

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No. S- 15 of 2014

Appellant: Lakho s/o Jeewan Kolhi through
Mr. Muhammad Hassan Jakhro, Advocate.

Complainant: Nemo for complainant.

State: Through Ms. Rameshan Oad Assistant
Prosecutor General, Sindh.

Date of hearing: 13.03.2020

Date of Judgment: 13.03.2020

JUDGEMENT

ABDUL MAALIK GADDI, J- Through this criminal jail appeal, appellant has assailed the legality and propriety of judgment dated 28.11.2013 passed by learned 2nd Additional Sessions Judge, Thatta in Sessions Case No.16/2011 (Re: The State V/s Lakho) arisen out of Crime No.54/2010 registered U/S 302, 504, 34 PPC at PS Jherrukh, whereby the learned trial court after full dressed trial convicted and sentenced the appellant as stated in Point No.3 of the impugned judgment. For the sake of convenience, it would be proper to reproduce the findings of the said point of the impugned judgment which reads as under:-

“On over all appraisalment of the entire evidence and on considering the surrounding and attending circumstances of the case I can draw the conclusion that the prosecution have established the case against the accused namely Lakhoo s/o Jeewan Kolhi beyond the reasonable shadow of doubt. However, motive as narrated in the FIR has not clearly been disclosed by eye witnesses in their evidence. This, being so, there is no justification to award death sentence to the accused. Looking to mitigating circumstances, accused Lakho s/o Jeewan Kolhi is therefore, convicted under section 302(b) PPC and sentenced for life imprisonment and to pay a fine of Rs.100,000/-. In case of recovery of the amount, the same will be pay to the L.Rs of the deceased Aziz Khoso as compensation and in case of default they will suffer twelve months more R.I. Accused is allowed to avail benefit of Section 382(b) Cr.P.C. the accused Lakho is produced in custody is remanded to Central Prison Hyderabad with direction to serve out sentence awarded to him. The case of absconder accused Pono s/o Jewan Kolhi is kept on dormant while when he was arrested and produced before this Court the proceedings against him will be initiated according to law”.

2. Brief facts of the prosecution case as per F.I.R are that, complainant is Zamindar by profession, deceased Aziz Khoso son of Imdad Ali was adopted by him since his childhood and deceased used to reside with him and used to cultivate his land. On 01.11.2010 complainant went outside for personal work and he left his nephew deceased Aziz at his land situated at deh Nai Baran near Band Mori for sowing seed in the land. He returned back at evening time, when he was informed by Ghulam Rasool son of Lakhano on phone that he and Ghulam Mustafa Khoso were also working at their lands and deceased Aziz was also cultivating seed, when at about 1530 hours they saw that accused Lakhoo son of Jeevan b/c Kolhi and his brother Ponu Kolhi armed with hatchets came near to the deceased Aziz Khoso and started some talks with him. they saw that both accused caused hatchet blows injuries on the head of deceased Aziz, on crises, they attracted at the place of incident, the accused on seeing the witnesses escaped away. They saw that the deceased Aziz was seriously injured and unconscious, blood was oozing from his head injuries, on such information of Ghulam Rasool Khoso, he and his relative Imamdin son of Ali Muhammad Khoso came at the place of incident in his Jeep and saw that the above named witnesses were standing there. Aziz Khoso was in serious condition, who sustained hatchet injuries on his head, on his inquiry, the above named witnesses disclosed the same fact to them as stated above. Thereafter they brought the injured Aziz Khoso in the Jeep at Jherruck Hospital, but in the way, injured succumbed to injuries. Thereafter, they brought the dead body at Jherruck Hospital, where Jherruck police completed the necessary formalities and after conducting postmortem, the dead body of deceased was handed over to the complainant for funeral ceremony. Thereafter, he appeared at P.S and lodged F.I.R.

3. After usual investigation, police submitted challan before the concerned Judicial Magistrate, who took cognizance of the offence and thereafter the case was entrusted to the learned trial Court having jurisdiction in the matter. A formal charge against the accused was framed at Exh.04, who pleaded not guilty and claimed trial vide his plea Ex.4/A. However, since the co-accused Ponu Kolhi was declared as proclaimed offender vide order dated 06.11.2010, therefore, his case was kept on dormant file.

