

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Jail Appeal No.S-24 of 2016

Appellant: Kanoo through Mr. Badal Gahoti,
Advocate.

Respondent: The State through Ms. Rameshan Oad,
Assistant Prosecutor General Sindh.

Complainant: Expired.

Date of hearing: **11.08.2022.**

Date of Judgment: **25.08.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 28.01.2016, passed by the learned Sessions Judge, Tando Allahyar in Sessions Case No.167/2012 arising out of the FIR No.87/2011 for an offence under sections 302 PPC registered at PS Tando Allahyar, whereby the appellant was convicted under section 302 (b) PPC for murdering deceased Shr: Shani and sentenced to suffer imprisonment for life as Tazir with direction to pay compensation of Rs.1,00,000.00 [Rupees one hundred thousand only] to the heirs of deceased; in case of failure to undergo S.I for six months. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case as depicted in the FIR are that on 20.04.2011 at 2300 hours complainant Ramshi reported at Police Post Bukera Sharif of PS Tando Allahyar, which was incorporated vide FIR bearing No.87/2011 at PS Tando Allahyar. The complainant stated that his younger sister Shani aged about 17/18 years was married to accused Kanoo about two years back and out of this wedlock one male

issue was born and they used to reside with him in village Jumma Khan. Accused Kanoo was forcing deceased Shani to shift at his parent's house, to which she was not agreed and accused on two or three occasions also beaten her and issued threats that in case she will not shift to his parent's house, she will be murdered. According to the complainant on 20.04.2011, PWs ChettanKolhi and BeejalKolhi came to the complainant in the village and informed that they were working in the land when at about 1200 hours his sister Shani and her husband Kanoo having hatchet passed from near to them and went towards sand dunes and Devi jungle and upon their asking Kanoo disclosed that they were going to collect chuff and as soon as Shani and Kanoo entered in Devi jungle they (PWs) heard cries of Shani and when they rushed in the jungle they saw that accused Kanoo was causing sharp side hatchet blow on the neck of Shani and when they challenged the accused he along with hatchet fled away in the jungle and within their sight, Shani succumbed to the injuries. On such information, the complainant along with his other relatives reached at pointed place and saw the dead body of Shani lying in the jungle having hatchet injuries on the right and left sides of her neck. The complainant then informed his zamindar, who informed the police and the police came and completed formalities and then the complainant lodged his report.

3. The dead body of the deceased was examined by ASI Nazar Mohammad and prepared such memo, inquest report, recovered blood-stained earth, shifted the dead body to a civil hospital for post-mortem and then handed over it to the legal heirs of the deceased under receipt. This police officer also arrested the accused KanooKolhi and prepared such memo. Further investigation of this case was conducted by SIP Mohammad Anwar, who recorded the statements of PWs in terms of section 161 Cr.P.C. on 21.04.2011. He also recovered a crime weapon i.e. hatchet on 23.04.2011 on the pointation of the accused. On 28.04.2011, statements under section 164 Cr.P.C. of PWs Chettan and Beejal were recorded before Magistrate. The crime weapon i.e. hatchet was sent to the Chemical Examiner on

05.05.2011; thereafter, a report under section 173 Cr.P.C (Challan) was submitted before the concerned Magistrate.

4. The charge was framed against accused at Ex. 02, to which he pleaded **“not guilty”** and claimed to be tried vide his plea recorded at Ex. 02/A. In order to establish its case, the prosecution has examined PW-01 complainant Ramshi at Ex. 03, who produced receipt of dead body, report, FIR at Ex.04 to Ex.06. PW-02 Chettan was examined at Ex. 07, who produced his 164 Cr.P.C. statement at Ex. 08; PW-03 Beejal at Ex. 09, who produced his 164 Cr.P.C. statement at Ex. 10; PW-04 VeehoKolhi at Ex. 11, who produced memo of dead body, inquest report, memos of arrest of accused, recovery of hatchet at Ex. 11/A to Ex. 11/F respectively. PW-05 WMO Dr. Tasleem was also examined at Ex. 12, who produced police letter, postmortem report and receipt of dead body at Ex. 13 to Ex. 15. PW-06 ASI Nazar Mohammad Behrani at Ex.16 and PW-07 SIP Mohammad Anwar at Ex. 17, who produced departure/arrival entries regarding recovery of crime weapon at Ex. 18 and Chemical Report at Ex. 19. Then prosecution close its evidence through statement vide Ex. 20.

