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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL JAIL APPEAL NO. D-101 OF 2021  
CONFIRMATION CASE NO. 21 OF 2021

MUHAMMAD ILYAS @ ILYAS V/S THE STATE

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

COMPOSITION OF BENCH

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA  
HON'BLE MR. JUSTICE KHADIM HUSSAIN TUNIO

(D.B.)

Date of last hearing (heard/reserved): 23-11-2023

Decided on: 30-11-2023

(a) Judgment approved for reporting YES



C E R T I F I C A T E

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: -

- (i) This slip is only to be used when some action is to be taken.
- (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
- (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

SGP, Kar-L (iii) 773-2000-4-2003-III

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

Cr. Jail Appeal No.D-101/2021  
(Confirmation Case No.21/2021)

Muhammad Ilyas @ Ilyas S/O Ghulam Hussain Jamali  
Confined in Central Prison, Hyderabad. . . . .Appellant.

**V/S.**

The State. . . . .Respondent.



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ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.D- 101 of 2021  
[Confirmation case No.21 of 2021]

DATE	ORDER WITH SIGNATURE OF JUDGE
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23.11.2023.

Mr. Asif Ali Talpur, Advocate for appellant.  
Mr. Shewak Rathore, Deputy Prosecutor General, Sindh.

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We have heard the learned counsel for appellant and learned  
Deputy Prosecutor General. Reserved for Judgment.

Tufail

Deputy Prosecutor General, Reserved for Judgment

Deputy Prosecutor General, Reserved for Judgment

IN THE HIGH COURT OF SINDH, CIRCUIT  
COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha  
Mr. Justice Khadim Hussain Tunio

**Cr. Jail Appeal No. D- 101 of 2021**  
[Confirmation Case No.21 of 2021]

Muhammad Ilyas @ Ilyas

Versus

The State

Appellant : Muhammad Ilyas @ Ilyas s/o Ghulam Hussain Jamali	Through Mr. Asif Ali Talpur, Advocate
Respondent : the State	Through Mr. Shahwak Rathore, Deputy Prosecutor General, Sindh
Complainant:	None present.
Date of hearing	23.11.2023
Date of judgment	30.11.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This Criminal Jail Appeal is directed against the judgment dated 25.08.2021, passed by the Additional Sessions Judge-I / MCTC, Dadu, in Sessions Case No.437 of 2020 (re: The State V Muhammad Ilyas @ Ilyas), emanating from Crime No.172 of 2020, registered at Police Station A-Section Dadu, under section 302 PPC, whereby the accused /



appellant Muhammad Ilyas @ Ilyas S/o Ghulam Hussain Jamali has been convicted u/s 302(b) PPC and sentenced to death as ta'zir; however, subject to confirmation by this Court. The appellant was also directed to pay compensation of Rs.200,000/- [Rupees Two Lac] to the legal heirs of the deceased Ghulam Hussain as provided under section 544-A Cr.P.C.

2. The facts of the prosecution case as per FIR are as under:-

*"On 20.08.2020 complainant Muhammad Azeem Jamali lodged FIR stating therein that he used to cultivate land, his elder brother Ilyas usually demanded share of land from his father Ghulam Hussain, his father told him that he will distribute the land to all of them, however, his brother Ilyas often exchanged harsh words with his father Ghulam Hussain and was annoyed. On 16.08.2020, he, his brother Muhammad Saleem, Father Ghulam Hussain went to visit their land, his father was ahead of them, meanwhile his brother Ilyas having sickle in his hand and hatchet on his shoulder came out from house, as soon as he arrived, he asked his father that he will not spare him today. Thereafter Muhammad Ilyas inflicted hatchet blow on the head of his father Ghulam Hussain, on receiving injury, his father while raising cry fallen down on the ground. Then accused Muhammad Ilyas caused injury on back side of head of his father with top edge of sickle. He and his brother Saleem rushed towards their father by raising cries and issuing Hakals. They came near to their father and saw that he had sustained injuries from which blood was oozing. They arranged conveyance and took their father to Civil Hospital Dadu, wherefrom his father was referred to Nawabshah hospital for further treatment. On 19.08.2020 his father died at Nawabshah hospital. Thereafter they brought the dead body at Civil Hospital Dadu. After conducting postmortem the dead body was handed over to complainant for burial and after completing funeral rites complainant appeared at PS and lodged the FIR."*

3. After usual investigation, police submitted challan of the case before the concerned Court. After completing necessary formalities, learned trial court framed charge against the accused, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined seven (07) witnesses who exhibited various documents and other items. The statement of accused under Section 342 Cr.P.C was recorded wherein he denied the allegations of prosecution witnesses, however, neither he examined himself on Oath nor produced any witness in his defense.



