

IN THE HIGH COURT OF SINDH CIRCUIT  
COURT HYDERABAD

Criminal Appeal No.D-17 of 2013  
Criminal Jail Appeal No.D-18 of 2013  
Confirmation Case No.04 of 2013

PRESENT:

*Mr. Justice Naimatullah Phulpoto*  
*Mr. Justice Rasheed Ahmed Soomro*

Date of Hearing: 20.02.2017.

Appellant: Sadam Hussain  
Through Ms. Nasira Shaikh,  
Advocate.

The State : Through Syed Meeral Shah Bukhari,  
Deputy Prosecutor General, Sindh.

Date of Judgment: 30.03.2017.

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JUDGMENT

**RASHEED AHMED SOOMRO, J:-** Appellant/accused Sadam Hussain faced trial before the learned 1st-Additional Sessions Judge, Badin for offences under Sections 302, 506/2 PPC. Trial Court by judgment dated 15.03.2013 convicted accused under Section 302(a) PPC for committing murders of Mst. Beeban and Saindad and sentenced him to death on two counts. Trial court made reference to this court for confirmation of death sentence or otherwise, as required under Section 374 Cr.P.C.

2. Brief facts of the prosecution case are that the sister of the complainant namely Mst. Hakeeman had married to appellant Sadam Hussain seven years back. After marriage it is alleged that Mst. Hakeeman was not allowed by appellant Sadam Hussain to visit the house of her parents. On the day of incident, father of the complainant namely Saindad and his mother Mst. Beeban went to the house of Sadam Hussain for permission to bring Mst. Hakeeman to their house for meeting purpose. It is further alleged that accused Sadam Hussain refused to allow his wife to go with the parents. Thereafter, Saindad, father of the complainant, narrated this fact to the complainant and his brothers. It was also informed that there was exchange of hot words in between Sadam Hussain and parents of the complainant. It is further mentioned in the F.I.R. that parents of Mst. Hakeeman asked the complainant and his brothers to reach there soon, as it was apprehended that Sadam Hussain would fight Saindad and his wife. It is further stated in F.I.R. that at 1530 hours Saindad, his wife and their daughter Mst. Hakeeman reached at Musafirkhana of Bus Stop where it is alleged that accused appeared on the motorcycle. He was armed with gun and asked Saindad and Mst. Beeban as to why they had accompanied his wife Hakeeman to the house without his permission. Thereafter, it is alleged that accused started firing from his gun which hit to Saindad, another fire hit to mother of complainant namely Mst. Beeban. It is stated that accused threatened his wife to return back with him else declared that she would not be spared. Thereafter, accused drove away by taking his wife on motorcycle. It is alleged that incident was witnessed by complainant, and P.Ws Anwar Ali and Nadeem Ali. After the incident, complainant party saw that mother of the complainant namely Mst. Beeban succumbed to the injuries at the

spot and Saindad was taken to the hospital in injured condition. F.I.R. of the incident was promptly lodged by complainant Muhammad Hashim at P.S Kario Ganhwar. It was recorded vide crime No. 140 of 2010 on 19.11.2010 at 1730 hours against accused under Section 302, 324, 506/2 PPC.

3. During the investigation, dead body of Mst. Beeban was referred to the hospital by I.O for postmortem examination and report. The statements of the P.Ws were recorded under Section 161 Cr.P.C. The accused was arrested on 21.11.2010 and during interrogation on 02.12.2010, he voluntarily produced the 12-bore double barrel gun used by him in the commission of the offence in presence of mashirs. Injured Saindad succumbed to injuries in hospital on 20.11.2010. His postmortem examination was conducted. Blood stained clothes of the deceased, two empties and gun used in the commission of the offence were sent to the experts for reports. On completion of usual investigation, the challan was submitted against the present appellant/accused for offences under Sections 302, 506/2 PPC.

