

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No. 407 of 2022

Date	Order with signature of Judge
Appellant:	Mst. Beena wife of late Muhammad Shahid, Muslim, Adult, Resident of House No. 192, Korangi # 6, Karachi, Presently confined in Women Prison Karachi Through Mr. Habib-ur-Rehman Jiskani advocate.
The State:	Through Ms. Asisha Saeed, ADPP.
Date of hearing.	26-02-2025.
Date of decision.	10-03-2025.

J U D G M E N T.

Ali Haider ‘Ada’,J:- Through the instant appeal, the appellant named above impugned the judgment dated 31-05-2022 passed by learned Ist Additional Sessions Judge (Model Criminal Trial Court) East Karachi whereby she has been convicted u/s 302 (b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs. 10,00,000/- (Ten Lacs) to the legal heirs of deceased as required u/s 544-A Cr.P.C with benefit of section 382-B Cr.P.C.

2. Brief facts of the case as narrated in the FIR are that the incident was registered on 13-06-2021 by the complainant namely Mst. Muskan u/s 302, 34 PPC as date of incident was mentioned as 12-06-2021, In FIR the complainant stated that she was present at her house as she received information on 12-06-2021 that somebody killed her brother namely Muhammad Shahid, so, she attracted on pointed place, viz. house of deceased brother as police was already available and it had come to her knowledge that appellant Mst. Beena wife of deceased in collusion with her paramour namely Sony killed her brother as a resulted in cavity trauma to deceased neck by sharp aged weapon. The version of complainant was recorded by police in simple paper as shown statement u/s 154 Cr.P.C on 12-06-2021 and later-on her statement was incorporated in FIR in prescribed proforma on 13-06-2021. The appellant as well as co-accused Rehan alias Sony were arrested and they were sent for trial after completion of investigation.

3. The learned trial court framed the charge against the appellant and c- accused under 302, 34 PPC as the same charge was pleaded not guilty by both the accused and they claim for their prosecution

4. In order to prove the charge against the accused, the prosecution examined the complainant Mst. Muskan as PW/1 at Ex. 5, she exhibited her simple statement, memo of examination of dead body, inquest report. PW/2 namely Arman was examined at Ex. 9, who exhibited mashirnama of place of occurrence, PW/3 Dilsher alias Foji examined at Ex. 11, the prosecution give up PW Salman son of Muhammad Akber who is husband of the complainant by filing an statement at Ex. 12, PW Tariq Javed, who is mashir of arrest was examined at Ex. 12, who exhibited mashirnama of arrest of appellant. Investigating Officer Zulfiqar Ali Khan was examined at Ex. 14, who exhibited entries, copy of FIR in prescribed proforma, letter for medical examination, memo of arrest of co-accused. The Medical officer Dr. Syed Hassan was examined at Ex. 22, who exhibited the post mortem of the deceased as well as certificate regarding cause of death. Another Investigating Officer Ali Haidar Solangi was also examined at Ex. 25, who exhibited entries, photographs and also seen the mashirnama of arrest. He also exhibited some letters regarding shifting of appellant to women police station Sadar Karachi, exhibited one application of deceased before SHO PS Zaman Town against appellant, letter of forensic and report of forensic along with relevant entries. Thereafter on 08-03-2022 the prosecution closed their side by filing statement at Ex. 32 and then the trial Court recorded the statement u/s 342 Cr.P.C of accused Rehan alias Sony and appellant Mst. Beena at Ex. 39 and 40 respectively. After hearing learned counsels for the parties, the learned trial Court convicted appellant Mst. Beena u/s 302 (b) PPC and sentenced to undergo imprisonment for life and to pay compensation of Rs. 10, 00,000/- (Ten Lacs) to the legal heirs of deceased as required u/s 544-A Cr.P.C with benefit of section 382-B Cr.P.C while acquitted the accused Rehan alias Sony and passed the judgment, which is impugned by the appellant by preferring the instant appeal.

