

JUDGMENT SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-76 of 2022

Appellant: Azam alias Aziz Son of Ramzan Solangi,
through Mr. Sameeullah Rind, Advocate.

Complainant: Ghulam Sarwar son of Muhammad Ramzan,
through Mr. Irshad Ali Jahejo, Advocate.

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

Date of hearing: 03.05.2023.

Date of judgment: 03.05.2023.

J U D G M E N T

AMJAD ALI SAHITO, J:- The appellant has impugned the judgment dated 17.05.2022 passed by the learned Additional Sessions Judge-I/MCTC, Dadu in Sessions Case No.321 of 2021 emanated from Crime No.24 of 2021 registered at P.S. A-Section Dadu under sections 316 and 504 P.P.C, whereby he was convicted and sentenced to pay Diyat amounting to Rs.4,261,205/- (Rupees four million two hundred sixty one thousand two hundred and five only to the legal heirs of deceased Saddam so also shall suffer rigorous imprisonment for fourteen (14) years for committing offence under section 316 P.P.C directing that appellant shall remain in jail till payment of Diyat amount. Appellant was also directed to pay compensation amount Rs.200,000/- to the legal heirs of deceased in terms of section 544-A Cr.P.C in default whereof compensation amount would be recovered as provided under section 544-A Cr.P.C and shall also undergo S.I for six months more. The appellant was also convicted to suffer R.I for one year and to pay fine of Rs.10,000/- for the offence under section 504 P.P.C in case of failure, he shall suffer S.I for three months however the sentences awarded to him was ordered to run concurrently and provided benefit of section 382-B Cr.P.C.

2. Complainant Ghulam Sarwar in his F.I.R alleged that on 30.01.2021 as usual his son went at hotel for work. The brothers of complainant namely Imtiaz Ali and Ali Asghar

Solangi also used to work as laborers adjacent to hotel of Zounrs. On the said date, complainant also went at said hotel where his son working for taking tea where his brothers also came to meet with him and they were waiting for tea, in the meantime, complainant's son received order of tea and he took the tea towards Karo Machhi hotel near Magsi Mori it was about 11:30 a.m they saw every one Azam and Sajjan both sons of Ramzan Solangi sitting at the hotel, the complainant's son served tea to them and then demanded payment of bill, whereupon appellant Azam abused him by stating that he was demanding money in presence of people, therefore, they will see him, saying so appellant Azam threw up cup of tea hitting him on his chest and he fell down on the ground, co-accused Sajjan maltreated and started to throttle him so also both accused caused kicks and fist blows to him raised cries. By seeing such incident complainant and his brothers rushed towards them to save Saddam Ali but accused persons ran away. Thereafter they saw that Saddam Ali was lying unconscious so they arranged conveyance and was going towards Civil Hospital Dadu but on the way he expired. In Civil Hospital Dadu after conducting postmortem of deceased the dead body was handed over to complainant who took the same to home and then handed over the dead body to his brothers and relatives appeared at Police Station and lodged FIR.

3. Initially, the police registered the FIR under sections 302 and 504 P.P.C and after completing the investigation submitted final report (Challan) under section 173 Cr.P.C in offence under sections 316 and 504 P.P.C showing appellant Azam in custody while co-accused Sajjan Solangi was shown as absconder. Learned Magistrate issued NBW against absconding accused same returned un-executed and then after observing proceedings under section 87 and 88 Cr.P.C he was declared proclaimed offender vide order dated 28.07.2021.

4. The copies of documents were supplied to the present appellant and the charge was framed against him to which he did not plead guilty and claimed for trial.

