

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-34 of 2017

[Ghulam Hyder versus The State]

Appellant : Through Mr. Abid Ali Mirjat advocate

Complainant : None present despite notice

The State : Through Mr. Shahid Ahmed Shaikh Addl: P.G

Date of hearing : 20.05.2024

Date of decision : 27.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- Appellant has challenged the Judgment dated 12.01.2017 passed by the learned 1st Additional Sessions Judge Dadu in Sessions Case No.835 of 2014 (*Re: The State versus Ghulam Haider*), outcome of Crime No.135 of 2014 registered at P.S Johi District Dadu under Sections 302 and 504 PPC, whereby he has been convicted and sentenced to suffer R.I for 25 years with fine of Rs.50,000/-, payable to be legal heirs of deceased, and in case of non-payment of fine amount he has to suffer S.I for six months more, however, benefit of Section 382-B Cr.P.C has been extended to him.

2. The brief facts of the case are that on 18.09.2014 at 2030 hours complainant Muhammad Siddique Jamali appeared at P.S Johi and reported that on 13.09.2014 he alongwith his brother Muhammad Ibrahim @ Kaloo, cousin Ghulam Nabi and maternal cousin Rustam Jamali were working at their lands, when at about 0930 hours accused Ghulam Haider Jamali having hatchet was seen standing under the Babul tree, who disclosed that he would cut the same on which Muhammad Ibrahim @ Kaloo restrained him, which annoyed the accused Ghulam Haider, who caused sharp side hatchet blows to Muhammad Ibrahim @ Kaloo on head and left side of neck, who fell

down while raising cries; that thereafter he (complainant) and PWs gave hakals to accused, who escaped away then they saw that Muhammad Ibrahim @ Kaloo died at the spot; after necessary legal formalities he lodged the subject FIR.

3. After usual investigation police submitted the challan and the learned trial court after completing necessary formalities framed the charge against the appellant to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined six (06) witnesses, who exhibited numerous documents and other items. Then statement of accused under Section 342 Cr.P.C was recorded whereby he denied the allegations leveled against him and claimed his false implication by the complainant party on account of previous enmity. However, he neither examined himself on Oath nor led any evidence in his defense.

5. After hearing the parties and assessing the evidence on record the trial court convicted and sentenced the appellant as mentioned in opening paragraph of this Judgment, hence appellant has preferred captioned appeal.

6. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of a family dispute and hence the FIR was delayed by 6 days which gave the complainant time to cook up a false case against him; that the eye witnesses did not witness the incident and as such their evidence should be discarded especially as they gave their S.161 eye witness statements 10 days after the incident; that the prosecution deliberately failed to produce the best evidence in that eye witness Ghulam Nabi was dropped by the prosecution without explanation; that the hatchet was foisted on the appellant by the police and he did not lead the police to it hidden at his house on his own pointation and as such 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 cases of **Mehmood Ahmad and 3 others vs. The State and another** [1995

SCMR 127], **Muhammad Asif vs. The State** [2017 SCMR 486] and **Muhammad Mansha vs. The State** [2018 SCMR 772].

7. On the other hand learned APG fully supported the impugned judgment. In particular, he contended that the delay in lodging the FIR had been fully explained; that the delay in recording the witnesses S.161 Cr.PC statements had also been explained; that the evidence of the eye witnesses was trustworthy and confidence inspiring and could be safely relied upon; that the medical evidence supported the ocular evidence and that the murder weapon (hatchet) had been recovered from the appellant on his pointation after his arrest and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed or in the alternative the appellant be convicted under S.302 © PPC. In support of his contentions he placed reliance on the cases of **Khadim Hussain vs. The State** [2010 SCMR 1090], **Sajid Mehmood vs. The State** [2022 SCMR 1882] and **Amanullah vs. The State and another** [2023 SCMR 527].

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

9. Based on my reassessment of the evidence of the PW's, especially the medical evidence and blood recovered at the crime scene, I find that the prosecution has proved beyond a reasonable doubt that Muhammed Ibrahim (the deceased) was murdered by an sharp cutting instrument on 13.09.2014 at about 9.30am at the agricultural land of the complainant towards the northern side of the top of Sakhani Shakh near village Babu Khan Jamali, deh Channa Johi.

10. The only question left before me therefore is who murdered the deceased with a sharp cutting instrument at the said time, date and location?

11. After my reassessment of the evidence on record, I find that the prosecution has **not** proved beyond a reasonable doubt the

charge against the appellant u/s 302 (b) PPC but has proved beyond a reasonable doubt the charge against the appellants u/s 302 (c) PPC for which I now convict him for the following reasons;

(a) That the FIR was lodged **after a delay of 5 days**. I find that this delay has not been fully explained. Admittedly, the complainant took the dead body to the hospital where it was subject to post mortem and then released to him the same day for burial purposes. Under such circumstances it would have been expected that the FIR would have been lodged the next day or at a maximum after two days yet 3 days have gone unexplained before the FIR was finally lodged. Usually such delay is fatal to the prosecution case however in this case I note that **on the same day after two hours** the incident was reported to the IO PW 6 Ghulam Abbas as per his evidence which is supported by a duly exhibited entry stating the complainant informed him that the appellant had murdered his brother/the deceased and hence he had gone to the hospital to complete legal formalities. As such based on the particular facts and circumstances of this case where the IO was informed by the complainant about the identity of the murderer within two hours of the incident I do not find the delay in lodging the FIR fatal to the prosecution case although it does put me on caution as only the fact of the murder and who committed it was disclosed at the time of the murder being reported by the police which potentially left time to elaborate on the murder story especially as no eye witness was mentioned in this early report to the police.

