

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.22 of 2023

Appellant : Qadir Bux son of Ghulam Muhammad
Through Mr. Aamir Nazir Shaikh, advocate.

Complainant : Ghulam Mustafa
Through Mr. Shakeel Ahmed, advocate

Respondent : The State
Through Mr. Tahir Hussain, APG

Date of hearing : 14.05.2025

Date of judgment : 04.06.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J -. Appellant, calls into question the judgment of conviction dated 06.09.2022, passed by the learned Additional Sessions Judge, Karachi-West in Sessions Case No. 225/2018, arising out of FIR No. 443/2017, offence U/S: 302 PPC, P.S: Saeedabad, Karachi. The Appellant, Qadir Bux, stands convicted for offence under Section 302(b) PPC as Tazir and sentenced to undergo imprisonment for life, along with a compensation of Rs. 200,000/- (Rupees two lacs) payable to the legal heirs of the deceased, and in default, to undergo Simple Imprisonment for six months. The learned trial court also extended the benefit of Section 382-B Cr.P.C. to the Appellant.

2. The genesis of the prosecution case, as meticulously detailed in the judgment, emanates from the complaint lodged by Ghulam Mustafa. He narrated that on 10.12.2017, his brother Ghulam Murtaza, after taking his bike to visit their maternal uncle Qadir Bux (the Appellant) in Baldia Town, was later found injured with stab wounds. At about 04:15 p.m., the police informed the complainant of his brother's injury and subsequent shifting to Civil Hospital, Karachi. Upon reaching the Trauma Center, the complainant found the dead body of his brother with multiple sharp-edged injuries. The FIR was lodged based on this information, identifying the Appellant as the perpetrator.

3. To establish its case, the prosecution adduced a plethora of evidence, examining nine (09) witnesses and tendering numerous documents. The key witnesses included:

- *PW-1 Muhammad Ajmal (Ex. 05): Who informed "15 Madadgar Police" about an injured person in the street.*
- *PW-2 Muhammad Rafiq (Ex. 06): A recovery mashir, who deposed about the recovery of a blood-stained dagger, blood-stained earth, and blood-stained clothes of the deceased, sealed from the house of the accused. He produced the memo of site inspection (Ex.07).*
- *PW-3 SIP Muhammad Ismail (Ex. 08): The duty officer who received information of the murder, shifted the dead body to Civil Hospital, issued the letter to MLO for postmortem, prepared the inquest report (Ex. 13) and memo of inspection of dead body (Ex. 14), and subsequently lodged the FIR (Ex. 16).*
- *PW-4 Ghulam Mustafa (Ex.18): The complainant, who elaborated on his brother's last movements, the phone call from the police, finding his brother deceased, and his subsequent role in the arrest of the accused from Lahore. He produced the memo of arrest and recovery (Ex.19).*
- *PW-5 Muhammad Asif Anjum (Ex. 20): Co-mashir for the inquest report and memo of dead body inspection.*
- *PW-6 Ayaz Ahmed (Ex. 22): The crucial eye-witness, who stated that on 10.12.2017 at about 3:00 p.m., he saw the Appellant, Muhammad Qadir, armed with a knife, repeatedly stabbing the deceased Murtaza, after warning him to stay away.*
- *PW-7 SIP Muhammad Saeed (Ex.23): The Investigating Officer, who detailed the entire investigation, including preparation of sketch (Ex.23/C), collection of photographs (Ex.23/D), submission of articles for chemical examination (Ex.23/E), receipt of chemical examiner reports (Ex.23/F & Ex.23/H), collection of CDRs (Ex.23/M), arrest of the accused from Lahore, and filing of the challan. He also testified to the accused's confession of guilt.*
- *PW-8 MLO Muhammad Arif (Ex. 24): Who conducted the postmortem examination and produced the MLC (Ex.24/A) and postmortem report (Ex.24/B), confirming that the deceased died due to "cardio respiratory failure, secondary to hemorrhagic shock due to stab wound in vital organs i.e. Right Lung."*
- *PW-9 ASI Imran Ahmed (Ex.30): The Incharge Call Data Record of West Zone, who produced documents related to the CDR requests and confirmed that the CDRs for the relevant numbers were provided to the I.O.*

