

H/S case

For hearing of main case

12-2-2025.

Shri Deewan Badar Abbasi, advocate for
the appellant.

Shri Ali Anwar Kanthoo, Addl. P.G.

Shri Anwar Rasool Nazki, advocate for
the complainant.

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Arguments heard. Reserved for
judgement.

CS
Judge

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No.S-14 of 2022

Khadim Hussain Kakhrani

V/S

The State

Appellant: Through Mr. Irfan Badar Abbasi,
Advocate

Complainant: Through Mr. Ghulam Rasool M. Narejo,
Advocate

State: Through Mr. Ali Anwar Kandhro,
Additional Prosecutor General, Sindh.

Date of Hearing: 12.02.2025

Date of Decision: 21.02.2025

J U D G M E N T

Omar Sial, J.- The background to this case is as follows:

Manzoor Hussain and Khadim Hussain are brothers. Reema and Sabir are Manzoor's children. Tahir and Feroza are the children of Jamul Khatoon. The understanding between the families was that Sabir would marry Feroza and Tahir would marry Reema. The former two did marry, but when the marriage of the latter two could not take place as Reema was a minor. The delay did not please Manzoor, and the topic remained a friction point between the families. In the early hours of 24.01.2020, Manzoor, Khadim, Sabir, and two others, duly armed with weapons, came to the home of Jamul Khatoon, and after an exchange of harsh words, both Khadim and Sabir fired upon Janul's son, Tahir Abbas, and killed him. F.I.R. No. 01 of 2020 was registered under sections 302, 452, 148, and 149 P.P.C. at the Keti Mumtaz police station on 25.01.2020 when the incident information was provided to the police by Jamul Khatoon.

2. Khadim was arrested but pleaded not guilty and claimed trial. At trial, the prosecution examined the following witnesses. Jamul Khatoon (the complainant); Zulfiqar and Sher Dil (Jamul's nephews and eyewitness); Dr.

Ghazanfar Khokhar (the doctor who did the postmortem); Abdul Ghafoor (who witnessed various steps taken in the investigation); S.I. Syed Nisar Ali Shah (the first investigating officer); Kashif Hussain (the revenue officer who sketched the scene of incident); P.C. Muslim Ali (the policeman who handed over the dead body to its relatives); H.C. Abdul Kareem (the policeman who took case property to the laboratory for chemical analysis). In the section 342 Cr.P.C. statement recorded by Khadim, he professed innocence, denied all wrongs, and further stated that he was arrested a few days before the date that his arrest was shown, that Manzoor had lodged an F.I.R. earlier against Jamul's brother and that he was in Karachi when the incident is said to have occurred. Khadim did not want to appear as his witness but wanted Reema to be summoned as a defense witness, which she did.

3. On 31.03.2022, the learned Additional Sessions Judge, Ratodero, found Khadim guilty of committing offenses under sections 302(b) and 452 P.P.C. and sentenced him to life imprisonment and two years imprisonment, respectively. He was also fined Rs. 200,000. Khadim, being aggrieved, has now filed this appeal.

4. I have heard the learned counsel for the appellant, the complainant, and the learned Additional Prosecutor General. For brevity, the counsel's arguments are not reproduced but are reflected in my findings and observations below.

5. It would be appropriate to address the grounds of defense the appellant's counsel argued. The first submission was that there was a delay in the registration of the F.I.R. He attributed the delay to ulterior motives and Jamul Khatoon's malafide. Tahir was murdered at 2:00 a.m. on 24.01.2020, while the F.I.R. was registered at 2:00 p.m. on the same day. A delay in registering the F.I.R. will only be material if evidence raises doubt that the F.I.R. was deliberately delayed, so a conspiracy regarding who to bring within its net and manipulate facts could happen. This does not appear to be the position in this case. I say this because the record reflects that Jamul Khatoon had called the police station at 3:30 a.m. on 24.01.2020 and informed the police that her son Tahir was murdered. In that information, she specifically told the police that Manzoor, Sabir, Khadim, and Dadan did the killing. She was consistent with the information when the F.I.R. was registered. Essentially, the police were informed in an hour about the incident.

The delay in the registration of the F.I.R. was not material and will not upset the conviction.