4. At trial, the prosecution to prove its case has examined following witnesses:

- i. PW-1 / Complainant Hidayatullah examined at Ex.5, he produced F.I.R at Ex.5/A.
- ii. PW-2 Ghulam Rasool examined at Ex.6.
- iii. P.W-3 Ghulam Mustafa examined at Ex.7.
- iv. P.W-4 Ashique Ali examined at Ex.8, he produced mashirnama of dead body of deceased Aziz at Ex.8/A, danishtnama / inquest report of deceased Aziz at Ex.8B, mashirnama of place of incident at Ex.8/C, mashirnama of clothes at Ex.8/D, mashirnama of arrest at Ex.8/E, mashirnama of recovery at Ex.8/F, mashirnama of recovery at Ex.8/G and mashirnama of recovery at Ex.8/H.
- v. P.W-5 Natho Khan examined at Ex.10.
- vi. P.W-6 ASI Moula Bux examined at Ex.11, he produced roznamcha of departure entry at Ex.11/A, sketch of place of incident at Ex.11/B, roznamcha entry of their arrival at Ex.11/C, roznamcha entry of their departure dated 07.11.2013 at Ex.11/D, roznamcha entry of their arrival dated 07.11.2013 at Ex.11/E, sketch of recovered hatchet at Ex.11/F, Chemical report at Ex.11/G.
- vii. P.W-7 Dr. Sarfaraz Ahmed Memon examined at Ex.12, he produced letter for postmortem at Ex.12/A and postmortem report at Ex.12/B.
- viii. P.W-8 Sohail Akhtar Mangi, learned 3rd Civil Judge / J.M. Thatta, examined at Ex.13, he produced application of SIO P.S Jherruck for recording confession statement of accused u/s 164 Cr.P.C at Ex.13/A, confessional statement of accused at Ex.13/B.
- ix. P.W-9 ASI Muhammad Yousif examined at Ex.14, he produced lash chakas form at Ex.14/A.

It appears that all these witnesses have been cross-examined by the counsel for appellant.

5. Thereafter, learned DDPP closed prosecution side at Ex.15. Later on statement of accused was recorded U/S 342 Cr.P.C at Ex.16, in which he denied the prosecution allegation and claimed his innocence. However, he did not examine himself on oath nor led any evidence in his defence.

6. Learned counsel for the appellant contended that the case is managed one and appellant is innocent and has been falsely implicated in this case with malafide intention and ulterior motives; that prosecution case is full of doubts and infirmities, as such, accused deserves benefit of such doubt; that the incident took place on 01.11.2010 whereas F.I.R was lodged on 04.11.2010 after the delay of three days and the distance between police station and the place of

incident is / was 25 KM; that murder of deceased is pre-planned as the deceased and his wife were living in the complainant's house and there were matrimonial dispute between deceased and complainant to each other, therefore, this murder has been occurred due to the dispute between the complainant and deceased; that there are material contradictions and discrepancies in the evidence of prosecution witnesses which have not been appreciated by learned trial Court; that prosecution has not brought any independent evidence against the present accused, as such, false implication of the appellant in this case cannot be ruled out.

7. Conversely, learned A.P.G. Sindh while supporting the impugned judgment submits that prosecution has fully established its case beyond any reasonable doubt by producing consistent / convincing and reliable evidence and the impugned conviction and sentenced awarded to the appellant is the result of the proper appreciation of evidence brought on record, which needs no interference by this Court. She lastly prayed for dismissal of this appeal.

8. I have heard the learned counsel for appellant, learned A.P.G for the State and perused documents & evidence so brought on record.

9. After hearing the learned counsel for the parties, I have come to the conclusion that prosecution has proved its case against appellant beyond a shadow of reasonable doubt. It appears from the record that incident in this case took place on 01.11.2010 whereas F.I.R was lodged on 04.11.2010 by complainant Hidayatullah who appears to have no inimical terms with the appellant. However, on perusal of record it reveals that delay in lodging of F.I.R has been properly explained by the complainant. The allegation against the appellant is that he caused hatchet blows to the deceased Abdul Aziz. The accused / appellant Lakho has been arrested by the police on 07.11.2010 and he has made his judicial confession before the Judicial Magistrate on 08.11.2010. The cause of death as per medical evidence / postmortem report was the injury caused with sharp edged weapon (hatchet) and in this regard the prosecution has brought on record direct as well as circumstantial evidence against the appellant.

10. The motive as per confessional statement of the appellant behind the incident was that deceased Abdul Aziz had given Rs.500/- to present appellant for doing labour work in his land but he could not complete the same due to his illness and left the work incomplete.

