

JUDGMENT SHEET IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Syed Fiaz ul Hassan Shah.

Cr. Jail Appeal No.393 of 2025

Appellant: Ghulam Hyder through Mr. Moula Bux Bhutto,
Advocate.

Respondent: The State through Mr. Ali Haidr, Addl. P.G.

Date of hearing: 04.02.2026.

Date of decision: 10.02.2026

JUDGMENT

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Muhammad Iqbal Kalhoro, J. Appellant Ghulam Hyder having been convicted and sentenced to death in S.C. No.65/2023 U/s 302(b) PPC and to pay compensation of Rs.200,000/- in terms of section 544-A Cr.P.C, in default to further undergo SI for six months vide impugned judgment dated 02.06.2025 by learned Sessions Judge Sujawal, has filed this appeal.

2. As per FIR dated 22.02.2023, by complainant Javed Ahmed, his brother Niaz along with a guest namely Gul Muhammad were sleeping on a cot outside of the house, when he and other inmates woke up at about 0010 hours, same night, on hearing cries coming from outside. He alongwith his son rushed outside and saw in torch light that their neighbor Ghulam Hyder /appellant was inflicting hatchet blows on different parts of his brother Niaz. He and others tried to apprehend him but he fled away threatening the complainant party. Then he came over his brother Niaz, who before their sight succumbed to his injuries and died. Meanwhile other villagers, attracted on cries, gathered there and were narrated the entire incident. He then reported the incident to his relative Ali Muhammad, who went to inform the police which came at the spot, completed necessary formalities and took dead body to the hospital

for postmortem, after which handed over the corpse to them for a burial. After burial, complainant appeared at P.S. and recorded his statement u/s 154 Cr.P.C. in the terms as above. The motive of the offence disclosed by the complainant is an altercation between his brother and appellant over money dispute in the evening before fateful night.

3. Appellant was arrested after four days on 26.02.2023 from protective bund Khadi forest, and from him the crime weapon i.e hatchet was recovered. After usual investigation the challan (173 Cr.P.C report) was submitted in the court. A formal charge against the appellant was framed to which he pleaded not guilty and claimed trial. The prosecution in order to prove its case, examined in all 10 witnesses including the eyewitnesses, MLO, mashirs, who have produced all the necessary documents including FIR, postmortem report etc.

4. After prosecution evidence, appellant's statement u/s 342 Cr.P.C was recorded. He has pleaded his innocence, without however leading any evidence in defence or examining himself on oath. Then vide impugned judgment, the trial court has decided the case against him in the terms as stated above, hence this appeal.

5. We have heard learned counsel for appellant, who has pleaded that eyewitnesses are interested in that complainant is brother of deceased, whereas other witness is his friend; the motive i.e. altercation on money dispute in the evening has not been proved by the prosecution; the identity of appellant in torch light is a weak type of evidence; there are contradictions in the evidence of prosecution witnesses, the benefit of which goes in favour of the appellant. In the last, he has pleaded for acquittal of the appellant.

6. On the other hand, learned Addl.P.G has supported the impugned judgment.

7. We have considered submissions of the parties and perused material available on record. The prosecution has examined Javed Ahmed, the complainant, as P.W.1. In his evidence, he has revealed the entire incident in detail that on the fateful night Gul Muhammad had arrived in the evening as a guest and slept with his brother on the same cot outside of the house when at about 0010 hours night, he and others in the house woke up hearing cries, he and his son went outside and saw in the torch light appellant inflicting hatchet blows on head and different parts of the deceased. When appellant saw them, he threatened them not to come close and fled away. After his departure, he saw his brother, due to injuries, taking a last breath. Police were duly informed which came and prepared necessary documents, shifted dead body to hospital where his postmortem was conducted. After that the dead body was handed over to them for burial, where after he appeared at P.S. and registered FIR. He has also stated that next day blood stained earth from the spot was taken and necessary memo of place of incident was prepared by the police. He has also supported arrest of appellant on 26.02.2023 and recovery from him of a hatchet.

8. His narration is supported by evidence of P.W.2 Gul Muhammad. He has stated that he had gone to complainant's house as a guest where in the evening altercation between appellant and deceased took place over a money dispute. After taking meal, he and Niaz slept. At late night, appellant arrived and inflicted hatchet blows to different parts of body of Niaz. He raised cries upon which complainant and his son came out of the house and saw appellant, who meanwhile made his escape good. Thereafter, police, after such information was communicated to them, arrived and completed necessary formalities.

