JUDGMENT SHEET

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

Criminal Appeal No.D-29 of 2021
Confirmation Case No.05 of 2021

Cr. Jail Appeal No.S-51 of 2021

Present:-
Mr. Justice Mahmood A.Khan,
Mr. Justice Zulfiqar Ali Sangi

Appellants:	Veero (Criminal Appeal No.D-29/2021) through Mr. OmParkash H.Karmani, Advocate. Rado @ Ladoni (Criminal Jail Appeal No.S-51 of 2021) through Mr. Saad Salman Ghani, Advocate.
Respondent:	The State through Mr. Shawak Rathore, Deputy Prosecutor General Sindh.
Date of hearing:	13.09.2023 & 27.09.2023.
Date of Decision:	10.10.2023.

J U D G M E N T

***ZULFIQAR ALI SANGI*, J-.** Since both these criminal appeal and jail appeal are arising out of one and same crime, as such, the same are decided together. The appellants, through their Appeals have respectively assailed the conviction judgment dated 17.02.2021, passed by learned VthAdditional Sessions Judge/ MCTC, Shaheed Benazirabad in Sessions Case No.802 of 2019, emanating from Crime No.179 / 2019 for the offence punishable under sections302, 34 PPC, registered at PS B-Section, Nawabshah. The impugned judgment was pronounced after finding the appellants guilty, the appellant Veero was convicted for the offence punishable under section 302 (b) PPC on two counts to be hanged by neck till he is dead subject to confirmation of his death by this Court; whereas, appellant Rado @ Ladoni was convicted for the offence punishable under section 302 (b) PPC r/wsection 34 PPC and sentenced to imprisonment for lifeon two counts. Both the appellants were also directed to pay

compensation of Rs.200,000/- each payable to the legal heirs of the deceased u/s 544-A Cr.P.C, failing which they shall undergo further simple imprisonment for five months. Both the sentences were ordered to run concurrently. However, they were extended the benefit of Section 382-B of Cr.PC. Reference as required in terms of section 374 Cr.P.C. for confirmation of death sentence of appellant Veero was also sent by the trial Court.

2. Brief facts of the prosecution case are that on 29.08.2019 at 0030 hours when complainant SIP Rasheed Ahmed Memon along with his staff consisting of Police constables Nazeer Ahmed, SainBux, Gul Hassan, Munawar Ali, LHC Kousar and DPC Ali Khan was on patrolling duty and they reached at railway road near Ishaque Hotel. They received spy information that one man and woman are jointly slaughtering the two children with Churri at Railway Godown near Railway Iron Bridge. On such information, immediately they called SHO PS A-Section and SHO PS Airport through wireless and asked to reach at the pointed place. Thecomplainant proceeded there and reached at about 2100 hours. At the spot, they heard the cries of child in the meantime Inspector Sanaullah Panhwar, SHO PS A-Section Nawabshah and SIP Ghulam Awais Mangrio, SHO PS Airport with their staff also reached there on Government Mobiles and then in the lights they saw that one woman caught a child hold from his legs and a man was cutting his neck with Churri for committing his murder and beside them one dead body of one baby girl was also lying whose neck was cut. The complainant party made hakals to the accused persons to which accused Veero on seeing coming police party suddenly stand and tried to run in which the Churri hold by him had hit to accused Rado @ Ladoni and she became injured. The appellant Veero was apprehended with Churri and appellant Rado @ Ladoni was also captured at the spot. They saw dead body of deceased baby girl aged about 2 /3 years was lying whose neck was cut and boy aged about 12 / 13 years whose neck was also cut had died away in their sight. Due to non-availability of private mashirs complainant deputed Inspector Sanaullah Panhwar SHO PS A-Section and LHC Kousar as mashirs and enquired the name from accused persons on which male accused disclosed his name as Veero s/o Heer Das @ Beejal Jandawaro r/o Tando Adam District Sanghar. On his body search, Rs.20,045/- and one mobile phone were recovered from his side

pocket. Female appellant disclosed her name as Rado @ Ladoni wife of Kishno Jandawaro r/o Shahpur Chakar, District Sanghar and police saw the injuries at her left and right eyes as well as at her neck cut type. Nothing was recovered from her possession except her wearing apparel and she disclosed the names of children as baby girl Chanda d/o Kishno aged about 2 /3 years and boy as Gullan s/o Kishno Jandawaro aged about 12 / 13 years. On further inquiry, both the appellants told that boy Gullan had seen them in objectionable condition, as such, both jointly committed their murders. The police thereafter observed usual formalities i.e. recoveries and preparation of mashirnamas and shifting deadbodies to PMCH Nawabshah for post mortem examination; admission of lady appellant in ICU Ward for her medical treatment under police surveillance and registered the instant case.