5. The statement of the accused under Section 342 Cr.P.C was recorded at Ex. 21, wherein he has denied the prosecution allegation and claimed his innocence. He further stated that his wife deceased Shani was murdered by some unknown person and his brother-in-law (complainant) in order to usurp his ten buffaloes which are with him.

6. The learned trial Court after hearing the counsel for the parties and on the assessment of the evidence, convicted and sentenced the appellant/accused vide Judgment dated 28.01.2016, which is impugned by the appellant before this Court by way of filing the captioned Criminal Appeal.

7. Learned counsel for the accused/appellant argued that the appellant has been falsely implicated by the complainant; in fact, the complainant himself has murdered his wife only to usurp the buffaloes. He urged that the complainant is not an eyewitness and both the eyewitnesses are close relatives

of the complainant, who are interested and set up by the complainant to implicate the appellant in the instant case. He further contended that even the prosecution has failed to support its case through eyewitnesses concerning the time of their arrival at their land/place of incident, therefore, their presence at the place of the incident has become doubtful. Learned counsel further argued that the case in hand is not free from doubt and if a single doubt is created in the prosecution case, which always goes in favour of the accused, as such, by extending the benefit of the doubt in favour of the accused, he may be acquitted of the charge.

8. On the other hand, learned A.P.G. Sindh has contended that the prosecution has fully established the case against the appellant by adducing convincing evidence of eyewitnesses against him. The recovery has been effected from the accused. Chemical Report is also in positive. The evidence of the medical officer, who conducted post mortem of the deceased has gone unchallenged and un-rebuttal, which fully implicates the appellant and is in line with the ocular version. She further contended that though the appellant has tried to colour the incident to have taken place for the reasons that the complainant has committed the murder of the deceased in order to usurp the buffaloes but he has failed to adduce any evidence in this respect; even, the appellant has not examined himself on oath to strengthen his version. She, therefore, supported the impugned judgment and prayed for dismissal of the instant appeal.

9. I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance.

10. On the assessment of the material brought on the record, it appears that the case of prosecution solely depends upon the ocular and circumstantial evidence adduced in the shape of evidence of the complainant as well as eyewitnesses namely Chettan and Beejal, Investigating officer(s), Medical Officer and other witnesses of the case. Admittedly the complainant PW-1 Ramshi is not an eyewitness of the incident.

PWs namely Chetan and Beejal informed him that within their sight the accused/appellant has murdered his wife Mst Shani. After receiving such information he along with other persons proceeded towards the place of the incident. He has also informed the police through Nekkard. ASI Nazar Hussain Behrani along with other police officials also reached there and after completing legal formalities brought the dead body to a hospital for postmortem. After conducting a post-mortem of the deceased, the dead boy was given to him by the said ASI. After completing the funeral formalities, on the next day, he lodges FIR against the appellant Kanoo. He produced FIR as Ex.6.

11. The complainant was cross-examined by the learned counsel for the accused at length, but his evidence has not been shattered. In his cross-examination, the complainant admitted that he is not an eyewitness of the incident. He denied the suggestion of defense counsel by deposing that *“It is incorrect to suggest that accused deceased were missing since morning of the incident and we then started tracing them and finally found the dead body of deceased Sht: Shani at the place of alleged incident...It is incorrect to suggest that incident is unseen and accused is involved only on the basis of suspicious. It is incorrect to suggest that at the time of incident accused had about 10 buffalos. It is incorrect to suggest that in order to usurp said buffalos accused has falsely been implicated in his case.*

