IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha

JAIL
CRIMINAL APPEAL NO.116 OF 2020

Appellant:	Ajoo son of Bashalloo Machi through Mr. Saleem Raza, Advocate.
Respondent/State:	Through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh
Date of hearing:	03.04.2024
Date of announcement:	17.04.2024

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Ajoo has preferred this appeal against the impugned judgment dated 21.01.2020 passed by the learned 1st Additional Sessions Judge/MTCT Thatta in Sessions Case No.08/2017 under F.I.R. No.24/2016 u/s. 302 PPC registered at PS Keenjhar Lake; whereby the appellant was convicted u/s. under Section 302(b) PPC as *Tazir* and sentenced to undergo life imprisonment with direction to pay compensation to the legal heirs of deceased in the sum of Rs.1,00,000/-. Such compensation shall be recoverable as arrears of land revenue. In case of default in payment of compensation he was ordered to suffer SI for 06 months more. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case as per FIR are that on 22.11.2016 at about 1700 hours near Sonda High School Ground, Taluka and District Thatta appellant/accused Ajoo murdered the deceased Noor Muhammad Machi by causing injuries with a knife(churri), hence this FIR was lodged against the applicant.

3. After completion of usual investigation charge was framed against the appellant/accused to which he pleaded not guilty and claimed to be tried.

4. In order to prove its case, the prosecution examined 07 witnesses who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The statement of the appellant/accused was recorded under Section 342 Cr.P.C. wherein he denied the prosecution allegations. However, the appellant neither examined himself on oath nor produced any witness in his defence.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 21.01.2020 convicted and sentenced the appellant as stated above, hence this appeal has been filed 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, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and that he has been falsely implicated in this case by the complainant on account of enmity; that the eye witnesses are unreliable as they are all related to the complainant and the deceased; that the medical evidence conflicted with the ocular evidence and in such like cases the ocular evidence would prevail; that the murder weapon (knife) was foisted on the appellant by the police and that 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 record.

8. Learned Additional Prosecutor General Sindh who was also representing 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, he contended that the FIR was lodged promptly, the eye witness evidence was trust worthy reliable and confidence inspiring and was to be believed; that the murder weapon (knife) was recovered from the appellant at the time of his arrest; that the medical evidence supported the ocular evidence and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions, he placed reliance on the cases of **Ijaz Ahmed v The State** (2022 SCMR 1577), **Sajid Mehmood v The State** (2022 SCMR 1882), **Qasim Shahzad V The State** (2023 SCMR 117),

Takdir Shamsuddin Sheikh v State of Gujarat (2012 SCMR 1869) and **Khadim Hussain v The State** (PLD 2010 SC 669).

9. I have heard the learned counsel for the appellant as well as learned APG 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 and the blood recovered at the scene of the crime I find that the prosecution has proved beyond a reasonable doubt that Noor Muhammed (the deceased) was murdered by a sharp cutting instrument on 22.11.2016 at 1700hrs near Sonda High School ground taluka and district Thatta.

11. The only question left before me therefore is who murdered the deceased by a sharp cutting instrument 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) The FIR was lodged within 1 and a half hours of the incident as such there was no delay in lodging the FIR which could give time for the complainant to cook up a false case against the appellant.

(b) The appellant is named in the promptly lodged FIR with the specific role of murdering the deceased by causing him knife injuries. Even otherwise **no specific /proven enmity** has come on record between the appellant and the complainant or any PW which would motivate him/them to lodge a false case or give false evidence against the appellant apart from the fact that the complainant and the deceased and the appellant were not on good terms.

(c) The prosecution's case rests on the eye witnesses to the murder whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Muhammed Hussain. He is the complainant and the deceased is his brother.** According to his evidence on 22.11.2016 at about 5.30 pm he and his brother/deceased were returning from Sonda Town where they had been at work and thereafter he bought some items. His brother was walking a head of him however when his brother/deceased reached near High School ground he saw the accused take out a churri from his shalwar and attack his brother/deceased and caused him numerous churri blows including on the back and front of his neck. His brother fell to the ground and PW Sohrab and Bashir reached the scene. The accused fled the scene and his brother was taken by Suzuki to hospital where he died en route as a result of his injuries.

