

IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S-69 of 2020

FOR ORDER ON MA NO.2017/2020.
FOR HEARING OF CASE.

Appellants: Subhan Ali, Ali Mour, Ali Gohar and Ali Ghanwar through Mr. Wazeer Hussain Khoso, Advocate.

Respondent: The State through Mr. Nazar Muhammad Memon A.P.G. Sindh.

Date of hearing: 25.11.2022, 02.12.2022 & 16.12.2022.

Date of Decision: 23.12.2022.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Through this Criminal Appeal, appellants have challenged judgment dated 14.02.2020, passed by learned 1st Additional Sessions Judge/MCTC, Shaheed Benazirabad in Sessions Case No.639 of 2018, Crime No.133 of 2018 registered at PS B-Section Nawabshah for offences under sections 302, 504, 147, 148, 149 PPC, whereby the appellants have been convicted for committing murder of deceased Asghar and sentenced to imprisonment for life and to pay compensation of Rs.200,000/- each in view of section 544-A CrPC to the legal heirs/wali of deceased, or in default, shall suffer S.I. for six months more. However, the benefit of section 382-B CrPC was extended to the appellants.

2. Complainant Shoukat Ali in FIR has stated that Latif Jamali had misbehaved with a woman of family of Akbar Brohi a relative of complainant and on that issue Latif Jamali and Muhammad Akbar Brohi had altercation with each other. Latif Jamali used to say that they will take revenge from Brohi community. On 29.07.2018, the complainant along with his father Ali Asghar Brohi left house for doing work and reached nearby otaq of Sher Muhammad Jamali at 09:30 a.m., where they came across Muhammad Umar Brohi and Qurban Ali Brohi. While complainant and his father were chatting with them when Latif Jamali, Subhan and Shabir, Ali Mour, Ali Gohar, All Ghanwar, all residents of Khuda ki Basti arrived. Subhan Jamali, Ali Gohar Jamali and Latif Jamali were having iron rods while Ali Mour

Jamali, Ali Ghanwar and Shabir Jamali were armed with lathies. All the accused hurled abuses and thereafter Subhan Jamali, Ali Gohar Jamali and Latif Jamali inflicted iron rod blows, while Ali Mour Jamali, Ali Ghanwar Jamali and Shabir Jamali inflicted lathi blows on head and other parts of body of Ali Asghar and caused him injuries. Ali Asghar fell down on the ground whining. On intervention of Muhammad Umar and Qurban Ali, all the accused decamped by saying that they had taken revenge. After their departure, complainant and others saw that Ali Asghar had injuries on various parts of his body and his bones were exposed. The complainant and others shifted the injured to PMC Hospital Nawabshah where he expired during treatment at 0140 hours. The complainant informed P.S. B-Section Nawabshah of the incident. Police arrived at hospital, inspected dead body of Ali Asghar, got its postmortem and returned the same after such procedure. The complainant shifted dead body of his deceased father to village. After funeral and burial of the deceased the complainant lodged FIR against accused on 29.07.2018 at 2100 hours.

3. After usual investigation the challan was submitted showing the appellants in custody while accused Shabir and Latif Jamali were shown as absconders, and were declared as proclaimed offenders subsequently after due formalities and their case was kept on dormant file.

4. In the trial, prosecution in order to prove the charge has examined seven witnesses: Medical Officer Dr. Zain-ud-Din, Tapedar Mehar Ali, Complainant Shoukat Ali, Eyewitness Qurban Ali, Mashir Khair Muhammad, Investigating Officer SIP Khan Muhammad and P.C Lutuf Ali; and has produced all necessary documents i.e. FIR, postmortem report, relevant memos etc. The prosecution evidence then was put up to the appellants under section 342 CrPC. They have simply denied it and pleaded innocence without however, examining themselves on oath or leading evidence in defense. The trial Court after hearing the parties has decided the case vide impugned judgment dated 14.02.2020 in the terms as stated in para No.1 of the judgment.