6. Learned counsel next submitted that there was a delay in recording the eyewitnesses' section 161 Cr.P.C. statements. The record reflects that the statements were recorded within twenty-four hours of the incident. Keeping in mind that the F.I.R. itself was registered at 2:00 p.m. on 24.01.2020, there was no substantial delay in recording the witness statements. On the contrary, it appears that the police were quite prompt in recording the statements in a case of such a nature.

7. The third argument raised was why Khadim would kill Tahir when he was not even a family member. This argument is misconceived because Khadim was Manzoor's brother and is said to have accompanied his brother (Manzoor) and nephew (Sabir) that fateful night. Learned counsel also submitted that the children in the house that night were not made witnesses. The argument does not merit a comment. Suffice it to say that the prosecution case was not impacted adversely because the children of the house were not made witnesses. The counsel finally argued that the reason for the false implication was that Manzoor had earlier lodged an F.I.R. against Jamul's brother and that Jamul involving Khadim in this case was a consequence. I have seen the F.I.R. It shows that the F.I.R. was registered on 20.10.2019 and alleged that Jamul's family had kidnapped Sabir. Most interestingly, the F.I.R. was recommended for disposal under C Class. The learned magistrate accepted the police recommendation on 03.01.2020. There is little doubt that the families had bad blood for quite some time. That would not, ipso facto, mean that this case was false. If Khadim intended to rely on this aspect to show his innocence, it was incumbent upon him to produce witnesses to support him. He got an opportunity to do so at trial but did not avail it. Manzoor's daughter, Reema, the deceased's wife, was the only witness who appeared. Her testimony at trial was not very confidence-inspiring. I have commented later on it.

8. Finally, the learned counsel argued that Khadim was arrested on the night of the murder, while the memo of arrest shows that he was arrested on 28.01.2020. The basis of the counsel's argument is a news report. The news report strengthens the case of the prosecution. The heirs of the deceased gave the same story as in the F.I.R. to the reporter. The publication is dated 25.01.2020. The report says that the S.H.O. of the area had told the reporter

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that all the accused had been arrested. Whether what the S.H.O. said was correct or not could only have been determined had he or the reporter been called a witness. It seems that an over-exuberant S.H.O. to cool down tempers (the incident had led to outrage in the locality) may have given a wrong statement. It is pertinent to mention that the other accused, who also the S.H.O. said had been arrested remain absconders to date. This was not done. The new report was not an admissible piece of evidence. Even if it was, the report also says that the appellant was one of the nominated killers. The appellant cannot blow hot and cold at the same time. Speaking hypothetically, even if Khadim's arrest was shown a couple of days after the actual arrest, that fact would not be sufficient to discard the entire prosecution evidence.

9. The three eyewitnesses, Jamul Khatoon, Zulfiqar, and Sher Dil, were natural witnesses. They were sleeping in the same house where Tahir was murdered. No apparent reason came on record to show that they or either one had made a false allegation. On the contrary, they have been consistent in their statements and have supported and corroborated each other. Their testimonies have a ring of truth to them and are confidence-inspiring.

10. As a last-ditch effort, it seems Reema, Sabir's sister and defense witness, introduced another motive for the false allegation, negating the stance taken earlier by the defense that this false allegation was made because of the previous F.I.R. Reema said at trial that the deceased was found in an objectionable position with his sister-in-law. Therefore, his brother had killed him. No evidence is on record to substantiate this allegation. She had all the reasons to support her brother Sabir. Her husband had died, ostensibly killed by her family; her father and brother were accused of the murder. Her parental home was the only place she could find refuge in. This is also evidenced by her testimony when she said that she had been living with her father since the incident. Her testimony was further diluted when she admitted that what she said at trial had not been disclosed to anybody earlier. When juxtaposed, the prosecution's version is more believable than the defense's.

11. Khadim's defense of alibi, i.e., he and his father were in Karachi when the murder happened, went unproven. Had Khadim been in Karachi, some friends and family, apart from others, could have testified in his support. Khadim did not avail the opportunity to produce such witnesses or other

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evidence at trial. The only witness who he produced did not mention any such thing.

12. The record shows that the crime weapon was recovered from the appellant when he was arrested. An investigation lapse occurred when the investigator did not send the weapon and crime empties to secure a match. A separate case was filed for the appellant's possession of an unlicensed weapon; hence, I have not commented further. Suffice it to say that the investigation lapse was not material in light of the eyewitness testimonies.

13. Given the above, I find no reason to interfere with the learned trial court's judgment. The appeal is, therefore, dismissed.


2/2/25
JUDGE