

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Jail Appeal No. 48 of 2014

Appellants : through Mr. Muhammad Akbar Khan, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Date of hearing : 28th November, 2022

JUDGMENT

Omar Sial, J.: F.I.R. No. 9 of 2010 was registered under sections 302, 114, 504 and 34 P.P.C. at the Jati police station in Thatta at 9:30 p.m. on 25.02.2010 on the complaint of Abdul Karim. Karim recorded that earlier that day i.e. at 2:30 p.m. he was sitting with his elder brother Nazir Ahmed and his father Jummu at a hotel where his relatives, namely, Mohammad Baksh Rind, Mureed Rind and others were also present. 4 persons holding hatchets and identified as Ghulam Rind, Misri Rind, Mir Mohammad and Mubarak came to the hotel. Upon the instigation of Ghulam Rind, Misri Rind hit Jummo on his head with a hatchet. Mubarak and Mir Mohammad struck Nazeer Ahmed on his head with their hatchets. The accused then left the scene. Both Jummo and Nazeer Ahmed died soon thereafter. The accused were arrested on 28.02.2010. They pleaded not guilty and claimed trial.

2. At trial the prosecution examined 5 witnesses. **PW-1 Abdul Karim** was the complainant. **PW-2 Mureed Rind** was an eye witness according to the prosecution. **PW-3 Muhammad Akram Rind** witnessed the inspection of the dead body, the preparation of the inquest report and the seizure of clothes worn by the deceased at the time of the incident. **PW-4 Khan Mohammad** witnessed recovery of the crime weapons on the pointation of the accused Misri, Mubarak and Mir Mohammad. **PW-5 A.S.I. Dodo Khan Leghari** registered the F.I.R. **PW-6 Mukhtiar Ahmed Lashari** was the first responder as well as the investigating officer of the case. **PW-7 Mohammad**

Bux Rind claimed to be an eye witness. **PW-8 Dr. Noorullah Larik** conducted the post mortem on the deceased **Nazeer**. **PW-9 Dr. Mohammad Usman** conducted the post mortem on **Jummo**.

3. In their respective section 342 Cr.P.C. statements termed all allegations and evidence against them to be false and professed innocence.

4. The learned trial judge convicted all the accused under section 302(b) P.P.C. to a life in prison and further directed them to pay a compensation of Rs. 100,000 and if they did not pay that amount they would have to spend another 1 year in prison. It is this judgment which has been impugned through this appeal.

5. I have heard the learned counsel for the appellants as well as the learned APG. The complainant did not effect an appearance in spite of notice. The individual arguments of the counsel are not being reproduced for the sake of brevity however the same are reflected in my observations and findings below.

6. The evidence against the appellants was the statements of 3 eye witnesses, the recovery of the hatchets and the medical evidence. I will address the evidence produced at trial however as a first step it may be appropriate to address the first argument of the learned counsel for the appellant regarding the delay in F.I.R.

Delay in the F.I.R.

7. Incident happened at 2:30 p.m. while the F.I.R. was registered at 9:30 p.m. with a 7 hour delay. The complainant explained at trial that time was taken in registering the F.I.R. as the 2 injured were first taken to the hospital. The complainant's father died at the Taluka Hospital Sujawal while his injured brother was asked to be taken to the Civil Hospital in Karachi, which was roughly a 100 kilometers away. It was at 5:00 p.m. while on the way to the hospital in Karachi when **Nazeer Ahmed** expired. **Nazeer's** dead body was brought back to the hospital in **Thatta** and it was then that the

police was called. The 7 hour delay in the lodging of the F.I.R. in the circumstances told by the complainant appears to be justified.

Eye witnesses

8. Apart from the complainant, PW-2 Mureed Rind was said to be an eye witness to the occurrence. In fact that is what he posed to be during his examination-in-chief in which he gave vivid details as to how the incident unfolded. In his cross examination he however admitted that he had not seen any of the accused cause injuries to the deceased and that in fact it was the complainant Abdul Karim who told him what had happened. His evidence was therefore hearsay and thus inadmissible in evidence.

9. PW-7 Mohammad Bux Rind claimed to be an eye witness. This witness did not assign Ghulam any role except instigation. This witness's credibility was impacted adversely at trial when he stated that immediately after the incident he had gone off to a marriage ceremony and that he did not know further what transpired. He however did acknowledge that on 26.02.2010 he witnessed recovery of the blood stained earth and a blood stained cap from the scene of the crime. One, I find it quite odd that the cousin of the complainant after witnessing 2 persons being hacked to death, would opt to leave the crime scene behind, not assist in the post killing operations and go attend a wedding instead. Second, while according to the 2 other alleged eye witnesses the incident occurred outside the hotel whereas according to Mohammad Bux Rind, it occurred inside the hotel. Third, according to Mohammad Bux Rind he had left the scene of occurrence shortly after the incident had occurred and that throughout the proceedings the police made him sign only one document which was the memo of site inspection. If this witness was being honest then it does not explain how his signature and presence is shown not only at the time of the inspection of the place of incident but also as a witness to arrest and the memo made on 28.02.2010 as well as a witness to the memo of arrest prepared on 01.03.2010. His presence and signature is also shown on the memo of inspection of dead body prepared on 25.02.2010 as well as the