9. Both the eyewitnesses have marked presence of the appellant at the time of incident and both have named him as a main culprit,

who within their sight allegedly inflicted hatchet blows on different parts of body of deceased killing him at the spot.

10. Third witness examined by the prosecution is Ali Muhammad, he has also supported the complainant to the extent of his role as described by latter in his evidence. According to him, on the night of incident, he woke up hearing cries, went out of his house and saw complainant, P.W. Soof and P.W. Gul Muhammad available there. They informed him that appellant Ghulam Hyder had murdered the deceased. They requested him to inform the police. Hence, he went to Police station, brought police at the spot who inspected the dead body, carried out relevant formalities and shifted dead body to hospital for postmortem. As per his narration, complainant lodged FIR after burial of deceased and next day police inspected the spot, collected blood stained earth and recorded his statement.

11. Amir Bux P.W.4 has been examined by the prosecution as mashir of the case. He has confirmed that dead body of the deceased was inspected in his presence and such mashirnama was prepared which he duly signed. He has also verified that dead body of the deceased was taken to hospital for postmortem and next day viz. 23.02.2026 police had arrived at place of incident, had collected blood stained earth from there, prepared such memo which he had signed. Then, in the course of investigation, he was repeatedly called by the police to witness different formalities such as sealing of clothes of deceased, arrest of appellant on 26.02.2023, and recovery of crime weapon from him.

12. Prosecution has also examined Senior Medico Legal Officer Dr. Abdullah as P.W.5, who had conducted postmortem of the deceased. He has verified this fact in his deposition. According to him, he had spotted following injuries on his person:

- i. Incised wound cutting back of neck extending left lip (labile fold).

- ii. Incised wound 19.0 cm x 2.5 cm x brain deep at left side of forehead extending right side.

He has opined that those injuries were caused by a sharp cutting object, which fact is in synchronization with prosecution version that appellant had caused hatchet blows to the deceased. In his opinion the injuries were sufficient to cause instantaneous death of deceased.

13. P.W.6 Tarique Hussain, Tapedar, in his evidence has reported to have prepared sketch of place of incident under the directions of Mukhtiarkar communicated to him through an official letter. He has produced such sketch in his evidence. P.W.7 is ASI Hyder Ali, who was duty officer on the night of incident. In his evidence, he has confirmed that P.W. Ali Muhammad had come to P.S. with the information of murder of Niaz in village Soof Palejo. He recorded such information in daily diary and alongwith other staff came at place of incident. He inspected the dead body lying in the street of the house, prepared such memo obtained signatures of the mashirs. Per his evidence, he had also prepared Lash chakas /inquest report noting hatchet injuries on different parts of body of the deceased. He has confirmed to have issued a letter for postmortem and after such procedure, had handed over dead body to complainant party for burial. He has also verified that after burial, complainant appeared at P.S. and got his version of the incident registered.

14. P.C Saddam has been examined by the prosecution as P.W.8. His evidence is confined to the fact that on 07.03.2023, he received two parcels containing clothes of deceased and blood stained earth by SHO for depositing the same in the office of Chemical Examiner which he did duly and obtained such a receipt. He has also confirmed that his statement u/s 161 Cr.P.C was recorded during investigation to the extent of his role that he had performed as a carrier of the parcels to the office of Chemical Examiner for examination. WHC Murad Ali has been examined as P.W.9. His evidence is limited to the fact that he had received parcels containing

blood stained earth on 23.02.2023 which fact he duly recorded in daily diary and lodged the parcels in Malkhana. Then on 25.02.2023 he received another parcel containing clothes of the deceased from I.O. of the case and which fact he also recorded in daily diary. He has produced such daily diaries in his evidence. Per him, again on 26.02.2023 he received sealed parcels containing hatchets with wood handle, which he had also recorded in the daily diary. He has identified all those parcels and contents thereof in his evidence before the court. He has also produced a letter whereby the case properties were sent to Chemical Examiner for inspection.

15. Last witness examined by the prosecution as P.W.10 is SIP/SHO Bashir Ahmed. Per his evidence, he was member of the team which had been assigned investigation by the SSP Sujawal. According to him, in investigation all the relevant formalities were carried out such as retrieving blood stained earth from the spot, clothes of deceased, collecting forensic lab. reports etc. he has produced relevant documents in this respect in his evidence. After which, statement of appellant u/s 342 Cr.P.C. was recorded in which entire evidence as above was put to him. He has merely denied the same without offering anything to its opposite in defence. He has however, reiterated that he has been falsely implicated in the case.