5. Learned defense counsel in his arguments has submitted that appellants are innocent, falsely implicated in this case, there is unnatural conduct on the part of prosecution witnesses, that per

contents of FIR and depositions, complainant party comprised four persons Shoukat Ali, Qurban Ali, Muhammad Umar and Ali Asghar (deceased) and the accused were six in numbers and were armed with only dandas and iron rods, whereas the complainant party had instruments to install hand pump; so it is strange that PWs 3 in number did not react or mount any resistance when the accused attacked upon the deceased; the prosecution witnesses were son and relatives of the deceased and non-intervention by them in such a situation was very unnatural and presumption would be that they were not present. He has further submitted that the prosecution has not proved motive of the incident; there was dispute between accused Lateef Jamali and Akbar Brohi, so when main target was Akbar and he was present at the time of incident then why he was not attacked; there is contradiction between ocular and medical version of the incident; as per prosecution witnesses, the deceased had incised wounds but as per Medical Officer there was no incised wounds upon the deceased. PW-5 Khair Muhammad, who is mashir of all memos which includes arrest and recoveries did not identify appellant in Court meaning thereby that no arrest and recoveries was effected in his presence; that PW-04 deposed that there were no iron rods with Subhan, Ali Gohar and Lateef whereas complainant in FIR has stated that they were having iron rods, it would mean that the appellants Subhan and Ali Gohar had not given the deceased any blows with iron rods. In support of his contentions, he has relied upon 2015 SCMR 315, 2018 SCMR 326, 2010 SCMR 97 and an unreported Criminal Appeal No.D-88 of 2016 passed by this Court and prayed for acquittal of the appellants.

6. Learned Additional Prosecutor General Sindh has supported the impugned judgment and stated that this is a day time incident, as such there is no question of mistaken identity, medical evidence is in complete sync with oral account, there is no major contradiction and the prosecution has fully proved its case.

7. I have considered submissions of the parties and perused material available on record including the case law cited at bar. Prosecution has examined Doctor as PW-01 who conducted postmortem of the deceased and found upon him as many as six injuries, mostly lacerated wounds caused by hard and blunt substance. He has further opined that the time between death and

postmortem was 13 to 20 minutes and time between injuries and death was about 30 to 40 minutes. Second witness examined by the prosecution is Tapedar Mehar Ali (Ex.08) who has produced sketch of place of incident highlighting the points where the incident took place. PW-03 examined by prosecution is complainant Shoukat Ali at Ex.09. He has described the entire incident, as disclosed in FIR, in detail, that he and his father, the deceased, had gone towards otaque of Sher Muhammad Jamali where they came across PW Qurban Ali and Muhammad Umar. They were present there when at about 09.30 a.m., appellants armed with iron rods and lathies accosted them. They reminded the complainant party about fight between them and Muhammad Akbar sometime ago and started inflicting iron rod and lathies blows to the father of complainant. And that PWs Qurban Ali and Muhammad Umar interceded on behalf of complainant and rescued father of the complainant from further assault. Then after departure of the accused, they took the injured to PMC hospital Nawabshah where the injured died at about 10.40 a.m. This information was conveyed by the complainant to the police which arrived at 11.20 a.m., inspected the dead body, prepared the inquest report, and other relevant documents including memos and had the postmortem of the deceased conducted and returned the body to complainant for burial.

8. PW-04 (Ex.10) Qurban Ali who was also present at the spot and seen the incident has supported the complainant in his description of the incident. He has also given the relevant details as to how the incident took place, how he and other witness namely Muhammad Umar intervened and saved the injured from further attack in the name of holy Quran. However, when they brought the injured at Hospital at Nawabshah he succumbed to his injuries and expired. He has also supported the complainant on the point of bringing him at police station on the same day for registration of FIR and his examination u/s 161 CrPC. PW-05 at Ex.11 examined by the prosecution is a mashir of all the relevant memos, inquest report, arrest of the accused and recovery of incriminating articles i.e. iron rod and lathies stained with human blood. He has produced all the aforesaid documents in his evidence. Second last witness examined by the prosecution as PW-06 (Ex.12) is the I.O. of the case. He has described the entire account of investigation i.e. receiving information

about the incident, reaching PMC Hospital Nawabshah, inspecting the dead body, preparing inquest report, getting the postmortem of the dead conducted, registering FIR, arresting the appellants recovering incriminating articles from them and sending them for lab reports. Last witness examined by prosecution is PW-07 (Ex.13) P.C. Lutuf Ali through whom blood stained clothes, blood stained earth were sent to the office of chemical examiner for report. He has supported these facts in his evidence.