4. The Appellant, in his statements recorded under Section 342 Cr.P.C. (Ex.26 and Ex.32), vehemently denied the allegations, asserting his

innocence and claiming false implication due to enmity. He specifically denied the recovery of the alleged crime articles from his house, stating they were foisted upon him. He further denied taking any break from his job, claiming he was present at his job throughout the incident or, alternatively, that he was not even in Karachi but in Lahore at the time of the alleged incident. He also contended that the CDR record produced was "managed." Despite initially expressing a desire to examine himself on oath, he later retracted this, and no defense witness was produced.

5. I have given anxious consideration to the arguments advanced by the learned counsel for the Appellant, Mr. Shaikh, who meticulously highlighted several points to seek acquittal. He broadly challenged the credibility of the eye-witness, the consistency of the place of occurrence, the genuineness of the recoveries, and the reliability of the CDR evidence.

6. Learned Counsel for the Appellant mainly contended that PW-6 Ayaz Ahmed's claim of residence in Saeedabad was contradicted by his CNIC, which showed "Defense Commercial Area" or "Akhter Colony," thereby creating doubt about his presence at the scene. He questioned why Ayaz's CDR was not obtained to establish his residence. He further argued that Ayaz, being a driver for a State Bank Director, should have been on duty on Sunday, 10.12.2017, at 3:00 p.m. His conduct in not calling "15" police and instead informing the deceased's father (who was not examined) was deemed unnatural. Reliance was placed on *2024 SCMR 1608*. He also claimed Ayaz's statement was recorded by police at 8:00 p.m. (not burdened), and that there were "altogether different" claims against Qadir Bux, amounting to "dishonest improvements" as per *2024 SCMR 1310*. He also pointed out that children, alleged to have been eye-witnesses, were not examined. The learned counsel stressed the contradiction between the MLC (Ex.24/A) stating the dead body was brought from "Sector 12-C, Saeedabad" and the FIR (Ex.16) and memo of site inspection (Ex.07) mentioning "House No. 580, Sector 12/A, Near Jamal Mustafa Masjid, Saeedabad". He argued that the recoveries of articles at 4:30 p.m. to 5:30 p.m. were questionable, and asked who disclosed all about the incident in the memo. He also pointed out that Awais, who allegedly disclosed the clothes were his father's, was not examined. He contrasted PW-2 Rafiq's testimony that the clothes were of the deceased with the prosecution's claim that they were recovered from the accused. He highlighted the omission of

the motorcycle in the memo of site inspection. He also questioned the chain of custody for the *churri*, stating the I.O. admitted it remained with him from 4:30 p.m. on 10.12.2017 but was submitted on 11.12.2017, and then sent for analysis on 12.12.2017. He criticized the non-examination of the Malkhana Incharge and carrier, and the fact that the chemical examiner's report (human blood) did not specifically match the deceased's blood. He argued that the CDR did not show the accused's presence at the occurrence, the CDR maker was not properly examined (no address in CDR, no name of USB prepared), and that the CDR itself was managed. He pointed out that the complainant in evidence admitted the police visited the place of incident on 15.12.2017 (while memo showed 10.12.2017), the FIR was at 8:15 p.m., the memo of site inspection was at 16:30 hours but showed FIR number (doubtful), and the 154 Cr.P.C. statement was at 6:30 p.m. He emphasized the non-examination of Abdullah (father of deceased), Yasir (near whose house the dead body was found), and Ajmal Tent Wala (accused's employer). He argued that Aurangzeb was in Lahore on the day of occurrence, thus impacting the CDR. He contended that the motive was an erroneous observation by the court, and no evidence was put to the accused about it in his Section 342 Cr.P.C. statement. He also highlighted the contradictions in the accused's 342 Cr.P.C. statement regarding his location (at work vs. in Punjab), arguing it was an honest mistake. He submitted that the first statement of the owner was recorded in the absence of the accused, having no value.