16. The gist of prosecution as reproduced above shows that it has examined all necessary witnesses including eyewitnesses, I.O, MLO, relevant mashirs and Tapedar who had sketched the site plan. The report of the Chemical Examiner viz-a-viz clothes of deceased and the blood stained earth have also been brought on record. Eyewitnesses namely Javed Ahmed and Gul Muhammad, who had seen the incident first hand have been subjected to cross-examination but without any positive element in favour of defence. They have stood the ground and have detailed all the necessary aspects of the case.

17. From their evidence, it is established that appellant on the night of incident on account of past altercation on money matter came over the cot where the deceased and P.W. Gul Muhammad were sleeping and started causing hatchet blows to him. This incident was not only witnessed by the complainant who happens to be a brother of deceased but by an independent person who was present at the spot as a guest. No material contradiction in their cross examination has come on record to vilify truthfulness of the story recorded in their deposition. In cross examination, PW Gul Muhammad has clarified that at the time of incident, he was still awake and meanwhile the deceased had fallen asleep. He has clearly disclosed that he had seen the face of appellant at the time of incident. He has confirmed arrival of Complainant and his son Soof at the spot in less than two minutes of raising cries. According to him, after arrival of the police, house of appellant was shown to them by the complainant party but the police did not immediately arrest him. He has also confirmed that complainant party was having a torch light which they used at the time of incident in order to identify the appellant and dead body. He has denied the suggestion that he was not present at the spot.

18. To us the evidence of eyewitnesses appears to be confidence inspiring, it does not suggest that it is a result of some contrivance or concoction. Even otherwise in murder cases replacing the real culprit for the fake one is a rare phenomenon. It is hard to believe that the complainant, who happens to be a real brother of the deceased, would save a real culprit and implicate appellant, who is his neighbor, without any rhyme and reason. The evidence of the eyewitnesses is supported by the medical evidence. The Doctor has confirmed that deceased had two injuries occasioned by a sharp and cutting weapon. He has also verified that deceased died instantaneously as revealed by both the eyewitnesses.

19. P.W.6 Tapedar has confirmed the place of incident to be the same as described by the eyewitnesses in their evidence. His evidence allies with evidence of eyewitnesses to the extent of place of incident and no discrepancy or contradiction is found in this regard. The evidence of I.O. and other police official who had arrived at the spot after some time of the incident when approached has also propped up evidence of eyewitnesses. They have verified that when they were approached by the complainant party, they came at place of incident, carried out necessary formalities and shifted dead body to the hospital for postmortem. The arrest of the appellant and recovery of crime weapon which is duly identified in the court in the evidence of witnesses also stand established beyond a doubt.

20. Against such evidence which confirms entire prosecution case perfectly as unfolded initially in FIR, nothing in rebuttal has been offered by the appellant. It is well settled that to prove the charge, the burden lies upon the prosecution but once such burden is discharged then the accused is invited to bring out his version in defence. In this case, the prosecution by examining all the material witnesses who are familiar with one or other aspect of the case has proved the charge against the appellant. But the appellant has offered nothing to rebut the same except that he has been falsely implicated in this case. The reasonably lengthy cross examination of the witnesses has not brought any worthwhile discrepancy which may put the prosecution case in jeopardy. Therefore, we are of a view that prosecution has proved the case against the appellant beyond a reasonable doubt and the conclusion dawn by the trial court in this respect is well founded.

21. Notwithstanding, in our view there are certain mitigating circumstances which justify lesser punishment than death to the appellant. For instance, the motive viz. past altercation in the evening on money dispute has not been proved entirely although it

has been referred by the witnesses in the evidence. The torch, the source of identification has not been produced to support such part of the case and crime weapon does not seem to have been subjected to forensic inspection to confirm the fact that it was in fact the crime weapon. The absence of these pieces of evidence, no doubt supporting in nature and connecting the missing dots only, but their absence constitutes mitigating circumstances. It is settled that where there are mitigating circumstances, death penalty cannot be awarded, as held in case reported in 2017 SCMR 1662¹. This legal position has not been disputed even by learned Addl. P.G. that presence of such circumstances would mitigate seriousness of alleged crime.

22. We, therefore, while maintaining conviction of the appellant convert his sentence from death to life imprisonment with benefit of section 382(b) Cr.P.C duly extended to him. The remaining terms viz. compensation u/s 544-A Cr.P.C. and the term of sentence in case of its default shall remain the same. In view of such findings, death reference No.11/2025 is replied in negative and is accordingly disposed of.

The appeal and the death reference both stand disposed of.

Judge

Judge

A.K.

¹ 2017 SCMR 1662