

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Rasheed Ahmed Soomro

Cr. Jail Appeal No.D-121 of 2009
(Confirmation Case No.D-11 of 2009)

Mushtaque Ahmed

Versus

The State

Appellant : Mushtaque Ahmed	Through Syed Tarique Ahmed Shah, Advocate
Respondent : The State	Through Miss Safa Hisbani, A.P.G. Sindh
Date of hearing	03.06.2020
Date of judgment	09.06.2020

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This appeal is directed against the judgment dated 21.07.2009, passed by learned Additional Sessions Judge, Sanghar, in Sessions Case No.155 of 2003, arising out of Crime No.35 of 2003, registered at Police Station Mangli, under section 302 PPC, whereby the appellant Mushtaque Ahmed has been convicted u/s 302(b) PPC and sentenced to death on three counts subject to confirmation by this court. He was also directed to pay Rs.900,000/- as fine to the legal heirs of all three deceased in terms of section 544-A Cr.P.C. or in default thereof he shall undergo RI for six months more. He was also convicted and sentenced (1) under section 324 PPC to suffer seven years R.I with fine of Rs.20,000/- payable to injured P.W Mumtaz or in default he shall undergo for three months more R.I and (2) under section 337-F(ii) PPC to undergo three years R.I with fine of Rs.10,000/- as Daman payable to P.W Mumtaz Ali. As per impugned judgment, all sentences were ordered to run concurrently with benefit of section 382-B Cr.P.C being extended to the appellant.

2. The facts of the prosecution case as disclosed in the FIR are as under:-

"Complaint is that I used to reside alongwith my father and brothers in deh Sadrath, Taluka Sanghar. My mother had expired; therefore, my deceased father Khan Muhammad got contracted second marriage with deceased Mst. Jannat Bibi. My father was aged about 80/82 years and my step mother was aged about 50/52 years. My step mother got six sons and one daughter namely Mst. Sughran Bibi from her ex-husband. Marriage of Mst. Sughran Bibi was contracted with Mushtaque Ahmed S/o Sobho Khan Bhatti R/o Taj Colony Nawabshah. My step brothers Mumtaz Ali and Taj Muhammad used to reside together. Taj Muhammad was aged about 19/20 years. **Two days prior to this crime my step sister Mst. Sughran alongwith her husband Mushtaque Ahmed had come at our village and she complained that her husband Mushtaque Ahmed was often maltreating her on petty matters. Upon which we beseeched husband of our sister Mushtaque Ahmed whereupon he got annoyed and went away by issuing threats that he will not spare us.** Yesterday (i.e 14.07.2003) in evening time my father, step mother Mst. Jannat Bibi and step brother Taj Muhammad and step sister Mst. Sughran after having a dinner went to sleep in the Courtyard of our house. I and my brother Mumtaz went to sleep outside in cattle pan. At night time (0100) hours we heard cries from our house, thus I and my brother Mumtaz took torches in our hands and rushed at the venue of offence. On torch light we saw and identified husband of my step sister Mushtaque Ahmed who was causing "Churri" blows to my father on his face and abdomen. Another unidentified person if seen again could be identified, was causing "Churri" blows to my step mother Mst. Jannat Bibi on her face and abdomen. Meanwhile my step brother Taj Muhammad intervened, hence accused also attacked upon Taj Muhammad and caused him "Churri" blows on his face, chest and other parts of his body and he fell down. We challenged accused and my sister Mst. Sughran rushed towards us. My step brother Mumtaz tried to intervene. However, accused Mushtaque caused him "Churri" blows. On hue and cries both accused ran away from the spot by scaling over the wall of our house. Thereafter, we saw that our father Khan Muhammad, step mother Mst. Jannat Bibi and step brother Taj Muhammad had succumbed to their injuries and died. An intestine of my father came out from his abdomen due to grievous injuries. We reported matter to P.S Mangli on telephone as such police came and completed formalities." (bold added)

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

4. The prosecution in order to prove its case examined 11 PWs and exhibited numerous documents and other items. The statement of the accused was recorded under Section 342 Cr.P.C whereby he claimed false implication. He did not examine himself on oath or call any witness in support of his defence case.

5. Learned Additional Sessions Judge, Sanghar, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 21.07.2009, convicted and sentenced the appellant as