12. Eyewitnesses namely Chettan and Beejal were examined by the prosecution and both have deposed that on the day of the incident viz 20.04.2011 at about 12.00 noon they were working in the land and saw that the accused namely Kanoo having a hatchet along with his wife Shr: Shani were going; on their inquiry, they disclosed that they were going towards WARI JA DARA (SANDS), Devi bushes to collect Chuff. They further deposed that sometime, later on, they heard cries of Shr: Shani, therefore, they immediately rushed there where they saw that accused Kanoo was causing hatchet blow to his wife Shr. Shani and then made his escape good with the said hatchet. She succumbed to the injuries and lost her life on the spot. They

further deposed that they both approached the complainant and narrated to him aforesaid facts, who along with them and others after informing the facts to co-villagers, nekmard and police through nekmard proceeded towards the place of incident and found the dead body of his younger sister. Police also reached at the place of the incident and brought the dead body at the hospital for post-mortem. On the next day after the completion of the funeral ceremony, the complainant lodged such FIR. During the investigation, their statements under section 164 Cr.P.C. were got recorded before the learned 1st Judicial Magistrate, Tando Allahyar. They were cross-examined by the learned defense counsel and during cross-examination, PW Chettan admitted that *“We saw the accused and deceased from the distance of about 10 or 15 paces. Accused was ahead of the deceased while going towards jungle. Place of incident is situated at the distance of about one or half acre from my land. After about 15 or 20 minutes, we heard cries of deceased Shr. Shani and we reached at the place of incident within 10 or 15 minutes. Accused had caused one hatchet blow before our arrival while second blow was caused by the accused to deceased within our sight and they accused run away.... After half an hour of incident, I informed the complainant about the incident. PW Beejal and I myself informed the complainant about the incident. It was about 12.30 p.m. when informed with complainant. None was present, therefore, nobody was left with dead body when we informed the complainant.”* PW Beejal also deposed the same facts as stated by PW Chettan during his cross-examination.

13. PW Veeho co-mashir of this case was also examined, who is mashir of inspection of the dead body of deceased Shr: Shani, preparation of Danishnama, an inspection of the place of incident, handing over cloths of deceased to the Investigating Officer, arrest of accused and recovery of crime weapon i.e. hatchet from the Devi bushes on the pointation of accused.

14. PW ASI Nazar Mohammad was also examined by the prosecution. This witness has partly investigated the case. He deposed that on 20.04.2011, he was posted at PS Bukera Sharif.

He received a telephonic message that one Kanoo has murdered his wife Shr: Shani by causing hatchet blows. On such information, he along with his subordinate staff reached at the place of wardat and on the pointation of complainant Ramshi he saw dead body of Shr: Shani lying in devi jungle. He examined the dead body and prepared such memo. Veeho and Kanji acted as mashirs. He also shifted the dead body to a civil hospital for post-mortem and after the post-mortem dead body was handed over to its L.R, under receipt. After registering the report, he handed over the police papers to ASI Mohammad Anwar Laghari for further investigation. On 21.04.2011, he arrested accused KanooKolhi in presence of mashirsVeeho and Kanji and prepared such memo. During cross-examination, he deposed that *“I received information at about 4-00 pm through my superiors. I reached at the place of incident at about 6-30 pm. The distance between the PS and place of wardat is about 15/16 KM. It is correct to suggest that report was lodged after about 13 hours of the incident.”*

15. SIP Mohammad Anwar Laghari second investigating officer deposed that on 21.04.2011, he was posted as SIP Investigation Team, PS Tando Allahyar. On the same day, he was present in his office when ASI Taj Mohammad Bhatti handed over copy of FIR No.87 / 2011 PS Tando Allahyar for further investigation. He then went to PS Bukera Sharif and met with ASI Nazar Mohammad Behrani, who handed over mashirnama of place of wardat, Danishnama and physical custody of accused Kanoo. Thereafter he came back at PS Tando Allahyar and recorded the statements of PWs under section 161 Cr.P.C. On 23.04.2011 accused voluntarily showed his willingness to produce hatchet, which was used by him in the commission of offence, as such, after keeping departure entry, took the accused and left PS. Accused led them upto Sand Dunes and produced crime weapon i.e. hatchet. He prepared such memo in presence of mashirsVeeho and Kanji. He also recorded statement of accused under section 161 Cr.P.C. On 28.04.2011, he produced PWs Chettan and Beejal before the concerned Magistrate, where their respective statements under section 164 Cr.P.C. were