inquest report prepared the same day. His presence and signature is then shown at the hospital vide memo dated 25.02.2010. His presence and signature is again shown on 26.02.2010 when the complainant handed over the clothes of the deceased to the police. His presence and signature is also shown on the memo documenting the recovery of hatchets dated 5.3.2010. The foregoing clearly reveals that either the remaining prosecution witnesses were dishonest or this witness was dishonest. The contradiction also puts doubt in the authenticity of the recovery. It also makes it clear that the investigating officer has prepared all the documents at the police station. Whatever the scenario was, one thing is for sure that the prosecution case did get adversely impacted by such glaring and material inconsistencies.

Medical Evidence

10. I do not find any discrepancy or contradiction between the medical evidence and the ocular account. In any case it is not disputed that the 2 deceased died due to hatchet blows.

Investigation

11. I do not fully believe the evidence against Ghulam because of the following reasons. I find it extremely hard to reconcile with the theory that a person who comes to kill another will first vocally pronounce the reasons for his having come to kill and then shout clear instructions to his colleagues to kill that other person while he himself stays a silent spectator. This in my mind, would not be the conduct of a killer or as a matter of fact natural conduct. This court has noticed a substantially large number of F.I.Rs, especially in cases originating from rural areas, that this aspect of instigation is included in each F.I.R. This perhaps results from advice being provided to the complainant by the WHC who is in most cases the scribe of the F.I.R.. It appears that including this loud intention of imminent killing and stating the reasons for the same in those very loud vocal pronouncements, seems to the WHC a sure shot way of conviction. To me, it appears to be a ploy to spread the net wide. One dubious eye witness in

the shape of PW-2 Mureed Rind who claimed he heard Ghulam making the loud pronouncement admitted that he had not seen anything at trial whereas the other eye witness, PW-7 Mohammad Bux Rind, for the reasons stated in the above paragraph was also suspect and his testimony far from being trustworthy or reliable. At the end of the day it is the prosecution's case which is impacted.

12. Similarly, another troubling trend seen in the WHC's further standing advice to a complainant is to ask him to produce 2 eye witnesses and 2 eye witnesses for the entire steps in the investigation. This is a practice that is adversely impacting dispensation of justice. The police must, on a war footing, take steps to improve the capacity of its investigation department in every way.

13. I make the above observations because this is one such case which, in my opinion, has been adversely impacted by those practices. Looking at the case holistically, I am of the view that there are several grey areas in the case. The eye witnesses presence on the scene was marred in suspicion, the recovery of the hatchets also was not clear as 2 witnesses gave different accounts of how the hatchets were seized, one of the shown witnesses on the memo of recovery denying he was present and the hatchets not shown as being blood stained in the memo, are aspects that raise some doubt. One father and all his 3 sons nominated in the case, elements in the case of throwing the net wide, one blow attributed to each accused, motive not having been proved, accused not even making an attempt to flee after the incident and instead living in their respective homes till arrest; are all areas which create an element of suspicion in the prosecution case. I am cognizant of the principle that one doubt may be enough to acquit a person yet the potency of that doubt is perhaps an aspect which cannot be ignored as well. This case, because of the observations made above, merits a conversion of the conviction to one under 302(c).

14. The jail roll of the appellants dated 06.12.2022 No. JB/37866/67 sent by the Senior Superintendent, Central Prison & Correctional Facility, Hyderabad shows the following:

- (i) Ghulam has finished 20 years and 3 moths (including remissions) of his sentence;
- (ii) Misri has finished 23 years and 10 moths (including remissions) of his sentence;
- (iii) Mubarak has finished 23 years and 10 moths (including remissions) of his sentence;
- (iv) Mir Mohammad has finished 23 years and 10 moths (including remissions) of his sentence;

15. The appeal is dismissed; however, with the following modification in sentence:

- (i) The appellants are convicted under section 302(c) P.P.C. and sentenced to 20 years rigorous imprisonment;
- (ii) The compensation amount shall remain the same as stipulated by the learned trial court; however, the imprisonment in lieu of compensation awarded by the learned trial court was excessive as under section 544-A(2) Cr.P.C. a period of up to 6 months is specified; hence it is reduced to 3 months.

16. It appears from the jail roll that the appellants have completed their sentence along with the sentence given to them in lieu of the compensation. They may therefore be released from prison if not required in any other custody case.

JUDGE