Some days after, deceased Abdul Aziz met with appellant and there was exchanged of hot words between them and then after beating the appellant, deceased snatched his mobile and told him that when he (appellant) will return Rs.500/- to him then he will return his mobile. Thereafter, accused / appellant collected Rs.500/- after doing labour and went to deceased Abdul Aziz and asked him to take Rs.500/ and return his mobile, who instead of returning his mobile, started beating him. At that time accused / appellant was having a hatchet in his hand and attacked upon deceased and caused injury to him which resulted his death.

11. The judicial confessional statement on record has also found support from the circumstantial and direct evidence as discussed above. Learned counsel for the appellant has attacked on judicial confessional statement and stated that the same was not voluntary and true as enough time required by law has not been given to the accused for reflection and so also such confessional statement was not recorded in accordance with the law as according him the requisite question with regard to removing of handcuffs has also not been asked from the accused.

12. I have examined the judicial confessional statement on record with the able assistance of the learned counsel for the parties and found that the Civil Judge after observing all requirements of law and giving a time of two hours viz. 1:00 p.m. to 3:00 p.m. for reflection recorded the same and he was of the opinion that the confession was voluntary and true. In this regard I am fortified with the case law reported as **Gul Jamal v. State** (1980 SCMR 654), wherein it was held that no hard and fast rule as to how much time is to be allowed to the accused for reflection before confession is recorded. However, period of time depends on each case. In the present circumstances of the case, I am of the opinion that the time given by the Judicial Magistrate for reflection purpose to the appellant was sufficient and it has not caused any prejudice to the case of prosecution.

13. Learned counsel for the appellant has also pointed out some lapses while recording confessional statement of the appellant, but in my view, the lapses pointed out having no bearing. Even otherwise, any lapse left by Magistrate in recording the confession cannot always be treated as fatal to the evidentiary value of confession when the court is satisfied that lapse on the part of the Magistrate has not in

any way adversely affected the voluntariness or truthfulness of the confession. On perusal of confessional statement, I did not find any infirmity in such statement which is corroborated by the strong direct, medical as well as circumstantial evidence. Even otherwise, as per law the judicial confession if ring true and is voluntary, can be made the sole basis for the conviction of the maker thereof. However, if the same is retracted, even then its evidentiary value is not diminished if the same gets corroboration from other facts and circumstances of the case. In this regard, I am also supported with the case of **State v. Minhun alias Gul Hassan** (PLD 1964 SC 813), wherein the Hon'ble Supreme Court of Pakistan observed as under:

“As for the confessions the High Court, it appears, was duly conscious of the fact that retracted confession, whether judicial or extra judicial, could legally be taken into consideration against the maker of those confessions himself, and if the confessions were found to be true and voluntary, then there was no need at all to look for further corroboration. It is well-settled that as against the maker himself his confession, judicial or extra judicial, whether retracted or not retracted, can in law validly A form the sole basis of his conviction, if the Court is satisfied and believes that it was true and voluntary and was not obtained by torture or coercion or inducement”.

14. No evidence on record to show that confessional statement of appellant was recorded by means of any torture or coercion. Even otherwise learned counsel for the appellant has failed to point out any illegality in recording the said confessional statement. In this case, learned trial court has properly appreciated the evidence according to the settled principles of law connecting the appellant in the commission of crime. Judicial Confession of the accused / appellant was voluntary which was corroborated by medical and other pieces of evidence as discussed above. No evidence has been produced by the appellant before the trial Court in his defense. Prosecution witnesses had no motive to falsely implicate the appellant in this heinous crime. Appellant has committed murder of one innocent person in a brutal manner.

15. As observed above, in this case, the prosecution through documents and evidence on record established the strong direct as well as circumstantial evidence connecting the appellant with the offence. During the course of arguments, I have specifically asked the question from learned counsel for the appellant to point out any illegality in recording of confessional statement of the appellant or any

material contradiction in between the evidence of prosecution witnesses, he has no satisfactory answer with him.

16. For whatever has been discussed above, I hold that the prosecution has proved its case against the appellant beyond any shadow of doubt. Trial Court has appreciated the evidence according to the settled principles of law. Judgment of trial Court requires no interference by this Court. Resultantly, the Cr. Jail Appeal merits no consideration is hereby dismissed along with listed application[s], if any. Consequently, impugned judgment dated 28.11.2013 is maintained. However, the appellant is entitled for benefit of Section 382-B, Cr.P.C.

17. Office is directed to immediately send the copy of this judgment to the Superintendent Central Prison Hyderabad for providing the same to the appellant as well as R&P be returned to the trial Court.

JUDGE

****Hafiz Fahad****