

## **Judgment sheet**

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

Criminal Appeal No.S-247 of 2011

**Appellants** : Ali Hassan, Jabbar, Anwar and Hassal  
Through Ms. Urooj Aqeel advocate.

**Complainant** : Shahbaz through Mr. Shakir Ali Talpur,  
Advocate.

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

Date of hearing : **31.08.2023.**  
Date of announcement: **04.09.2023.**

### **JUDGMENT**

**ZULFIQAR ALI SANGI, J:** Through instant appeal, the appellants have assailed the judgment dated 20.07.2011, passed by learned IInd. Additional Sessions Judge, Badin in Sessions Case No.142 of 2008 (re-State Vs. Ali Hassan and others) arising out of FIR No.47 of 2011, offences under sections 302, 324, 114, 337-H(ii), 504 and 34 P.P.C, registered with P.S Shaheed Fazul Rahu, 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 and to pay compensation of Rs.200,000/- (two lacs) to the legal heirs of deceased in terms of section 544-A Cr.P.C. In case of default thereof, accused shall suffer SI for two years more. They were also convicted under section 504, PPC to suffer R.I. for two years. Both the sentences shall run concurrently. 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 11.05.2008 at 1100 hours, at water course No.6-L deh Girari No.3, Taluka Shaheed Fazul Rahu, appellants in furtherance of their common intention duly armed with deadly weapons like pistols, guns and hatchets attacked upon complainant party and at the instance of appellant Ali Hassan made straight fire at complainant party while abusing them. In the firing one Muneer

Ahmed sustained injuries and was being shifted to hospital where on the way he succumbed to the injuries. Such FIR was lodged against above named accused.

3. After registration of the crime report and on completion of investigation challan was submitted against the accused persons. After completing legal formalities, 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 denied the allegations of the prosecution and further stated that they are innocent and have falsely been implicated in this case and police compelled them to confess about the guilt. Accused Anwar and Hasal also examined DW-1 Mr. Inayatullah, the then Civil Judge & J.M, Badin, who exhibited certain documents, DW-2 Muhammad Saleem Security guard, DW-3 Amir Hassan, DW-4 Wahid Bux, they also produced certain documents. Thereafter side of the accused was closed by learned advocate for the accused.

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

6. Learned counsel for the appellants, at the very outset, does not press instant appeal in respect of appellants namely Ali Hassan, Jabbar and Hassal, as they have already served out their sentences and further states in respect of appellant Anwar that she does not wish to contest this appeal on merits if this Court while maintaining the conviction of the said appellant Anwar reduces the same to one he has already undergone. However, besides arguing further contended that appellant Anwar is innocent and has falsely been implicated in this case

by the complainant party; 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 appellant Anwar was let off by the police after investigation; that the PWs are interested witnesses of the incident and no independent person has been shown as a witness to believe that the appellant has committed the offence. Lastly, she prays for the acquittal of the said appellant. In support of her contentions, 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 appellant Anwar by dismissing his appeal on merits and modifying the sentence to one as already undergone.

8. I have heard learned counsel for the appellant, learned Assistant Prosecutor General and learned counsel for the complainant and have 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 one Muneer Ahmed nephew of the complainant lost his life had taken place on 11.05.2008 at 1100 hours whereas the matter was reported to the police at 1230 hours on the same day while the inter se distance between the place of occurrence and the Police Station was 22/23 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 Shahbaz (PW-1) and eyewitnesses Imtiaz (PW-2). These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the appellant 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 appellant 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 appellant could not point out any reason as to why the complainant has falsely involved the appellant 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 and other witnesses have given details of the occurrence, which prove that they have witnessed the tragic death of Munir Ahmed.

10. As per the evidence of (PW-3) Dr. Muhammad Khan, he noted seven injuries on the person of deceased Munir Ahmed at the time of his examination and opined that injuries on vital organs i.e. brain, meninges caroted artery vein by firearm was sufficient to cause death in the ordinary course of life but after the meticulous perusal of the evidence, there is no mention of such injuries being specifically caused by which appellant. The

injuries as per the medical evidence were available on the vital organs i.e. brain of the deceased and the allegation for causing the same was against four 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. 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 that there was dispute on water course and the same was not investigated properly nor the same was proved at the trial. No description of the land is available on the record.

11. As requested by learned counsel for the appellant that she does not wish to contest this jail appeal on merits by pointing out appellant is behind the bars, as such, during the pendency of this appeal, his Jail Roll was called from the concerned jail authority, which shows that appellant Anwar has served sentence excluding remission of 12 years, 07 months and 23 days and has earned remission of 11 years, 08 months and 29 days, **hence he has served total sentence of almost 24 years, four months and 22 days**. However, the portion of the sentence now remains only 02 years, 07 months and 08 days with a sentence awarded to him 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 appellant is altered from section 302(b), P.P.C. to section 302(c), P.P.C. Record shows that he remained in jail almost to 24 years, hence the sentence already undergone by him would be sufficient to meet the ends of justice. Resultantly, while maintaining the conviction of appellant Anwar under section 302(c), P.P.C, this appeal is dismissed to its extent. However, the quantum of the sentence is reduced to the period already served out by him which includes the period on failure to pay compensation.

Presently, the appellant is in custody. He shall be released forthwith if he is not required in any other custody case.

12. Instant appeal stands disposed of in above terms.

**JUDGE**

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