

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Muhammad Saleem Jessar

Cr. Appeal No.D-02 of 2022
[Confirmation Case No.02 of 2022]

Cr. Jail Appeal No.D- 03 of 2022
[Confirmation Case No.02 of 2022]

Mashooque Ali

Versus

The State

Pauper Appellant Mashooque Ali S/o Muhammad Achar	through Mr. Asif Ali Talpur, Advocate
Respondent the State	through Mr. Shewak Rathore, Deputy Prosecutor General, Sindh
Complainant Ghulam Qadir alias Baboo	In person and has relied on learned DPG.
Date of hearing	13.06.2023
Date of judgment	15.06.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- This criminal appeal and criminal jail appeal are both directed against the judgment dated 05.01.2022, passed by the learned Sessions Judge, Tando Allahyar, in Sessions Case No.70 of 2021 (re: The State V Mashooque Ali), emanating from Crime No.19 of 2021, registered at Police Station B-Section, Tando Allahyar, under sections 302 PPC, whereby the accused / appellant

Mashooque Ali S/o Muhammad Achar has been convicted u/s 302(b) PPC and sentenced to death; however, subject to confirmation by this Court; he was also directed to pay compensation of Rs.500,000/- to the heirs of the deceased. Benefit of section 382-B Cr.P.C was also extended to the accused.

2. Facts of the prosecution case in brief, are as under:

"Complainant Ghulam Qadir alias Baboo has two daughters and three sons and his daughter Mst. Komal aged about 24½ years got married with Mashooque Ali s/o Muhammad Achar Siyal about 5/6 years back and after marriage they were spending their life happily, **thereafter they started to make quarrel with each other on petty matters.** According to complainant, his son in law was jobless, therefore, some days back, he along with his wife and daughter arrived at his house and started to live with him. Thereafter on 11.02.2021 complainant had gone to his work place and when at about 03-40 pm returned back to his home for lunch and reached at the door of his house, there he met with his nephew Gul Hassan s/o Rahim Bux and Muhammad Umer Qambrani, they disclosed him that Mashooque Ali is beating his wife Mst. Komal. **Thereafter they all three went inside the house and found that Mashooque Ali Siyal was holding sickle in his hand and he was striking sickle on the left neck side of Mst. Komal and she was trying to save herself and was making hue and cry.** According to complainant, they raised hackles to accused and asked him not to commit murder, in the while Mst. Komal sustained severe injuries and she fell down on the ground and blood was oozing, thereafter accused Mashooque **with his daughter Ume-e-Ruqia aged 03 years** fled away on the motorcycle, which was parked at the outer door of the house of the complainant. Then complainant went near to Mst. Komal, lifted her and found out that she has sustained three injures at her neck, one injury at left cheek and one injury at her left hand and due to those injuries, she succumbed to her death. Thereafter complainant informed to B-Section Police, police arrived and after completing formalities, shifted the dead body of deceased to Civil Hospital, Tando Allahyar for postmortem. After postmortem, complainant sent the dead body of deceased through his relatives and arrived at PS and lodged F.I.R."

3. After usual investigation, police submitted formal challan of the case before the concerned court. After completing necessary formalities, learned trial court framed charge (Ex.2) against accused Mashooque Ali, to which he pleaded not guilty and claimed trial vide his plea (Ex.2/A).

4. In order to prove its case the prosecution has examined 05 witnesses and exhibited numerous documents and other items and thereafter prosecution side was closed at Ex.9.

5. The statement of the accused / appellant was recorded under Section 342 Cr.P.C. at Ex.10, in which he denied the allegations leveled against him and claimed his false implication. However, he neither examined himself on oath nor produce any witness in his defence.

6. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the accused / appellant, as mentioned in the impugned judgment and has also sent reference to this Court u/s 374 Cr.P.C for confirmation of death sentence or otherwise, hence the appellant has preferred this appeal against his conviction.

7. The evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

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 hence the FIR was delayed for 5 hours; that none of the PW eye witnesses was present at the scene of the incident; that there are material contradictions in the PW's evidence which renders their evidence unreliable; that PW's, even if they were present, are all related and interested as such their evidence cannot be safely relied upon; that the ocular evidence is contradicted by the medical evidence; that the sickle was foisted on the appellant; that at the relevant time the appellant was not present at the place of incident and 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 cases of **Bashir Muhammad Khan V The State** (2022 SCMR 986), **Mohammad Shoaib alias Shahoo and others V The State** (2022 YLR 1837), **Jamal Khan V The State** (2020 P.Cr.L.J 1589) and **Ghulam Hyder through Superintendent, Central Prison V The State** (2020 YLR 2411).