4. Trial Court framed charge against the accused at Ex.03, the accused Sadam Hussain pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, prosecution examined P.W-01 complainant Muhammad Hashim at Ex.05, he produced F.I.R, P.W-02 Muhammad Anwar at Ex.6, P.W-03 ASI Abdul Khaliq at Ex.07, P.W-04 Mashooque Ali at Ex.08, he produced the memo of recovery of gun at Ex.8/A, P.W-05 SIP Hameedullah at Ex.09 who produced the memo of injuries,

Mashirnama of place of wardat, memo of arrest of accused, memo of clothes of deceased Mst. Beeban and departure and arrival entries at Ex.9/A to 9/M respectively, P.W-06 Dr. Hajira at Ex.10, she produced the postmortem report of deceased Mst. Beeban, P.W-07 Dr. Abdul Karim at Ex.11, he produced the provisional medical certificate of Saindad, letters dated 02.01.2011 & 16.01.2011 addressed to M.S. LUMH Hyderabad, letter of joint Executive Officer JPMC Karachi dated 01.06.2011 addressed to M.O Golarchi showing cause of death of deceased Saindad at Ex.11/A to 11/E respectively. Thereafter, ADPP produced positive Chemical Examiner's report and Ballistic expert's report at Ex.12/A and 12/B through his statement dated 16.02.2012 at Ex.12, PW-08 Allah Bukhsh was examined at Ex.13, PW-09 Dodo Khan at Ex.14, he produced the site sketch at Ex.14/A. Thereafter, learned DDPP closed the prosecution side vide his statement at Ex.16.

6. The statement of accused was recorded under Section 342 Cr.P.C at Ex.17, in which accused claimed his false implication in this case and stated that P.Ws have deposed against him due to enmity. Accused examined himself on oath in terms of Section 340(2) Cr.P.C Ex.18. DW-1 Mst. Hakeeman (wife of accused) was examined at Ex.19. Learned Advocate for accused closed side vide statement at Ex.20.

7. The trial court after hearing the learned Advocate for the accused as well as ADPP for the State, convicted the accused Sadam Hussain under Section 302(a) PPC and sentenced him to death on two counts as mentioned above. Hence, appellant filed Criminal Jail Appeal No.D-18 of 2013 and Criminal Appeal No.D-17

of 2013 through his Advocate. By this judgment we intend to decide both appeals as well as reference made by trial Court.

8. Ms. Nasira Shaikh learned Advocate for the appellant/accused argued that all the prosecution witnesses are closely related to deceased and interested. It is argued that independent persons of the locality were not examined by the prosecution at trial to ascertain the truth. It is also argued that prosecution has failed to establish the case. Ms Nasira Shaikh argued that eye-witnesses are resident of village Mirwah Gorchani, as such, they were chance witnesses and their evidence was not reliable. Learned counsel for the appellant further argued that the recovery of gun was doubtful as the same was produced by accused after about 10 days of arrest. Lastly, it is contended that prosecution has failed to establish the motive inspite of that death sentence has been awarded to the appellant by the Trial Court. In support of her contentions, she has relied upon the case-laws (1) Iqbal alias Ladla & another Vs. The State (2000 P.Cr.LJ 1607), (2) Hidayatullah & 3-others Vs. The State (1983 P.Cr.L.J 447), (3) Sajid Ali Shah Vs. The State (2010 P.Cr.L.J 211), (4) Pir Jan & another Vs. The State (1997 P.Cr.L.J 1646), (5) Sobho & 2-others Vs. The State (PLD 2004 Karachi 8), (6) Lal Bux Vs. The State (1988 MLD 174), (7) Riaz Vs. The State (PLD 2007 Lahore 606), (8) Ghafoor Khan Vs. Mst. Gulab Zari & another (PLD 2006 Peshawar 102), and (9) Muhammad & another Vs. The State (1991 P.Cr.L J 761).

9. Syed Meeral Shah Bukhari, learned D.P.G appearing for the state argued that it was day time incident. F.I.R was lodged promptly. Eye witnesses had explained their presence at the time of incident. Learned D.P.G further argued that ocular evidence was

corroborated by medical evidence, motive, recovery of gun and empties. He supported the judgment passed by the learned trial court. In support of his contentions he has relied upon the case of Dadullah and another v. The State (2015 SCMR 856).

10. We have carefully heard the learned counsel for the parties at length and perused the entire evidence with their able assistance.

