

✓  
Eye witness Believed

S22 (3)

2743  
15/6

PRESENTED ON 15.06.2013

Additional Registrar 15/6/13

IN THE HIGH COURT OF SINDH CIRCUIT  
COURT HYDERABAD

Criminal Appeal No. 59 of 2013

(Expired)

- 1- Ahmed son of Jadaro,
- 2- Sohbat son of Ahmed

BOTH muslims, adults, Arisar

Residents of village Hawali Arisar

Taluka & district Umerkot ----- APPELLANTS/ACCUSED

VERSUS

The State. -----

RESPONDENT

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

Cr. Appeal No.S-59 of 2013

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DATE ORDER WITH SIGNATURE OF JUDGE

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For hearing of main case.

11.12.2023.

Appellant Ahmed is present on bail.

Mr. Jahangir Khan Pathan, Advocate for appellants.

Mr. Abdul Hafeez, Associate of Mr. Mian Taj Muhammad Keerio,  
learned counsel for the complainant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.

I have heard the learned counsel for the appellant, complainant and the  
learned A.P.G. Reserved for judgment.

"Hafiz Fahad"

Eye witness Believed

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL APPEAL NO. S-59 OF 2013  
AHMED AND ANOTHER 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): 11-12-2023

Decided on: 18-12-2023

(a) Judgment approved for reporting YES

10/3/2

**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

Criminal Appeal No. S- 59 of 2013

AHMED AND ANOTHER

Versus

THE STATE

Appellant : Ahmed s/o Jadaro (present on bail).	Through Mr. Jahangir Khan Pathan, Advocate.
Respondent : The State	Through Ms. Sana Memon, Assistant Prosecutor General, Sindh.
Complainant.	Mr. Abdul Hafeez, Associate of Mr. Mian Taj Muhammad Keerio, Advocate is present.
Date of hearing	11.12.2023
Date of judgment	18.12.2023

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** This Criminal Appeal is directed against the judgment dated 27.05.2013, passed by the learned Sessions Judge, Umerkot, in Sessions Case No. 107 of 2009 (re: The State versus Ahmed and another), emanating from Crime No.20 of 2009, registered at Police Station Chhor, under section 302, 324, 109, 337-A(i), 337-F(i) PPC, whereby the appellants Ahmed and Sohbat have been convicted u/s 302(b) PPC as Ta'zir and sentenced to suffer imprisonment for life for committing the murder of deceased Rajab Ali and Rasool Bux. They were also directed to pay Rs.1,00,000/- (Rupees One Lac) each as compensation to the legal



heirs of deceased as provided u/s 544-A Cr.P.C; and, in case of non-payment of said compensation, the appellants shall further undergo S.I for 06 months more. However, benefit of Section 382-B Cr.P.C was also extended to the appellants. It is noted that during pendency of this appeal, the appellant Sohbat has expired and report in this regard has already been furnished by the Jail Authorities vide order dated 28.10.2013 and as such his appeal was not pressed.

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

*"On 28.10.2009 at 1500 hours, complainant Inam Bux lodged FIR, alleging therein that there is a dispute over plot in front of his house with Ahmed Arisar. It is further alleged in the F.I.R that on 26.10.2009, Ahmed and Obhayo called him at plot and asked to vacate the same, otherwise it would not be good for him, thereafter and they went away. It is further stated that on 28.10.2009, he, his brother Rasool Bux, Qadir Bux, nephew Rajab Ali, Mumtaz Ali, Shah Nawaz and Asif were available at bus stop near cabin of Hayat, when at about 1:30 P.M. a black colour lancer car No.C-6039, came from Dhoronaro side, stopped neat them, accused Sohbat armed with gun, Shahmir alias Punhoon armed with DBBL Gun, Ahmed armed with hatchet, Jabbar armed with DBBL Gun alighted from the said car saying that they will be killed, saying so, accused Sohbat made fire from repeater gun upon Rajab, who while receiving the fire shot fell down, Shahmir alias Punhoon made fire upon Rasool Bux, who after receiving injury fell down, accused Ahmed caused Jabbar made straight fire upon Qadir Bux, Shah Nawaz, Mumtaz and Asif, who also sustained injuries. Accused Ahmed caused Sharp side hatchet blow to Shah Nawaz, on fire reports villagers came running to which all accused went away while firing in the said car towards Chhor. It is further alleged in the F.I.R that they saw that Rasool Bux and Rajab Ali died at the spot, leaving Hayat and Qazi over dead bodies, referred the injured to hospital, thereafter complainant appeared at police station and lodged the F.I.R."*

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed the charge against the appellants, to which they pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 12 witnesses and exhibited numerous documents and other items. The statements of accused were recorded under section 342 Cr.P.C

whereby they denied the allegations leveled against them and claimed their false implication by the complainant. However, neither the appellants examined themselves on Oath nor led any evidence in their defense.