stated above, hence this appeal has been filed by the appellant 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 there was an unexplained delay of 7 hours and 30 minutes in lodging the FIR which enabled the complainant to cook up a false case against the appellant in connivance with the police who falsely implicated the appellant in this case who was otherwise entirely innocent, that the eye witnesses were not present at the time of the incident and were planted witnesses, that there were major contradictions in the evidence of the PWs and as such they could not be safely relied upon, that the identification of the appellant as the murderer could not be safely relied upon as it was a night time incident and there was no source of light, that the PW's were related and as such could not be relied upon, that no recovery had been made from the appellant and for any one 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 placed reliance on the cases of **Syed Saeed Muhammad Shah and another V The State** (1993 SCMR 550), **Nazir Ahmad V Muhammad Iqbal and another** (2011 SCMR 527), **Muhammad Shah V The State** (2010 SCMR 1009), **Muhammad Ibrahim V Ahmed Ali and others** (2010 SCMR 637), **Mst. Shazia Parveen V The State** (2014 SCMR 1197), **Hameed Gul V Tahir and 2 others** (2006 SCMR 1628), **Mst. Sughra Begum and another V Qaiser Pervez and others** (2015 SCMR 1142), **Muhammad Mansha V The State** (2018 SCMR 772), **Muhammad Asif V The State** (2017 SCMR 486), **Zafar V The State** (2018 SCMR 326), **Abdul Jabbar and another V The State** (2019 SCMR 129), **Mubeen alias Haji Muhammad Mubeen V The State** (2006 YLR 359), **Nazeer Ahmed V Gehne Khan and others** (2011 SCMR 1473), **Akbar V The State** (2019 MLD 491), **Ali Muhammad Brohi V The State** (2016 YLR 1878) and **Farooq V Musavir Ahmed and 3 others** (2020 PCr.LJ 328).

8. On the other hand learned APG appearing on behalf of the State as well as the complainant fully supported the impugned judgment and in particular contended that the eye witnesses were reliable, trust worthy and confidence inspiring and that they had correctly identified the appellant as committing the murders and attempting to murder PW 5 Mumtaz, that the medical evidence supported the eye witness evidence, that the recoveries supported the prosecution

case and as such the appeal against conviction should be dismissed and that the impugned judgment should be upheld.

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

10. In our view after our reassessment of the evidence based on the evidence of the PW eye witnesses PW MLO's, post mortem reports and other medical evidence, PW police witnesses and IO, recovery of churri from the spot and positive chemical reports we are satisfied that the prosecution has proved beyond a reasonable doubt that on 15.07.2003 at about 0100 hours at the house of Khan Muhammed Bhatti in Deh Sadrat Taluka District Sanghar Khan Muhammed Bhatti, his wife Mst. Jannat Bibi and her son Taj Muhammed were murdered by churri blows and that PW Mumtaz was attempted to be murdered by churri blows at the same house at the same date and time.

11. The only issue therefore, in our view, left before us is whether it was the appellant or some other third party who murdered the three deceased by churri blows and injured PW Mumtaz by churri blows.

12. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellant beyond a reasonable doubt that he murdered the three deceased and attempted to murder PW Mumtaz and hereby uphold the convictions and sentences in the impugned judgment for the following reasons;

(a) In our view there has been no lengthy unexplained delay in lodging the FIR. The incident took place at 1am on 15.07.2003 and within two hours of the incident according to his evidence PW 3 Qasim had telephoned the police and informed them of the incident which is corroborated by PW 9 Muhammed Yousif who was SHO of PS Mangli who made a roznamcha entry of the report and then proceeded to the place of incident where he found three dead bodies and the injured PW Mumtaz. Keeping in view the trauma of the triple murder of close family members and the need to transport the dead bodies to hospital we find that any delay in lodging the FIR has been adequately explained. Thus, there was no time to cook up a false story between the complainant and the police. Even otherwise no enmity between the complainant and the appellant has come on record and thus he had no reason to implicate the appellant in a false case. Furthermore, the appellant is specifically nominated in the FIR with a specific role which was confirmed by the eye witnesses during their evidence.

(b) The key witnesses in this case in our view are eye witnesses PW 3 Qasim

who is also the complainant, PW 4 Mst Sughran and PW 5 Mumtaz hence we will consider the evidence of these eye witnesses below.

(i) We start with eye witness **PW 5 Mumtaz** who in our view is the star eye witness. This is because his presence at the scene of the incident cannot be doubted because he was injured by the appellant with the churri as confirmed by MLO PW 11 Shabbir Ahmed. He was a natural witness and not a chance witness as he was residing with his mother and father and step brother all of whom were murdered by the appellant. **According to his evidence he saw the appellant causing dagger injuries to his mother, father and brother. He knew the appellant who was married to his sister** and as such there was no requirement of an identification parade. He had no enmity with the appellant and had no reason to falsely implicate him in this case. He witnessed the incident by the moon light and according to him the appellants face was open. He would have got a good look at the appellant as he got close enough to him to be injured by the appellant's churri which suggests that he could not have been more than one foot away from the appellant and as such he would have been easily able to correctly identify the appellant who he knew as he was related to him and the question of poor lighting based on the particular facts and circumstances of this case in terms of identification is irrelevant. His eye witness statement under S.161 Cr.PC was also taken without delay being at the earliest on the spot and at the latest within 2/3 days and he gave a week later a S.164 Cr.PC statement. He was not shattered during cross examination. It was his real father who was murdered and as such he would have no interest in substituting the appellant with the real murderer as he would want justice for his father and as such no question of substitution arises. He also **corroborates eye witness PW 3 Qasim** reaching at the spot at the time of the murder and **that PW 4 Mst Sughran the wife of the appellant was also staying at the house at the time of the murders.** We find no reason to disbelieve his evidence which we find reliable, trust worthy and confidence inspiring and find that he has correctly identified the appellant as the person who murdered the three deceased and injured him with a churri.

