

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr.Appeal.No.S- 158 of 2012

Sahib @ Karo

Vs.

The State

Date of hearing: 27.02.2019.

Date of judgment: 01.03.2019.

None present for the appellant.

Mr. Shahid Ahmed Shaikh, D.P.G. for the State.

J U D G M E N T

ZULFIQAR AHMAD KHAN, J: Appellant Sahib @ Karo was tried by learned 1st Additional Sessions Judge, Shaheed Benazirabad in Sessions Case No.271 of 2006, arising out of Crime No.41 of 2006 for offence u/s 302 PPC registered at Police Station Daulatpur. By judgment dated 14.12.2011, the present appellant was convicted u/s 302 PPC and sentenced to imprisonment for life and to pay fine of Rs.50,000/-. In case of default of fine, the accused shall further undergo RI for six months more. The accused is also directed to pay the compensation of u/s 544-A Cr.P.C of Rs.2,00,000/- (Rupees two lac) to the legal heirs of deceased Nazir Oad and in case of default he shall undergo RI for six months more. However, benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by the complainant Gulab Oad on 25.09.2006 are that the deceased Nazeer Oad was husband of his sister and used to sell articles in villages on his bicycle.

On the fateful day deceased Nazeer alongwith PWs Sajjan and Iqbal Oad left their houses on their bicycles for selling the small articles and at about 01-00 p.m. Iqbal came back and informed the complainant that while they were going for selling the articles on their bicycles and while Nazeer was in their front, when at about 10-30 a.m. they reached near Faiz Muhammad Dahri, accused Sahib alias Karo Channa having hatchet stopped Nazeer and demanded his amount with the result that an altercation took place and the accused caused him hatchet blows, deceased Nazeer in order to save himself, ran in the sugarcane crop and they saw accused following the deceased towards the sugarcane fields. Due to fear they did not follow them. Then accused Sahib alias Karo came out of sugarcane crop and went running towards west alongwith hatchet, they then saw Nazeer Oad was having injuries on different parts of his body with bleeding and within their sight succumbed. On receipt of such information he went to the place of wardat and then to PS where he lodged the FIR. It was recorded vide crime No.41/2006 for offence u/s 302 PPC at 1600 hours.

3. During investigation, Lash Chakkas Form of the dead body was prepared, Inspection of place of incident took place, blood stained earth, cloths of the deceased were secured, accused was arrested, blood stained hatchet was recovered on his pointation and later sealed. I.O recorded the statements of PWs and referred the blood stained earth, cloths and hatchet to the chemical examiner. On conclusion of the investigation, the accused was sent up for trial.

4. Charge was framed against accused on 25.07.2007 at Ex.02, to which accused pleaded not guilty and claimed for trial vide plea at Ex.03.

5. In order to prove its case, the prosecution examined PW-1 Dr. Iqbal at Ex.06, who conducted the autopsy of the dead body of Nazeer Oad, PW-2

complainant Gulab Mal Oad at Ex.07, PW-3 Iqbal Oad (eye witness) at Ex.08, PW-4 Sajjad Oad (eye witness) at Ex.09, PW-5 Nazar Oad, mashir of place of incident, dead body, blood stained earth, arrest and recovery of hatchet/crime weapon at Ex.10, PW-6 Tapedar Ali Gohar Dahri at Ex.11, who produced a sketch of place of incident, PW-7 Azizullah Mouro, Inspector/SIP, Investigation Officer of the case at Ex.12 and PW-8 Muhammad Dawood Rind at Ex.13. Thereafter, prosecution side was closed vide statement at Ex.14.

6. The statement of accused was recorded u/s 342 Cr.P.C. at Ex.15, in which he claimed his innocence and denied the prosecution allegations. According to him he has been falsely implicated and the weapon has been foisted upon him. He further stated that a false case has been engineered against him. However, he did not examine himself on Oath nor lead any evidence in his defence.