5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellants as stated earlier in this judgment. Hence, the appellants have filed this appeal against his conviction. It is to be noted that appellant Sobat has died and the appeal with regard to him was disposed of as not pressed.

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 counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of enmity; that the evidence of the eye witnesses cannot be safely relied upon as they are all related to each other and the deceased; that the so called dispute over the plot is made up; that the hatchet was foisted on the appellant by the police; that there are material contradictions in the evidence of the PW's which renders their evidence unreliable; that two co-accused have been acquitted and on the same set of evidence and he is entitled to similar treatment and for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the reported cases of **AMIR MUHAMMAD KIHAN versus The STATE** [2023 SCMR 566] and **MUHAMMAD HASHIM SHAH and others versus The STATE** [2023 SCMR 1768].

8. Learned Assistant Prosecutor General Sindh as well as learned counsel for the complainant, after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, they contended that there were 6 eye witnesses in this case all of whose evidence could be safely relied upon; that the medical evidence supported the

ocular evidence; that the motive had been proven and that the murder weapon (hatchet) had been recovered on the pointation of the appellant and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions, they placed reliance on the cases of **Qasim Shahzad and another versus The State and others** [2023 SCMR 117] and, **Muhammad Bashif and another versus The State and others** [2023 SCMR 190].

9. I have heard the learned counsel for the appellant as well as learned APG and learned counsel for the complainant and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, recovery of blood and empties at the crime scene which lead to both positive chemical and FSL reports I find that the prosecution has proved beyond a reasonable doubt that Rasool Bux (the deceased) was murdered by firearm and hatchet injuries and PW Shah Nawaz was injured by hatchet on 28.10.2009 at about 1.30pm adjacent to cabin of PW Hayat situated in village Hawali deh larh taluka Umerkot.

11. The only question left before me therefore is who murdered the deceased and injured Shah Nawaz by firearm and hatchet and hatchet only at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) That the FIR was lodged within a few hours of the incident and based on the particular facts and circumstances of the case I do not find such slight delay fatal to the prosecution case. This is because after the witnessing the murder and ferrying the injured to hospital the complainant immediately lodged the FIR as corroborated by PW Tajmal Singh who was the duty officer at the PS at the time of lodging the FIR as such any



slight delay in lodging the FIR has been fully explained. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

- (b) The appellant is named in the promptly lodged FIR with the specific role of hitting the deceased and injured Shah Nawaz with a hatchet. Thus there was no time for the complainant to cook up a false case against the appellant. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW which would motivate them to lodge a false case against the appellant.
- (c) In my view the prosecution's case primarily rests on the eye witnesses to the murder of the deceased and injury to Shah Nawaz whose evidence I shall consider in detail below;

- (i) **Eye witness PW 1. Imam Bux is the complainant and brother of the deceased.** According to his evidence two days prior to the incident at about 9am the appellant and co-accused (Obhayo who was acquitted based on a different and distinguishable role i.e he was not present at the time of the incident) came to his house and asked him to vacate the plot otherwise it would not be good for him. On 28.10.09 at about 1.30pm he along with the deceased, Rabjab Ali (since dead), Qadir Bux, Shah Nawaz, Mumtaz Ali and Asif Ali were standing at the bus stop of the village Hawali Arisar when the appellant armed with a hatchet, Sobat (expired appellant), Shamir and Jabbar all of whom had firearms came in a lancer car No.C-6039 and asked them why they had not vacated the plot. Whereupon Sobat fired at Rajab Ali and Shamir (Proclaimed Offender PO) fired at the deceased and the appellant caused hatchet blows to the deceased and Shah Nawaz. Mumtaz Ali and Asif also fell to the ground on account of fire shots. There upon the accused escaped from the crime scene in the same car. He took the injured to the hospital leaving Qazi and Hayat over the dead bodies and then he lodged the FIR.