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 evidence. 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) and **Ashfaq Ahmed v. The State** (2007 SCMR 641).

This eye witness **knew the appellant before the incident** as he was related to him and they both lived in the same village. At 5.30pm it would have been day light and the appellant was only 20 feet away when he saw the incident from close range and as such there is no case of mistaken identity and no need to hold an identification parade. He lodged his FIR shortly after the incident as explained earlier in this judgment which was not materially improved on during the course of his evidence. He was not a chance witness as he was living in the same house as the deceased/brother and they had gone to Sonda town together. He had **no proven enmity** or ill will with the appellant which would lead him to implicate the appellant in a false case. He gave his evidence in straightforward manner and was not damaged during a lengthy cross examination. I find his evidence to be reliable, trust worthy and confidence inspiring especially in relation to the identification of the appellant and believe the same and place reliance on it.

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/her evidence to be trust worthy, reliable and confidence inspiring and in this case I have found the evidence of this eye witness to be trust worthy, reliable and confidence inspiring especially in respect of the correct identification of the appellant and as such I believe the same and place reliance on it. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shahzad and another v The State** (2023 SCMR 117). His evidence is also of good quality and it is settled by now that it is not the length of the evidence which is of importance but its quality.

There are however 2 other eye witnesses.

(ii) These are eye witnesses PW 2 Sohrab and PW 4 Bashir. They are both independent witnesses from the same village as the complainant and the deceased. There evidence fully corroborates the evidence of the complainant in all material respects. They both saw the appellant who they knew as they were from the same village cause churri blows to the deceased from about 150 feet. They are not chance witnesses as they live in the same nearby village as the complainant, deceased and

appellant. They knew the accused from before so there is no case of mistaken identity in this day light incident which they saw from a short distance. They are both named in the promptly lodged FIR as eye witnesses. They were not dented despite a lengthy cross examination and they had no ill will or enmity to implicate the appellant in a false case. PW Sohrab gave his S.161 Cr.PC statement on the day of the incident and there has been no material improvement in the same and as such I find his evidence to be trust worthy reliable and confidence inspiring and believe the same especially in respect of the identification of the appellant. With regard to PW 4 Bashir it appears from the record that he did not give a S.161 Cr.PC statement and as such he could not be cross examined on his S.161 Cr.PC statement to test his evidence however since he was named in the promptly lodged FIR and his evidence corroborates that of the other 2 eye witness I am inclined to attach only a little weight to his evidence. In this respect reliance is placed on the case of **Sajid Mehmood** (Supra)

Having believed the evidence of the two eye witness and given little weight to the third eye witness I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) 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, commonsense or reason that a real brother would let the real murderer of his real brother 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 stab wounds and sharp incised wounds to his neck and other body parts which was where the eye witnesses in their evidence stated he was hit by a churri/knife which would cause such injuries. Even if there is some discrepancy in the number of churri/knife wounds it is well settled by now that ocular evidence if found to be trust worthy, confidence inspiring and reliable (as it has been so found in this case) will prevail over the medical evidence. In this respect reliance is placed on the case of **Qasim Shahzad** (Supra)

(f) That the appellant was arrested one day after the FIR was lodged and a knife (murder weapon) was recovered from him by the police on his person.

(g) 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 knife 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 and other police witnesses who were not dented during cross examination.

(h) 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) 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 appellant attacking the deceased with a churri/knife to the deceased dying en route to hospital on account of stab wounds to the accused being arrested the next day with knife (murder weapon) being recovered from his person.

(i) The motive for the murder appears to be a domestic dispute between the appellant and the deceased.

(j) 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 caste doubt on or dent the prosecution case. The defence case as set out by the appellant is simply false implication on account of the fact that he was arrested from his house. The appellant did not give evidence on oath or call a single defence witness in support of his claim of false implication on account of enmity and did not even elaborate on the nature of that enmity or call any one to prove that he was arrested from his house. Thus, in the face of 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 offence for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed.**

MAK/PS