5. On conclusion of the trial, the learned trial Court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the appellant vide impugned judgment, as set out earlier in this judgment, hence the appellant has preferred this appeal against his conviction.

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

7. It is noted that vide order dated 20.06.2023 the service upon complainant has been held good and as such his interest shall be looked after by learned A.P.G.

8. Learned counsel for the appellant has contended that he is innocent of any wrong doing and that he has been falsely implicated in this case by the complainant party; that there was a four day delay in lodging the FIR which gave the complainant time to concoct a false case; that there are material contradictions in the PWs' evidence which renders their evidence unreliable; that the ocular evidence is contradicted by the medical evidence; that no incriminating article has been recovered from the appellant and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the case of **Amir Muhammad Khan versus The State** [2023 SCMR 566].

9. On the other hand, learned Deputy Prosecutor General Sindh has fully supported the impugned judgment and contended that the evidence of the eye witnesses to the incident was reliable and confidence inspiring and they had fully implicated the appellant in the murder of the deceased in a brutal manner; that police recovered crime weapon / hatchet from the crime scene; that the chemical report relating to the bloodstained earth secured from the place of incident, bloodstained clothes of the deceased and appellant's



clothes were all positive and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and as such his appeal should be dismissed and his conviction and sentence be maintained. In support of his contentions he placed reliance on the cases of **Sajid Mehmood versus The State** [2022 SCMR 1882] and, **Shahsher Ahmad and another versus The State and others** [2022 SCMR 1931].

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant case laws including those cited at the bar.

11. Based on our reassessment of the evidence of the PWs especially the medical evidence and other medical reports and recovery of blood and murder weapons (sickle and hatchet) at the crime scene, we find that the prosecution has proved beyond a reasonable doubt that Ghulam Hussain (the deceased) was hit over the head with a hatchet/sickle on 16.08.2020 at about 6pm at the agricultural land situated near village Shah Muhammed Jamali which lead to his death on account of such injuries on 19.08.2020 at Nawabshah hospital.

12. The only question left before us therefore is whether it was the appellant who murdered the deceased by causing hatchet/sickle blow to his head at the said time, date and location?

13. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

- (a) It is true that the FIR was lodged 4 days after the incident however we find that this delay in the FIR has been explained. Initially the deceased was hit over his head by a hatchet/sickle at 6pm on 16.08.2020 however



the deceased did not die immediately instead he was rendered unconscious with severe wounds and was transported by the complainant to Civil Hospital Dadu where he received first aid treatment before he was referred to Nawabshah Hospital where he died on 19.08.2020. His body was then transported back to Civil Hospital Dadu where a post mortem was carried out and thereafter the body of the deceased was handed over to his relatives for burial who immediately after burying the body of the deceased lodged the FIR. As such any delay in lodging the FIR has been fully explained and is not fatal to the prosecution case based on the particular facts and circumstances of this case. In this respect reliance is placed on the case of **Muhammed Nadeem alias Deemi versus The State** (2011 SCMR 872). In fact since the deceased was the father of the accused and the eye witnesses were also sons of the deceased/father if the deceased had lived it might be that no FIR would have been lodged as in essence it was a close family matter.

- (b) That the appellant is named in the FIR with the specific role of murdering the deceased by hitting him over the head with a hatchet and sickle.
- (c) We find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether we believe their evidence whose evidence we shall consider below;
  - (i) **Eye witness PW 1 Muhammed Azeem. He is the complainant and son of the deceased.** According to his evidence the accused who was the eldest son of the deceased used to ask the deceased to give him his share of the joint land however the deceased told him that the land would be distributed equally among all legal heirs and on account of this dispute the accused was annoyed and used to exchange harsh words with the deceased. On 16.08.2020 he, his brother PW 2 Muhammed Saleem and his father (the deceased) went to visit their land. At about 6pm the accused having sickle in his hand and hatchet on his shoulder came out from the family house and told the deceased that he would not spare him. He saw the accused inflict hatchet blow on head of the deceased who fell down and raised cries and the accused hit him on the head again with the sickle. He and his brother PW 2 Saleem rushed to their father by raising cries and hackles. He saw the incident from about 50 feet. The accused dropped the sickle and hatchet and ran away whilst he and his brother Saleem arranged to take the deceased to hospital for treatment as he was not dead but unconscious.