3. After usual investigation the case was challaned before the Court having jurisdiction and after completing the legal formalities, the charge against the appellants was framed to which they pleaded not guilty and claimed trial. At the trial, the prosecution examined as many as 05 witnesses including the complainant, mashir of arrest and recovery, MLO and Investigating Officer, who produced certain documents and the items in support of their statements. Learned Prosecutor thereafter closed the side of prosecution.

4. Statements of appellants u/s 342 Cr. P.C were recorded wherein they denied the prosecution allegations and pleaded their innocence. They, however, neither examined themselves on oath nor led any evidence in their defence.

5. After the trial and hearing the parties while appreciating the evidence produced by the prosecution, the learned trial Courtconvicted and sentenced the appellants through the impugned judgment as stated above.

6. Learned counsel for the appellants mainly contended that the appellantsare innocent and has been falsely implicated in this case; that the private persons were not made mashirs of the

proceedings; that Khemo who is relative of deceased and received dead bodies was not made as mashir nor was examined by the prosecution; that there was pacca road and blood stained earth collected from there creates doubt; that as per prosecution story the appellants have committed alleged offence with the motive that the deceased children had seen them in objectionable condition but no such medical examination of appellants were got conducted to confirm that they at that time committed sex or otherwise. Learned counsel for lady appellant contended that the appellant being real mother of deceased cannot commit their murders; however, the offence is committed by appellant Veero. Both the learned counsel contended that the appellants are innocent and prayed for their acquittal. Learned counsel in support of arguments relied upon the cases of ***Iftikhar Hussain and others v. The State (2004 SCMR 1185) and Mst. Asia Bibi v. The State and others (PLD 2019 Supreme Court 64)***.

7. On the other hand, learned DeputyProsecutor General has contended that the prosecution has successfully proved its case by examining the P.Ws, who have no enmity with the appellants; that there are eyewitnesses who deposed that in their presence, the appellants were arrested on spot; that the ocular and medical evidence corroborated the version of the complainant viz-a-viz slaughtering the deceased by the appellants; that the recovery of 'Churee' from the possession of appellant Veero at place of the incident with other material were sent for FSL and the same is in positive; that there is no major contradiction between the statements of the complainant and P.Ws, thus the impugned judgment does not call for any interference by this court. He prayed for dismissal of the appeal and confirmation of death reference.

8. We have heard learned counsel for the appellants as well as learned DeputyProsecutor General and perused the material available on record with their able assistance and the law cited at the bar.

9. The prosecution examined two eyewitnesses of the incident viz. PW-02 SIP Rasheed Ahmed, who was also Investigating Officer and PW-03 Inspector Sanaullah, who was also mashir of the

case, both are police officials, who reached at the place of incident and saw that lady appellant Rado @ Ladoni was holding the child / boy from his legs and appellant Veero was cutting his neck with Churri. They raised hakals to them, they tried escape and their attempt of escaping the Churri hit the appellant Rado @ Ladoni.The appellants were arrested by them at the spot and they recovered Churee/dagger from appellant Veero. They saw dead body of one baby girl Chanda aged about 2 /3 years was also lying, whose neck was cut. The boy Gullan had also died on spot within their sight. The injured lady appellant was admitted for treatment in hospital where she was medically examined. Post mortem of both the deceased was got conducted. Both the eye eyewitnesses have fully supported the case of prosecution. They are independent having no relation with the deceased or having any ill will with either of the parties and even the same had not been suggested during cross-examination. Their evidence was not dented despite a lengthy cross examination. On reassessment of their evidence, we find the same reliable, trustworthy and confidence-inspiring in nature. In the case of ***Muhammad Din v. The State (1985 SCMR 1046),*** the Supreme Court of Pakistan has maintained the death sentence of the accused who was arrested at the spot and crime weapon was recovered from him while observing as under:-