5. On 13-03-2024 complainant Mst. Muskan was present and stated that she does not wish to engage her counsel and reposes full faith and confident upon Additional P.G.

6. Heard arguments and perused the material available on record.

7. According to the deposition of the complainant, she received information about the incident from the people of the mohalla as these mohalla people were informed by baby Anzula (real daughter of the complainant as well as stepdaughter of the deceased) as such baby informed the people of the mohalla that her mother (complainant) along with Rehan alias Sony had committed murder of her step-father/deceased. However, these mohalla people were not called as witnesses in the prosecution case and even the complainant in his cross-examination stated that the police did not record any statement from the mohalla people. The baby Anzula was also not examined by the investigating officer as her statement is very important but the prosecution is completely silent about her statement as according to the prosecution she is an eyewitness of the incident.

8. The complainant is also a witness to the recovery of the knife, as the police prepared an inspection report in which they secured the knife as case property, as the complainant was examined before the trial court, but such case property was not seen by her in order to verify or identify it. The Rule 22.16 of Volume-III Chapter XXII of Police Rules 1934 pertains with the case property as the same is read as under:-

22-16. (1) The police shall seize weapons, articles and property in connection with criminal cases and take charge of property which may be unclaimed:

- (a)_____
- (b)_____
- (c)_____
- (d)_____
- (e)_____
- (f)_____
- (g)_____

(2) Each weapon or article of property not being cattle, seized under the above rule, shall be marked or labeled with the name of the person from whom, or the case diary or other report submitted from the police station.

- _____
- (3)_____
 - (a)_____
 - (b)_____

(4)_____

9. At the time of recording of evidence before the trial court, it is very essential that every article to be produced, as in instant case, the case property was not produced before the complainant at the time of her examination, while the complainant as mashir of this recovery must identified or seen, but such practice was not followed.

10. The PW/2 Arman, who deposed in chief that he received information about incident, then he proceeded toward at the place of occurrence with his friends each namely Faisal, Shakeel and Aamir and met the appellant/accused and she revealed the commission of the murder by the co-accused Rehan alias Sony. The prosecution is silent on the recording of Faisal's, Shakeel's and Aamir's statements. In cross, the said PW Arman deposed that he received information from one Jamshed alias Foji, who live in same vicinity as when such Foji whose actual name is Dilsher alias Foji when examined before the trial Court was silent that he gave any information to PW Arman about the incident. The PW Foji in his chief examination deposed that one Kashif who repaired the gutter line informed him that one baby girl (Anzula) disclosed that deceased was killed by signaling that his throat was cut down, after receiving such information informed Foji regarding the incident. As per material available on record said Kashif, who was the first informer of incident through baby Anzula was not examined by the Investigating Officer. It turns out that in the case of prosecution, everyone puts the weight on others.

11. That on 12-06-2021 at about 2330 hours at first time the allegations were levelled against the appellant and mashirnama of the arrest showed that on the same day prior to levelling the allegation against the appellant at 2045 hours she was arrested by the ladies of the Mohalla Peoples, as per the contention of Mashir of the arrest. The point is that such women of the mohalla people have not been named as mashirs and even their statements have not been available in the police records

12. To address the medical aspect, it is essential that the post-mortem be as thorough and complete as circumstances permit; partial post-mortem is not permitted. In instant case the medical officer in his deposition has deposed that the postmortem report expresses about surfaced wounds and injuries. The same is reproduced as under:-

“Incised wound of 12 cm x 5 cm on interior surface of neck extending from left to right side, exposing hyoid bone and thyroid cartilage along with severing of right and left carotid arteries. The injury was ante mortem.

