 at 1430 hours, the complainant namely Diyalo son of Narain Kachhi Kolhi lodged

an FIR at Police Station B-Section, Tando Allahyar, stating therein that he resides with his family in village Muhammad Ramzan Lashari, Taluka and District Tando Allahyar. On 19.10.2018 during the day-time, the complainant was present at his house when his younger brother namely Mitho son of Narain Kachhi Kolhi, aged about 16 years, informed him that his brother-in-law namely Prem s/o Bacho Kachi Kolhi had telephoned him and asked him to come at Quba Stand, from where they would go to the Mela of Rama Pir. He was going with Prem to the Mela and by saying so he left the house. However, he did not return home that night. The complainant then tried to contact Mithoo on his mobile phone No. 0303-3961595, but the mobile phone was switched off. He also called Prem Kolhi on his mobile Phone No.0300-3592627 but his phone was also switched-off. Thereafter the complainant and others searched for Mitho but were unable to trace him. Subsequently, the complainant's relatives namely Kamoon s/o Dhero Kachi, Kolhi and Chando s/o Kathan Kachi Kolhi disclosed to complainant that on 19.10.2018 at about 5.00 pm, they had seen Mitho at Quba Stand along with Prem s/o Bacho Kachhi Kolhi and Waloo s/o Bacho Kachi Kolhi, both residents of Village Daim Lakho Sakrand District Shaheed Benazirabad and Aju Kachhi Kolhi r/o Ratanabad District Mirpurkhas and one person were with them. Upon hearing these details, the complainant contacted the accused persons, but they were unwilling to participate in a *Faisla* (settlement) and did not provide any information about Mitho's whereabouts.Thereafter, complainant went to the police station and lodged the FIR against the accused persons alleging that due to some unknown grudge Prem Kachi Kolhi had phoned Mitho and along with co-accused namely (1) Walo s/o Bacho Kachi Kolhi (2) Aju Kachi Kolhi and one unknown person had kidnapped/abducted his brother on the pretext of going to the Mela. The accused persons are also his close relatives and PWs can identify the unknown accused on seeing him. Hence, the instant FIR was lodged.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellants. The formal charge was framed against the present appellants/accused, to which they pleaded not guilty and claimed trial. In order to prove a charge, prosecution examined as many as nine (09) witnesses, which include PW No.1 Diyalo at Ex.05, PW No.2 Pirbho at Ex.06, PW No.3 Kamoon at Ex.07, PW No.4, Muneer Hussain (Tapedar), PW No.5

Nizamuddin at Ex.09, PW No.6 PC Aamir Ali at Ex.10, PW No.7, ASI Zain-ul-Abiden at Ex.11, PW No.8, SIP Ghulam Nabi Paryo at Ex.12, PW No.9, Medical Officer Bansi Dhar at Ex.13 and thereafter the learned ADPP submitted statement at Ex.14, whereby closed the side of prosecution evidence. All the Prosecution witnesses during evidence produced numerous documents, which were exhibited. The Statement of appellants/accused persons U/s 342 Cr.P.C were recorded, whereby they denied the allegations of prosecution in terms of Section 342 Cr.P.C, but they neither testified on oath nor called any defense witness(s). They claimed their false implication and pleaded their innocence.

4. After hearing the learned State counsel, learned counsel for appellants as well as assessment of evidence available, the learned trial Court passed the Judgment dated 29.10.2019, convicted and sentenced the appellants as stated above. Hence, the appellants preferred instant Criminal Jail Appeal against the impugned Judgment.

5. The learned counsel for appellants has mainly argued that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the impugned Judgment; that the judgment of the conviction is against the law and facts and is not sustainable in law; that the prosecution has failed to prove the case, against the appellants/accused persons; that the learned trail Court did not appraise and appreciate the evidence in its true perspective, in accordance with the safe administration of criminal justice; that the complainant on the basis of hearsay evidence, got registered FIR of instant case, as the complainant was informed by their relatives Kamoon and Chando, who are said to be the eye-witnesses; that both the appellants are innocent and have falsely been implicated in this case due to the matrimonial dispute; that both the appellants are workers of garment factories at Karachi, and at the time of this alleged incident, both the appellants were at Karachi and both the appellants/accused were arrested from the garment factory at Karachi; that all the P.Ws are relatives of complainant, and the prosecution has not examined any independent witness, which creates doubts in this case; that the complainant has self-contradicted himself and stated that on 09.11.2018, SIP of police station B-Section. Tando Allahyar recorded further statement of complainant, while he has stated in cross-examination that