> *"9.On going through the evidence, we find that the case against the petitioner is established to the hilt. He had been caught red-handed with a razor, produced before the police. He also sustained injuries on, his hand which could be the result of dealing blows to the deceased. We find no reason for the witnesses, who had actually allowed the petitioner to reside in their house for about two years, to depose falsely against him. This petition does not merit any interference by this Court and the same is, consequently dismissed."*

10. The Supreme Court in another case of ***Majhi v. The State (1970 SCMR 331)***has also maintained the death sentence of the accused caught red-handed with the recovery of a crime weapon and observed as under:-

> *"The petitioner has been sentenced to death for the murder of Mst. Budhai on 4-6-1968 in village Sangra, district Jhang. The deceased was a woman of loose character. She at first formed illicit intimacy with the petitioner, but she soon discarded him and made a liaison with Rehman, the village barber. Attempts made by the petitioner to dissuade the*

deceased from carrying on with her new paramour having failed to invoke any response, he felt provoked and finding the deceased alone in her house at pesh1wela strangulated her to death. The alarm raised by the deceased attracted her uncle Sultan, P. W. 7, Mazhar Hussain, P. W. 8, and Muhammad Hussain, P.W. 9. They actually succeeded in apprehending him and latter on made him over to the police officer who visited the spot after recording the F. I. R., lodged by P. W. 7 at 4 p.m.Courts below have found no enmity between the three eyewitnesses and the petitioner. None had, therefore, any motive to falsely implicate the petitioner on a capital charge. The grounds raised in the petition for leave to appeal go to mere appreciation of evidence which do not warrant interference with the conviction of the petitioner by this Court."

11. In the present case two eyewitnesses fully supported the case as has been discussed above. However, the sole evidence of a material witness i.e an eyewitness is always sufficient to establish the guilt of the accused if the same is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers the quality of evidence and not its quantity to prove the charge. The accused can be convicted if the court finds the direct oral evidence of ***one eye-witness*** to be reliable, trustworthy and confidence-inspiring. In this respect, reliance is placed on the case of ***Muhammad Ehsan v. The State (2006 SCMR 1857).*** The Supreme Court in the case of ***Niaz-Ud-Din v. The State (2011 SCMR 725)*** has also observed in respect of the ability of the court to uphold a conviction even based on the evidence of ***one eye-witness*** provided that it was reliable and confidence-inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which is of importance. Further the Supreme Court in the case of ***Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)*** also held that "*even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable*."

12. There can be no denial ofthe legally established principle of law that it is always the *direct* evidence, which is material to decide a *fact* (charge). The *failure* of direct evidence is always sufficient to hold a criminal charge as ***'****not proved'* but where the *direct evidence* holds the field and stands the test of it 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 can *safely* be placed on the case of ***Muhammad Ehsan vs. The State*** **(2006 SCMR-1857),** wherein the Supreme Court of Pakistan 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".*

13. In the prosecution evidence, it has come on record that on the information, the police reached at the place of incident, arrested appellants; recovered crime weapon i.e. Churee along with cash of Rs.20,045/-, Q-Mobile from the possession of appellant Veero. The appellants have also disclosed the cause of the commission of instant crime that the children had seen them in objectionable condition. The Investigating Officer sealed the property at the spot and prepared such mashirnama in presence of mashirs. He also prepared mashirnamas of inspection of dead bodies of both the deceased, recovery of their blood stained earth and danistnamas so also Lash Chakas Forms. Police also shifted lady appellant at PMCH Nawabshah where she was admitted in ICU ward and thereafter lodged FIR. After post mortem, the dead bodies of children were handed over to Khemoon (uncle of children) under a receipt. Said Khemoon was examined u/s 161 Cr.P.C. who had also produced clothes of deceased children, which the I.O. had sealed separately under mashirnama in presence of mashirs PCs SainBux and Nazir Ahmed. The Investigating Officer on 05.09.2019 sent the blood stained clothes of deceased children; their blood stained earth and recovered Churee to the chemical examiner Rohri through PC Lutuf Wagan. The report of Chemical Examiner [Ex.04/K] was received by the Investigating Officer, according to which, the expert certified that the blood available on the Churee, earth material and blood stained clothes of deceased children to be of a human.