This eye witness knew the appellant before the incident, and saw the appellant from a few feet away murdering the deceased by hatchet and injuring Shah Nawaz by hatchet so there is no case of mistaken identity and no need to hold an identification parade especially it was broad day light at 1.30pm. The accused is also named with specific a role in the promptly lodged FIR. In this respect reliance is placed on the cases of



**Amanullah v State (2023 SCMR 527), Qasim Shazad V State (2023 SCMR 117).**

Admittedly the eye witness was related to the deceased who was his brother however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has not been proven in this case by any reliable. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State (2009 SCMR 99)** **Nasir Iqbal alias Nasra and another v. The State (2016 SCMR 2152)** , **Ashfaq Ahmed v. The State (2007 SCMR 641)** and **Abdul Wahid (Supra)**,

This eye witness is not a chance witness as he was residing in the same locality as the deceased who was his relative who he had met up with at the bus stop with other relatives. His evidence was not materially improved on from his promptly lodged FIR. He gave his evidence in a natural manner and was not damaged during a lengthy cross examination I find his evidence to be trust worthy, reliable and confidence inspiring and I believe the same.

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his evidence to be trust worthy reliable and confidence inspiring. 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 I find the evidence of these eye witnesses to be of good quality and believe the same.

- (ii) **Eye witness PW 2 Shah Nawaz. He is related to the complainant, the deceased and other eye witnesses who are all his co-villagers.** His evidence corroborates the complainant's evidence in all material respects. He saw the appellant hit the deceased with a hatchet from close range and was also hit himself by the appellant with a hatchet which lead to him being injured as proven by the medical evidence. He knew the appellant and the incident took place in broad day right under his nose with the appellant even striking him with a hatchet. It is settled by now that the evidence of an

injured eye witness is deemed more reliable than usual eye witnesses. In this respect reliance is placed on **Aquil V State** (2023 SCMR 831). He is named in the promptly lodged FIR and gave his Section 161 Cr.PC statement on the same day which was not materially improved upon during his evidence at trial. He had no enmity with the appellant and had no reason to implicate him in a false case. He gave his evidence in a natural manner and was not dented during a lengthy cross examination and the same considerations apply to his evidence as to the complainant's evidence. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.

- (iii) **Eye witness PW 3 Asif Ali. He is related to the complainant and deceased and the injured Shah Nawaz.** His evidence corroborates that of the complainant and PW 2 Shah Nawaz in all material respects. He knew the accused before the incident and saw the incident in broad day light from a short distance. He was injured at the crime scene as supported by the medical evidence and it is settled by now that the evidence of an injured eye witness is deemed more reliable than usual eye witnesses. He was named in the FIR and gave his Section 161 Cr.PC statement as soon as he woke from consciousness at the hospital which was not materially improved upon during his evidence at trial. His evidence was not damaged during a lengthy cross examination and the same considerations apply to his evidence as to the complainants and PW 2 Shah Nawaz's evidence. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.
- (iv) **Eye witness PW 4 Qadir. He is closely related to the complainant and the deceased.** His evidence corroborates that of the complainant, PW 2 Shah Nawaz and PW 3 Asif Ali in all material respects. He knew the accused before the incident and saw the incident in broad day light from a short distance. He was injured at the crime scene as supported by the medical evidence and it is settled by now that the evidence of an injured eye witness is deemed more reliable than usual eye witnesses. He was named in the FIR and gave his Section 161 Cr.PC statement as soon as he woke from consciousness at the hospital which was not materially improved upon during his evidence at trial. He was not damaged during a lengthy cross examination and the same considerations apply to his evidence as to the complainant's and that of

PW's 2 Asif Ali's evidence. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.