9. Thereafter, all such evidence adduced by the prosecution was put up to the appellants in their statements under section 342 CrPC. They have simply denied it without however leading any evidence in their defense or on oath.

10. When I take a holistic account of the entire evidence, I get persuaded that prosecution has proved the case against the appellant beyond a reasonable doubt. All the witnesses have been subjected to a lengthy cross-examination but no material contradiction has come on record. They have stood ground on all salient features of the case. They have supported each other regarding the main parts of the incident and nothing in response to the questions in cross-examination has come on record suggesting false implication of the appellants in the case. Eyewitnesses have been successful in establishing their presence at the spot, seeing the incident, bringing the injured to the Hospital, where after death, his postmortem was conducted. The police officials and mashirs have supported arrival of the police at Hospital in response to information of the incident communicated by complainant and inspecting the dead body and completing all the formalities. There is not much delay in FIR which was registered on the same day after just 12 hours of the incident, which from the facts of the case appear to have been consumed by the complainant in taking his injured father to Hospital for treatment, postmortem and bringing the dead body to his village, its burial, and in the end, travelling to police station for registration of FIR.

11. Further, in cross-examination nothing has come on record to suggest that nomination of the appellants in FIR is outcome of any deliberation or consultation by the complainant party or that the appellants have been substituted with real culprits in this case. Next argument of the learned defense counsel was the alleged unnatural

conduct of the witnesses. I do not find the same persuasive either. Complainant party in fact comprised only complainant and his father. PW Qurban Ali although was relative of the complainant party but distantly, as far as that even in his cross-examination he has not been able to describe his actual relation with the complainant. Muhammad Umar was although caste-fellow of the complainant but was not relative and simply happened to be present at the time of incident. Therefore, argument of learned counsel that there were four persons against six accused is factually incorrect. In fact they were only two persons: complainant and his father, empty handed against six accused who were armed with iron rods, lathies/clubs and who no sooner did they arrive than they started inflicting blows to the father of complainant leaving no room or time to any other person to intervene and save the injured before fatal blows had already been inflicted to him.

12. There is no contradiction between medical evidence and ocular evidence and both the eyewitnesses have stated that the injured was hit by the appellants with lathies and iron rods which is what has been opined by the doctor in his evidence: presence of lacerated wounds on the body of the victim caused by hard and blunt substance. The witnesses are illiterate and do not have any idea what incised or lacerated wound is and how it is caused. Therefore, the witness saying, that they were incised wounds is immaterial from the point of view of actual description of the wounds. The last ground taken in defense is that the prosecution was not able to prove motive. Non-proving motive cannot be considered as a circumstance undermining prosecution case. It is settled that non-proving of the same in the cases of capital punishment can be considered as a mitigating circumstance justifying reduction of sentence from death to imprisonment for life, at the most. In this case, the appellants have already been given life imprisonment, therefore, in my view, non-establishing the motive part of the story is not fatal to the prosecution case nor is it helpful to the appellants in any manner to earn acquittal.

13. The evidence against the appellants is trustworthy and confidence inspiring, it contains no material contradiction to give its benefit to appellants. Presence of appellants is further established from the memo of place of incident which confirms that there were foot-prints of more than 5/6 persons at the spot. The iron rods and

lathies recovered from them were found with human blood also points out to involvement of the appellants.

14. In view of above discussion, I am of the view that the case against the appellants has been proved beyond a reasonable doubt and there is no any circumstance justifying interference in the impugned judgment which the learned trial Court has passed after appreciating all the relevant facts and circumstances of the case and relying upon the relevant laws in this regard. Consequent to above discussion, instant appeal is **dismissed** and conviction and sentence awarded to appellants vide impugned judgment are upheld.

The Criminal Appeal stands dismissed.

JUDGE