

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

**CRIMINAL APPEAL S-75 OF 2007**  
**MUHAMMAD ISMAIL V/S THE STATE**

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

**COMPOSITION OF BENCH**

**HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA**

**(S.B.)**

Date of last hearing (heard/reserved): 23-01-2023  
Decided on: 30-01-2023

(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

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PRESENTED ON 02-04-2007  
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IN THE HIGH COURT OF SINDH  
HYDERABAD CIRCUIT,  
HYDERABAD.

Cr. Appeal No. S- 75 of 2007.

Muhammad Ismail S/o Allahdino  
adult, Muslim, Machhi by caste,  
R/o Sakrand, District Nawabshah,  
at present confined in Central  
Jail, Hyderabad, Sindh..... Appellant.

Vs.

The State..... Respondent.

APPEAL UNDER SECTION 410 CR.P.C.

Being aggrieved by and dissatisfied with the Judgment and conviction dated 27.03.2007 passed by learned 02<sup>nd</sup> Additional Sessions Judge, Nawabshah (Mr. Masood Ahmed Kourajo) in S.C.No.128/2000 Re- State Vs. Muhammad Ismail & others (Crime No.82/2000 of PS Sakrand U/S 302, 109, 34 PPC) convicting & sentencing the appellant U/S 302 (B) PPC to suffer Imprisonment for life for committing murder of deceased Gulab and shall also pay Rs.3,00,000/- as compensation to heirs of deceased Gulab and in default of payment thereof, he shall suffer SI for six months more and also sentenced him to suffer imprisonment for life for committing murder of deceased Mst. Najma and shall also pay Rs.3,00,000/- as compensation to heirs of deceased Mst. Najma and in default of payment thereof, he shall suffer SI for six months more with the benefit of Section 382-B Cr.P.C. while his co-accused Shoukat and Anwar are released U/S 365-II Cr.P.C. while

03/04/07

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

Criminal Appeal No.S- 75 of 2007

DATE	ORDER WITH SIGNATURE OF JUDGE
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23.01.2023.

Syed Tarique Ahmed Shah, Advocate for appellant.  
Ms. Sana Memon, A.P.G for State.

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Appellant is present on bail. I have heard learned counsel for the appellant and learned A.P.G for State. This was a date and time fixed matter and the name of learned counsel for complainant appears in cause list however, he has preferred to remain absent. Since this was an old case of 2007, in the interest of justice, I did not see any justification in delaying it any longer simply because the complainant's counsel did not choose to put his appearance. Reserved for judgment.

JUDGE

Tufail



Eye witness unreliable

101

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-75 of 2007

Muhammad Ismail

Versus

The State

Appellant : Muhammad Ismail (present on bail)	through Syed Tarique Ahmed Shah alongwith Mr. Ammar Ahmed, Advocate
Respondent : The State	through Ms. Sana Memon, A.P.G. Sindh
None present for complainant	
Date of hearing	23.01.2023
Date of judgment	30.01.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-This criminal appeal is directed against the judgment dated 27.03.2007, passed by the learned IInd Additional Sessions Judge, Nawabshah, in Sessions Case No.128 of 2000 (re: State V Muhammad Ismail and others), emanating from Crime No.82 of 2000, registered at Police Station Sakrand, under sections 302, 109, 34 PPC, whereby the appellant has been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life each for committing murders of deceased Gulab and Mst. Najma. He was also directed to pay Rs.300,000/- each as compensation to the legal heirs of deceased Gulab and Mst. Najma separately as provided under section 544-A Cr.P.C; and, in case of non-payment of the said compensation, the appellant shall further undergo R.I for 06 months,

for each offence. He was awarded benefit of section 382-Cr.P.C. However, both the sentences were ordered to run concurrently. Whereas co-accused Shaukat and Anwar were acquitted of the charge while extending the benefit of the doubt.

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

*"That, on 16.05.2000 complainant Mouledino lodged FIR at P.S Sakrand stating therein that he was hari of Ghulam Mustafa Unar. They were 06 brothers and Gulab aged about 40 years was elder to them. There were houses of Anwar Machi and others towards their northern side. On the day of incident at evening time, he along with his brothers Hussain Bux and Gulab were available in the field and were irrigating the field of Ghulam Mustafa Unar. In the meanwhile, at about 07:00 p.m, Muhammad Ismail armed with gun and Muhammad Anwar armed with hatchet came over there and Muhammad Ismail told Gulab, the brother of the complainant, that since he (Gulab) had illicit relations with his sister Mst. Najma aged about 30 years, hence he will be done to death and accused Muhammad Ismail fired from his gun at Gulab while accused Anwar inflicted hatchet blows. Gulab fell down on the ground on receipt of fire arm injuries. Complainant party raised cries which attracted his brother Ghulam Nabi, while the accused persons went away towards their houses; and their brother Gulab had succumbed to injuries. It is further stated that in the meantime they heard cries from the house of accused Anwar and others and as such they rushed there and saw that accused Anwar Machi was inflicting hatchet blows to his wife Mst. Najma while accused Muhammad Ismail straightly fired at Mst. Najma from his gun, and on receipt of such fire-arm injury, she fell down and died. Thereafter, complainant went to police station and lodged report that the accused have committed murder of his brother Gulab and Mst. Najma at the instance of Aslam and Shaukat."*

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed charge (Ex.2) against the accused/appellant as well as co-accused Shaukat Ali and Anwar, to which they pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 09 witnesses and exhibited numerous documents and other items. The statements of both accused were recorded under section 342 Cr.P.C (Exh. 19, 20 and 21) whereby they denied the allegations leveled against them and claimed their false implication by the complainant.