5. In support of its case prosecution examined P.W.1 complainant Ghulam Sarwar at Ex.06, who produced receipt of

receiving dead body and FIR as Ex.06/A to Ex.06/B; P.W-2 Ali Asghar at Ex.07; P.W-3 Tapedar Aijaz Hussain at Ex.08, who produced police letter and sketch of place of wardat at Ex.08/A to Ex.08/B; P.W-4 Mashir Javed Akhtar at Ex.09, who produced memo of dead body, Danistnama, memo of place of wardat and memo of arrest of accused at Ex.09/A to Ex.09/D; P.W-5 ASI Ghulam Rasool Bhutto at Ex.10, who produced letter issued by him to M.O for conducting postmortem of deceased, Lash Chakas form, departure entry No.12 and arrival entry No.20 on same page, two photographs of place of wardat, departure entry No.4 dated 31.01.2021 and arrival entry No.16 on same page, departure entry No.11 dated 08.02.2021, arrival entry No.16 on same page and report of chemical examiner at Ex.10/A to Ex.10/G respectively; P.W-6 Dr. Attique Rehman at Ex.11, who produced police letter, provisional postmortem report, Lash Chakas form, receipt of delivery of dead body of deceased, histopathological report, report of chemical examiner and final postmortem report at Ex.11/A to Ex.11/G. Thereafter learned State prosecutor filed statement and closed his side of the evidence at Ex.12.

6. Thereafter statement of accused Azam under section 342 Cr.P.C was recorded at Ex.13, wherein he denied all allegations leveled against him by the prosecution by claiming his innocence however neither he examined himself on oath nor led any person in his defence.

7. The learned trial Court after hearing the learned counsel for the respective parties, and appraisal of the evidence, convicted and sentenced the appellant in a manner as stated above. The conviction and sentence, recorded by the learned Trial Court, have been impugned by the appellant before this Court by way of filing the instant captioned appeal.

8. Learned counsel for the appellant submits that the impugned judgment passed by learned Trial Court is against the law and facts of the case; that ocular evidence is inconsistent with the medical evidence same does not inspire confidence hence could not be relied upon against the appellant; that there are contradictions in between the evidence of prosecution witnesses; that impugned judgment passed by the learned Trial

Court is a result of misreading and non-reading of the evidence available on record; that medical evidence is negative. He lastly prayed for acquittal of the appellant from the charge. In support of his contention, learned counsel for appellant has relied upon the cases of *Shaukat Hussain Vs. The State* [**2022 SCMR 1538**], *Ghulam Abbas and another Vs. The State and another* [**2021 SCMR 23**], *Javaid Akbar Vs. Muhammad Amjad and Jameel @ Jeela and another* [**2016 SCMR 1241**], *Saeed Ahmed Vs. Muhammad Nawaz and others* [**2012 SCMR 89**], *Muhammad Ali Vs. Muhammad Shahid and another* [**2012 P Cr. L J 789**], and *Muhammad Shahid Vs. The State and others* [**2014 P Cr. L J 1273**].

9. While refuting the above contentions, the learned Assistant Prosecutor General, Sindh for the State assisted by counsel for the complainant argued that the appellant was specifically nominated in the FIR and for his act one person has lost his life. He further argued that no material contradiction and the discrepancy is pointed out by the learned defence counsel to show the appellant's false implication in this case, therefore, in such circumstances, the learned Trial Court has rightly awarded the conviction and sentence to the appellant following the law, hence appellant deserves no leniency. They lastly prayed for the dismissal of the instant appeal. In support of his contention, learned counsel for complainant has relied upon the cases of *Muhammad Bashir and another Vs. The State and others* [**2023 SCMR 190**], *Muhammad Aslam Vs. The State* [**2022 P Cr. L J 323**], *Muhammad Arshad Vs. The State and others* [**2021 YLR 785**], *2021 YLR 2041* and *2019 P Cr. L J 1775*.

10. I have heard the learned counsel for the respective parties and have gone through the evidence with their able assistance.

