

**HIGH COURT OF SINDH CIRCUIT COURT,  
HYDERABAD**

**Cr. Jail Appeal No.D-101 of 2019**

[Confirmation Case No.17 of 2019]

[Muhammad Juman and another Others versus The State]

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**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

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**BEFORE:**

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA  
JUSTICE MRS. KAUSAR SULTANA HUSSAIN**

**Appellants : Through Syed Shahzad Ali Shah advocate**

**The State : Through Mr. Shahzad Saleem Nahiyoon A P G**

**Date of hearing: 08.03.2023**

**Date of judgment: 16.03.2023**

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

**KAUSAR SULTANA HUSSAIN, J:** Through this jail appeal, appellants have impugned the Judgment dated 12.06.2019 passed by learned Additional Sessions Judge-I/MCTC Tharparkar @ Mihti in Sessions Case No.05 of 2019 [**Re: The State versus Muhammad Juman & Others**], outcome of Crime No.43 of 2018 registered at P.S Diplo for offences punishable under Section 302 and 34 PPC, whereby they have been awarded death sentence with further directions to pay Rs.2,00,000/- as compensation to the legal heirs of deceased, while the co-accused have been acquitted of the charge.

2. Facts of the case, in brief, are that Complainant lodged the aforesaid FIR on 30.11.2018 against accused party, stating therein that his deceased son Abdul Qayoon @ Mir Muhammad was Government employee and one week back he returned to village on leave. He further alleged in FIR that accused party was not in good terms with them and on 29.11.2018 at about 2.00 p.m his above deceased son left the house and was going towards Mithi while he was present at home and heard the commotion and cries, on which he, his relatives namely Abdul Rehman and Nawaz Ali reached at the place of incident and saw that Muhammad Juman (**appellant No.1**) having 'Churra' in his hands, Aarib (**appellant No.2**), having hatchet in his hands, Jian (**acquitted accused**) having hatchet in his hands and Mumtaz (**acquitted accused**) having 'lathi' in his hands were standing there and as soon as they reached there the appellant/accused Muhammad Juman inquired from his son why he was passing from there whereupon his son Abdul Qayoom replied that it is public road and he is going towards Mithi with some work, on

which accused/appellant Aarib, with intent to cause death, gave straight hatchet blow on the head of Abdul Qayoom who fell down and accused/appellant Muhammad Juman, with intent to kill him, caused straight blows of his 'Churra' on left side of chest of his son while other accused also caused blows of hatchet and lathies to his son; thereafter he also reached over there but the accused persons went away towards their houses and his son within their sight did succumbed to injuries and died at the spot, hence aforesaid FIR.

3. After registration of FIR investigation was conducted and then challan was submitted before the learned Magistrate concerned, who took cognizance of the matter and sent the R&Ps to learned District Judge. Thereafter copies were supplied to accused/appellants at **Ex.01** and the formal Charge was framed against them at **Ex.05**, to which they pleaded not guilty and claimed trial vide their pleas at **Ex.06 to 09**. In order to prove the charge prosecution examined seven (07) witnesses at **Ex.10 to 32**, who exhibited and recognized certain documents at **Ex.11 to 41**, then prosecution closed its side at **Ex.42**. Statements of accused/appellants, as required under Section 342 Cr.P.C were recorded at **Ex.43 to 46**, wherein they denied the allegations of the prosecution witnesses and alleged false implication, however, neither they examined themselves on Oath nor produced any witness in their defense. Finally learned trial Court after hearing the arguments of the learned counsel for the parties awarded the death sentences to present appellants while acquitted the co-accused, and also sent reference to this Court under Section 374 Cr.P.C for confirmation of death sentences awarded to the appellants. We therefore, decide the fate of captioned appeal as well as reference by this single judgment.

4. Learned counsel for the appellants, inter-alia, contended that prosecution did not examine and withheld the evidence of Dodo Khan, Mashir Jameel and PC Kastoorchand without giving any reason; that there are material contradictions in the evidence of prosecution witnesses, which makes the case highly doubtful; that prosecution has failed to establish the motive; that Complainant and I.O. gave different account of motive during their evidence; that signatures of witnesses on their statements do not tally; that though Complainant alleged the he alongwith his relatives reached at the spot, however, he did not try to save his son; that there are several improvements and omissions in the evidence of prosecution witnesses; that FIR was lodged with delay, therefore, false implication and due deliberation cannot be ruled out; that medical evidence do not support the ocular evidence; that on same set of evidence co-accused have been acquitted of the charge, therefore, present appellants are also entitled for same relief. Finally he prayed that prosecution has failed to establish its case against the accused persons beyond

any reasonable shadow of doubt, therefore appellants may be acquitted of the charge. In support of his arguments he relied upon (i) 2015 SCMR 840, (ii) 2017 SCMR 486, (iii) 2018 SCMR 344, (iv) 2019 SCMR 1086, (v) 2020 SCMR 305, (vi) 2020 SCMR 192 and (vii) 2021 SCMR 810.