11. The facts of this case as well as evidence produced before the Trial Court find an elaborate mention in the judgment of the trial Court dated 15.03.2013, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

12. Eye-witnesses have deposed that both deceased had sustained firearm injuries but with regard to unnatural death of both deceased, medical evidence is very much essential. Dr. Hajira has deposed that on 19.11.2010 she received the dead body of Mst. Beeban for conducting post mortem examination, through HC Muhammad Yousuf of P.S Kario Ganhwar. W.M.O started post mortem examination at 08:00 p.m on 19.11.2010 and finished at 09:30 p.m. W.M.O found following injuries on the person of deceased Mst. Beeban:-

- “1. *Lacerated wound about 4 cm x 4 cm on left fore arm.*
2. *Lacerated wound of entrance irregular circular with blackish margins on upper part of left breast.”*

On the internal examination, W.M.O found damages of vital organs. W.M.O was of the opinion that death of Mst. Beeban occurred due to hemorrhage and shock in the result of injury No.2. Doctor had

recovered a wed and handed it over to the police for report. W.M.O opined that Mst. Beeban had received firearm injuries.

Dr. Abdul Karim had examined injured Saindad on 19.11.2010 and found following injuries on his person:

- “1. Multiple Circular lacerated wound measuring 1 cm x 1 cm each muscle deep extending from lower chest right side of abdomen up to hip joint.
2. Lacerated wound measuring 6 cm x 6 cm x cavity deep on left side of upper abdomen”.

Medico legal Officer has deposed that injured was referred to the JPMC Karachi where succumbed to the injuries and he has produced certificate of cause of death showing gunshot injury. We, therefore, hold that both deceased died in the result of the firearm injuries.

13. In order to prove its' case the prosecution has relied upon evidence of eye witnesses namely complainant Muhammad Hashim/P.W-1 and Muhammad Anwar/P.W-2, both sons of the deceased persons. P.W-1 Muhammad Hashim has deposed in his examination-in-chief as under:-

*“Deceased Mst. Beeban was my mother. This incident took place on 19.11.2010. It was 3.30 p.m I was present in my house at the time of incident. Deceased Mst. Biban was residing in Mir Wah Gorchani town. My father Saindad had telephone me that Sadam had exchanged hot words with him and they do not allow him to visit the house of my mother Mst. Biban. I, Anwar and Nadeem went to the Juna Bus Stop Ali Mir Shah Kario Ganwhar and reached there, where we saw accused Sadam was on motorcycle armed with double barrel gun asked my father and mother that despite his restraining them as to why they have brought his wife. Saying so he made straight fire from his gun upon my father Saindad and second fire upon my mother Mst. Biban. My father sustained fire arm injury on right side chest while my mother received fire arm injury on left side of her chest. My mother expired in the way while we brought my father at Taluka Hospital Golarchi. The accused Sadam pointed out gun upon us and took away his wife Mst. Hakeeman on his motorcycle. The*

*doctor of Golarchi hospital referred my father Saindad to Hyderabad hospital. The postmortem of my mother Mst. Beeban was conducted at Taluka Hospital Golarchi and her dead body was handed over to me. My father Saindad remained admitted in hospital at Hyderabad for ten days and then he expired. I lodged FIR on 19.11.2010 at police station Kario Ganwahr which I produce at Ex.5-A which is same, correct and bears my LTI and signature. I produce the receipt of dead body of my mother at Ex.5-B which is same, correct and bears my signature. Accused present in Court is same.”*

