

Judgment Sheet

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S – 88 of 2019

1. For hearing of MA No.889/2022
2. For hearing of MA No.890/2022
3. For hearing of main case.

Date of hearing & Judgment: 17.10.2022

Mr. Ubedullah Malano, Advocate for Appellant.

Syed Sadar Ali Shah, Deputy Prosecutor General.

J U D G M E N T

NAIMATULLAH PHULPOTO, J. Appellant Ghareeb Nawaz alias Ghareebo was tried along with accused Gul Baig (since acquitted) by the learned 1st Additional Sessions Judge / (MCTC) Nausheero Feroze, in Sessions case No. 222/2013. After regular trial, appellant was found guilty and vide Judgment dated 27.05.2019, he was convicted under section 302(b) PPC and sentenced to imprisonment for life as Ta'zir and to pay compensation of Rs. 200,000/- (Rupees two lacs) to be paid to the legal heirs of deceased in terms of Section 544-A Cr.P.C and fine of Rs. 50,000/- (Fifty thousand) and in case of default htereof he was ordered to suffer one year S.I more. Appellant was extended benefit of Section 382-B Cr.P.C.

2. The prosecution story as given in the judgment of learned trial Court reads as under :-

“Succinctly facts of the prosecution case as gleaned from the FIR lodged by complainant Muhammad Yaseen s/o Ghulam Abbas by caste Lashari on 17.4.2013 @ 1730 hours are that marriage of his sister namely Mst. Haseena aged about 25 years was solemnized about 8/9 years ago with Ghareeb Nawaz alias Ghareebo son of Rajib Lashari and out of wedlock no issue born to spouse. Complainant came to know that his brother in law Ghareeb Nawaz alias Ghareebo was intending to commit murder of his sister Mst. Haseena by declaring her as 'KARI', hence, on the night of 15.4.2010 complainant, his uncle Ghulam Mustafa s/o Faiz Muhammad, maternal uncle Muhammad Arshad s/o Fateh Khan Lashari and mother Mst. Meeran reached at the house of Ghareeb Nawaz @ Ghareebo for discussion with him over the matter of Mst. Haseena, upon which Ghareeb Nawaz informed that Mst. Haseena has got illicit relations with some unknown person and he will murder her by declaring 'KARI', complainant asked him to disclose the name of said unknown person with whom she has got alleged illicit relations on which he became annoyed and went outside from house. After little late, accused Ghareeb Nawaz, Gul Baig so Muhammad Bux Waggan both armed with hatchets and one unidentified person armed with repeater came there where at about 9.00 pm accused Ghareeb Nawaz challenged the complainant party that Mst. Haseena is 'KARI', hence, they will commit her murder, the armed person pointed his repeater at complainant party and kept them silent as such they remained mum due to fear of weapon, in the meanwhile accused Ghareeb Nawaz Lashari

and Gul Baig Wagan started causing sharp and blunt hatchets blows to Mst. Haseena with intention to commit her murder and she due to sustaining of hatchet injuries fell down on the ground by raising cries, thereafter all accused persons went away outside the house along with their respective weapons. Complainant party raised cries and found that Mst. Haseena having hatchet injuries on her head & other parts of body from which blood was oozing and died. Due to odd hours of night and non-availability of transport, complainant party did not go to police station and in the morning, informed at P.S, got postmortem through police and after completion of formalities performed her funeral ceremony, thereafter, complainant appeared at Police station where he reported the incident.”

3. After completion of investigation, report under section 173 Cr.P.C was submitted before Trial Court. Trial Court framed charge against appellant / accused, he pleaded not guilty claimed to be tried. In order to prove its case, prosecution examined 10 witnesses. Trial Court recorded statement of accused under Section 342 Cr.P.C, the appellant denied the allegations leveled against him. However, he did not make his statement on oath under section 340(2) Cr.P.C in disproof of prosecution allegations leveled against him. He also did not led evidence in defense.

4. The evidence produced before the trial Court finds an elaborate mention in the judgment passed by the trial Court. Therefore, same may not be reproduced here so as to avoid duplication and unnecessary repetition.

5. Learned trial Court after hearing the learned Counsel for the parties and assessment of evidence, vide Judgment dated 27.05.2019 convicted and sentenced the appellant, as stated above.

6. Learned advocate for appellant argued that there was delay of 15 hours in lodging of the FIR for which no plausible explanation has been furnished; that incident had occurred at about 8/9 p.m but the source of light has not been mentioned; that eye witnesses of incident were chance witnesses and closely related to the deceased; that eye witnesses made no effort to rescue the deceased; that their presence at the place of incident was doubtful. It is further submitted that co-accused Gul Baig on the same set of evidence has already been acquitted by the trial Court. Lastly, it is submitted that prosecution case was highly doubtful. Learned counsel for appellant in support of his contentions placed reliance upon the case reported as *Muneer Ahmed and another vs. State (2019 SCMR 79)* and *Muhammad Mansha vs. The State (2018 SCMR 772)*.

7. On the other hand, learned Additional Prosecutor General argued that deceased was wife of appellant, she was murdered in the house of appellant but he had failed to explain about the un-natural death of his wife in his house. Learned Additional Prosecutor General prayed for dismissal of the appeal.

