

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.S- 289 of 2018**  
**Criminal Appeal No.S- 03 and 07 of 2019**

**Appellants:** Chetan son of Chatoon Meghwar, Kewal son of Moti, Gumano son of Moti, Sht.Gudi w/o Bhagu, Sht.Babri w/o Moti, Sadhu son of Rajo, Garuo son of Mano. Through M/s Ghulamullah Chang, Vasand Thari, Ashok Kumar and Kanji Mal, Advocates.

**Complainant:** Through Mr. Aslam Sipio, Advocate.

**State:** Ms. Safa Hisbani, A.P.G

**Date of hearing:** 11.10.2019

**Date of decision:** 11.10.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The appellants by way of captioned appeals have impugned judgment dated 20.12.2018, passed by learned Sessions Judge, Tharparkar @ Mithi, whereby they have been convicted and sentenced as under;

“all the accused for causing the murder of deceased Abdul Razaque s/o Mureed by caste Makwano, I convict all of them U/S 302(b) P.P.C R/W section 34 PPC to suffer imprisonment for life as Tazir. They are also liable to pay Rs.1,00,000/-(rupees one hundred thousand) each as compensation to the legal heirs of the deceased as provided U/S 544-A Cr.P.C. they are also convicted U/S 201 PPC and sentenced to suffer imprisonment for five years with fine of Rs.10,000/-and in case of default, they shall suffer S.I for two months

more in addition to above sentence. The sentences awarded shall run concurrently.. “

2. The facts in brief necessary for disposal of instant appeals are that Abdul Razauque young boy of 14 years son of complainant Mureed, went missing and he accordingly lodged FIR at P.S. Islamkot alleging therein that the appellants have killed his son Abdul Razaque and then have caused disappearance of his dead body to save them from legal consequence, in order to misappropriate the money, which his son Abdul Razaque was having with him.

3. On due investigation, the appellants were challaned by the police to face trial for the above said offence.

4. At trial, the appellants did not plead guilty to the charge and prosecution to prove it, examined complainant Mureed and his witnesses in all ten in number and then closed the side.

5. The appellants in their statements recorded U/S 342 Cr.P.C denied the prosecution allegations by pleading innocence by stating that they have been involved in this case falsely by the complainant party in order to satisfy its old enmity and dispute with them over landed property. In order to prove their innocence, the appellants produced certain documents; they however, did not examine themselves on oath to disprove the charge against them or anyone in their defence.

6. On evaluation of the evidence, so was produced by the prosecution, learned trial court convicted and sentenced the appellants as is detailed above.

7. It is contended by learned counsel for the appellants that the appellants being innocent have been involved in this case falsely by the complainant party in order to satisfy their enmity with them over landed property; the FIR has been lodged with un-explained delay of eight days; 161 Cr.P.C statements of the PWs have also been recorded with considerable delay to FIR; neither the complainant nor any of his witness has seen the appellants committing the alleged incident; the appellants have been convicted on the basis of recovery of dead body of deceased at the pointation of the appellants; such recovery being doubtful in its character, could hardly be relied upon to maintain conviction. By contending so, they sought for acquittal of the appellants.

8. Learned counsel for the complainant and learned A.P.G for the State by supporting the impugned judgment have sought for dismissal of the captioned appeals, by contending that the appellants have committed the death of an innocent boy in a very clanstine manner.

9. I have considered the above arguments and perused the record.

10. As per complainant Mureed on 06.10.2013, his son Abdul Razaque went missing. He came to know through Abdul Razaque and Ibrahim that his son Abdul Razaque after taking money with him has gone with appellants Kewal and Gumano. On coming to know of such fact, he went to the above said culprits and in the meanwhile was intimidated by Abdul Latif and Luqman that they have seen appellant Gumano with hatchet, Sadu and Cheetan in suspicious condition by side of their houses. On coming to know of such fact, he lodged report of the incident with police on 14.10.2013. It was with delay of about eight days. Failure on the part of the complainant to report missing of his son to the police promptly could not be overlooked. In case of **Mehmood Ahmed & others vs. the State & another (1995 SCMR-127)**, it was observed by the Hon'ble Court that;

*“Delay of two hours in lodging the FIR in the particular circumstances of the case had assumed great significance as the same could be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution might wish to implicate”.*

11. PWs Ibrahim and Abdul Razaque have not been examined by the prosecution. Evidence of PW Muqem is only to the extent that he intimidated the complainant to have seen his son Abdul Razaque lastly in company of the appellants. The evidence

of PW Abdul Latif is only to the extent that he seen the appellants while standing by the side of their house. None of them including the complainant, even otherwise, has seen the appellants while committing the alleged incident.

12. The 161 Cr.P.C of the said PWs as per SIO / SIP Khan Muhammad were recorded on 16.10.2013. If it was so, then it was on 3<sup>rd</sup> day of lodgment of the FIR. No plausible explanation to such delay is offered by the prosecution. In that situation, no much reliance could be placed upon evidence of above said witnesses. In case of ***Abdul Khaliq vs. the State (1996 SCMR 1553)***, it was observed by Hon'ble Court that;

*“----S.161---Late recording of statements of the prosecution witnesses under section 161 Cr.P.C. Reduces its value to nil unless delay is plausibly explained.”*

13. The conviction of the appellants on the basis of extra judicial confession allegedly made by the appellant Kewal and recovery of hatchet and dead body of the deceased on his pointation could hardly be sustained simply for the reason that the extra judicial confession being weakest type of evidence in absence of direct evidence connecting the appellants in commission of incident, could hardly be relied upon. Simultaneously, the recovery of the hatchet on 10<sup>th</sup> day of his (appellant Kewal) arrest could hardly implicate him or anyone

else in commission of incident. Only thing which remains to be discussed is recovery of the dead body of the deceased allegedly on the pointation of appellant Kewal. Nothing has been brought on record which may suggest that the appellant Kewal was owner of the house by the side whereof dead body of deceased Abdul Razaque was found buried. In case of ***Muhammad Hussain vs the State (2011 SCMR 1127)*** it has been held by the Hon'ble apex Court that ;

*“Benefit of doubt. Dead body of the deceased was recovered from the house of another person for which no evidence was led that the house was on rent with the accused.”*

14. As per memo of recovery of dead body of deceased Abdul Razaque, the dead body was dug out on 18.10.2013. As per mashir Akbar Ali it was dug out on 18.06.2013. As per SIO / SIP Muhammad Khan it was dug out on 14.10.2013. As per PW Rao Muhammad Nadim the then Judicial Magistrate-II Mithi it was dug out on 18.03.2013. Single dead body could hardly be recovered on four different dates, such omission has made the very recovery of the dead body of the deceased allegedly at the pointation of appellant Kewal together with its memo to be doubtful one.

15. The conclusion which could be drawn of the above discussion would be that the prosecution has not been able to

prove its case against the appellants beyond shadow of doubt and to such benefit they are found to be entitled.

16. In case of **Tarique Pervaiz vs. The State (1995 SCMR 1345)**, it has been held by Hon'ble Apex Court that;

*“For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right.”*

17. Above are the reasons of short order dated 11.10.2019, whereby the captioned appeals were disposed of by this Court, which reads as under;

*“Heard arguments. For the reasons to follow, instant appeals are accepted and impugned judgment is set aside. Consequently, appellants are acquitted of the charge and they may be released forthwith, if not required in any other criminal case.”*

**J U D G E**