- (v) **Eye witness PW 5 Mumtaz Ali.** He is related to the complainant, deceased and other PW eye witnesses mentioned above. This eye witness was again injured on the spot. His evidence corroborates that of the complainant and other PW's mentioned above. He was named in the promptly lodged FIR and gave his S.161 Cr.PC statement on the same day which was not materially improved upon during his evidence at trial. He had no enmity with the appellant and had no reason to implicate him in a false case. It was day light and as such he got a good look at the appellant from a close range who he already knew from before. The same considerations apply to his evidence as to the evidence of all the other eye witnesses as mentioned above. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.
- (vi) **Eye witness PW 6 Muhammed Ilayat.** He is related to the complainant. His evidence corroborates the other eye witnesses mentioned above in all material respects. He was not injured at the crime scene although he corroborates being left at the crime scene to look after the two dead bodies whilst the injured were taken to hospital. He is named in the promptly lodged FIR and gave his S.161 Cr.PC statement with relative promptitude which was not materially improved on during the trial. He had no enmity with the appellant and had no reason to implicate him in a false case. It was day light and as such he got a good look at the appellant from a close range who he already knew from before. The same considerations apply to his evidence as to the evidence of all the other eye witnesses as mentioned above. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.

Having believed the evidence of 6 eye-witnesses I turn to consider the corroborative/supportive evidence whilst keeping in view that it was it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784), at P.786 para 4 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"*



Thus, based on my believing the evidence of the 6 PW eye witnesses as mentioned above what other supportive/corroborative material is there against the appellant?

- (d) That it does not appeal to logic, commonsense or reason that close relatives of the deceased would let the real murderer of their close relative get away scot free and falsely implicate an innocent person 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 post mortem report fully support the eye-witness/ prosecution evidence that the deceased died from receiving a firearm injury **and incised wound** to the head/neck (i.e hatchet injury) as mentioned by the eyewitnesses and the injured eye witness Shah Nawaz (who also gave evidence) also received his injuries from a sharp incised instrument i.e a hatchet as mentioned by the eye witnesses in their evidence.
- (f) That the appellant was arrested two days after the incident and within 6 days of his arrest the appellant lead the police to the murder weapon (hatchet) on his own pointation which was hidden in a place which only he could have known about as confirmed by PW 7 Ghaulam Mustafa who was the mashir and the memo of recovery itself.
- (g) Notably, only the appellant was armed with a hatchet according to the eye witnesses and as such only he could have caused the hatchet blows to the deceased and Shah Nawaz and as such there is no case of throwing the net wider to rope in the appellant especially as it was he who had originally threatened the complainant to vacate the plot two days before the incident or face dire consequences and it was his son expired appellant Sobat who was with him at the time of the incident who caused fire arm injuries to some of the PW's.
- (h) That one day after the incident the police seized the car which the appellant and his co-accused alighted from which was abandoned and also contained the firearms used by the other co-accused in the offence.
- (i) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case, for instance, by foisting the hatchet on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed**



**V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO who was not dented during a lengthy cross examination whose evidence of arrest and recovery is supported by the mashir's evidence.

- (j) That the blood stained earth recovered at the wardai and clothes recovered from the deceased were sent for chemical examination which report found the blood recovered at the scene and on the clothes to be human blood.
- (k) The motive for the murder has come on record. Namely, that the deceased had refused to vacate the plot which was demanded by the appellant as per the evidence of the eye witnesses. As per evidence of the complainant there was no land record in respect of this land which is not uncommon in some small villagers in the interior of Sindh.
- (l) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I 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) **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669) and **Maskeen Ullah and another versus The State and another** [2023 SCMR 1568]. The evidence of the PW's provides a believable corroborated unbroken chain of events from the accused warning the appellant of dire consequences unless he vacated the plot to the appellant and his co-accused attacking the complainant party with firearms and in the case of the appellant a hatchet to the death of the deceased and serious injury to Shah Nawaz caused by hatchet to the recoveries of empties at the crime scene to the arrest of the appellant and the recovery of the hatchet on his pointation.
- (m) That the fact that some of the co-accused were acquitted is of no benefit to the appellant as either they had much lesser roles or were acquitted by way of compromise.
- (n) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was falsely implicated in this case and was not present at during the incident. However the accused did not give evidence under oath and did not call any DW to support his defence case. Even in his S.342 C.P.C statement he offers simple denials and does not even say where he was

supposed to be at the time of the incident or with whom. Thus, in the face of eye reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed**. SHO PS Chhor shall arrest the appellant who is on bail and return him to Central Prison Hyderabad to serve out the remainder of his sentence. A copy of the Judgment shall be sent to SSP Umerkot for compliance.

*\*Hafiz Fahad\**