his further statement was not recorded by police; that PW namely Khamoo has stated that the names of accused Prem and Hari have been disclosed to him by the complainant; that the complainant has not supported the case of prosecution as he has deposed in his examination-in-chief, that accused Prem telephoned his brother Mitho, and asked him to come over and go to Mela together with him at Rama Pir, and his brother went along with accused Prem at Mela, but in his Cross-examination the complainant has stated that his deceased brother left the house alone for Mela in Rickshaw; that PW-8 Ghulam Nabi Pario in his evidence deposed that in Column No: 10, of Danishnama (Ex. 10/B), it is mentioned therein that no visible mark of injury was found on the body of deceased; that there is no direct evidence against the appellants/accused persons to connect them with the alleged offence; that there is no eye-witness of the alleged offence to connect the appellants/accused persons with the alleged offence, and no witness was available at the place of incident; that as per column No: 10, of Danishnama, there is no mark of violence upon the body of the deceased; that as per column No: 11, of Danishnama, it is clearly mentioned that no one identified the dead body of the deceased which shows that the complainant with the help of PWs managed this false case as the appellants/accused persons were not present at the place of incident, nor they called the deceased on his mobile phone; that during cross-examination the Medical Doctor deposed that the deceased died due to drowning in water; that the appraisal of the evidence by the learned trial Court was against the safe administration of criminal justice and settled principles of law as laid down by superior courts by denying the benefit of doubt to the accused but instead stretched it in favour of the prosecution, resulting into miss-carriage of the rule of law and justice; that the impugned judgment is liable to be set aside in the larger interest of justice. The learned counsel for the appellant/accused has placed his reliance in the laws reported as 2018 SCMR 772, 2010 SCMR 385, 2008 SCMR 1103, 2006 SCMR 1846, 1995 SCMR 1345, PLD 2018 S.C. 813 and 2020 YLR 238(Sindh)

6. On the other hand, Mr. Shawak Rathore, Deputy Prosecutor General, Sindh opposed the instant Criminal Jail Appeal. He argued that the testimonies of the PWs remained unsheltered and fully corroborated

the version of the complainant. There is no contradiction between the medical and ocular evidence, despite the case being based on circumstantial evidence. The chain of circumstances inspires confidence regarding the commission of the offence by the present appellants/accused persons. Therefore, he prayed for the dismissal of the instant Criminal Jail Appeal.

7. I have carefully heard the learned counsel for the parties and examined the entire evidence as well as the medical record.

8. The main crux of the prosecution's evidence on record is always the dead body of the deceased, which is prima facie piece of evidence and subsequently its post-mortem report, which indicate the murder facts and based on those facts, the judgment is pronounced. However, in the present case, such crucial facts are missing. Here an unidentified dead body was recovered from a water canal and sent to the Medico Legal Officer for post-mortem examination. Admittedly at that time, the police/investigating team did not identify the deceased. The only note on the post mortem report refers to the Court record stating that the body belonged to the present deceased. However, during the cross-examination, the Medical Officer testified that the whole body was swollen due to water. He has also mentioned in his cross-examination, not denying the defence counsel's suggestive question that in the column No.12 of the Lash Chakas (Dead Body Identification) form, it is mentioned that nobody had identified the dead body. The post mortem report does not mention any evidence of force being used. The cause of death was determined to be drowning. Such medical evidence being independent and uninfluenced by the complainant side raises serious doubts about the prosecution's case. It appears that unknown body was conveniently declared as the deceased body to support a premature conclusion in the police investigation so also to satisfy the complainant's side for giving a positive result of the case by the police. No substantial material evidence was produced to support such contention. However, such lacunas, were not mentioned in the judgment by the learned trial Court, which also placed its reliance on the evidence presented by the complainant side, which miserably failed to produce any quantitative or substantiative evidence, as all the PWs are admittedly related to each other and belong to the same caste. Hence, the evidence is neither reliable