7. No one has been attending this court since 2013 on behalf of the appellant who as per file is being represented by two advocates as pro bono but none of them is in attendance nor any intimation has been received for years. Record further shows that despite notices none has come forward from the complainant's side either. This appeal is pending since 13.02.2012 and evidently not being persuaded vigilantly therefore, keeping in view heavy backlog of cases pending in this Circuit Court and when learned D.P.G. is ready to proceed, the appeal was taken up for hearing with the valuable assistance of learned D.P.G and the material available on record as the paper book has already been prepared and the R&Ps were already called in the past.

8. Through this appeal, the appellant has stated that the impugned judgment is contrary to law and result of misreading and non-reading of the evidence; that there are material contradictions in the evidence of the

prosecution witnesses which have not been considered by the trial court at the time of pronouncing the judgment; that the impugned judgment is against the ingredients of administration of criminal justice.

9. Conversely, Mr. Shahid Ahmed Shaikh, learned D.P.G. argued that the prosecution had proved its case against the appellant beyond any shadow of doubt; there are minor contradictions in the evidence of prosecution which cannot be deemed as fatal; ocular evidence corroborates the medical evidence. He has supported the impugned judgment and prayed for dismissal of the instant appeal. However, he concedes that Section 302 PPC under which the appellant has been convicted has not been properly applied.

10. I have heard the learned D.P.G. for the State and perused the entire evidence minutely available on the record.

11. PW-1 Dr. Iqbal in his examination in chief has stated that on 25.09.2010 he received the dead body of Nazar Oad for conducting the postmortem. He has stated that the dead body was identified by Gulsher and Hakim (strangely none of those individuals have been examined before the trial Court). He stated that postmortem was started at 06-00 p.m and was completed at about 08-00 p.m and on external examination, he found 06 injuries. He further stated that time between death and postmortem was 6 ½ hours. In the said statement it is reported that the deceased was wearing white Shalwar Qameez. It is not stated that whether there were blood stains on the said Shalwar Qameez or not when the body was seen by him.

It to be noted that the complainant Ghulab Mal was not the eye witness of the incident. Why any of the two alleged eye witnesses chose not to act as complainant though they were also close relatives of the deceased, is a question which remained un-answered. He stated that at about 1-00 p.m on

that day, his nephew Iqbal came to his house and informed that his sister's son Nazir was murdered at the hands of accused Sahib whereupon he left the house alongwith Iqbal, came to the venue and found the dead body of Nazir lying in the sugarcane crop. When he reached there is also unknown. Thereafter, leaving the PWs Sajjan and Iqbal over the dead body he went to P.S alone to lodge the FIR. It is interesting to note that time of lodging the FIR is 4-00 p.m however, the latter states that he alongwith police officials reached to the place of incident where after usual formalities the dead body was handed over to him at 5-00 p.m. Clearly there appears to be a disjoint between the time of FIR being lodged at 1600 hours and body being handed over to him at 1700 hours, considering in this one hour he proceeded to the place of venue which is 3 miles and the police completed all the formalities within such a short span of time and handed over the body to him for postmortem. In cross examination, he has denied that there was any business transaction known to him between the deceased and the accused. He admitted that he was informed that at the time of incident deceased was ahead at some distance on bicycle from two riders and that a scuffle took place between the accused and deceased at Panj Futa Path and the deceased in order to save himself ran inside the sugarcane crop. He admitted that the eye witnesses Sajjan and Iqbal did not venture to go inside the sugarcane crop due to fear. He though admits that he saw the bicycle of the deceased lying at Panj Futa Path under the Khabar tree when he reached to the place of incident for first time.

