

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Abdul Mobeen Lakho,*

CRIMINAL JAIL APPEAL No.531 OF 2019 Confirmation Case No.23 of 2019

Appellant	Muhammad Raheel son of Abdul Wahab through Mr. Iftikhar Ahmed Shah, Advocate
Respondent	The State through Mr. Mohammad Iqbal Awan, Deputy Prosecutor General.
Date of Hearing	14.04.2021
Date of Announcement	22.04.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Appellant Muhammad Raheel son of Abdul Wahab has preferred this Criminal Jail Appeal against the impugned judgment dated 26.08.2019 passed by the learned IIIrd Additional District & Sessions Judge Malir, Karachi / Model Criminal Trial Court-II in Sessions Case No.634/2018, F.I.R. No.351/2018 u/s. 302 PPC whereby the appellant has been convicted and sentenced as under:-

- a) For causing murder of Mst. Anisa daughter of Nisar Ahmed, to death as Tazir under Section 302(b) PPC subject to confirmation by this court. He shall pay fine of rupees 05 lacs to the legal heirs of the deceased under section 544-A Cr.P.C and in case of failure to pay such fine, he shall further undergo simple imprisonment of 06 months.
- b) Benefit of Section 382-B PPC is also extended to accused.

2. The brief facts of the prosecution case as per FIR are that on 28.05.2018 at about 2110 hours, the complainant Mansoor Ahmed Soomro son of Nisar Ahmed Soomro lodged the FIR at PS Shah Latif Town alleging therein that he is doing labour and resident of House near Gulza-e-Madina Masjid Town, Khuldabad, Karachi along with his family and one sister Aneesa wife of Muhammad Raheel

aged about 23/24 years along with her two children. His sister Aneesa was married with accused Raheel son of Abdul Wahab in the year 2010 and she has two children namely Kulsoom and son Najeebullah. His brother in law did not give money for daily expenses to his wife and used to fight with her and usually was not residing in his house. On 28-05-2018, when the complainant was on his job, he received telephonic call that his sister was killed by her husband Raheel and on such information he immediately went to the house from where he saw a lot of blood was scattered on the floor. He had come to know from his mother and from the area people that Muhammad Raheel had killed his sister by inflicting knife blows and police had arrested him and dead body was shifted to Jinnah Hospital, hence this FIR was lodged against the accused.

3. After usual investigation and completion of all the legal formalities, charge was framed against the accused to which he pleaded not guilty and claimed trial of the case.

4. The prosecution in order to prove its case examined 07 prosecution witnesses and exhibited various documents. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the allegations leveled against him. He did not examine himself on Oath or call any DW in support of his defence case. After appraising the evidence on record the trial court convicted the appellant and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against conviction.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 26.08.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel appearing on behalf of the appellant contended that the appellant was innocent of any wrong doing and had been falsely implicated in this case by the police in collusion with the complainant; that there was a long delay in lodging the FIR which assisted in such collusion between the police and the complainant; that the so called eye witness was a put up witness and was not present at the time of the incident; that no recovery was made from him and that the medical evidence in terms of the post mortem report mentioning rigor mortis only three hours after the death of the deceased casts doubt on the medical evidence and the prosecution case as a whole and that for any of the above

reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on **Asad Rehmat V State** (2019 SCMR 1156)

7. On the other hand learned DPG fully supported the impugned judgment and contended that there is overwhelming evidence against the appellant in shape of at least one eye witness whose evidence was reliable and confidence inspiring; that the appellant had been arrested on the spot; that the murder weapon (churri) had been recovered from appellant and as such the appeal should be dismissed and due to the brutality of the crime the death penalty should be upheld. In support of his contentions he placed reliance on the case reported as **Muhammad Imran v. The State** (2021 SCMR 69), **Khalid Mehmood v. The State** (2017 SCMR 201), **Shamshad Ali v. The State** (2011 SCMR 1394), **Majhi v. The State** (1970 SCMR 331) and **Muhammad Ilyas and others v. The State** (2011 SCMR 460).

8. We have heard the arguments of the learned counsel for the appellant as well as learned DPG, gone through the entire evidence which has been read out by the counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law.

9. Based on the PW witnesses especially the medical evidence and medical reports we find that the prosecution has proved beyond a reasonable doubt that on 25.05.2015 at about 2.00pm inside the house of the complainant (PW Mansoor Ahmed) situated near Gulzar-e-Madina Masjid, Madina Town, Khuldabad, Quaidabad Karachi Mrs Aneesa (the deceased) wife of the appellant was murdered by churri blows. This position is not disputed by either the prosecution or the defense and as such is an admitted position

10. Thus, the only issue left before us is whether the prosecution has proved beyond a reasonable doubt that it was the appellant who had committed the murder of his wife at the time, date and place as alleged by the prosecution.

11. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt against the appellant for the offense for which he was charged i.e the murder of his wife by churri blows and uphold his conviction for the following reasons:-

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(a) The incident took place at about 2pm. The complainant was informed about the incident whilst he was at work (the deceased was his sister who was living at his house) and he reached home at about 4.15pm after the dead body of his sister had been transported from his house to the JPMC. He recorded his S.154 Cr.PC statement at 7.40pm which became the FIR. Due to the trauma and tension which the complainant was under after finding out that his sister who was living with him had been brutally murdered and that his aged blind mother had been pushed to the floor where she became unconscious we find that the delay in lodging the FIR has been explained and as such the delay in lodging the FIR is not fatal to the prosecution case based on the particular facts and circumstances of this case.

(b) In our view the foundation of the prosecution's case rests on the evidence of the eye witnesses to the murder whose evidence we shall consider in detail below;

(i) **Eye witness PW 2 Muhammed Anwar.** He was the neighbor of the deceased and had been living 4.5 feet away from her house for the last four years. He knew the appellant and the deceased who were husband and wife who according to his evidence regularly argued as corroborated by PW 3 Mansoor Ahmed the complainant. In his evidence he states that on 28.05.2018 he was at home when at about 2pm he heard noise of fighting and so he went to the house of the deceased and saw the accused who was the husband of the deceased attack and assault his wife (the deceased) with a churri which severely injured her and saw blood oozing from her. On seeing such incident he rushed to PP Khulabad where chowki in charge SIP Raza Muhammed Solanghi was present and disclosed the facts to him. His evidence is fully corroborated by PW 1 Raza Muhammed Solanghi. The eye witness was the neighbor of the accused and as such he was a natural and not a chance witness. He knew both the deceased and the appellant and since it was a day light incident and he saw the attack on the deceased by the appellant at close range there was no need for any identification parade or any question that he has not correctly identified the appellant. He is not related to either the deceased or the appellant. He is a completely independent witness. It was not suggested that there was any enmity or ill will between him and the appellant and thus he had no reason to implicate the appellant in a false case. He was not dented during his cross examination and gave his eye witnesses S.161 Cr.PC statement within hours of the incident which was not improved upon at the time of his evidence. We find his evidence to be reliable, trust worthy and confidence inspiring and believe the same. We can convict on this evidence alone which we believe provided that there is some other supportive or corroborative evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in **Farooq Khan v. The State** (2008 SCMR 917), 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.

(ii) PW 5 Khursheed Begum is not strictly an eye witness but the importance of her evidence is that she is the mother of the deceased and knew the appellant well and was present in the house at the time of the appellant entering the house. She may not have been able to see the appellant but we are of the view that since the appellant was married to her daughter she would have been able to recognize his voice, smell and mannerism's quite easily. According to her evidence the appellant continually was fighting with the deceased. She stated in her evidence that on the day of the incident the appellant came into the house and called the name of her daughter after which she told the appellant to go away however the appellant pushed her over and on his entering the house she heard hue and cries and she then fell unconscious. This witness was not a chance witness as she lived at the house where the incident occurred and was not dented during cross examination although she disliked the appellant we believe her evidence especially as the appellant admits in his S.342 Cr.PC statement that he came to the house and found his wife dead although he does not mention the presence of this PW.

Thus, based on our believing the evidence of the above two eye witnesses what other supportive/corroborative material is there against the appellant?

(c) That the medical evidence and post mortem report of PW 7 Dr. Aiman Khursheed who was the MLO who carried out the post mortem on the deceased fully supports the prosecution case and eye witness evidence in that she found the cause of death to be on account of multiple stab wounds.

(d) That the appellant was arrested on the spot in the washroom of the house when the police and eye witness PW 2 Muhammed Anwar reached the house whilst the dead body was lying on the floor of the house.

(e) That the blood stained churri was recovered next to the dead body at the time of the appellant's arrest on the spot and was sealed and sent for chemical examination.

(f) That the blood stained earth, blood stained clothes of the deceased and blood stained churri all resulted in a positive chemical report.

(g) That the appellant in his S.342 Cr.PC statement admits his presence at the scene and his arrest from the washroom by the police whilst the dead body is still in the house.