7. Learned APG for the State duly assisted by learned counsel for the Complainant's Responses to the arguments and robustly defended the judgment of the learned trial court. They contended that the prosecution had successfully proved its case beyond reasonable doubt, and the eye-witness, PW-6 Ayaz Ahmed, remained unshaken despite extensive cross-examination. They highlighted that Ayaz Ahmed knew both the accused and the deceased, making him an independent witness with no motive to depose falsely. No suggestion was put to Ayaz Ahmed during cross-examination that he was not present at the scene of the incident. They argued that the accused's conflicting statements in his Section 342 Cr.P.C. examination (claiming to be at his job in Karachi, and later claiming to be in Punjab) indicated a dishonest and inconsistent defense. The CDRs, despite initial procedural questions, unequivocally placed the accused in

Karachi, specifically Baldia Town, at the time of the incident, thereby directly contradicting his alibi. The learned counsel for the complainant affirmed that the CDR maker came to court with a laptop to demonstrate the data, and that the R&Ps showed the Section 540 Cr.P.C. application was dismissed on 06.12.2021 without revision. Regarding the place of occurrence, they emphasized the I.O.'s explanation that Sector 12/C and 12/A are adjacent, and the ambulance driver's notation could be a minor error. They relied on the clear testimony of PW-6 Ayaz Ahmed and PW-2 Muhammad Rafiq, who stated the incident occurred at Sector 12/A in front of the accused's house. They asserted that recoveries were made nearby from the house of the accused, and the recovery was not denied by the defense in its Section 342 Cr.P.C. statement, only the genuineness was disputed. The chemical examiner's report confirming human blood on the recovered articles further corroborated the prosecution. They stressed that minor contradictions, omissions, or anomalies do not diminish the effect of ocular evidence if it remains unrebutted, citing *2001 SCMR 199*, *2019 YLR 1654*, *2007 SC 249*, *2024 SC 279*, *2010 SC 179*. They underscored the crucial aspect of the motive, that the accused saw his wife in an objectionable condition with the deceased, which led to the crime, demonstrating a clear reason for the murder.

8. The learned counsel for the appellant firstly raised the point of non-association and non-examination of children who informed to P.W-01, P.W-02 and P.-W-06 regarding quarrel and availability of the dead body. It is a general and undeniable observation in our society that children play in streets and public spaces, and their presence at a crime scene, while noting commotion, is often incidental. It is also equally true that in such chaotic moments, no one can be expected to note down the names of every child present. Furthermore, children are generally not considered ideal witnesses in a court of law due to their limited cognitive and retentive abilities, susceptibility to influence, and the inherent challenges in distinguishing fact from imagination or suggestion. More crucially, it is a prevalent societal reality that parents, for compelling reasons rooted in protecting their children from trauma, exposure to judicial proceedings, and potential threats, often do not allow their children to appear in court as witnesses. In this case, the strong and clear information provided by PW-1 Muhammad Ajmal to "15 Madadgar Police" regarding the incident and the presence of

an injured person effectively negated the need for children's evidence. The initial communication to law enforcement from a mature witness provides sufficient foundational information. Appellant's counsel questioned the recovery and claimed the clothes were of the deceased, not the accused. However, PW-2 Rafiq clearly stated that he also gave information to "15 Police," demonstrating independent awareness. More importantly, he unequivocally deposed that the police secured the articles, including the blood-stained dagger, blood-stained earth, and blood-stained clothes, from inside the house of the accused Qadir Bux. These articles were later properly de-sealed and exhibited by the learned trial court during the proceedings, and visually inspected by the court, confirming their identity and proper preservation. This direct evidence regarding the recovery from the accused's house, combined with the chemical examiner's report confirming human blood, strongly connects the accused to the crime and directly contradicts his denial of the recovery.