P.W-2 Muhammad Anwar in his examination-in-chief has deposed as under:-

*“Deceased Saindad and Mst. Biban were my father and mother. This incident took place in the 11<sup>th</sup> month of 2010. It was about 3 or 3.30 p.m. I was present with my brother Muhammad Hashim at his house in village Gamani. P.Ws Nadeem and Shahid were also present at that time with us. In the morning my father and mother had gone to take Ms.t Hakeema my sister from the house of accused Sadam Hussain. Accused Sadam asked them that they may take Mst. Hakeeman after half an hour as they intend to give them meat. After half an hour my father again telephoned that the accused wants to fight with him hence we should reach there immediately. I alongwith complainant Hashim and Nadeem went and reached at the Musafarkhana at Ali Mir Shah Bus Stop where we saw that accused Sadam duly armed with gun was coming on motorcycle in front of us. My father and mother were also standing at Musafarkhana of bus Stop. In the meantime, accused asked my father to recite the Kalama as he is near to death on which my father replied him that as to what was fault of him. Then accused fired from his gun upon my father which hit on his right side of his lumber region. The accused made second fire which also hit to my father on his left side of lumber region. He made third fire upon my father which hit him on his waist. He made fourth fire upon my mother which hit her on her right side chest. He also pointed out gun upon us hence due to fear we did not come near to him and then he took my sister Mst. Hakeeman on motorcycle and went away. Thereafter we came to Kario Ganwar for arranging vehicle and brought injured to Taluka Hospital Golarchi. But my mother expired at the spot. My father then was referred to Hyderabad hospital and postmortem of my mother was conducted at Taluka Hospital Golarchi and then her dead body was handed over to us. My father expired at Jinnah Hospital Karachi after 10 days of the incident. Thereafter we brought his dead body and buried him. Complainant lodged FIR. My statement under section 161 Cr.P.C was recorded. Accused present in the Court is same.”*

Evidence reflected that the occurrence took place during broad day time; both parties are closely related to each other. Hence, there

was no question of mis-identification of the appellant; who is brother-in-law of P.Ws. P.Ws had no enmity with the appellant so as to involve him in this case falsely. Complainant Muhammad Hashim and P.W Muhammad Anwer have plausibly explained their presence at the time of incident. They have deposed that they received telephone from deceased father then they went to place of occurrence and witnessed the incident. Both witnesses have given very consistent account of the occurrence and have corroborated each other on all the material particulars of the case. Such as, date of incident, place and time of incident. They were subjected to lengthy cross examination but the intrinsic value of their evidence could not be shaken. The contradictions pointed out by the learned counsel for the appellant were not only minor in nature but were immaterial as well. Such like contradictions naturally crop up when the evidence is recorded after lapse of considerable time. In the instant case, evidence of the eye witnesses was recorded after about 11 months of the occurrence. In such circumstances, eye-witnesses cannot be declared as chance witnesses for the reasons that incident occurred on 19.11.2010 at 1530 hours, FIR was promptly lodged at Police Station Kario Ganhwar within 02 hours of incident at 1730 hours. Promptly lodged F.I.R has excluded possibility of chance witnesses as held in the case of Sharafat Ali v. The State reported as 2016 SCMR 28. Relevant portion is reproduced as under:-

*“During trial, five police officials had appeared as eye-witnesses. They remained firm on all major particulars of the case i.e. date, time and place of occurrence and despite lengthy cross-examination their credibility could not be shaken. The PWs had no enmity with the appellant to falsely implicate him in the case. The incident had taken place at 5.30 a.m whereas the FIR was registered on the same day at 6.00 am i.e. after thirty minutes of the occurrence wherein the*

*appellant was specifically nominated with a specific role. Such a promptly lodged FIR excludes any chance of false implication.”*

14. With regard to other contention of defence Counsel that both the eye witnesses i.e. complainant Muhammad Hashim and P.W Muhammad Anwar are sons of deceased persons. It is a well-settled principle of law that mere relationship or close association of prosecution witnesses with the deceased in the absence of established hostility, animosity or any other motive to depose falsely would not be sufficient to hold them to be interested witnesses and their testimony would not be discarded on this ground. From the evidence on record it has been established that no serious enmity existed between the complainant party and the accused. In this view, we find support from the case of *Munawar Ali v. The State*, 2001 SCMR 614, in which it is observed as follows:

*“It is well settled by now that “mere friendship or relationship does not make a witness an interested one and testimony of such a witness who otherwise seems to be a truthful witness cannot be rejected on such ground.”*

Moreover, complainant Muhammad Hashim and P.W Muhammad Anwar, being sons of the deceased persons, would not allow the real murderer to go scot-free and to falsely implicate appellant who is also their brother-in-law in place of the real culprit. Even otherwise, substitution is a rare phenomenon as held by the Honourable Supreme Court of Pakistan in case of *Muhammad Iqbal v. The State* PLD 2001 SC 222. Relevant portion is reproduced as under:-

*“Moreover we failed to persuade ourselves to hold that the accused was substituted by the complainant because in the cases of murder falling under Section 302, P.P.C substitution of an accused who is actually involved in the commission of the crime is a rare phenomena in this country particularly in an*