(h) His consistent arguing with his wife as evidenced by numerous PW's gave him a motive for the murder.

(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 *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 entry of the appellant into the house of the complainant by pushing aside the deceased's mother to the eye witness seeing him

murder his wife with a churri to his arrest on the spot along with the churri which was recovered at the scene while the deceased body was still in the house.

(j) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case by for example making up his arrest at the washroom (which the appellant admitted himself in his S.342 Cr.PC Statement or by planting the churri) and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mustaq Ahmed V The State** (2020 SCMR 474

(k) That it does not appeal to reason, logic or commonsense that the mother of the deceased who was a semi eye witness would let the murderer of her daughter go scot free by substituting the appellant with an innocent person. In this respect reliance is placed on **Allah Ditta V State** (PLD 2002 SC 52). Likewise on finding his wife dead it does not appeal to reason, logic or commonsense that the appellant after such an awful discovery would casually go to relieve himself in the washroom rather than immediately calling the police or alerting any of his neighbors if he was innocent of his wife's murder.

(l) 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 simply one of false implication. The appellant did not give evidence on oath or call any DW in support of his defense case which was basically false implication simpliciter. He admits being at the house where the murder took place and even being arrested from the washroom of that house whilst the dead body of the deceased was in the other room. As discussed above none of the PW's had any reason to falsely implicate the appellant in this case. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence the defence case (which we disbelieve) has not at all dented the prosecution case.

12. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction.

13. With regard to sentencing the attack on the deceased which lead to her death was brutal and frenzied whereby the deceased was stabbed at least 9 separate times at nine separate places of her body including vital parts by the deceased and took the life of an innocent young mother and deprived her two young children of their mother whose loss will be irreplaceable for them. The

brutality of the attack can be found in the medical evidence of PW 7 Dr. Aiman Khursheed a part of which is set out below for ease of reference;

SURFACE INJURIES:

Anterior Chest injury:

- *Right breast had two incised wounds, skin deep, size 3x1x1.5 cm medical to nipple*
- *Size 4x2x0.5 cm lateral to nipple*
- *Left Breast has one incised wound, skin deep, size 3x1x0.5 cm*

POSTERIOR CHEST INJURY

- *Incised wound on the right size at 10th intercostal space size 5x3x2 cm viscera deep.*
- *Left side at the level 9th intercostal space, stab wound, cavity deep, size 5x2 cm.*

LEFT LATERAL INJURY

- *Chest wall showing stab wound size 20x4cm*
- *At epigastric region has an incised wound size 4x1x5cm with one adjacent incised wound on the right lateral side size 4x5x5 cm skin deep.*

ANTERIOR ABDOMEN WALL: *Left Lateral, left lower quadrant having stab wound cavity deep size 6x4 cm*
Incised wound on both lower limbs just below knee each skin deep approx. 12x4x2cm, multiple incised wound over both upper limbs of various sizes.

14. On particularly brutal crimes justifying the death sentence reliance is placed on *Tariq Iqbal V State* (2017 SCMR 596) which at P.596 held as under:

“3. Leave to appeal had been granted in this case only to consider as to whether the appellant deserved the sentence of death on the charge of murder or not and the stage of granting leave to appeal the merits of the appellant’s case had not been pressed before this Court. This shows that the question of the appellant’s guilt as well as all the factual allegations leveled by the prosecution against the appellant now conclusively stand settled and accepted. The appellant had trespassed into the complainant’s house, had killed the complainant’s wife and had robbed different articles available in the complainant’s house which articles had later on been recovered from the appellant’s custody. The appellant had made an extra-judicial confession before two witnesses and had also made a judicial confession before a Magistrate. The murder in issue had been committed by the appellant in furtherance of a robbery and a young lady in her prime had been butchered by the appellant inside her house by giving as many as 10 *churri* blows on different parts of her body. Such conduct displayed by the appellant clearly shows that the appellant is a cruel

desperate person who deserves no sympathy in the matter of his sentence. This appeal is, therefore, dismissed." (bold added)


15. Under these circumstances due to the particular brutality and callousness of the murder we hereby uphold the death sentence of the appellant. Thus, the appeal is dismissed, the impugned judgment is upheld along with its convictions and sentences and the confirmation reference is answered in the affirmative.

16. The appeal and confirmation reference stand disposed of in the above terms.


JUDGE


JUDGE 22/04/21

Announced in Open Court on 22/04/21 by


Arshad Hussain Khan J.

 22/04/21
Mohammed Keir Khan Agha J.