14. On reassessment of the evidence of the Investigating Officer, it is found that he in cross-examination has stated that "***It is correct to suggest that lady accused Ladoni had sustained the***

injury on her neck infront of us but she had not fallen down by sustaining such injury and remain standing. The lady accused was standing by holding the deceased boy from leg."The other witness Inspector Sanaullah during his cross-examination has also deposed that***"We saw that accused Veero was cutting the neck of deceased Gulan whereas the lady accused Ladoni was standing by holding the said deceased from his leg.<u>The accused Veero had not intentionally caused the Churee blow to the lady accused Ladoni but Churee hit to the lady accused when accused had abruptly stand</u>."*** We have observed that though both these witnesses were cross-examined at length but the defence counsel has failed to shatter their evidence from the main version of incident brought on record by the police officials who have no enmity with the accused persons. Their evidence is consistent upon date, time of incident, place of scene and narration of incident in the manner happened at the spot with specific role of the appellants. So far the version taken by appellant Rado @ Ladoni in her statement under section 342 Cr.P.C. that she is innocent and murders of the deceased had solely committed by co-appellant Veero is concerned, she has not taken this stance during the investigation of the case but at later stage this version has been brought by her at the time of recording her statement under section 342 Cr.P.C. which does not find support from the evidence of prosecution witnesses who being police official are the independent witnesses. Appellant Rado @ Ladoni also not denied the fact that the incident was not taken place at the place of incident as narrated by the prosecution witnesses. The happening of the incident at the same place as narrated by the police officials has also support from the evidence of **PW-04 Asif Ali (Tapedar)**, who visited the place of incident on the pointation of Inspector Sanaullah Panhwar SHO PS A-Section and had prepared his report showing the points in respect of incident. Though this witness was cross-examined by the defence counsel but his evidence was also not shattered.

15. We have also perused the medical evidence of Medical Officers Dr. Samina, who conducted post mortem of deceased child Chanda and examined appellant Rado @ Ladoni; and Dr. Pir Zain Uddin, who conducted post mortem of deceased Gulan. The Medical Officer ***Dr. Samina*** deposed that on external examination of dead body of deceased Chanda, he found the injury as: *"Incised wound of*

13 cm of 04 cm extend lobule of right ear to throat 03 cm behind the left ear skin. Subcutaneous tissue and at front muscle of neck of bones, spinal cord cutting. Head attached with body with fixed at skin. Trachea, Oesophagus also cut with purposes bleeding seems and margins of blood vessels also seen cuts." On the internal examination, she found Head/Neck: Extend it to seen as described in external examination. Thorax: open lungs; heart which healthy but pale looking. Abdomen. Not opened. She opined that cause of death of deceased was homicide cut resulting damage of vital organs such as trachea, spinal cord and blood vessels resulting in bleeding, hypovolemia, shock, cardio vascular death. All the injuries were ante-mortem and were caused by sharp cutting substance. She also examined appellant Rado, who was brought before her in injured condition and found three injuries (1) Incised wound size about 05 cm x 01 cm at left of neck. (2) Incised wound at left eye measuring about 01 cm x 0.5 cm. (3) Incised wound at first figure of left palm about 02 cm x 0.5 cm. As per medical officer, the injuries were fresh and caused by sharp cutting substance. Her evidence is in full support of the oral evidence brought by the prosecution witnesses before the trial Court. The defence taken by the appellant Rado when was scanned and kept in juxtaposition with the prosecution evidence, it was found to be unreliable on the ground that when the police party reached at the place of incident and saw that she caught hold legs of child Gulanand appellantVeero was cutting his neck and on seeing police party, they immediately tried to escape away during which, she received injuries. In such circumstances, if it is believed that the appellant Rado told truth then why she did not make efforts to save life of baby Chanda, who was already (before police raid) murdered by appellant Veero.The other Medical Officer ***Dr. Pir Zain Uddin*** deposed that on external examination of dead body of deceased Gulan, he found the injury as: "*An incised wound of 13 cm x 04 cm on the front side of neck, extending from behind to right ear to the side of neck on left side, skin, subcutaneous tissues, trachea, large and small blood vessels of the neck, muscles, nerves cut, spinal cord also cut, vertebrae cut from the ligaments."* On the internal examination, he found Head and Neck: Same as described in external examination. Thorax: Opened. Heart and lungs healthy but pale looking. Abdomen. Not opened. He opined that cause of death of deceased was homicide cut throat resulting damage of vital structures of neck e.g. trachea, spinal cord, large blood vessels