5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant Muhammad Ismail, as stated above; however, acquitted the co-accused Shaukat and Anwar.
6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.
7. Learned advocate for the appellant has contended that the appellant is innocent and has been falsely implicated in this case by the complainant party; that the evidence against the appellant is shaky and full of contradictions but the learned trial Court has not appreciated the same; that the impugned judgment suffers from irregularities and illegalities and is not sustainable in law. Learned counsel further contended that the statement of the appellant under section 342, Cr.P.C has been recorded in stereo type manner and the incriminating pieces of evidence were not even put to him for the purpose of seeking his explanation and, therefore, such pieces of evidence cannot be relied upon for the purpose of convicting the appellant. In support of his contentions he placed his reliance on the cases of **Akhtar Ali and others V The State** (2008 SCMR 6), **Muhammad Imran V The State** (2020 SCMR 857), **Muhammad Asif V The State** (2017 SCMR 486), **Sardar Bibi and another V Munir Ahmed and others** (2017 SCMR 344), **Imtiaz alias Taj V The State and others** (2018 SCMR 344) and **Muhammad Arif V The State** (2019 SCMR 631).
8. On the other hand Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has supported the impugned judgment. In support of her contentions, she placed reliance on the case of **Mst. Sughra Begum and another V Qaiser Pervez and others** (2015 SCMR 1142).
9. I have heard the arguments of the learned counsel for the appellant and learned Additional Prosecutor General Sindh and gone through the entire evidence which has been read out by the learned



counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law.

10. The learned counsel for the complainant was called absent without intimation despite this matter being date and time fixed and the complainants name appearing in the cause list. This is an old case of 2007 (15 years old ) and I decided that it would not meet the ends of justice to adjourn the appeal any longer simply because the learned counsel for the complainant preferred to remain absent and as such I have proceeded to decide this appeal.

11. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports and blood and empties at the crime scenes I find that the prosecution has proved beyond a reasonable doubt that Gulab and Mst.Najam (the deceased) were shot and murdered by firearm respectively on 16.05.2000 at about 7pm in the lands of Ghulam Mustafa Umar and at the nearby house of accused Anwar respectively.

12. The only question left before me therefore is whether it was the appellant who murdered both the deceased by firearm at the said time, date and locations?

13. After my reassessment of the evidence I find that the prosecution has **NOT** 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) That the FIR was lodged with promptitude **however** the complainant's FIR is completely at odds with the evidence which he gave at trial. According to the FIR he was present with his brother Ghulam Hussain on the land of Ghulam Mustafa Umar on 16.05.2020 when Ismail accused deceased Gulab of having illicit relations with his sister Ms Najma and shot him with a shot gun and Anwar hit him with Hatchet. In his evidence however the complainant states that he, Ghulam Nabi and women folk were present in his house when he heard gun fire shots from the land which was half a Jareb away and came out of our house in a street and saw accused Ismail armed with gun, Ali Anwar and Shoukat with hatchet, Aslam with DDBL who fired at them who fell to the ground in order to save themselves



and then saw deceased Gulab lying on the earth and the accused heading towards Anwar's house. As such according to his FIR which was lodged with promptitude he was present as an eye witness to the murder of deceased Gulab by the appellant but according to his evidence he was not. If he was not present how did he even hear Ismail say anything to deceased Gulab about his sister let alone witness the murder of Gulab. In his FIR he does not mention being fired at whilst he claims to be fired at in his evidence by Aslam. In his FIR he only names the appellant and Anwar whilst in his evidence he also states that Shoukat, Aslam and Ibrahim were also present. I find these contradictions in the FIR and evidence to be of **material significance** and find that I cannot believe or safely rely on the evidence of the complainant as the appellant being the person who shot the deceased Gulab. In this respect reliance is placed on **Akhtar Ali** (Supra).

(b) That according to the complainants FIR he and his brothers Ghulam Nabi and Ghulam Hussain then heard cries from Anwar's house and as such they went to Anwar's house and saw Anwar aim a hatchet blow at his wife deceased Ms Najma and the appellant shoot her with his shot gun. None of the brothers had any relationship with deceased Ms Najma so it does not appeal to logic commonsense or reason that they would leave their dead brother and go to the cries at Anwar's house especially as they were unarmed. The complainant in his evidence clarifies that he saw the murder of Ms Najma whilst peeping over the hedge. However the complainant's story of being able to peep over the top of the hedge is completely belied by PW 6 the tapedar who says that it was impossible to see Ms Najma's murder from over the hedge and as such I once again find the complainant a dishonest witness in respect of the murder of Ms Najma. He is also a chance witness as according to PW 3 Hussain Bux he was living with him at Sher Bago at the time of the incident which again suggests that this witness was not even present at the time of the incident as he had no reason to be there on that day.