12. Eye witness Iqbal has stated that deceased Nazir was his sister's son and he alongwith Sajjan left home for selling articles on bicycles. He stated that deceased Nazir was ahead at some distance from himself and other eye witness Sajjan. He stated that he saw accused Sahib available at the road armed with hatchet who stopped Nazir and demanded the outstanding money

and scuffle took place whereupon accused started causing hatchet blows to Nazir and the deceased ran in the sugarcane crop in order to save him. Due to fear they did not go near to accused till the accused fled away from the spot and when they reached, they found that deceased was bleeding and succumbed to injuries. It is interesting to note that in his examination in chief he has not given any suggestion as to the time which this whole slaughtering exercise took. He stated that he waited for 15 minutes at the venue but later left Sajjan with the corpse and went to the village to inform the complainant about it. Point to note is that he did not tell anyone about this case. Complainant Ghulab Mal has admitted that there is distance of 3 miles between the place of incident and the village of complainant. He also has not stated that whether he went to the complainant on cycle or was on foot. Nonetheless, a distance of 3 miles would take a reasonable time notwithstanding he spent 15 minutes at the place of incident to start with. In his cross, he has admitted that he and Sajjan made cries and some persons arrived at the place of incident however, he has not given names of those persons. He admitted that when the incident took place he was at the distance of half jareb from the deceased. He however, admitted that some conversation took place between the deceased and accused whereafter the accused caused hatchet injury to the deceased who leaving his cycle ran into the sugarcane crop to save him. He admitted that bicycle of the deceased was lying on the way until police arrived and they showed the cycle to police which was taken by them to the village.

13. Eye witness Sajjan has narrated the same story however, he admitted that he remained with the corpse and Iqbal went to the village to inform the complainant. Neither the time when the incident took place nor the time when Iqbal left for village nor the time when Iqbal and the complainant returned to the place of incident and the police arrived has been mentioned anywhere. In

his cross examination he admitted that they shifted the bicycle by placing the same on the roof of the datsun in which the dead body of the deceased was shifted to the hospital. There appears to be a clear contradiction between these two eye witnesses' statements as to the fate of the bicycle of the deceased. Since bicycle is the only toll which could support the prosecution's version that the deceased was on his bicycle to sell the merchandise alongwith eye witnesses Sajjan and Iqbal.

14. PW Nazar, who is mashir of the case in his examination in chief has stated that the police took blood stained earth and sealed it in a cigarette. He admits that he alongwith Hakim reached to the place of venue after hearing the news of alleged murder of their relative Nazir however, no time is specified for his arrival at the place of venue. He stated that on 5th day of the incident accused Sahib was arrested near from his otaq by the police party in his presence and in presence of co-mashir Hakim and that on the same day at about 2-30 p.m accused produced the hatchet which he had hidden in the western side of hedge of his house. He admitted sealing two parcels; one having blood stained earth and the other with hatchet however, did not disclose that the earth was in a cigarette pocket as admitted by him in examination in chief. He also produced last wearing clothes of the deceased as article No.3. In his cross examination, he admitted that he received information regarding the murder of Nazir at 11-00 a.m. A serious question arises as to how this information reached to him within 30 minutes as the murder had taken place at 10-30 a.m particularly when Iqbal or Sajjan did not disclose that they informed anyone else other than Gulab at 1-00 p.m. Eye witness Iqbal spent 15 minutes with body and travelled a distance of 3 miles to inform the complainant, which suggests that Nazar would have been informed by someone else. Admittedly, besides Sajjan and Iqbal, nobody knew of the incident other than the complainant before 1-00 O` Clock.

Strangely he stated that information was given to him by the complainant Gulab, thus discrepancy as to how this information reached to the complainant about 11-00 a.m when the complainant Gulab only got to know about the incident at 1-00 p.m is hard to ignore. The critical information coming out of his cross is that he admitted that nowhere in the memo of incident the presence of the bicycle belonging to the deceased was shown, which allegedly was taken by him in the vehicle. He admitted that except the place where dead body was lying, nowhere else blood stain were found. This version supports the view that no hurt was caused to the deceased by the alleged attack on him outside the sugarcane field, so whatever happened inside the field caused his death, which act was hidden from the eyes of the two eye witnesses Iqbal and Sajjan who chose not to go inside the field to save their nephew.

15. PW Ali Gohar, the concerned Tapedar has admitted in his examination in chief that the venue of the incident was visited by him after about 5 years of the incident. He produced three sketches which show that witnesses were atleast 110 feet away from the point where the dead body was lying inside the fields.

