

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

Criminal Jail Appeal No.S-136 of 2014

- Appellants** : Muhammad Jaffar son of Muhammad Ismail Junejo and Fida Hussain son of Ali Muhammad Junejo through Ms. Urooj Aqeel, Advocate.
- Complainant** : Ali Muhammad son of Meer Khan Junejo through Mr. Ghulamullah Chang, Advocate.
- Respondent** : The State through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.

Date of hearing : **21.08.2023.**
Date of announcement: **25.08.2023.**

JUDGMENT

ZULFIQAR ALI SANGI, J. Through instant criminal jail appeal, the appellants have assailed the judgment dated 18.11.2014, passed by learned Sessions Judge, Badin in Sessions Case No.184 of 2011 (Re- State Vs. Muhammad Jaffar and another) arising out of FIR No.106 of 2011, offence under sections 302, 109 and 34 P.P.C, registered with P.S Kario Ganhwar, whereby they have been convicted and sentenced to suffer imprisonment for life for committing an offence under section 302 (b) PPC read with section 34 PPC. Both the appellants were directed to pay compensation of Rs.200,000/- in words rupees (two lac) each, to the legal heirs of deceased Rabdino in terms of section 544-A Cr.P.C. In case of failure to pay the compensation amount, both the accused shall also suffer RI for two years more. However, the benefit of section 382 (b) Cr. P.C. was extended to the appellants/accused.

2. Brief facts of the prosecution case are that on 07.11.2011 at 1750 hours, complainant Ali Muhammad Junejo reported the matter with P.S Kario Ganhwar inter alia alleging therein that Rabdino was his son-in-law-cum-nephew. On the eve of Eid-ul-Azha, he went to see his daughter and when he was present in the house his son-in-law Rabdino accompanying his cousins Hassan and Shafi went to take a bath in the pond near the gate

of the oil field. However after some time, the complainant heard the cries of Shafi Muhammad and others, as soon as he reached the gate of the oil field, he saw that his son-in-law Rabdino had sharp side hatchet injuries on his head and blood was oozing. PWs Hassan and Shafi informed the complainant that Rabdino after taking a bath came out from the pond and they were standing at the gate at about 05:00 p.m. appellants Muhammad Jaffar and Fida Hussain with co-accused Muhammad armed with hatchets came there, all of them turn by turn caused sharp side hatchet blows on the head of Rabdino, resultantly he fell down whereupon they raised cries and then accused ran away along-with hatchets. Thereafter complainant arranged for a vehicle to take the injured to Taluka Hospital Golarchi but on the way he succumbed to injuries. Thereafter complainant leaving the above-named PWs at the dead body of deceased Rabdino went to the police station and lodged the above FIR.

3. After the registration of the crime report, an investigation was conducted by the I.O Muhammad Ali Zaonr, who inspected the dead body as well as prepared an inquest report, visited the place of the incident, took the bloodstained earth sealed it in a tin and prepared its memo, issued the letter to Mukhtiarkar for preparing sketch, secured cloths of deceased, sent bloodstained earth and clothes of deceased to chemical examiner through PC Din Muhammad, arrested the appellants and prepared such memo, secured hatchets produced by appellants and recorded their statements and produced them before learned Magistrate for recording their confessional statements, recorded statements of DWs Haq Nawaz and Ameen thereby released co-accused Muhammad under section 169 Cr. P.C., and finally submitted the challan before the competent Court. After completing legal formalities, police papers were supplied to the accused. A formal charge was framed against them, to which, they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined as many as 11 witnesses, who produced certain items and documents in support of their statements. Thereafter learned

prosecutor closed the prosecution side. The trial Court recorded statements of the accused under section 342 Cr. P.C., wherein they stated that they are innocent and have falsely been implicated in this case. However, the accused neither examined themselves on oath nor produced any witness in their defence.

5. After the assessment of evidence, the learned Trial Court passed the impugned judgment and awarded the sentence to the present appellants/accused as mentioned above. Being aggrieved by and dissatisfied with the said judgment, appellants/accused have preferred the instant criminal jail appeal.

6. Learned counsel for the appellants, at the very outset, states that she does not wish to contest this appeal on merits if this Court while maintaining the conviction of the appellants reduces the sentence to one they have already undergone. However, besides arguing further contended that the appellants are innocent and have falsely been implicated in this case by the complainant; that the impugned judgment is contrary to law, facts and equity and the learned trial court has miserably failed to properly appreciate and assess the evidence of the prosecution witnesses, whose evidence is insufficient and full of major contradictions and the judgment has been passed in violation of guiding principles laid down by the superior courts; that recovery has been foisted upon the appellants; that the complainant is not an eye-witness of the incident and there is no independent person has been shown as a witness to believe that the appellants have committed the offence. Lastly, she prays for the acquittal of the appellants. She has relied upon the case of *Muhammad Mansha Vs. The State* [2018 SCMR 772].