recorded. On 05.05.2011, he sent the hatchet to the Chemical Examiner and produced such report of Chemical Examiner in his evidence. After completion of investigation, he submitted final challan before the concerned court. Though this witness was cross-examined by the learned defense counsel but could not be able to shatter his evidence.

16. The complainant, eyewitnesses and investigation officer(s) were put on a lengthy cross wherein the learned counsel for the defence asked multiple questions to shatter their confidence but they could not extract anything from any of the said witnesses, who remained consistent on all material points. The parties are known to each other, so there was no chance of the mistaken identity of the appellant.

17. From the perusal of the evidence of the complainant and both the eyewitnesses, it appears that they cannot be termed as chance witnesses but rather would fall within the category of natural witnesses. From the appreciation of evidence, it is crystal clear that the prosecution remained successful to bring cogent and unimpeachable direct evidence well supported and corroborated by the medical version against the accused. The evidence of complainant and eyewitnesses cannot be discarded merely because they are relatives inter-se particularly the presence of eyewitnesses at the place of occurrence was obvious as the incident took place during bright day time when except the eyewitnesses, who were working at their land near to place of incident, none from the public was available there. The accused has been assigned with the definite role. The defense plea of the accused is general in nature without substance.

18. Neither the prosecution needs to draw the said aspect of the matter, nor the defense is devoted to discarding it, thus, it is an admitted fact that the deceased Shr: Shani has died an unnatural death. The medical evidence also depicts the seat and nature of injuries and how his death occurred. Dr. Tasleem, Senior WMO, who has conducted the Postmortem of the deceased and issued such Report produced in evidence at Ex. 14. She has deposed that the dead body of Shr: Shani was brought

on 20.04.2021 for postmortem by one ASI of PS Bukera Sharif, which was identified by brother of deceased namely Ramshi. She started the postmortem at 10.30 pm and completed it upto 11.30 pm on the same date. On external examination of dead body, she found that dead body was cold, stif, dirty with average built. Mouth was opened and eyes were closed. Postmortem leividity positive, Rigor mortis present. Cloths:- Shirt was green with brown border. Shalwar was green colour with ambroidy. Belt was of green colour. On internal examination found open fracture at the base of the right side occipital region about 9 x 3 cm, incised wound about 8 x 4 cm at left side of neck, chambers of heart empty. Trunk NAD, Abdomen NAD, Extremities: NAD, External Genital Organs: NAD (Vaginal swabs was taken and sent for chemical examination). Probable time between injury and death: Sudden. Probable time between death and post-mortem 12-14 hours. From external and internal examination of deceased Shr: Shani, the medical officer was of the opinion that death was occurred due to cardio-respiratory failure resulted from excessive hemorrhagic shock due to above mentioned injuries caused by sharp cutting instrument. All injuries were antimortem in nature and sufficient to cause death.

19. In view of the above position, it is clear that the accused has murdered his wife Shr: Shani and the guilty of such offence is liable for the punishment which extends to death or imprisonment for life. In the instant matter, the complainant as well as both the eyewitnesses have sufficiently explained the date, time, place of incident, manner of occurrence, and involvement of the appellant. There can be no denial to the legally established principle of law that it is always direct evidence that is material to decide the fact and to prove the charge. Insufficient, contradictory, discrepant direct evidence is deemed adequate to hold a criminal charge as not proved but where direct evidence remains in the field with that of its being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case.

Reliance may be placed upon the case of Muhammad Ihsan v. The State (**2006 SCMR 1857**) wherein the Apex Court has held that:

“5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence.”