(b) I find that the entire prosecution case hinges on whether I believe the evidence of the eye witnesses whose evidence I shall consider in detail below;

- (i) **Eye witness PW 1 Muhammed Siddique is the complainant of the case and is related to both the deceased who is his brother and distantly to the accused.** According to his evidence on 13.09.2014 he, the deceased, his cousin Rustam and Ghulam Nabi were busy on their land when at 9.30am Ghulam Hyder/accused came their and starting cutting down a tree on their land. His brother/deceased told the accused to stop cutting the tree whereupon the accused became annoyed and abused his brother/deceased and hit him twice over the head with a hatchet before making his escape good. The complainant found that his brother/deceased was dead and took him to hospital and then informed the police. The body was released to him the same day for burial purposes and he lodged the FIR 5 days later despite informing the police about the murder and the identity of the murderer within 2 hours of the incident as mentioned above.

This eye witness was related to the deceased and the accused and no proven enmity has come on record between the complainant and the accused and as such it is settled by now that his evidence cannot simply be discarded and must be considered at its own worth.

The complainant knew the accused from before and the incident happened in front of him in broad day light at 9.30am in the morning and hence there is no need for an identification parade. He is not a chance witness as his house was nearby and he was working his land with his brother/deceased. He had no proven enmity or ill will with the accused and as such had no reason to implicate him in a false case. He gave his evidence in a straight forward manner and was not dented during 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.

- (ii) **Eye witness PW 2 Rustam.** He corroborates the evidence of complainant in all material respects. He also is not a chance witness and had no enmity or ill will to implicate the appellant in a false case. He gave his evidence in a straight forward manner and was not dented during cross examination. He, however, was not named in the promptly lodged police entry as an eye witness which entry was made within two hours of the incident. He was only named in the FIR which was lodged **5 days after** the incident. He S.161 Cr.PC statement was recorded **10 days after** the incident so it cannot be ruled out that his evidence was based on a case concocted between himself and the appellant after due deliberation and he was a planted witness. It is well settled by now that S.161 Cr.PC eye witness statements which are recorded after an unexplained delay of 2 days or more (let alone 10 days) are of no evidentiary value and cannot be relied upon. In this respect reliance is placed

§

120

on the case of **Muhammed Asif** (Supra) and as such I have disregarded the evidence of this eye witness.

Having believed the evidence of the sole eye witness as to the murder of the deceased and the identification of the murderer 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"

(c) That it does not appeal to logic, commonsense or reason that a 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).

(d) That the medical evidence and post mortem report fully support the eye-witness/prosecution evidence that the deceased died from receiving two injuries from a sharp cutting instrument in the place which he claims i.e a hatchet.

(e) 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 and other police witnesses who were not dented during cross examination. However I have excluded the hatchet from consideration as it was not put to the appellant in his S.342 Cr.PC statement as being recovered by him from his house on his own pointation which is a mandatory requirement of the law.

(f) 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).

(g) It is true that there was no independent mashirs however it has now become a judicially recognized fact that in such like cases independent members of the public do not want to involve themselves and as such today the fact that there are no independent mashir's is not of huge significance especially when the eye witness evidence is believed and the case happens in a small village where nearly every one is related to each other so there are hardly any independent mashirs available.

}

121

(h) 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 in his S.342 Cr.PC statement is simply false implication by the complainant. The appellant did not give evidence on oath or call a single defence witness in support of his defence case. 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 as an after thought which has not at all dented the prosecution case.


(i) However I find from the evidence on record that there was no prior ill will or enmity between the appellant and the deceased; that as admitted in the FIR and by the PW eye witnesses referred to above a sudden quarrel broke out between the appellant and the deceased over the cutting down of a tree which led to the appellant after being provoked by the quarrel on the spur of the moment to give two hatchet blows to the head of the deceased without premeditation which hatchet the appellant had on him and hence I find that the case falls within the purview of S.302 © PPC and find that the prosecution has proved its case in respect of this offence against the appellant beyond a reasonable doubt and hereby convict him and sentence him for this offence. In this respect reliance is placed on the case of **Azmat Ullah V The State** (2014 SCMR 1178) which held as under;

"A bare perusal of the FIR, the statements made by the eye-witnesses before the learned trial Court and the findings recorded by the learned courts below clearly shows that there was no background of any ill-will or bitterness between the appellant and his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a churri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead body had categorically observed that both the injuries found on the dead body of the deceased could be a result of one blow of chhurri. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, PPC. It has already been held by this Court in the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, PPC, now, attract the provisions of section 302(c) PPC. The case in hand was surely a case of lack of premeditation, the incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, PPC squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c) PPC." (bold added)

}

Further reliance is placed on the cases of **Raza and another v The State** (2020 SCMR 1185) and **Alamgir v Gul Zaman and others** (2019 SCMR 1415).

12. Based on the above discussion I find that the prosecution has not proved its case against appellant under S.302 (b) PPC **but** the prosecution has proved its case against the appellant under S.302 (c) PPC beyond a reasonable doubt and as such the appellant's conviction under S.302 (b) PPC is converted in to a conviction under S. 302 (c) PPC and the appellant is sentenced to time already served in custody and as such he shall be released unless wanted in any other custody case.

13. The appeal is disposed of as modified above. 

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

Cr. Jail Appeal No.S-34 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

20.05.2024.

Mr. Abid Ali, Advocate for appellant.

Mr. Shahid Ahmed Shaikh, Addl. Prosecutor General, Sindh.
=

I have heard the learned counsel for the appellant and learned A.P.G.
However, complainant and his counsel despite this being date and time fixed
matter are called absent without intimation as such interest of the complainant
looked up by learned A.P.G. Reserved for judgment.

Hafiz Fahad