16. Investigation Officer Azizullah in his examination in chief has stated that he collected the blood stained earth from the incident and sealed it in the presence of the mashirs. This however is in conflict with the statement of Nazar that the earth was only put into a cigarette box which clearly shows that it was not sealed at the place of incident. In his cross examination he admitted that on the day of incident he prepared the memo of venue of the incident as well as recorded the statements of PWs but admitted that 161 Cr.P.C. statements were written down by WHC under his dictation while the memo of venue of the incident was written by him in his own handwriting. He could not

answer whether the statements of witnesses were recorded on the same date or not. Later on in his cross, he admitted that the statements of witness Iqbal was written down by him in his own hand writing while that of Sajjan was written by WHC. He further stated that the statement of PW Iqbal had over writing on its date. He also admitted that there is also over writing on the date of statement of PW Sajjan. In cross he admitted that he reached at the place of incident but he admitted that he did not record the statements of eye witnesses at the spot. He further admitted that in the memo of venue of incident, it is not stated that any guidance was provided by the eye witnesses on the spot. He stated that the dead body was lying at the distance of 15 feet in the sugarcane crop from katcha path. He further stated that the dead body was lying in the sugarcane crop at the distance of about 7/8 feet, from start of the crop. He admitted that except where the dead body was lying, there were no blood stain marks in the sugarcane crop. He admitted that in the memo of place of incident it is mentioned that the deceased was wearing white colour Shalwar Qamiz but it was not mentioned that there was any blood stained earth on his clothes. He admitted having not produced his departure or arrival entries. Further, he admitted that he does not remember if any bicycle was lying on the spot. He further commented this line by making admission that there was no mention regarding the existence of bicycle in the memo of venue of the incident. About the chemical examiner report, while the report has come positive that the blood test was positive, but it fails to mention that whose blood was on the hatchet or were there any fingerprints on the said hatchet and if there were, were they matched with those of the accused.

17. In his statement recorded u/s 342 Cr.P.C, the accused has denied the prosecution`s allegations and stated that nothing has been recovered on his pointation and hatchet has been foisted upon him to strengthen the case. He stated that the blood stained earth, hatchet and the chemical report were

managed. He did not claim the case property being hatchet while through question No.7 as to why the prosecution witnesses have deposed against him (it is pertinent to mention here that the names of those witnesses were not even specifically given), he replied that they are interested, set up and hostile witnesses. In the last question as to what else he wants to say, he stated that he is innocent and has committed no such offence.

18. If one believes the prosecution story one has to register this fact that deceased alongwith Sajjan and Iqbal were wondering in the streets selling small goodies on their bicycles, and when they reached near Faiz Muhammad Dahri, the deceased gained some distance from Sajjan and Iqbal, the latter saw the accused quarreling with the deceased however, they could not register as to what was the quarrel about. I.O and the other witnesses have also seen that there was no blood anywhere else except near the dead body therefore, it cannot be believed that hurt was caused to the accused when he was seen by PWs Iqbal and Sajjan outside the sugarcane fields, till the deceased ran into these fields and the accused followed him. It is surprising to note that when the accused was hitting the deceased and hue and cry must have been made, nobody came forward and tried to held him, as allegedly he was attacked with hatchet in the hand of one man and admittedly the attacker was not armed with any pistol etc. There were three people available at the place of incident, which were closely related yet they could not overcome an attacker with a hatchet, does not appeal to logic.

19. Admittedly, neither PW Sajjan nor Iqbal saw what was happening in the sugarcane field. They only saw the deceased running in the sugarcane crop and the accused chasing him therefore, they cannot be called as "eye witnesses" at best they could be termed as the "last seen witnesses". Admittedly, one hatchet injury is alleged to have been caused to the

deceased before running to sugarcane crop but there was no blood found outside the crop and the blood stained earth was only found where the dead body was lying which does not support the chemical report. The postmortem report suggests that injuries were caused by sharp cutting weapon however it failed to specify whether it could have been caused through knife, razor, glass, splinter or the hatchet as the injuries No.1, 3, 5 and 6 are shown as 8 c.m whereas injuries No.2 and 4 are 10 c.m long, giving reason to believe that more than one instrument was used by the attacker(s). Also size and dimension of hatchet's sharp-edge has not been specified, as to whether the same hatchet was 6 inch or 8 inch faced.