The witness is the son of the deceased however he had **no proven enmity or ill** will towards the accused, who was his brother, and had no reason to implicate him in a false case and thus the eye witness' mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371) and **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness knew the accused before the incident as he was his brother living with them and he saw him from about 50 feet in day light and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the accused. The cross examination of the accused also suggests that he does not deny his presence at the scene of the incident but only that it was not him who did the murder and that he has been falsely implicated.

This eye witness was not a chance witness as he was the brother of the accused and son of the deceased who lived together and all worked their father's land. His evidence has not been materially improved upon from his FIR and his presence at the scene is corroborated by PW 2 Muhammed Saleem who is also his brother. He did not give chase to the appellant as his first priority was to attend to his injured father and transport him to hospital as he was still alive after the accused attacked him albeit seriously injured and unconscious. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the accused.

We can convict on the evidence of this sole eye witness alone although it would be of assistance by way of abundant caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That 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 and believe the same.

In this case however there is another eye witness namely PW 2 Muhammed Saleem. He is the brother of the complainant and the accused and son of the



deceased. His evidence corroborates the evidence of the complainant in all material respects. He also knew the appellant as he was his brother. He saw the appellant attack the deceased with hatchet and sickle from 60 feet in daylight. He is named in the FIR as an eye witness. He gave his section 161 Cr.PC statement with promptitude which fully implicated the appellant in the murder of the deceased which was not materially improved on at the time of giving his evidence. He also was not a chance witness and gave his evidence in natural manner. He was not dented during a lengthy cross and we find his evidence to be trust worthy reliable and confidence inspiring and we believe the same and place reliance on it.

Thus, based on our believing the evidence of the eyewitnesses mentioned above what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of *Muhammad Waris v The State*, (2008 SCMR 784) which held as under.

*"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"*

- (d) That it does not appeal to logic, common sense or reason that a brother (the complainant) would let the real murderer of his father (deceased) get away scot free and falsely implicate an innocent person, also his own brother, by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).
- (e) That the medical evidence and medical reports as discussed above fully support the eye-witness/prosecution evidence. It confirms that the deceased died from being hit over the head by a sharp cutting object i.e hatchet and or sickle. Even if there is some discrepancy between the medical and ocular evidence it is well settled by now that the ocular evidence will prevail. In this respect reliance is placed on the cases of **Muhammed Riaz V Muhammed Zaman** (PLD 2005 SC 484), **Muhammad Hanif v. The State** (PLD 1993 SC 895), **Amir Khan v. The State** (2000 SCMR 1885), **Sajid Mehmood** (Supra) and **Shamsher Ahmad** (Supra).
- (f) That the murder weapons i.e Sickle and hatchet were recovered at the scene and as per chemical report were stained with human blood.
- (g) That it has not been proven through evidence that the IO PW 7 Ali Haider had any enmity or ill will towards the appellant and had any reason to falsely implicate



him in this case, for instance by planting the sickle and hatchet (murder weapons) at the crime scene and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

- (h) That as mentioned in the FIR and the evidence of the two eye witnesses the appellant had a motive for murdering the deceased. Namely, that he was not giving him his share of the land as the eldest son.
- (i) That all the PWs 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 the cases of **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 time the complainant, PW 2 Saleem and the deceased left their house to go to their lands to the enraged accused murdering his father through hatchet/sickle and the being arrested to the recovery of the hatchet and sickle at the crime scene.
- (j) 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 on account of enmity but this is only a bare allegation. No evidence has come on record to support this allegation and the appellant did not give evidence on oath or call any DW in support of his defence case. Thus we disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring evidence of eye witnesses and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

14. Thus, based on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eye witness evidence and other corroborative / supportive evidence mentioned above, we find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and uphold his conviction. With regard to sentencing, the



appellant committed the brutal pre-meditated murder of his father in front of his other brothers simply because his father would not give him his share of the land. There are no mitigating factors and as such his death sentence is upheld.

15. Consequently, the appeal is **dismissed** and the confirmation reference is answered in the **affirmative**.

*\*Hafiz Fahad\**