resulting in bleeding, shock, cardio respiratory failure and death by sharp cutting substance. His evidence is also fully supported the oral evidence produced by the prosecution before the trial Court by examining two eyewitnesses.

16. The medical evidence is in the nature of*supporting, confirmatory or explanatory* of the direct or circumstantial evidencein the sense the term is used in legal parlance for a piece of evidence that itself also has force to connect the accused person(s) with the commission of the offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence concerning certain facts including the seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. However, it is the prosecution to establish the case through ocular, circumstantial and medical evidence, which it has proved connecting the appellants in the commission of the offence. In the case in hand from the oral evidence produced by the two eyewitnesses, it is established that the accused used the Churee for murdering deceased persons which is further corroborated by the recovery of the crime weapon at the spot when the accused were caught red-handed. The ocular account in respect of the incident furnished by the prosecution has been supported by the medical evidence reflecting that the cause of death of the deceased was due to aforesaid injuries with sharp cutting weapon.

17. To believe or disbelieve a witness all depends upon the intrinsic value of the statement made by him. Even otherwise, there cannot be a universal principle that in every case interested witness shall be disbelieved or a disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present at the scene of a crime and that he is making a true statement. A person who is reported otherwise to be very honest, above board and very respectable in society but gives a statement which is illogical and unbelievable by any prudent man despite his nobility would not be accepted as has been held by the Supreme Court of Pakistan in case of ***Abid Ali & 2 others v. The***

State (2011SCMR 208).In the case, at hand, both eyewitnesses are independent having no relations with the deceased or the appellants, therefore, their evidence cannot easily be discarded and being direct in nature cannot be overlooked. The contentions that the prosecution witnesses belong to police, therefore, their evidence is not reliable has no substance as the police officials are good witnesses and can be relied upon if their testimony remained un-shattered during cross-examination. Reliance can be made to the cases of ***Muhammad Naeem v. The State (1992 SCMR 1617), Muhammad v. The State (PLD 1981 S.C 635), Hayat Bibi v. Muhammad Khan (1976 SCMR 128), Muhammad Hanif v. The State (2003 SCMR 1237) and Yakoob Shah v. The State (PLD 1976 S.C 53).***

18. In the case in hand, not only confidence inspiring oral account has been produced by the prosecution but the motive has also been established i.e. objectionable condition of the appellants seen by the deceased coupled with their arrest and recovery at the moment, all these factors *prima facie* established a charge against the appellants. The appellants in their statements neither wished to be examined on oath nor led any evidence in their defence in rebuttal of prosecution evidence, which fully proved the charge against them beyond a shadow of a doubt. Careful examination of the impugned judgment shows that the learned trial court has rightly appreciated the evidence on record and passed the conviction. Except the stated motive of incident, no previous enmity or ill will has been urged in the instant case. After the motive came to existence, the appellants formed their intention to kill the deceased who had seen them in objectionable condition. On scrutiny of the evidence produced by the prosecution, it established that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence. The appellants though availed the chance of cross-examination to the witnesses but they failed to bring on record any material contradiction in their evidence. No comments are found required as to the learned counsel for Rado @ Ladoni being a matter as to the same perhaps by the reason, learned trial Court already being awarded her life imprisonment and not the death sentence.

19. For the foregoing reasons, we are of the view that the prosecution has successfully proved the charge of murders of

deceased Chanda and Gulan against the appellants. The impugned judgment is based on sound reasons and does not call for any interference by this Court. Accordingly, these appeals are **dismissed** and the conviction and sentence awarded by the trial court are **maintained**. The reference for confirmation of the death sentence is answered in the affirmative

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20. The above Criminal Appeal, Jail Appeal and the reference made by the learned trial Court for confirmation of death sentence stand disposed of as above.

JUDGE

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