nor confidence inspiring. This is a case of unseen incident and no PWs claimed to have actually seen the appellant/accused committing the alleged murder of the deceased. Other than the complainant all other PWs have only repeated the story told to them by the complainant, making their deposition as only hearsay evidence. The official evidence from the Investigating Officer and Tapedar have only given their evidence, as per the investigation story transmitted by themselves. Moreover, the name of co-accused Hari Ram son of Radho Kach Kolhi was not initially mentioned in the FIR and was later introduced as one of the unidentified person. As per FIR, one other person was allegedly last seen with the deceased by the name of Waloo son of Bacho Kachi Kolhi. However, this key witness was never brought to trial as accused or witness nor any plausible reason was given for omitting out his name from the charge sheet. Rather replacing his name with another name, who is now a co-accused and has been co-convicted along with the main accused Prem. No motive has been brought on record to explain why a 16 years old boy was murdered. He was initially kidnaped allegedly under the false pretext of being taken to the Mela. No PWs has clearly articulated a motive for the murder of the deceased, which is a vital component in a criminal trial for making decision. Unfortunately the learned trial Court has also miserably failed to bring any material on record showing how the accused committed the alleged murder and why before pronouncing the conviction in the case.

9. That both the accused in their statement under Section 342 Cr.P.C have stated that they were falsely implicated in the case. That they were arrested from Karachi factory gate where they were working as labourer. No mention of this fact is discussed in the impugned judgment.

10. It is also observed that the learned trial Court has also not placed its reliance on medical evidence brought on record, which is independent in nature. In fact the learned trial court has not even discussed the medical evidence in its judgment, which is primary piece of evidence in any murder case. Merely reliance on the evidence of the complainant and his relatives, which are connected and related to each other is neither appreciated nor can be relied upon. Case laws relied by the learned trial Court are also only on the point that there is no major contradiction in the prosecution evidence, which was very much possible

in the entire prosecution evidence as it was well connected and related. In the criminal trial, Court has to go beyond the shadow of reasonable doubt before pronouncing the conviction order. The court has to prick out the truth from well within the material produced before it for ensuring that it is independent and inspire confidence on the factuality of the case which I see missing in the present judgment of the learned trial Court.

10. In support of my observations, I rely upon the following case laws, reproducing the relevant portions that are applicable to the present case:-

> 2025 SCMR Page 944,
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> Prosecution failed to prove its case against accused beyond shadow of doubt---If there is a single circumstance, which creates doubt in prosecution case, then the same is sufficient to acquit accused---Case against accused was repleted with number of circumstances, which had created serious doubts in the prosecution story---Supreme Court set aside conviction and sentence awarded to accused and by extending him benefit of doubt acquitted him of the charge---Appeal was allowed.
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> PLD 2021 S.C. 600
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> The frightful nature of crime should not blur the eyes of justice, allowing emotions triggered by the horrifying nature of the offence to prejudge the accused. Cases were to be decided on the basis of evidence and evidence alone and not on the basis of sentiments and emotions. Gruesome, heinous or brutal nature of the offence may be relevant at the stage of awarding suitable punishment after conviction; but it was totally irrelevant at the stage of appraising or reappraising the evidence available on record to determine guilt of the accused person, as possibility of an innocent person having been wrongly involved in cases of such nature could not be ruled out.
> On matter how heinous the crime, the constitutional guarantee of fair trial (under Article 10-A of the Constitution) could not be taken away from the accused. It was, therefore, duty of the court to assess the probative value (weight) of every piece of evidence available on record in accordance with the settled principles of appreciation of evidence, in a dispassionate, systematic and structured manner without being influenced by the nature of the allegations. Any tendency to strain or stretch or haphazardly appreciate evidence to reach a desired or popular decision in a case must be scrupulously avoided or else highly deleterious results seriously affecting proper administration of criminal justice would follow.

2022 P.Cr.L.J 77 (Sindh Sukkur Bench)

c) Criminal trial---

----Last seen evidence---Scope---Last seen evidence is merely a circumstantial evidence, and is a weak type of evidence, which alone could not sustain the weight of a capital punishment, and will require other independent corroborative evidence to effect conviction.

Khurshid v. The State PLD 1996 SC 305 and Muhammad Amin v. The State 2000 SCMR 1784.

11. In such circumstances and based on case law produced above, I am of the view that the conviction pronounced by the learned trial Court is not based on law and material facts. Accordingly, the instant Criminal Jail Appeal is allowed. The appellants namely Prem son of Amreshi @ Bacho Kachi Kolhi and Hari Ram son of Radho Kachi Kohli are acquitted of all the charges and shall be released forthwith, if not required in any other custody case. Consequently, the judgment dated 20.10.2019 passed by the learned Ist Additional Sessions Judge/Model Criminal Trial Court, Tando Allahyar is hereby set-aside.

JUDGE