20. So far as the contention of the learned counsel for the appellant/accused that there was a delay in the registration of FIR is concerned, the complainant has fully explained the delay. The defense has failed to bring on record any material to show that there was previous ill-will/grudge between the accused person and witnesses. The Medical evidence of the doctor supports the ocular version of the complainant and the eyewitnesses that the deceased had died with unnatural death after receiving the injuries by sharp cutting instrument. The ocular account finds support from the circumstantial evidence collected by the investigating officer coupled with recovery of crime weapon i.e. hatchet. The report of Chemical Examiner [Ex. 19] issued by Director Laboratories & Chemical Examiner to the Government of Sindh, Karachi is in positive, whereby the Chemical Examiner has confirmed that the hatchet recovered from the accused and clothes of deceased are stained with human blood. The reliance is placed upon the case of **Zahoor Ahmed Vs. The State (2017 SCMR 1662)**, wherein the Honourable Supreme Court of Pakistan has held that:

“4. The ocular account, in this case, consists of Muhammad Khan complainant (PW-06) and Shahbaz (PW-07). They gave the specific reasons of their presence at the place of occurrence as, according to them, they alongwith the deceased were proceeding to harvest the sugarcane crop. Although they are related to the deceased they have no previous enmity or ill-will against the appellant and they cannot be termed as

interested witnesses in the absence of any previous enmity. They remained consistent on each and every material point. The minor discrepancies pointed out by the learned counsel are not helpful to the defense because with the passage of time such discrepancies are bound to occur. The occurrence took place in broad day light and both parties knew each other so there was no mistaken identity and in absence of any previous enmity, there could be no substitution by letting off the real culprit specially when the appellant alone was responsible for the murder of the deceased. The evidence of two eyewitnesses was consistent, truthful and confidence inspiring. The medical evidence fully supports the ocular account so far the injuries received by the deceased, time which lapse between the injury and death and between death and postmortem. Both the Courts below have rightly convicted the appellant under section 302(b), PPC.

21. Learned counsel for the appellant pointed out some minor contradictions and discrepancies in the evidence of witnesses, which in my view are not sufficient to hold that the case of the prosecution is doubtful. It is settled by now that, wherein the evidence, the prosecution established its case beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence supported by others viz. medical and circumstantial evidence then if there may some minor contradictions which always are available in each and every case such may be ignored, as has been held by Honourable Supreme Court in case of **Zakir Khan v. The State (1995 SCMR 1793)**. The relevant paragraph is reproduced as under:-

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into

consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

22. While recording the statements under section 342 Cr.P.C no substance has been brought on record by the appellant to justify his false implication at the hands of the complainant party. I would mention here that the deceased was the real sister of the complainant, normally the possibility of substitution of accused become rare by leaving the actual persons and involving other persons, thus, no material has been brought on record by the appellant to show the deep-rooted enmity existed earlier between the parties, which could have been the reason for false involvement of the accused in this case. Reliance in this respect is placed in the case of ***Lal Khan v. State (2006 SCMR 1846)*** ***Farooque Khan v. The State (2008 SCMR 917)***, ***Zulifqar Ahmed and others v. The State (2011 SCMR 492)*** so also case of ***Zahoor Ahmed v. The State (2007 SCMR 1519)*** wherein Hon’ble Apex Court discussed as under:-

6. *The petitioner is a maternal-cousin of the deceased, so also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case. Further, it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial.*

23. Considering the above facts and circumstances, I have concluded that the prosecution has successfully established its case against appellant through ocular account furnished by the complainant and eyewitnesses which is corroborated by the medical evidence coupled with circumstantial evidence. Learned

counsel for the appellant has failed to point out any material irregularity or serious infirmity committed by the learned trial Court while passing the impugned judgment which in my humble view is based upon proper appreciation of evidence and the same does not call for any interference of this Court. Thus, the conviction and sentence awarded to the appellant by the learned trial Court are hereby maintained and the captioned criminal appeal filed by the appellant merit no consideration, which is **dismissed** accordingly.

JUDGE