13. Now, as described in MODI Medical Jurisprudence, 26th Edition, Chapter 13, the autopsy relies on both external and internal examination, and in the internal examination it was mentioned which of the body parts should be examined internally. For Head and Neck the necessary parts are as follows:-

(i) Head and Neck

- | | |
|---------------------------------|------------------------|
| (a) Scalp, skull bones (vertex) | (e) Vertebrae |
| (b) Membranes | (f) Spinal cord |
| (c) Brain | (g) Neck structure |
| (D) Base of the skull | (h) Additional remarks |

14. In this case, the doctor only mentioned the inside of the neck and nothing else, whereas the neck structure, as mentioned in Supra including Pharynx (membrane line behind nose and mouth), larynx (muscular organ form as air passage, trachea and oesophagus (connect the throat to stomach), as detail of interior examination is nothing mentioned in postmortem report while the size of the wound is 12 cm X 5 cm. So the doctor should explain the seat of injuries upon all organs, but nothing available on record.

15. The Investigating Officer deposed in cross that no witness has stated during investigation that accused Rehan alias Sony and Mst. Beena and deceased Shahid were seen together in house as well as no witness has disclosed that at the time of occurrence both accused were present inside the house. The Investigating Officer exhibited one application of deceased, as on such application the deceased narrated the story for the year of 2020 before SHO PS Zaman Town on account of disputed amount with his wife/appellant, as she left his house with co-accused and has great apprehension for his life from both accused, on such aspect the Investigating Officer in order to prove motive must record the statement of concerned SHO, but he did not do so and even did not collect the fate of such application, the matter pertains for the year of 2020, much prior to the incident almost one year and if, go through the evidence PW Foji who deposed before trial Court that deceased did not make any complaint

regarding accused Rehan alias Sony during his life time and further deposed that no people of neighborhood had any grievance or complaint against the character of accused Rehan alias Sony, as said witness deposed in cross that deceased Shahid had never made any complaint about his wife Mst. Beena regarding her character.

16. The Investigating Officer on 20-10-2021 almost after the delay of 06 days sent the knife and clothes to the forensic laboratory and forensic laboratory in its report concluded that no human blood was identified on knife collected from the place of incident. The blood of deceased even not identified and it was also nothing mentioned in cloth item that human blood which was identified from whom it is be tally.

17. The trial Court acquitted the co-accused Rehan alias Sony and convicted the appellant with reasoning that the prosecution has not proved the case against Rehan alias Sony while proved the case against appellant and give benefit of doubt to co-accused by way of acquittal.

18. The judicial record unequivocally established that the complainant in her initial statement and subsequent Court testimony ascribed the identical role of perpetrating the deceased as murder to the co-accused Rehan alias Sony. This assertion was further reinforced by the testimonies of the prosecution witnesses Arman, Dilsher alias Foji, HC Zulfiqar Ali Khan and Investigating Officer SIP Ali Haidar Solangi, all of whom consistently attributed the same capability to both accused persons. Notably despite this parity in alleged roles and the share evidently basis, the co-accused was acquitted by the trial Court. In accordance with the precedent set forth by the Hon'ble Supreme Court of Pakistan in case of *Maqsood Alam and another V The State and others (2024 SCMR 156)*, such in consistencies in the prosecution case necessitate extending the same benefit of doubt to the appellant, as any ambiguity in the evidence must operate in favour of the accused.

19. In case of **Mst. Saima Noreen and another Vs. The State** reported as *(2024 SCMR 1310)* as the Saima Noreen had illicit terms/relation with Muhammad Shafique, the sentence was awarded both of them as both accused challenged their conviction resulted before Supreme Court as Apex Court observed in Para No. 26 in that case it is held that:

“26. At the trial the prosecution has not produced Muhammad Ashraf (paternal uncle of deceased Muhammad Akmal) who was mentioned as an eye-witness by PW-3 and PW-4. The prosecution has also not produced Muhammad Ajmal (brother of deceased Muhammad Akmal and PW-3) about whom it has come on record that he used to reside in the Baithak of the house in a room whereof the occurrence had taken place and he had identified the dead body in the hospital at the time of postmortem examination by PW-6.