9. Complainant Ghulam Qadir alias Baboo present in person does not want to engage independent counsel and has shown his full faith and confidence in learned D.P.G.

10. 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 the eye witnesses were corroborated by the medical evidence; that the murder weapon was recovered on the pointation of the appellant after his arrest 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 particular he stressed that due to the brutal and cold blooded murder of the deceased by the appellant, the death sentence awarded to him was fully attracted in this case. In support of his contentions he placed reliance on the cases of **Muhammad Abbas V The State** (PLD 2020 Supreme Court 620), **Noor Ahmed V The State** (2019 SCMR 1327), **Muhammad Akram alias Akrai V The State** (2019 SCMR 610) and **Rafaqat Ali and others V The State** (2016 SCMR 1766).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellants' counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. Based on our reassessment of the evidence of the PW's, especially the medical evidence, the blood stained earth recovered at the scene of the crime we find that the prosecution has proved beyond a reasonable doubt that on 11.02.2021 at about 1540 hours inside the room of the complainant's house situated at Ghazi Kalroo Mst Komal (the deceased) was murdered by having her throat cut by sickle and died on the spot on account of her injuries.

13. The only question left before us therefore is whether it was the appellant who murdered the deceased by cutting her throat with a sickle at the said time, date and location?

14. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted and sentenced 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 within 5 hours of the incident. This slight delay in lodging the FIR we find based on the particular facts and circumstances of this case has been fully explained and as such is not fatal to the prosecution case. This is because the complainant first had to call the police in respect of his deceased daughter who arrived and carried out legal formalities, he then had to take his deceased daughter to hospital where her post mortem was carried out before her body was returned to him and thereafter he immediately lodged the FIR. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi V The State** (2011 SCMR 872).

(b) That as the FIR was lodged with promptitude there was no time for the complainant to cook up a false case against the appellant in collusion with the police or any other party. The complainant was an eye witness to the murder and he names the appellant as the person who murdered his daughter with a sickle and as such has named him with a specific role in the FIR.

(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 especially in connection with the correct identification of the appellant whose evidence we shall consider in detail below;

(i) **Eye witness PW 2 Ghulam Qadir. He is the complainant and was the father of the deceased.** According to his evidence his daughter (the deceased) used to complain to him that her husband (the accused) used to quarrel with her on account of petty matters. His daughter and her husband had been living with him in his house for 2 to 3 weeks. That on 11.02.2021 he went to work and returned home for lunch at about 3.40pm when his nephew Gul Hasan and Umer met him and told him that the accused was quarreling with his daughter. All three then went to his house where he saw that the accused was carrying a sickle and was striking his daughter with it whilst his daughter was trying to defend herself. They tried to stop the accused but he caused three blows to the neck of deceased with the sickle and then ran away with his own baby daughter on a motorbike. Blood was oozing from the injuries of his daughter who died on the spot. He called the police who arrived and then the dead body of his daughter was taken for post mortem.

From the evidence it transpires that this witness is related to the deceased who was his daughter however no enmity or dispute has been proven between the eye witness and the appellant. There is an allegation that because the eye witnesses daughter had a love marriage he was annoyed but this can be discarded as a

reason for the complainant killing his daughter or having any enmity with the accused as the deceased and the accused had been married for over 6 years and had a daughter between them. If the appellant wanted to murder his daughter on account of the love marriage he would have done it within months of their marriage at their own home not after 6 years in his own house where he had invited them to stay. Thus, his 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), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663). The appellant was alone in the house with the deceased and his baby daughter at the time of the incident. The complainant was unarmed and was not in a position to stop the attack and according to him he was in a state of surprise and shock when he witnessed the incident.

This eye witness knew the appellant before the incident which occurred at about 3.30pm in broad day light in the complainants own house where the accused and the deceased were both living. He saw the attack on his daughter by the accused from only a few feet away which attack lasted a few moments and would have got a good look at the appellant who he already knew. Thus, there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. His presence at the scene of the incident is corroborated by PW Muhammed Umer who entered the house with him at the time of the murder of the deceased.

This eye witness was not a chance witness as he lives at the crime scene and was returning home for lunch. As noted earlier based on the particular facts and circumstances of the case, he lodged his FIR with promptitude where he named the appellant as the person who he saw hitting the deceased on the neck with the sickle and his FIR was not materially improved on during his evidence. 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 appellant who murdered the deceased. As in the FIR he also gives the motive for the murder namely the marital quarreling between the accused and the deceased.

We can convict on the evidence of this eye witness alone though it would be of assistance by way of 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 more than one eye witness.