11. Evaluating the material brought on record it appears that the case of the prosecution is full of contradictions, improvements and infirmities. The prosecution examined witness No.1 complainant Ghulam Sarwar, in his deposition he has stated that on 30.01.2021 his son Sadam aged about 22/23 years went for labour at the Hotel of Zounrs. There exists a hotel of Karo Machi in front of the hotel where his son does

labour. His brothers were also doing labour near to the hotels. He went to take tea at the hotel where his son used to do labour. His brothers also seen him and they sat jointly to take tea. He has further deposed that his son received order of two teas from Azam and Sajjan who were sitting in the hotel of Karo Machi his son served them tea and demanded money, on which appellant Azam became annoyed as to why he demanded money from them before public and on that score abused his son. Azam then hit cup of tea to his son on his chest, who fell down raising cry then co-accused Sajjan maltreated his son and throttled him. Later on, both accused caused him kicks and fists blows. The complainant and his brothers namely Ali Asghar and Imtiaz Ali rushed there and on seeing them, accused persons made their escape good. Hakim Ali, the brother of hotel owner Karo Machi informed them that he knew the accused as they reside in his neighbourhood and also said to shift the injured to hospital as his condition was bad, they arranged conveyance and while going to the hospital, his son succumbed to the injuries. Such information was given to the police and the police came at the hospital. After post-mortem the dead body was handed over to the complainant and then after handing over the dead body to his brother, he went to the police station and lodged FIR against the accused Sajjan and Azam, contents of the FIR were read over to him and he put his LTI on it. He produced a receipt of receiving the dead body and FIR at Ex.06/A & Ex.06/B and testified to be the same correct bearing his LTIs. He identified present appellant Azam to be the same while co-accused Sajjan to be the absconder. In his cross-examination, the aforesaid complainant replied that Hakim informed him that the accused persons were annoyed due to the demand of money by his son but he has not deposed the same in this chief examination. The Son of the complainant was semi-unconscious when he was taken from the place of the incident while the eyewitness Ali Asghar told that the deceased went fully unconscious at the spot. The complainant stated that his son informed to the police through mobile phone and admitted that he had not disclosed in the FIR the name of the person who informed to the police so also cell phone number while

eyewitness Ali Asghar replied that Sarwar (complainant's full name is Ghulam Sarwar) informed the police about incident these contradictory statements suggest that witnesses are not supporting to each other.

12. The ocular evidence does not find support from the medical evidence. The eyewitnesses claimed that the accused Azam hit a cup of tea to the deceased which hit him on his chest, and who fell down raising cry. Then accused Sajjan maltreated the deceased and throttled him. Later on, both accused caused him/deceased kicks and fists bellows. Wherein PW-06 Dr. Attique Rehman who conducted the post-mortem of the deceased Sadam opined that no mark of violence was seen on the body of the deceased Sadam so his heart sends for Histopathology examination. On receipt of Histopathological Report and Chemical Examiner report. He issued final medical report he was of the view that most probably "***it is a natural death occurred due to cardio-pulmonary failure***". The prosecution story was further negated by the autopsy report wherein on the neck a ligature mark was absent. "*No any external injuries present all over the body. No any bleeding point seen internally*". Reliance is placed in the case of **SHAUKAT HUSSAIN V. The STATE (2022 SCMR 1358) and JAVAID AKBAR v. MUHAMMAD AMJAD AND JAMEEL @ JEELA and another (2016 CSMR 1241)**.

13. The prosecution witnesses deposed that appellant Azam hit cup of tea to the deceased Sadam, but memo of dead body Ex.09 nowhere it is written that the clothes of the deceased were stand with tea marks. Even Pw-6 Dr. Attique Rehman in his evidence deposed that on external examination the clothes of a deceased worn purple colored shirt and purple colored shalwar. But he has not disclosed that the same were stained with tea marks. The complainant claimed that at the place of the incident, he along with his brother Ali Asghar and his son Imtiaz were present at the place of the incident and saw the incident from close distance, but surprisingly none of them intervened to rescue the deceased, hence their presence at place incident is doubt full.

14. The place of incident was a thickly populated area viz Hotel of Hakim Solongi. As per the prosecution story, the incident took place in the broad light of the day. According to Tapedar Aijaz Hussain PW-03, who has produced a map of the place of incident Ex.08-B, which shows that there were tea hotels, shops, and vegetable sellers and many people were present at the place of the incident but no sincere efforts have been made by the SHO or SIO to record the statements of an independent person or collect the evidence to believe that the incident had taken place in a manner, which was disclosed by the eye-witnesses.