7. Learned Assistant Prosecutor General and learned counsel for the complainant though supported the impugned judgment but have stated that they have no objection if a lenient view is taken against the appellants by dismissing their appeal and modifying the sentence to one as already undergone.

8. I have heard learned counsel for the appellants, learned Assistant Prosecutor General and learned counsel for the

complainant having also gone through the material available on record with their able assistance.

9. There is no denial to the fact that the unfortunate incident wherein son-in-law-cum-nephew of the complainant lost his life had taken place on 07.11.2011 at 05:00 p.m. whereas the matter was reported to the police at 05:50 p.m. on the same day while the inter se distance between the place of occurrence and the Police Station was 9/10 kilometres. This aspect of the case reflects that the matter was reported to the Police promptly without there being any delay. As the parties were known to each other, therefore, there was no chance of misidentification. In order to prove its case, the prosecution has mainly relied upon the statements of complainant Ali Muhammad (PW-3) and eyewitnesses Shafi Muhammad (PW-6) and Muhammad Hassan (PW-7). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the appellants or adverse to the prosecution could be produced on record. These PWs remained consistent on each and every material point inasmuch as they made deposition according to the circumstances that happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence-inspiring. The medical evidence available on the record is in line with the ocular account so far as the nature, locale, time and impact of the injuries on the person of the deceased is concerned. So far as the question that the PWs were closely related to the deceased, therefore, their testimony cannot be believed to sustain conviction of the appellants is concerned, it is by now a well-established principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses. Learned counsel for the appellants could not point out any reason as to why the complainant has falsely involved the appellants in the present case and let off the real culprit. Substitution in such like cases is a rare phenomenon. During the course of proceedings, the learned counsel contended that

there were material discrepancies and contradictions in the statements of the eyewitnesses but in my specific query, she remained unsuccessful and could not point out any major contradiction, which could shatter the case of the prosecution. On account of a lapse of memory owing to the intervening period, some minor discrepancies are inevitable and they may occur naturally. The accused cannot claim the benefit of such minor discrepancies. The eye-witnesses have given details of the occurrence, which prove that they have witnessed the tragic death of Rabdino.

10. As per the evidence of (PW-1) Dr. Muhammad Siddique, he noted three injuries on the person of deceased Rabdino at the time of his examination and opined that injury No.1 was sufficient to cause death in the ordinary course of life but after the meticulous perusal of the evidence, there is no mention of injury No.1 being specifically caused by which appellant. The injuries as per the medical evidence were available on the back side of the head of the deceased and the allegation for causing the same was against three persons which too not acceptable to the prudent mind as one cannot wait that at first so and so accused caused the injury then he caused the injury on same side. From the perusal of the confessional statements of the appellants recorded by the Magistrate and the evidence of the prosecution witnesses it reflects that the same are not in line but are contradictory to each other, especially in respect of causing injuries to the deceased resulting to his death. The trial court also in its judgment observed that there is a general allegation against the accused persons. It has also come in the evidence that the parties are relative to each other. If it is believed that each injury was caused by each accused then it can easily be believed that all of them had not repeated the same and they have no intention to murder the deceased. The motive as set out by the complainant was not investigated properly nor the same was proved at the trial. No description of the land is available on the record and even the motive was not alleged against the present appellants and the same was alleged

against the accused Muhammad. Learned counsel for the appellants placed on record a copy of the case diary dated 04-11-2020 (after the impugned judgment) which shows that the co-accused on the same allegation was acquitted by the trial court by extending him the benefit of the doubt.

11. As requested by learned counsel for the appellants that she does not wish to contest this jail appeal on merits by pointing out appellants have yet behind the bars since date of their arrest, as such, during the pendency of this Criminal Jail Appeal, their Jail Roll was called from the concerned jail authority, which shows that the appellants have served sentence excluding remission of 11 years, 09 months and 06 days and they have earned remission of 11 years, 02 months and 25 days, **hence they have served total sentence of almost 23 years.** However, the portion of the sentence now remains only 03 years, 11 months and 29 days with a sentence awarded to them on failure to pay compensation. In the given facts and circumstances of the case as well as in view of no objection recorded by learned APG, the counsel for the complainant and after perusal of the evidence of prosecution witnesses discussed above, the sentence of the appellants is altered from section 302(b), P.P.C. to section 302(c), P.P.C. Record shows that they remained in jail almost 23 years, hence the sentence already undergone by them would be sufficient to meet the ends of justice. Resultantly, while maintaining the conviction of appellants under section 302(c), P.P.C, this jail appeal is dismissed to its extent. However, the quantum of the sentence is reduced to the period already served out by them which includes the period on failure to pay compensation. Presently, the appellants are in custody. They shall be released forthwith if they are not required in any other custody case.

12. Criminal Jail Appeal stands disposed of in above terms.

JUDGE