An adverse inference is drawn under Article 129(g) of the Qanun-e-Shahadat Order, 1984 to the effect that had the above two witnesses been produced by the prosecution at the trial, they would not have supported the version of the prosecution.

And in Para No. 27

On reappraisal of the evidence available on record, we have no hesitation to conclude that the occurrence of the death of deceased Muhammad Akmal by strangulation was unwitnessed; the conduct of PW-8 was not fair and impartial as an investigating officer; fabrication has been made during investigation by PW-3 with the connivance of PW-8 to falsely implicate the petitioners by planting himself, PW-4 and Muhammad Ashraf as eye-witnesses of the occurrence.”

20. In case of ***Muhammad Ramzan Vs. Khizar Hayat and another reported in (2024 SCMR 1085)*** it is held that independent corroborating evidence is essential to test the validity and credibility of the testimonies of interested witnesses--- Capital punishment cannot be given on the testimony of any interested witnesses uncorroborated by any independent evidence.

21. In case of ***Muhammad Iqbal Vs. The State reported as (2024 SCMR 1133)*** it is held that whenever witnesses are found to have falsely deposed with regard to the involvement of one co-accused, then, ordinarily, they cannot be relied upon qua the other co-accused unless their testimony is sufficiently corroborated through strong corroboratory evidence, coming from an impeccable source.

22. In instant case, the motive is not proved as the prosecution has totally failed to establish the motive, as even the contents of application of deceased were not supported by evidence, so far medical evidence is concerned, the witnesses relied by the prosecution are unreliable and untrustworthy. The conviction cannot sustain on the basis of medical evidence alone. Reliance is placed on the case of ***Iftikhar Hussain alias***

Kharoo Vs. The State reported as (2024 SCMR 1449). Even the medical evidence is not thorough and proper.

23. In case of *Ghulam Sabir Vs. The State reported in (2020 P.Cr.L.J note 80 (DB) Lahore Bench)*, it is held that Chhurri/weapon of offence was got recovered by the accused and same was sent to forensic science agency, but report reflected that same was not found blood stained----- The appeal was allowed and accused were acquitted.

24. The prosecution asserted that the deceased body, wrapped in a blanket was discovered beneath the appellant's cot. However, the Investigating Officer failed to secure this critical piece of evidence, the blanket during the investigation, thereby undermining the prosecution ability to substantiate its allegation against the appellant. This omission constitutes a significant investigation oversight, reflecting a failure to preserve material evidence crucial to establishing the prosecution version of events.

25. As per the prosecution case it has been established that the witnesses were not eyewitness of the incident, therefore it is very much essential the witnesses must show their presence, but such fact is totally missing and the prosecution depended upon only one eyewitness namely baby Anzula, but neither she was examined by the Investigating Officer nor even prosecution filed any application before trial Court to call her in order to depose. Reliance is placed on case of *Muhammad Hassan and another Vs. The State reported in (2024 SCMR 1427)*.

26. It is evident that prosecution did not produce and examine the key witnesses to the alleged incident namely Anzula (baby) and Kashif and substantiate its case against the accused. The failure indicates that the prosecution withheld crucial evidence. Under Article 129 (g) of the Qanoon-e-Shahadat Order 1984, an adverse inference must be drawn against the prosecution implying that had these witnesses testified. Even they would have not supported the prosecution version of events. The principle is firmly upheld in the precedent of *Riasat Ali and another V. The State and another (2024 SCMR 1224)* where similar withholding of vital witnesses led to the dismissal of the prosecution claim due to lack of corroborative evidence.

27. In view of above, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside, consequently, she is acquitted of the offence for which she was charged, tried, convicted and sentenced by learned trial Court and she shall be released forthwith, if not required to be detained in any other custody case.

28. Above of the reasons of short order of even date, whereby the instant Crl. Jail Appeal was allowed.

J U D G E