

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Appeal No. 794 of 2019

Appellant : Hakim @ Hakoo  
through Mr. Mumtaz Ali Khan Deshmukh,  
Advocate

Respondents : The State & another  
through Mr. Talib Ali Memon, APG

**JUDGMENT**

Omar Sial J: On 6-7-2017 a dead body was brought to the Jinnah Hospital. S.I. M. Ashfaq was informed about it. He reached the hospital and conducted the preliminaries (memo of dead body, inquest report, post mortem, handing over of the body). The body was identified as that of Bashir Sultan. The police officer, while he was at the hospital, also recorded a statement under section 154 Cr.P.C. of Raja Naveed (the nephew of the deceased). S.I. Ashfaq went back to the police station and registered F.I.R. No. 378 of 2017 under sections 302 and 34 P.P.C. The investigation was then handed over to S.I. M. Ayub.

2. In his section 154 Cr.P.C. statement Raja Naveed recorded that he was a cook by profession and that his uncle Bashir (the deceased) who was a drug addict lived in an adjacent house. On 6-7-2017 at about 1430 hours he heard noise from outside his house. When he went to investigate he found his uncle Bashir in an injured condition with blood flowing from the front part of his body. Bashir, before he died, told Raja that Aamir, Gul Sher and Hakim alias Haku (the only appellant in this appeal); had quarreled with him over his addiction and that Gul Sher and Hakim had held him while Aamir had stabbed him with a knife. The 3 accused had then run away.

3. Shaukat Ali alias Gulsher along with the appellant Hakim were arrested. Hakim who was already arrested on 2-5-2018 in F.I.R. No. 217 of 2018 by the Zaman Town police station, while in custody, confessed before the police that he had also murdered Bashir. It is most surprising that Aamir was not nominated as an accused when the challan was filed. Gul Sher remained an absconder.

4. The arrested accused pleaded not guilty and claimed trial. **S.I. M. Ashfaq** was the first prosecution witness. **Raja Naveed** was examined as the second witness. The deceased's brother **Abdul Hameed** was examined as the third prosecution witness. **Muhammad Ali**, the learned Judicial Magistrate No. 19, Karachi East was examined as the fourth prosecution witness. The fifth prosecution witness was **Dr. Sheeraz Ali** who was the doctor who performed the post mortem of the deceased. **S.I. Jamshed Mehmood**, the first investigating officer of the case, was examined as the sixth prosecution witness. **H.C. Munawar Aziz** who acted as a witness to the site inspection and the re-arrest of Hakim was the seventh prosecution witness. **M. Ayub**, the second investigating officer of the case was the prosecution's eighth witness. The ninth prosecution witness was **H.C. Shafiq** who was a witness to the recovery of the knife allegedly used in the murder.

5. In his section 342 Cr.P.C. statement as well as his section 340(2) Cr.P.C., Hakim pleaded innocence. In his defence he also examined Lakhmir Baloch and Hajjan Lashari.

6. On 16-11-2019 the learned Additional Sessions Judge No. 5, Karachi East convicted Hakim under section 302(c) P.P.C to 15 years rigorous imprisonment and pay a compensation of Rs.200,000. As noted above, Aamir was not challaned, Shoukat alias Gul Sher was acquitted under section 265-K Cr.P.C. and Gul Sher remained an absconder. It is this judgment that has been impugned in these proceedings.

7. I have heard the learned counsel for the appellant as well as the learned APG. The complainant did not effect an appearance despite notice. My observations are as follows.

8. What is meaningful is that at trial, Raja Naveed made a material change to what he had narrated in his section 154 Cr.P.C. statement. As mentioned above, in the F.I.R. he had recorded that he was told by the deceased that Hakim and Gul Sher had held him while Aamir had stabbed him. At trial, he changed this story to say that Aamir and Nasir had held him (Bashir) while Hakim had stabbed him. When confronted with this contradiction between his statement under section 154 Cr.P.C. and what he had testified, Raja Naveed acknowledged that Hakim and his uncle Bashir were both drug addicts and that there was no

animosity between the two, to the contrary the two were friends. He also acknowledged that it was true that his uncle had told him that it was Aamir who had stabbed him (Bashir). He also acknowledged that while several people had gathered at the place of incident, no body else heard what his uncle had told him before he died.

9. Abdul Hameed, the deceased's brother testified that on 6-7-2017 at about 1430 hours there was a knock on his door and when he opened the door he saw his brother Bashir in an injured condition along with his son Raja Naveed. He further recorded that he was told at that time by his brother Bashir that it was Aamir who had stabbed Bashir. He also confirmed that Bashir and Hakim had no differences between them and that in his statement under section 164 Cr.P.C. recorded before the learned Judicial Magistrate No. 19 at Karachi East he had also recorded that Bashir had told him that it was Aamir who had stabbed him. This fact was corroborated by Muhammad Ali, the learned Judicial Magistrate No. 19 at Karachi East, who had recorded the statement of Abdul Hameed when he testified that Hameed had recorded that it was Aamir who had stabbed his brother Bashir. Dr. Sheeraz Ali testified that there was one stab wound on the deceased when he had conducted the post mortem.

10. S.I. Jamshed Mehmood at trial testified that all the witnesses whose section 161 Cr.P.C. statements were recorded by him had stated that it was Aamir who had stabbed Bashir and that Bashir and Hakim were friends who shared a common addiction. He acknowledged that he had not collected any blood samples from the place of incident as the whole floor had already been washed when he arrived there. Further, H.C. Shafiq, who was a witness to the recovery of the knife used in the murder, testified that the said knife had been recovered on the pointation of a co-accused Shoukat alias Gul Sher. Shoukat was acquitted in the case in the preliminary stage under section 265-K Cr.P.C.

11. In view of the analysis of the evidence I am quite surprised that the learned trial court reached the decision it did. The entire evidence was against Aamir but for reasons best known to the prosecution, he was not even challaned. The murder weapon was recovered on the pointation of Shoukat alias Gul Sher but he too was acquitted of the charge. Common intention was not proved and as a matter of fact at best Hakim could have been said to be sharing a common

intention with Aamir who the prosecution were unanimous as being the person who stabbed Bashir, but when Aamir was not even challaned then the question remained that with who was Hakim sharing a common intention.

12. No evidence was there against Hakim. The prosecution completely failed to establish a case against him. The appeal is allowed. Hakim is acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE