

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Spl. Anti-Terrorism Jail Appeal No. D – 285 of 2019**

*(Abdul Raheem Vistro versus The State)*

Present:

**Mr. Muhammad Iqbal Kalhoro, J.**

**Mr. Arbab Ali Hakro, J.**

Dates of hearing : **26.10.2023, 23.11.2023,**  
**16.01.2024 & 20.02.2024**

Date of announcement : **06.03.2024**

Mr. Achar Khan Gabol, Advocate for appellant.  
Complainant Niaz Hussain Vistro, present in person.  
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

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

**Muhammad Iqbal Kalhoro, J.** – Through this Appeal, appellant has impugned a judgment dated 30.11.2019, passed by learned Judge, Anti-Terrorism Court, Khairpur in Special Case No.85/2015 (*Re: State versus Abdul Raheem Vistro*), arising out of Crime No.108/2015, registered at Police Station Ahmedpur, District Khairpur U/S 302, 201, 377, 511 PPC read with Section 7 of Anti-Terrorism Act, 1997, whereby he has been convicted and sentenced in the following terms:

- For offence U/S 302(b) PPC to suffer imprisonment for life and to pay compensation U/S 544-CrPC of Rs.3,00,000/- (Rupees three lac) to the legal heirs of deceased Muhammad Akram Vistro, or in case of default in such payment, to suffer SI for six months more;
- For offence U/S 377 PPC read with Section 511 PPC to suffer RI for five years;
- For offence U/S 201 PPC to suffer RI for seven years and to pay fine of Rs.15,000/-, or in case of default in such payment, to suffer RI for two months;
- For offence U/S 7 of Anti-Terrorism Act, 1997 to suffer imprisonment for life and to pay fine of Rs.50,000/- (Rupees fifty thousand), or in case of default in such payment, to suffer further RI for six months.
- All the above sentences have been ordered to run concurrently, with benefit of Section 382-B CrPC extended to appellant.

2. As per FIR, complainant had four children: 02 sons and 02 daughters. Muhammad Akram, his second son, aged about 08 years, was in Class I. On 03.11.2015, complainant, his son Muhammad Akram and brothers Sajjad Ali and Hasamuddin were available in the house where, in the evening, complainant's maternal cousin appellant Abdul Raheem came and after staying for 05/10 minutes, left the house with his son Muhammad Akram, who did not return home till sunset. Hence the complainant went to Abdul Raheem's house for enquiry but he was not available there. Complainant then with the aforesaid witnesses mounted a search for his son. On the way, they met one Asif Nawaz, who on enquiry, disclosed that he had seen Muhammad Akram and Abdul Raheem going towards banana garden situated to southern side of the village. Complainant party searched the banana garden but in the vain. On their way back, they again peeped into the house of Muhammad Akram, but yet he was not there. Next morning viz. 04.11.2015, complainant along with witnesses again left to search for his son, and came across Abdul Sattar, who revealed about hearing cries coming from banana garden the night before. They again went to Abdul Raheem's house, and found him available there. On enquiry about minor son, he got confused and then sought forgiveness by admitting his mistake. On assurance that no action would be taken against him, he disclosed that he had murdered Muhammad Akram and concealed his dead body. He then led them to the place where he concealed dead body under leaves of banana plants. After which Abdul Raheem managed to steal away from the spot. The dead body was found having blood oozing from its nose and mouth with a mark and swelling on his neck and redness on his face. It was about 10:00 a.m. The complainant party thereafter informed police of PS Ahmedpur, which came at the site and completed usual formalities and took the dead body to Taluka Hospital, Pir-Jo-Goth for postmortem. After which, the dead body was handed over to complainant. After burial, complainant appeared at Police Station and registered the FIR against appellant Abdul Raheem, who was subsequently arrested on 08.11.2015.

3. After usual investigation, Challan was submitted in the Court, on the basis of which, the charge was framed against the appellant, but he pleaded not guilty and claimed trial, which prompted the prosecution to produce evidence of twelve (12) witnesses in the case. After the prosecution evidence, statement of appellant was recorded U/S 342 CrPC. He has denied the charge. He has not however examined himself on oath or led

any evidence in defense. At the conclusion, the trial Court has convicted and sentenced the appellant through impugned judgment in the terms as stated above; hence, this appeal.

4. Learned defense Counsel has argued that appellant is innocent, has been falsely implicated in this case; that FIR is delayed by 02 days, which has not been explained properly; that there is absolutely no evidence against the appellant; that the trial Court, on the basis of surmises and conjectures, has convicted the appellant; that this is a case of last seen evidence, but the witness namely Asif Nawaz, who claims to have last seen the appellant with the deceased minor boy has not satisfactorily adduced evidence; that his evidence is shaky and does not inspire confidence; that he is a shopkeeper and from his shop the banana garden is not visible, therefore, his evidence that he had seen appellant taking the minor deceased to banana garden is not believable; that evidence of other witness namely Abdul Sattar is not without a doubt either as the complainant in evidence has claimed that on next day of the incident he had informed the complainant about the cries coming from banana garden, but his evidence shows that all the night he was with the complainant party in trying to find out the missing minor; that the last seen evidence is always considered a weak type of evidence and cannot be relied upon unless there is supporting evidence to convict the accused. He further submits that there are a number of contradictions and discrepancies in the evidence of witnesses to the benefit of which appellant is entitled.

5. On the other hand, learned Additional Prosecutor General has supported the impugned judgment and has submitted that the appellant is a real maternal cousin of complainant, therefore, his false implication is out of question, the complainant cannot falsely implicate his own cousin in the murder of his minor son; that evidence of witnesses against the appellant is confidence inspiring and it is clearly established that he had taken the minor towards banana garden for the purpose of committing sodomy, but then on his resistance and raising cries, he panicked and murdered him.

6. Complainant, present in person, has narrated the entire story as to how in his presence, appellant, his cousin, had taken his son outside of house on the day of incident, but then neither he returned nor his son; hence, he mounted a search along with his relatives including brothers to find out his son and appellant, but the appellant did not come in his

house the whole night, and the next day when they confronted him in his house, he initially avoided to come up clean but then admitted his guilt and led the complainant party to the place where he had done away with minor boy and concealed his body.

7. We have considered arguments of the parties and perused material available on record. The prosecution, in order to prove the case, has examined twelve (12) witnesses. First witness examined by prosecution is complainant himself at Ex.04. In his evidence, he has reiterated entire story, which he has disclosed in the FIR that he was present in his house on 03.11.2015 with his son Muhammad Akram, brothers Hasamuddin and Sajjad Ali. It was about 04:00/04:30 p.m. when appellant, his cousin, came in the house and remained with them for about 05/10 minutes. He then left the house along with his son. When till sunset, his son did not return to home, he went to the house of appellant Abdul Raheem to make an enquiry, but he was not available there. Then, he and his brothers mounted a search to find out his son, and on the way, they met with PW Asif Nawaz, who informed them that he had seen Abdul Raheem and his son heading towards the banana garden on southern side. He further stated that then they started searching the banana garden, but in vain. Next day, on 04.11.2015 in morning, he along with his brothers when again were making efforts to find out his son, they came across PW Abdul Sattar, who disclosed that he had heard cries coming from the banana garden last night. Upon which, he with witnesses again went to the house of appellant and found him available there. When enquired, he got confused and then admitted his mistake. On assurance that no action would follow, he led the complainant party to the particular place in the banana garden where he had killed the minor boy and concealed his body under the leaves of banana plant. After the discovery of dead body on his pointation, the appellant managed to sneak away. Complainant then informed the police on mobile phone, which reached the place of incident within a short while and completed all the formalities including taking the dead body to a hospital for postmortem. After the postmortem and burial of his minor son, complainant approached police for registering of the FIR.

8. The second witness examined by prosecution is PW-2 namely Hasamuddin, Ex.05. He is brother of the complainant and has disclosed the facts in his deposition, which completely align with the story narrated by the complainant in his evidence. PW-3 Abdul Sattar, Ex.06 is complainant's maternal uncle; in his evidence, he has deposed that on

04.11.2015, complainant and his brothers had met him when he was outside of his house and told the story of missing son. He, in response, informed them about cries that he had heard the night before emanating from banana garden. Then he along with the complainant and others went to the house of appellant Abdul Raheem where complainant asked him about the whereabouts of his son, who he had taken away a day before. But he got puzzled and started seeking forgiveness of the complainant by stating that he had committed a mistake. But then on assurance, that no action would be taken against him, he led them to the place where he had concealed dead body of minor son of the complainant after murdering him. He has also confirmed in his evidence that after the dead body was discovered, in the ensuing mayhem and confession, the appellant had sneaked off.

9. PW-4 Asif Ali S/o Ahmed Nawaz has been examined at Ex.07. In his evidence, he has confirmed that on the day of incident when he found complainant party searching for minor son namely Muhammad Akram, he disclosed to them that he had seen the boy with appellant going towards banana garden, situated on southern side, owned by one Jan Muhammad Vistro. He has further narrated, how he along with complainant had gone to banana garden on the same day to search for the minor but without any result, then searched him for almost entire night, then met with PW Abdul Sattar Vistro next day viz. 04.11.2015 in the morning and received information from him of cries he had heard coming from the banana garden the night before. He has also confirmed in evidence that thereafter they had visited the appellant in his house where he, after some dillydallying and assurance that no action would be taken against him, had admitted the guilt and led the party to the place where he had hidden dead body of the minor after killing him. All the aforesaid witnesses in their evidence have produced their 164 CrPC statements echoing same facts.

10. At Ex.09 is the evidence of PW-5 Rabnawaz. He is the *mashir* and has confirmed that on 04.11.2015 at about 10:40 a.m. in his and co-*mashir* Zaheer Ahmed's presence dead body of son of complainant was inspected by the police. He has also verified that police had prepared the necessary documents there and then the dead body was shifted to hospital by the police, where, after postmortem, it was handed over to complainant. He has also produced all the necessary memos in his evidence and has confirmed his signature thereon.

11. Retired HC Ali Mardan has been examined at Ex.10 as PW-6 by the prosecution. He in his evidence has confirmed that on 04.11.2015 he was informed on mobile phone by the complainant about murder of his son. According to him, he then had left along with his staff for the place of incident where he had inspected the dead body on the pointation of complainant, and had prepared inquest report in presence of *mashirs*. He further has disclosed the facts about taking the dead body to Taluka Hospital, Kingri for postmortem. He has also confirmed in his evidence that his statement U/S 161 CrPC was recorded by the IO. He has verified all the documents which he had prepared and had already been exhibited by the other witnesses. Evidence of PC Amanullah, PW-7, Ex.11, is on the same lines with the evidence of PW-6 Ali Mardan, as he was also part of the police team, which, after receiving information about the incident had proceeded to the place of incident and had completed the formalities over there. At Ex.12, prosecution has examined PW-8 SIP/SHO Rehmatullah. He has verified in his evidence, registration of FIR as per verbatim of the complainant. He has produced the same and has verified it to be correct. Evidence of PW-9 Dr. Dur Muhammad, Ex.13 is in respect of postmortem of the deceased on 04.11.2015. According to him, he had found following injuries on the person of deceased:

“Two reddish marks of violence noted at right side of neck each measuring about 1 cm x 1 cm, head and neck reddish, swelling and dark red blood was coming from nose and mouth, neck flaccid with no sound from turning.”

As per his final opinion, death of deceased was due to asphyxia, caused by throttling, leading to brain, ischemia, cyanosis and asphyxia leading to death in ordinary course of life. He has also verified that throttling was antemortem, and probable time between injury and death was about 05 to 15 minutes. He has produced postmortem report as well as chemical reports in his evidence. At Ex.14, prosecution has examined Tapedar Abdul Sami as PW-10. He has verified the fact of preparing sketch / site plan of the incident under the directions of Mukhtiarkar, Taluka Kingri, where he was led by complainant Niaz Hussain.

12. The IO of the case namely SIP Sahib Khan has been examined by the prosecution as PW-11, Ex.15. He has deposed that on 05.11.2015, he was entrusted with investigation of the case along with relevant papers by SHO, Police Station Ahmedpur. On the same day, with the complainant

party he visited the place of incident situated in the banana garden, where he had prepared memo of place of incident in presence of *mashirs* under their signatures. According to him, he had also recorded statements of witnesses U/S 161 CrPC. He then had written a letter to Mukhtiarkar for preparing the sketch / site plan of incident. On 08.11.2015, on spy information, he had arrested the accused, appellant Abdul Raheem, which was duly documented in the relevant memo. He then had produced the witnesses in the Court of learned Civil Judge & Judicial Magistrate, Kingri for recording their statements U/S 164 CrPC. He has also in his evidence referred to all the bits and pieces of investigation. Last witness examined by the prosecution is Inspector Muhammad Ameen Pathan, who was handed over the case for further investigation by SSP Khairpur. His evidence shows that he had submitted initially interim Challan and then, in the end, the final Challan in the relevant Court. In the statement of 342 CrPC, the appellant has simply denied the prosecution case without leading evidence in his defense.

13. The above is the gist of the case which the prosecution has led against the appellant in order to prove the charge against him. The appellant is the real maternal cousin of the complainant and PW Hasamuddin, a brother of the complainant. PW Abdul Sattar is their maternal uncle as well of the appellant. The complainant and his brother both entirely agree in their evidence on the fact that on 03.11.2015 appellant had come in their house in the evening and after staying some time had left along with minor son of the complainant, who when did not return till sunset, an effort was mounted by them to search him which included an effort to contact the appellant in his house but in vain. Further, they and PW Abdul Sattar and PW Asif Ali have supported each other over the fact that on 04.11.2015 in the morning they went to the house of appellant where they asked him about son of the complainant. He got visibly upset initially and tried to evade the questions, but finally, after seeking forgiveness of complainant party and assurance that no action would follow against him, admitted his guilt and led them to the particular place in the banana garden where he had murdered the boy a day before. They have further deposed unanimously that on his pointation / disclosure the dead body was recovered from under the leaves of banana plants and from the nose and mouth of which the blood was oozing out. They in one voice have described that in ensuing moments of grief and confusion the appellant had managed to steal away. Over these important

aspects of the case, and of course on the remaining part of their evidence too, a lengthy cross-examination has been conducted by the defense counsel, but he has failed to extract any worthwhile contradiction or discrepancy sufficient to undermine truthfulness found inherent in their evidence. Their evidence on these aspects is confidence inspiring and there is no reason to discard it.

14. The evidence of PW Asif Nawaz that he had seen the appellant and the minor son of the complainant on 03.11.2015 going towards the banana garden to the southern side of the village has not been shaken either in cross-examination. The argument, in defense, that from point where the shop of PW Asif Ali is situated, the banana garden is not visible, and hence, his evidence is unreliable, is not sustainable being irrelevant. For the reason, this witness has simply pointed out the side where the banana garden is situated, and to where he had seen them going on the day of incident. He does not sound that he had actually seen the appellant and son of the complainant entering the banana garden to give credence to the argument. What he means is that he had seen them heading to the side of banana garden. The suggestion that banana garden is not visible from the place where shop of this PW is situated, therefore, cannot be considered harmful to the prosecution case. The appellant is the real maternal cousin of the complainant, spotting him in the company of son of the complainant was not an unusual event to raise alarm in the mind of this witness to pay more than usual attention and follow their track to see where they actually were going. The point, which is relevant here, is his evidence on the point that he had seen the appellant and minor heading towards the banana garden, which assertion has not been called into question materially by the defense Counsel in his cross-examination.

15. The evidence of these witnesses also points out to the fact that appellant had admitted in their presence committing murder of complainant's son. Further, the appellant had led them to the place of incident where he had committed the offence and concealed body of the minor. It was on his source and disclosure, the dead body of the minor son of the complainant was finally recovered. All the relevant witnesses on this aspect have supported each other and are unanimous and consistent in declaring these facts. It is not a simple case of last seen evidence that some witness had seen the accused in the company of the deceased last. Rather, this case is based on, aside from last seen evidence, on evidence of the witnesses, who are not only related to the complainant but in same



measure related to the appellant as well, revealing that appellant had taken away the boy in their presence and did not return him. And when for first time they confronted the appellant over missing of minor, he got confused, and then admitted his mistake, sought forgiveness and then led them to the place of offence. Not only the last seen evidence, fully incorporating the fact of appellant and the minor heading towards the banana garden together, the evidence of other witnesses has also fully established that it was the appellant, who had taken the minor son of the complainant from his house and thereafter he did not return, and finally was found dead.

16. It is established that after minor son of the complainant had left the house with the appellant, he went missing, and was not seen or spotted by anyone anywhere or in the company of anyone else. It was the appellant only in whose company the minor son of the complainant was last seen leaving the house and then heading towards the banana garden situated on southern side of the village wherefrom his dead body was recovered. The chain is complete and no link is missing. There is visibly no motive for the complainant to falsely implicate the appellant in murder of his minor son. Although learned defense Counsel in his arguments tried to establish that the appellant has been implicated in this by the complainant on the basis of enmity. But apart from a vague suggestion to the complainant in this regard in his cross-examination, which he has denied, he could not point out to any other material fostering such a view.

17. In the case of *Mobashar Ahmad v. The State* (2009 SCMR 1133), the Supreme Court has upheld sentence of the accused given on the basis of last seen evidence and extra judicial confession. The Supreme Court in the case of *Qaisar Mehmood and another v. The State* (2021 SCMR 662) has laid down that the Court may rely upon the evidence of last seen, without a demur, if found free from any taint, constituting a reliable link between the offender and the victim within the proximity of time and space. In the present case, all the conditions for the purpose of relying upon last seen evidence as enumerated above are fully satisfied, and therefore, there is no reason to discard evidence of close relatives of the appellant stating that appellant had taken away the minor from his house on the day of incident, who thereafter did not return, and subsequently on the pointation of the appellant, his dead body was found in the banana garden hidden under the leaves of banana plants. In the case of *Shahid Ali v. The State* (2023 YLR 1204), which almost is of similar nature as the case in hand, this Court has dismissed the appeal of accused and answered the

confirmation reference of death sentence in affirmative holding that witness of last seen evidence had no enmity to falsely implicate the accused in the offence committed with a child of tender age.

18. In view of above discussion and the case law quoted above, we are of the view that prosecution has established the case against the appellant beyond a reasonable doubt, and the reasons for convicting and sentencing him given by the trial Court are valid and substantial; hence, we find this appeal meritless and accordingly **dismiss** it.

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