(ii) Eye witness PW 3 Muhammed Umer. He is also related to

the deceased. His evidence corroborates that of PW 2 Ghulam Qadir in all material respects. He knew the appellant from before the incident which was in day light and he saw the appellant hitting the deceased on her neck with the sickle inside the complainant's house from a short distance so would have been easily able to recognize him. He is named as an eye witness in the FIR. He has no relationship or enmity with the appellant and had no reason to implicate the appellant in a false case. He gave his Section 161 Cr.PC statement one day after the incident which was not materially improved upon during the course of his evidence. He was also not a chance witness as he had come to visit the complainant who was his relative and he lived nearby. In this respect reliance is placed on the case of **Muhammed Akram alias Akrai** (Supra) His evidence was not dented despite a lengthy cross examination and in his evidence he also corroborates PW 2 Ghulam Qadir in respect of the motive for the murder i.e the marital quarrelling between the accused and the deceased. He was also present a day later and acted as mashir when the appellant was arrested by PW 5 Imran Akhtar with his baby daughter which further corroborates the evidence of PW 2 Ghulam Qadir that after murdering the deceased the appellant fled with his baby daughter. We believe his evidence in respect of the incident and in particular the correct identification of the appellant who murdered the deceased through sickle blows to her neck. The same considerations apply to his evidence as the evidence of PW 2 Ghulam Qadir.

Thus, based on our believing the evidence of the 2 eyewitnesses what other evidence/material supportive/corroborative or other wise 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)

(d) That apart from the actual murder the evidence of the eye witnesses is fully corroborated by the mashir of all the relevant documents PW 3 Muhammed Umar which included inspection of the wardat, recovery of blood at wardat, memo of arrest and memo of recovery of the murder weapon being the sickle on the pointation of the accused two days after his arrest.

(e) That the appellant was arrested by PW 5 Imran Akhtar with his baby daughter a day after the murder which further corroborates the evidence of PW 2 Ghulam Qadir that after murdering the deceased the appellant fled with his baby daughter.

(f) That it does not appeal to logic, commonsense or reason that a father would let the real murderer of his daughter get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammad Ashraf V State** (2021 SCMR 758)

(g) That the medical evidence and medical reports fully support the eye-witness/ prosecution evidence in that the deceased received cuts to her neck and major neck vessels caused by a sharp cutting instrument which caused her death. A sickle is a sharp cutting instrument. The fact that the deceased was also shown to have an incised wound on her left

hand also supports the prosecution case of the deceased being cut by a sickle as the wound on the hand is a defensive wound.

(h) That the murder weapon namely the sickle was recovered by the appellant on his pointation two days after his arrest which was hidden in a place which only he would have known about and as such could not have been foisted on him. That there was blood on the recovered sickle which lead to a positive chemical report.

(i) That nearly all the relevant police entries and memo's have been duly exhibited in support of the prosecution case.

(j) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case for instance by foisting the sickle on him 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).

(k) 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 affect 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 PW Umer saw the accused and the deceased quarreling to him and the complainant coming to the house of the complainant where they entered and saw the appellant hitting the deceased with the sickle on the neck and then escaping with his 3 year old child to the body of the deceased being pronounced dead at hospital to the corroborative/supportive medical evidence to the appellant being arrested a day later with his daughter to the appellant confessing to the crime to the police (inadmissible) to the appellant 2 days after his arrest leading the police to the place where he had secretly hidden the murder weapon (sickle) which was blood stained and recovered on his pointation which produced a positive chemical report.

(l) That the motive for the murder has been asserted in the FIR and has been proven throughout in the evidence which is a matrimonial dispute between the appellant and the deceased.

(m) 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 firstly false implication by the complaint on the basis of his love marriage with the complainant's daughter who he alleges killed his daughter for this reason. This plea has already been rejected earlier in this judgment; namely if the complainant was so infuriated by the marriage he would not have waited 6 years to kill his daughter and would not have done it in his own house. The appellant then claims to have been grazing cattle at the time of the incident however the appellant did not examine himself on oath and did not call any DW or even produce a shred of evidence in support of his defence case of

grazing cattle at the time of the incident. Thus, for the reasons mentioned above we disbelieve the defence case of false implication and alibi as an after thought in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

15. Thus, based on the above discussion 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.

16. With regard to sentencing we note that the motive for the murder of the deceased has been proven as being on account of the appellant/deceased marital dispute, that the murder was a brutal one where a young lady received several blows to the neck with a sickle but we note that the appellant has a three year old daughter who might one day need his support since she has already lost her mother and taking this factor into account we hereby reduce the sentence of the appellant from the death penalty to that of life imprisonment. Otherwise all the other fines etc imposed on the appellant in the impugned judgment shall remain in place.

17. As such the appeal is dismissed except in terms of modification in sentence as mentioned above and the confirmation reference is answered in the negative. The appellant shall have the benefit of Section 382(B) Cr.PC.