20. The third critical point which fails to inspiring confidence in the story of the prosecution is that accused was on cycle however neither the same was recovered from the site nor there is any evidence as to what happened with that cycle. At one place, PW Iqbal stated that they had taken the cycle to the village however PW Sajjan says that the cycle was taken on the roof of datsun alongwith dead body to the hospital, whereas mashir Nazar stated that there is no mention of existence of cycle which had been taken by us in the vehicle, but I.O stated that he did not remember whether any cycle was lying on the spot or not though he admitted that there is no mention of any cycle in the memo of venue of the incident. Complainant in his cross examination has also admitted that cycle was lying at Panj Futa under a Khabar tree. Prosecution story could be disbelieved only on this account. The alleged recovered hatchet is easily available in the market having no distinctiveness and the same was sent to the Chemical Examiner for report (with a delay) to find human blood. Hence it could not connect the appellant with the commission of instant crime unless blood type and finger printing was determined. Admittedly the complainant was not present at the venue and the ocular account is not free from doubts, hence needs corroboration, which is

lacking in the case in hand. I would rather in the circumstances would go to say that the murder was un-witnessed as what happened in sugarcane fields, nobody knows. Needless to add that it is by now a settled principle of law that for a case, based on circumstantial evidences, all pieces of such evidences have to make an unbroken chain. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment. Reference is made to a judgment, recorded by Apex Court, in the case of *Azeem Khan* 2016 SCMR 274 wherein it is held as:

“31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. The principle of law, consistently laid down by this Court is , that different pieces of such evidence has to make on chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment. “

21. So far as the recovery of hatchet is concerned, it needs not be reaffirmed the well settled principle of law of appreciation of evidence that recovery is only a corroborative piece and alone cannot hold the conviction but at the most could provide some help to other evidences. For recovery it would suffice to say that it does not appeal to a common sense that an accused of heinous crime of murder would instead of swiftly getting rid of weapon, used in commission of crime, prefer to keep or carry the same till his arrest. Even otherwise, the recovery of hatchet is alleged to have been affected from the accused, which even is easily available in open market hence possibility of it being foisted cannot be ruled out particularly in a case where the complainant had set-up ocular account on evidence of the persons who are closely related to him.

22. Since, the law is also quite clear that acquittal should not be avoided even if a single doubt prima facie causes material dent in the prosecution

case. The above contradictions made in the prosecution case create a plethora of doubts as to whether the deceased was actually wondering on his bicycle and when arrived on the place of incident got murdered in the sugarcane fields particularly when there is a counter version that someone else killed the deceased and threw his dead body in the sugarcane field and the accused is falsely implicated in this case. All these inconsistencies, infirmities and discrepancies create doubts in the prosecution's case. Furthermore, all the prosecution witnesses i.e. complainant and eye witnesses are related to the complainant and they are close relatives of the deceased and the complainant. Thus independent corroboration to support ocular and medical evidence and to connect the same with the accused in the commission of offence are missing. Circumstances establish that the prosecution has failed to prove its case against the accused beyond any shadow of doubt, benefit of which would only go in favour of the accused.

23. Accordingly, by extending the benefit of doubt, the instant appeal is allowed and the conviction and sentence awarded by the learned trial Court to the appellant through judgment dated 14.12.2011 in Sessions Case No.271 of 2006, arising out of crime No.41 of 2006 u/s 302 PPC of P.S. Daulatpur are hereby set aside and the appellant is acquitted of the charge. Appellant has been called to be produced in custody. He shall be released forthwith if not required in any other custody case.

JUDGE