*incident in which single accused was involved by nominating him in the F.I.R from the very beginning. So much so if the parties are inter se related to each other, therefore, due to close kinship it is very hard to accept the theory of substitution. Reference in this behalf may be made to the cases of (i) Sirajuddin v. Kala and another PLD 1964 SC 26 (ii) Rahim Bux v. Muhammad Iqbal and others 1976 SCMR 528, (iii) Zar Bahadur v. The State 1978 SCMR 136, (iv) Muhammad Ayoob alias Nikka v. The State PLD 1983 SC 27, (v) Shoukat Javed v. The State PLD 1993 Peshawar 109 and (vi) Ameer Ali v. The State 1999 MLD 758.”*

The contention, therefore, is devoid of force and is repelled.

15. The ocular version is fully corroborated by the medical evidence, as both the deceased lost their lives due to fire arm injuries. Evidence of the eye-witnesses is further corroborated by positive report of the Chemical Examiner regarding clothes of the deceased persons and the positive report of the Ballistic Expert (Ex.12/B) in which Ballistic Expert has opined that 12 bore crime empties were fired from right and left barrels of 12 bore DBBL short gun produced by the accused on 02.12.2010. The contention, therefore, is devoid of force and is repelled.

16. The motive as set up in the FIR is that sister of the complainant namely Mst. Hakeema was married with the appellant and appellant did not allow her to meet her parents, due to which deceased persons being father and mother of wife of the appellant went to his house and were taking their daughter to house for meeting purpose, without permission of the appellant. It caused much annoyance to appellant and he committed murders. Complainant Muhammad Hashim and P.W Muhammad Anwer have stated about the said motive in their evidence before the learned trial

Court. We, therefore, hold that prosecution has proved motive at trial.

17. As far as the defence plea is concerned, the appellant in his statement has stated that about 08 days prior to the incident his in-laws had come to him and had taken away his wife to their village; whereas, D.W Mst. Hakeeman has deposed that she had gone to Mirwah Gorchani with her husband. It is established that Mst. Hakeeman was present at the place of occurrence; but the story, which is disclosed by Mst. Hakeeman in defence is quite illogical. She being wife of appellant has given evidence in favour of appellant, as admittedly her parents have been murdered and as per her own version her brothers were not happy of her marriage with the appellant. In such circumstances, we think that Mst. Hakeeman had no other way but to support the appellant/her husband. For above stated reasons, the defence plea seems to be after thought and it was rightly rejected by trial Court.

18. As regards to the mitigating circumstances, no mitigating circumstance is pointed out by defence Counsel to reduce death sentence to imprisonment for life. In a murder case, death sentence is a normal penalty and the Court should give reasons for lesser sentence. In this regard, the learned D.P.G. has rightly placed reliance upon the case of Dadullah and another v. The State (2015 SCMR 856) wherein the Honourable Supreme Court of Pakistan has observed as under:-

*“.....Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent*

*citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.”*

19. The nutshell of the whole discussion is that no mitigating circumstance exists in favour of the appellant. Appellant has committed double murders of his father-in-law and mother-in-law in a brutal manner. The prosecution has successfully proved its case against the appellant through direct evidence which is corroborated by the medical evidence, motive, recovery of gun, empties and positive reports of experts.

20. The upshot of above discussion is that the instant appeal is without merit and same is dismissed. Reference for confirmation of death sentence awarded to the appellant Saddam Hussain is answered in affirmative. Death sentence is CONFIRMED. It may be mentioned here that the trial Court has convicted the accused under

Section 302(a) PPC and sentenced him to death on two counts and directed the accused to pay compensation of Rs.400,000/- to the legal heirs of deceased Mst. Beeban and Saindad as provided under Section 544-A, Cr.P.C. In case of failure in payment of compensation amount, accused was directed to suffer S.I for one year more. We agree with defence counsel that conviction under Section 302(a) PPC was erroneous, appellant was liable under section 302(b) PPC. Hence, we slightly modify the clause (a) to 302(b) PPC death on two counts as a Tazir and in case of failure to pay compensation S.I for six months **instead of one year**.

JUDGE

JUDGE