(c) The second eye witness to both murders is PW 2 Ghulam Nabi who is the brother of the complainant and the deceased. According to his evidence he is not even able to give the date of the incident and only says it occurred 18-19 months ago which is hardly confidence inspiring. He states that he was present with other women folk in the house along with the complainant when he heard shots. He came out and saw the appellant, Ibrahim, Shoukat, Anwar standing and deceased Gulab on the ground. As such he is not actually an eye witness to the murder of Gulab. He sees the appellant with a SBBL, Aslam with DBBL, Shaukat and Anwar with hatchets. They went away and then he heard cries from Anwar's house where he saw appellant Ismail shoot deceased Najma. Again he had no reason to leave his dead brother and go to Anwar's house where he could not have seen the appellant Ismail murder Najma because of the hedge. His evidence is flimsy and of a vey poor quality and I am unable to



believe the same .It appears that his so called eye witness is a put up witness by his brothers.

(d) The next eye witness is PW 3 Hussain Bux who was allegedly present with deceased Gulab at the time when he was shot. Again he is unable to specify even roughly the date of the incident and only states that it was about 12 months ago which casts doubt on his evidence. His evidence also contradicts that of the complainant and PW 2 Ghulam Nabi. As according to his evidence the appellant shot deceased Gulab in his presence but Anwar did not try to attack deceased Gulab with a hatchet. Instead Anwar restrained him. He raised cries which lead to the arrival of the complainant and PW 2 Nabi Bux who were clearly not eye witnesses to this murder. Again he whilst leaving his dead brother saw the appellant murder deceased Ms Najma over the hedge which was not possible. His evidence is flimsy and of a very poor quality and I am unable to believe the same. It appears that this so called eye witness is a put up witness by his brothers. He is also a chance witness as at the time of the incident he was living with the complainant at Sher Bago and had no reason to be at the place of the incident on that day.

(e) The evidence of PW 4 Dharoon who was the mashir of arrest and recovery is also completely contradictory to that of the police. According to him all the accused including the appellant were arrested on the spot at the vardat however according to PW 5 Mir Hussain who was the arresting officer he arrested the accused about 3 weeks later. According to his evidence he lived one and a half miles away and came when he heard the shots but it beggars belief that he could hear the shots from his house so far away. This also contradicts the evidence of the police who allegedly picked him up .He also claims that the dead body of Ms Najma was in her house when all the evidence is that she was shot outside the house hence the PW's allegedly saw her murder by the appellant. As such I find that his evidence cannot be safely relied upon and I discard the same.

(f) 2 empties were recovered at each vardat however only 3 were produced in court. Where did the fourth empty go keeping in view that the empties were not sealed in the presence of mashir PW 4 Dharoon.

(g) The father of the deceased Ms Najma surprisingly did not give evidence and the semen found on her clothes did not belong to deceased Gulab so the alleged motive of some kind of extra marital affair between deceased Ms Najma and deceased Gulab is not proven which allegedly lead to his murder by the appellant. Hence the appellant had no motive to commit the murder of either Gulab or Ms Najma.

(h) According to the evidence Anwar caused hatchet blow to both deceased however he was acquitted however the appellant

has been convicted on similar evidence except that he allegedly used a shot gun.

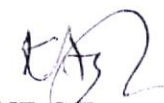
(i) Further doubt is caste on the witnesses by the fact that the ocular evidence is not particularly supported by the medical evidence. For example, the eye witnesses say that the deceased Gulab received two gun shot wounds but they do not say on which part of the body. PW 4 Dharoon states that one injury was on the forehead whilst PW 5 Mir Hussain who was the first IO states that there was only one firearm injury to the testicles. None of these places of injury tie in with the post mortem of deceased Gulab. With regard to deceased Mst. Najma the post mortem found that there was **charring** surrounding one of her injuries which indicates firing at a very close range which is contradictory to the so called eye witness evidence who do not claim that she was shot from a close range.

(j) That the appellant was acquitted in the illegal arms case

14. Based upon the above discussion there appears to be many doubts in the prosecution case that the appellant murdered either deceased Gulab or deceased Mst. Najma and it is well settled by now that the appellant is entitled to the benefit of a single doubt as a matter of right and not as a matter of concession.

15. As such, by extending the benefit of the doubt to the appellant, the appeal is allowed, the appellant is acquitted of the charge and the impugned judgment is set aside. The appellant on bail shall have his bail bonds discharged and is free to go.

16. The appeal stands disposed of in the above terms.

  
JUDGE 30/01/23