5. Vide Order dated 03.11.2021 Complainant was present and he, while submitting that he being poor person cannot engage a private counsel, and had shown full faith and confidence on State Counsel to proceed this case on his behalf

6. Learned Additional P.G vehemently opposed the appeal and argued that the appellants are nominated in the FIR with the specific role of causing injuries to the deceased, which resulted in his death; that motive is duly proved through evidence of prosecution witnesses; that medical evidence is duly supported by the ocular evidence; that there are no material contradictions in the evidence of the prosecution witnesses; that the appellants have committed a heinous act of premeditated murder of an innocent person; that the medical evidence is also on same line and supports the version of the Complainant and eye-witnesses and as such the appeal is liable to be dismissed. He relied upon 2007 SCMR 1296.

7. We have heard the learned counsel for the appellants as well as learned Additional P.G and have also perused the material available on record.

8. The prosecution case is that appellants caused injuries to deceased Abdul Qayoom, which resulted in his death. The unnatural death of deceased is not disputed. Dr. Tarachand, who conducted the postmortem of deceased, was examined as PW-04 at **Ex.21**, deposed that deceased had three injuries i.e (i) *at the centre of the head*, (ii) *below the breast at left side* and (iii) *above the breast at left side*. The said Dr. opined that death of deceased occurred due to injuries of sharp edge instrument and lose of blood due to above injuries.

9. Now it is to be seen that to whom the aforesaid injuries, which resulted in death of deceased, have been attributed. Complainant Seendhal, who was examined as PW-1 at **Ex.10**, deposed that on 29.11.2018 he was present at his home while his deceased son left the home for Mithi with some work and he heard the hue and cry, as such he came out of his home and his nephew Ali Nawaz and Abdul Rahim also came out of their adjoining/adjacent houses and they all went at Thikhar and saw that accused persons had encircled his son and within their sight accused Aarib caused hatchet blow at the head of his son, who fell down and then accused Muhammad Juman caused two blows of his Churra at the chest of his son. Complainant further deposed that acquitted accused also

caused blows to his son, however, he did not point out at what part of body the acquitted accused had caused the injuries. Prosecution also examined eye-witness Nawaz Ali as PW-2 at **Ex.12**, who deposed on similar lines as that of Complainant. These eye-witnesses have specifically attributed the above injuries to present appellants. These witnesses were also put to a test of lengthy cross-examination, however, their evidence remained un-shaken.

10. ASI Abdul Aziz, who investigated the matter, was examined as PW-7 at **Ex.32**. He deposed that after receiving investigation of aforesaid FIR he left the police station under entry No.30 and visited the place of incident and collected the blood scratching from pacca road through Rumbi and sealed the same for the purpose of chemical examination and prepared such mashirnama in presence of witnesses, then he alongwith Complainant and mashir Niaz and Jameel went in search of accused persons and arrested them from Badhoor Bus Stand and prepared such memo of arrest. Investigation Officer further deposed that during interrogation accused persons agreed to get the crime weapons recovered and on such disclosure he left the police station alongwith accused persons under entry No.09 towards pointed place where he also called the mashirs Niaz Muhammad and Jameel Ahmed, in whose presence appellants got recovered the Churra and hatchet and such memo was prepared. Investigation Officer also deposed that he sent the recovered weapons, blood and cloth for chemical examination, report of which came in positive. Prosecution also examined mashir of inspection and recovery and arrest Niaz Muhammad as PW-3 at **Ex.14**, who affirmed the arrest of accused persons and recovery of crime weapons at the pointation of appellants.

11. As discussed above, per medical evidence, the deceased had three injuries, which resulted in his death and all said three injuries have specifically been attributed to present appellants by the Complainant as well as eye-witness. Further the crime weapons were recovered on the pointation of appellants and the report of Chemical Examiner is in positive and states that “**Articles No. One to Seven noted above are stained with human blood**”. As far as motive is concerned, all accused persons themselves admitted in their statements recorded under Section 342 Cr.P.C that there was matrimonial disputed between them and Complainant party. There is no question of mistaken identity as both parties knew each other and further the appellants were seen by the Complainant party from close range. The ocular as well as oral evidence is fully supported by the medical evidence and there are no contradictions in the evidence of prosecution witnesses, who remained consistent despite test of lengthy cross-examination.

12. As far as the case of acquitted co-accused is concerned, their case is on different footings as none of them caused any serious injury to the deceased as per medical evidence and one of them had only a lathi.

13. For what has been discussed above, we find that appellants have failed to point out any illegality in the impugned judgment so that the same requires interference by this Court. We also find that there are no mitigating circumstances in respect of this brutal premeditated murder. Consequently, the conviction and sentence awarded to the appellants by the learned trial Court through Judgment dated 12.06.2019 passed by learned Additional Sessions Judge-I/MCTC Tharparkar @ Mihti in Sessions Case No.05 of 2019 [**Re: The State versus Muhammad Juman & Others**], is maintained and the captioned jail appeal is **dismissed**. The confirmation reference is answered in the **affirmative** in respect of both appellants.

JUDGE

JUDGE

Sajjad Ali Jessar