15. I have gone through the contents of F.I.R as well as evidence of complainant Ghulam Sarwar including entry No.12 kept at 1220 hours before the lodgment of FIR wherein the complainant alleged that present appellant Azam and others committed the murder of his son deceased Saddam Ali but neither he disclosed about a cup being the property of this case in the said entry which he mentioned in FIR and subsequent statements nor specifically nominated co-accused Sajjan this shows that FIR was lodged after due deliberation and consultation to strengthen the prosecution case with the delay of about ten hours having not been explained properly in above circumstances. Reliance is placed upon the case of *Muhammad Asif vs the State (2008 SCMR 1001)*, it has been held by Hon'ble apex Court that;

“..... The F.I.Rs. which are not recorded at the police station suffer from the inherent presumption that the same were recorded after due deliberations.....”

16. Investigating Officer Ghulam Rasool Bhutto in his evidence deposed that *“on 30.01.2021, I was posted as ASI at P.S A-Section Dadu and was present on my duty. Complainant Ghulam Sarwar Solangi appeared before me at P.S and disclosed that on the demand of amount of tea by deceased Saddam Hussain, on which accused annoyed, accused Azam threw cup of tea upon and accused Sajjan Solangi caused him kicks & fist blows.”* In his cross-examination, he admitted that *“It is correct to suggest that entry No.12 does not show that complainant disclosed the names of accused who threw cup on the deceased.”*

This witness has improved the prosecution case as he lodged NC wherein a different version was available but in the witness box in order to cover the lacuna he had tried to support the case of the complainant thereby has made great dent in the prosecution story which cannot be ignored slightly. I am inclined to place reliance on the case of **Muhammad Pervez and others Vs. The State and others [2007 SCMR 670]**, wherein the Hon'ble Supreme Court of Pakistan has held as under:

“6....It is pertinent to mention here that statement of eye-witnesses was not in consonance with each other. There are material contradictions and improvements in their statements which were not noted by the learned Federal Shariat Court in its true perspective. It is a settled law that person making contradictions and improvements cannot be held worthy of credence. See Muhammad Shafique Ahmad's case PLD 1981 SC 472; Roshin's case PLD 1977 SC 557 and Shahbaz Khan Jakhrani's case 1984 SCMR 42.

17. A perusal of the statement of the accused at Ex.13 reveals that it was recorded in a stereotype manner as only formal questions were put to be confronted to the appellant by the learned Trial Court. However, it is the requirement of section 342 Cr.P.C that all incriminating evidence is to be put to the accused and the evidence which has not been confronted to the accused conviction cannot be based on such evidence. In this case, no question specifically in respect of the preparation of memos made by the I.O during the course of the investigation was put to the accused in his 342 Cr.P.C statement to make his confrontation, therefore, above incriminating material was ignored by the learned Trial Court, which is significant.

18. Since the prosecution witnesses are not in line during their evidence thus the ocular evidence does not find support from the medical evidence. Further, it appears that the learned Trial Court while scrutinizing the record has failed to appreciate the material contradictions, improvements and admissions of the prosecution's witnesses made at trial rendering its case highly doubtful. In this respect, reliance can be placed upon the case of **MOHAMMAD MANSHA v. The STATE (2018 SCMR 772)**, wherein the Hon'ble Supreme Court of Pakistan has held

as under:-

4. *“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v. The State (2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749).”*

19. The upshot of the above detailed discussion is that the prosecution has failed to prove the charge against the appellant, hence instant Criminal Appeal No.S-76 of 2022 was allowed and the appellant was acquitted from the charge vide short order dated 03.05.2023 and the appellant was ordered to be released forthwith if was not required in any other custody case/crime. These are the reasons of my short order dated 03.05.2023.

JUDGE