(ii) Eye witness **PW 3 Qasim** who is also the complainant **corroborates PW 5 Mumtaz in all material respects** except that he identified the appellant by torch light who he knew already as he was related to him. **According to his evidence he saw the appellant causing dagger injuries to his mother, father and brother.** He corroborates the churri injury to PW 5 Mumtaz. His real father was murdered so once again he would have no interest in substituting the appellant as the murderer if he was innocent. He had no enmity with the appellant and had no reason to falsely implicate him. Like PW 5 Mumtaz he was not a chance witness and would have got a good look at the appellant and would have been able to correctly identify him. The only difference in his evidence to that of PW 5 Mumtaz was that he states that the face of the appellant was muffled. However since he knew the appellant as he was related to him, he was close to the appellant and there was a source of light we find this contradiction inconsequential in terms of his correct identification of the appellant. He was not damaged during cross examination, he gave his S.161 Cr.PC statement timely and as with PW 5 Mumtaz we believe his evidence and that he has correctly identified the appellant as the person who murdered the three

deceased and injured PW 5 Mumtaz by churri blows

(iii) **Eye witness PW 4** Mst Sughran again is not a chance witness as she was staying in the house of her deceased mother as her husband (the appellant) had left her there following an argument. Her real mother was murdered and as such she had no reason to implicate any one falsely. She knew the appellant very well as he was her husband and identified him by torch light which corroborates PW 3 Qasim and **states in her evidence that she saw the appellant causing injuries to her mother, father and brother with a dagger and that PW 5 Mumtaz had also received injuries.** She gave her S.161 statement timely. She was not damaged during cross examination. As with PW 5 Mumtaz and PW 3 Qasim we believe her evidence and find that she has correctly identified the appellant as the person who committed the murders of her mother, step father and brother and injured PW 5 Mumtaz based on her easily being able to recognize the appellant being her husband, her proximity to him and the torch as her source of light whilst he was committing the murders. **She also corroborates the presence of PW 3 Qasim and PW 5 Mumtaz's at the time of the murders who she corroborates in all material respects in her evidence.**

(c) It is settled law that we can convict if we find the direct oral evidence of one eye witness to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan V The State** (2006 SCMR 1857). In this case we find 3 eye witnesses to be fully corroborative and reliable, trust worthy and confidence inspiring especially in terms of correctly identifying the appellant as the person who committed the murders and injured PW 5 Mumtaz. Never the less by way of abundant caution we will consider below whether any corroborative /supportive evidence is available in respect of the direct oral eye witness evidence.

(d) The medical evidence through PW 1 Dr. Shamim, PW 2 Dr. Hotu Mal and PW 11 Dr. Shabbir Ahmed and their various reports and certificates corroborate/is supportive of the oral eye witness evidence as they opine that in effect the 3 deceased were murdered by churri blows and that PW 5 Mumtaz was injured by a churri blow.

(e) The churri being the murder weapon was recovered from the scene of the incident.

(f) Positive chemical reports showing that the blood gathered at the scene and on the clothes of the deceased was human blood.

(g) The appellant was arrested within 15 hours of the incident with blood stained clothes which were subject to a positive chemical report.

(h) 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 effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from the murder of the deceased by churri in the house to the arrest of the appellant.

(i) It is well settled by now that police witnesses are as reliable as any other

witness unless any ill will or enmity has been attributed to them which has not been done in this case. Like wise it is well settled that simply because a witness is related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99),

(j) The appellant has in effect taken the plea of alibi namely that he was at Nawabshah at the time of the incident and that he has been falsely implicated. However, he did not examine himself on oath or produce any defense witness in support of his case. It is also significant that he was also found to have churri injuries at the time of his arrest as well as blood stained clothes. Even during cross examination it is suggested by his counsel to MLO PW 2 Dr. Hotu Mal that his churri wounds may be defensive wounds which tends to indicate his presence at the scene of the crime. As such we disbelieve his defence case which we find to be an after thought and simply an effort to save the appellant's own skin.

(k) We also find that the prosecution has asserted a motive for the appellant to murder the deceased and has proved the same through the FIR, the evidence of PW 3 Qasim, PW 4 Mst Sughran and PW 5 Mumtaz who all state that the appellant had been humiliated by his wife in front of the deceased and on account of such humiliation had stormed out of the deceased house leaving his wife behind.

13. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt.

14. With regard to sentencing we note that the appellant brutally murdered 3 innocent persons whilst they were sleeping in their own home, which ought to have been their sanctuary, one being an 80 year old defenseless man, another a 50 year old defenseless women and one another young man with his whole life ahead of him by causing them **numerous churri blows on their faces and other vital parts of their bodies** and as such no leniency is justified in terms of sentencing.

15. Thus, for the reasons discussed above the appeal against conviction is dismissed the impugned judgment and its sentences imposed therein are upheld and as such the confirmation reference is answered in the affirmative.

16. The appeal and confirmation reference are disposed of in the above terms.