8. After hearing the learned counsel for the parties, I have re-assessed the prosecution evidence. Incident had occurred on 15.04.2013 at 9.00 pm in the house of appellant and it was reported to the police after about 15 hours on 17.04.2013 at 5.30 pm, inordinate delay in lodging of the FIR has not been explained. Complainant Muhammad Yaseen is the brother of deceased Mst. Haseena, on the day

of incident he along with his uncle Ghulam Mustafa, maternal uncle Muhammad Arshad and mother Mst. Meeran went to the house of appellant where co-accused Gul Baig (since acquitted) was also present, appellant leveled allegations against his wife and caused hatchet blows to his sister in presence of P.Ws. She fell down and succumbed to injuries. PW Ghulam Mustafa, Mst. Meeran have also deposed that they had seen the appellant while committing the murder of his wife by means of hatchet. I have several reasons to disbelieve evidence of eye witnesses for the reasons that eye-witnesses have admitted that they are residing in another village. Admittedly, they were chance witnesses and they failed to explain reason as to why they had gone to the house of appellant on the day of incident after sunset. Complainant Muhammad Yaseen is brother of deceased Mst. Haseena and was aged about 22 years at the time of incident, Mst. Meeran mother of deceased. Conduct of eye-witnesses at the time of incident was unnatural because they remained calm and made no effort at all to rescue deceased Mst. Haseena. The conduct of eye-witnesses clearly indicates that they were not present at the time of incident otherwise they would have rescue the deceased. Contention of learned advocate for appellant that at some set of evidence co-accused Gul Baig has been acquitted by the trial Court and conviction of the appellant on same set of evidence is not sustainable under the law.

9. In para No.2 of the Judgment trial Court disbelieved the prosecution evidence to the extent of co-accused Gul Baig but convicted appellant Ghareeb Nawaz alias Ghareebo on same set of evidence. Relevant portion is re-produced as under :-

“ Moreover, in presence of overwhelming evidence, burden shifts upon accused to prove his innocence & specific plea(s) taken

by him. This shows that accused Ghareeb Nawaz was not able to identify that which plea is favourable to him that why he has taken different vague pleas.

Sequel of the foregoing discussion is that the deceased Mst. Haseena died due to sustaining of hatchet injuries on her head which became fatal to her life. As for as the role sorted out against co-accused Gul Baig nothing has been detected in the episode of entire testimony so as to hold him liable with regard to murder of deceased, thus, hold him not liable for any offence, therefore point is answered accordingly.”

10. As far as the recovery of hatchet is concerned, according to prosecution case appellant was arrested on 21.04.2013 during interrogation on 21.04.2013 appellant led police party and produced blood stained hatchet used by him in the commission of offence from the hedge of house and it was sent to Chemical Examiner for analysis on 01.05.2013 through PC Muhammad Arshad but prosecution failed to examine PC Muhammad Arshad before trial Court. Incharge Malkhana of Police Station has also not been examined, prosecution utterly failed to prove safe custody and safe transmission of the hatchet to Expert, therefore, positive report of the Chemical Examiner would not improve the case of prosecution. Rightly reliance is placed on the case reported as Muhammad Mansha v. The State **(2018 SCMR 772)**.

11. So far a circumstance that Mst. Haseena died her un-natural death in the house of appellant, who was her husband which part of the onus had not been discharged by appellant. In this case Mst. Haseena who was wife of appellant, she was murdered in the house of appellant. Learned Additional Prosecutor General argued that appellant had failed to furnish explanation as to how deceased was murdered in his house. It is trite that in all such cases the initial onus of proof always lies upon

the prosecution and if the prosecution fails to adduce reliable evidence in support of its own case then the accused person cannot be convicted merely on the basis of lack of discharge of some part of the onus on him. Reliance is placed on the case of *Wajahat v. Gul Daras & others* (2019 SCMR 1451). Relevant portion is reproduced as under:

“Appellant's belated plea of the suicide even if rejected outright by itself would not absolve the prosecution to drive home the charge, on its own strength and same goes for appellant's absconion; people avoid to face process of law or their adversaries for a variety of reasons, not necessarily inclusive of their guilt; Appellant's reticence to satisfactorily explain as to what befell upon his better half under the same roof, though somewhat intriguing, however, cannot be equated to qualify as evidentiary certainty, essentially required in order to saddle him with formidable corporal consequences; his failure would not give rise to an adverse presumption within the contemplation of Article 121 of the Qanun-e-Shaliadat Order, 1984 and thus it would be grievously unsafe to maintain the conviction, without potential risk of error as well as diametrical departure from adversarial nature of criminal trial.”

12. These are the dents, which are so grave and sensational that they create a doubt in the authenticity of the prosecution case, which cannot be ignored. These dents are squarely hampering the very fabric of the prosecution case and ultimately the salient features of the case, therefore, it can safely be concluded that the prosecution has miserably failed to substantiate its case, which is basic requirement to sustain conviction of an accused in case of capital punishment. It is settled law that a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a

matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused.

13. For the above-stated reasons, I have no hesitation to hold that trial Court failed to appreciate the evidence on sound judicial principles. At the conclusion of the arguments, by short order dated 17.10.2022 for the reason to be recoded later, appeal was allowed and appellant was directed to be released forthwith unless required to be detained in any other case. These are the reasons for allowing the appeal and directing the acquittal of the appellant.

JUDGE

Irfan/PA