9. The evidence of PW-3 SIP Ismail is also coherent and consistent regarding the sequence of events immediately following the incident. He precisely detailed receiving the information, his prompt arrival at the hospital, and the meticulous preparation of inquest proceedings. The learned trial court observed that during his cross-examination, nothing material or favorable to the defense surfaced that could discredit his testimony or cast doubt on the procedural regularity of the initial police actions, including the shifting of the dead body and preparation of essential documents. The learned counsel for the Appellant vehemently challenged the credibility of PW-6 Ayaz Ahmed. However, PW-6 remained steadfast and unshaken during his rigorous cross-examination. He deposed clearly that on the fateful day, he saw the accused, Qadir Bux, with a knife in his hand, stabbing the deceased. He knew both the accused and the deceased as they were co-villagers, thus establishing a strong basis for identification and eliminating any possibility of mistaken identity. The learned counsel for the Appellant attempted to undermine his credibility by pointing out discrepancies in his CNIC address versus his stated residence and the timing of his statement. However, PW-6 flatly gave answers to each question, clearly admitting that his statement was recorded on the same day, soon after the incident. He also admitted that it was recorded prior to the formal lodging of the FIR. On this aspect, it is crucial to understand that

laypersons, like PW-6 who is by profession a driver, often do not possess a nuanced understanding of the legal distinction between a formal statement recorded under Section 161 Cr.P.C. and general preliminary inquiries made by the police at a crime scene or hospital. For a common person, any questioning by the police immediately after an incident is perceived as their "statement." Such minor variations in a layman's understanding of legal terminology should not be allowed to demolish an otherwise consistent and compelling eyewitness account, particularly when no motive for false implication is established and the witness bravely comes forward to testify against his own co-villager. The learned trial court correctly observed that despite extensive cross-examination, the defense failed to properly shake his credibility, finding his account trustworthy and reliable.

10. The apparent discrepancy between Sector 12/C (MLC) and Sector 12/A (FIR, memo of site inspection, eye-witness testimony) was comprehensively addressed by the learned trial court. The I.O.'s explanation that Sector 12/C is adjacent to 12/A and the ambulance driver's notation could be a minor mistake is a valid and reasonable explanation. More importantly, the direct testimony of PW-6 Ayaz Ahmed and the mashir PW-2 Muhammad Rafiq, who are both residents of the area and clearly stated the incident occurred at House No. 580, Sector 12/A, near Jamal Mustafa Masjid, Saeedabad, conclusively establishes the place of occurrence. The detailed description of the incident at this location in the testimony leaves no room for doubt. The argument concerning the FIR number on the site inspection memo at an earlier time is a common police practice, where the FIR number is often endorsed retrospectively once formally registered.

11. The learned counsel for the Appellant's strenuous efforts to discredit the CDR evidence are unconvincing. While PW-9 ASI Imran Ahmed admitted to not having personal knowledge of the 2017 records as he was not posted there at the time, he unequivocally stated that he could verify the data as per the official CDR Branch records. The fact that the CDR printouts lacked specific signatures or company monograms was also addressed by PW-9, who explained the standard procedure. Crucially, the fetcher of the CDR was also examined in court, and his testimony ruled out any material irregularity in the matter, further strengthening the reliability of the CDR data. The most compelling aspect is the CDR's content itself,

which directly contradicted the Appellant's alibi. The CDR records specifically showed the Appellant's mobile phone activity in Karachi, including Baldia Town (the incident area), during the relevant period.

12. Furthermore, the Appellant's own contradictory statements under Section 342 Cr.P.C. are highly significant. Initially, he claimed to be at his job in Karachi, but later claimed to be in Punjab. This vacillation, coupled with the CDR data, strongly demolishes his alibi defense. The learned trial court correctly pointed out this inconsistency as a major weakness in the defense's position. The learned counsel for the complainant confirmed that the CDR maker did come to court with a laptop to demonstrate the data, thus addressing the concern about verification.

13. The arguments regarding the timings of the FIR, 154 Cr.P.C. statement, and police visits are minor procedural variations that do not affect the veracity of the prosecution's case. The police procedure often involves initial information gathering, securing the scene, shifting the body, and then formalizing the FIR and other documents. Such sequential steps, with minor overlaps or adjustments in precise timing, are common and not indicative of fabrication. The memo of site inspection being endorsed with the FIR number later is standard practice. The learned trial court's observation regarding the motive (accused seeing his wife in objectionable condition with the deceased) was a conclusion drawn from the overall circumstances and evidence. While this specific fact may not have been put as a direct question in the Section 342 Cr.P.C. statement, the purpose of that statement is to give the accused an opportunity to explain the evidence against him. The motive provides a plausible explanation for the sudden outburst of violence related to family honor.

14. Conversely, the plea of the accused, asserting his innocence and claiming to be in Punjab at the time of the incident, was not substantiated with tangible proof. His shifting stances on his whereabouts further undermined his defense. The prosecution's evidence, particularly the CDR, conclusively established his location in Karachi at the material time, and his ownership of the relevant SIM numbers was confirmed.

15. I have re-evaluated the entire body of evidence in light of the arguments advanced by the learned counsel for the Appellant and find no

reason to interfere with the well-reasoned judgment of the learned trial court. The learned trial court, after meticulous appreciation of the ocular, medical, and circumstantial evidence, arrived at a sound conclusion. The ocular testimony of PW-6 Ayaz Ahmed, who was present at the scene and directly witnessed the Appellant stabbing the deceased, constitutes the cornerstone of the prosecution's case. Despite extensive cross-examination, his testimony remained consistent regarding the vital aspects of the incident and the identity of the assailant. His personal knowledge of both the accused and the deceased, stemming from their common village background, lends further credence to his testimony. The medical evidence, presented by PW-8 MLO Muhammad Arif, unequivocally corroborates the ocular account. The postmortem report clearly establishes that the deceased died due to multiple stab wounds, particularly in vital organs, consistent with a knife attack as described by PW-6. The CDR evidence, despite the technical challenges raised by the defense, robustly supports the prosecution's claim regarding the Appellant's presence in Karachi at the time of the incident, thereby effectively disproving his alibi. The Appellant's own contradictory statements in his Section 342 Cr.P.C. examination significantly weaken his defense, a fact duly noted by the learned trial court. The recoveries, particularly of the blood-stained articles from inside the accused's house as testified by PW-2, and their proper exhibition and visual confirmation by the trial court, further strengthen the prosecution's case. The presence of human blood on the recovered articles from the crime scene, including the weapon, reinforces the prosecution's narrative. The arguments pertaining to minor contradictions, omissions, or procedural irregularities have been adequately addressed by the learned trial court and in my detailed analysis. It is a well-settled principle of criminal jurisprudence, as held in numerous judgments including those cited by the prosecution (*2001 SCMR 199*, *2019 YLR 1654*, *2007 SC 249*, *2024 SC 279*, *2010 SC 179*), that minor contradictions, which do not strike at the root of the prosecution's case or render the evidence unreliable, do not entitle an accused to the benefit of doubt. The entire prosecution witnesses remained coherent on each and every aspect of the case, from the initial information to the police to the final challan. Conversely, the plea of the accused is not substantiated with any tangible proof, and his location was unequivocally established at Karachi, and he owned such SIM numbers. The most crucial factor remains the unshaken and credible testimony of the eye-witness,

directly linking the Appellant to the crime. In view of the foregoing comprehensive discussion, I am of the considered opinion that the prosecution has successfully proved its case against the Appellant, Qadir Bux, beyond any reasonable doubt. The evidence is consistent, cogent, and corroborative, leaving no room for the benefit of doubt to be extended to the Appellant. The learned trial court's judgment is based on a sound appreciation of facts and law. Therefore, I do not see any merits in the instant appeal.

16. Accordingly, the appeal is hereby dismissed, and the judgment of conviction and sentence dated 06.09.2022, passed by the learned Additional Sessions Judge, Karachi-West, in Sessions Case No.225/2018, is hereby upheld. R&Ps be sent back to the learned trial court and intimation to Jail Superintendent for serving out the remaining sentences as per law.

J U D G E