

**CERTIFICATE OF THE COURT IN REGARD TO REPORTING**

*to Fair Appeal No S-45 of 2007  
Juman Solangi vs. The State*

**SINDH HIGH COURT**

Composition of Bench

Single/JB.

*Mr. Justice Naimatullah Phulpoto*

Dates of hearing: *13-11-2012*

Decided on : *20-11-2012*

(a) Judgement approved for reporting.

YES

NO

*on*  YES  NO

**CERTIFICATE**

Certified that the judgment \* / Order is based upon or enunciates a principle of law \* / decides a question of law which is of first impression / distinguishes / over-rides / reverses / explains a previous decision.

\*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

*186*

105

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Jail Appeal No. S-45/2007

Juman S/o Misri by caste Salangi  
(Now confined in Central Prison, Hyderabad).....Appellant

VERSUS

The State

Respondent



IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Jail Appeal No.S-45 of 2007

Appellant : Juman Solangi, through Mr. Ali Nawaz Ghanghro, Advocate.

Respondent : The State, through Mr. Imtiaz Ahmed Shahani, State Counsel.

Date of hearing: 13-11-2012.

Date of Judgment: 20.11.2012.

J U D G M E N T.

NAIMATULLAH PHULPOTO, J.- Appellant Juman solangi has challenged the judgment dated 31.3.2007, passed by learned 1<sup>st</sup> Additional Sessions Judge, Dadu in Sessions Case No.268/2004, whereby he was convicted under Section 302(b), PPC in crime No.80/2010, PS Thariri Muhabat for committing murder of deceased Shahnawaz and was sentenced to suffer imprisonment for life and to pay compensation of Rs.100,000/- to be paid to the legal heirs of the deceased Shah Nawaz, failing which he was further directed to undergo R.I. for one year more. Benefit of Section 382-B, Cr.P.C was also extended to him.

2/- Brief facts of the prosecution case as disclosed in the F.I.R are that on 16.6.2004, at 10.30 hours, Nizamuddin son of Muhammad Ishaq Solangi lodged his report, alleging therein that he is WAPDA employee. About 15/16 days prior to the lodging of the F.I.R his brother Shahnawaz deceased had told the complainant that he has demanded hand of Mst. Hameeda, the daughter of one Muhammad Umar Solangi. Thereafter, complainant alongwith his brothers Yaqoob and Shahnawaz went to Muhammad Umar for hand of his daughter Hameeda for Shahnawaz. Muhammad Umar prepared to give his daughter subject to payment of Rs.60,000/-. It is alleged that Rs.15000/- were paid to Muhammad Umar, for the rest of the amount 7.6.2004 date was fixed. It is alleged in the F.I.R that appellant Juman came in the house of Muhammad Umar at that time, who issued threats to Shahnawaz as to why he was demanding hand of girl Hameeda and declared that Shahnawaz would not be spared. Thereafter, complainant alongwith his brother Shahnawaz and others returned home. Appellant Juman continued to issue threats to the deceased. On 7.6.2004, brother of the complainant, namely, Shahnawaz (now deceased) went to the Muhammad Umar for payment of Rs.20,000/-,

but did not return back. Complainant made search for his brother Shahnawaz and he came to know that a dead body has been found by the police in the land near abandoned Railway station under a tree. Police brought the dead body to the Taluka Hospital, Mehar for identification of the deceased. It is alleged that P.W Assadullah son of deceased identified his father. Deceased had received injuries at his head, neck and other parts of the body. After postmortem examination dead body of Shahnawaz was brought to the home by the complainant party. On 16.6.2004 complainant was informed by P.Ws Noor Hussain son of Jamaluddin and Nooruddin son of Bakhshal Khan, both by caste Solangi that on 7.6.2004 they were going to Seeta Road with some work, where they had seen deceased Shahnawaz alongwith appellant Muhammad Juman, Liaquat Ali son of Haji Khan and Muhammad Rajib son of Shahmeer Khan Solangi. They were chitchatting at that time. Complainant on receipt of such information went to the police station and lodged report against the appellant and others, alleging therein that his brother Shahnawaz has been killed by the appellant and others, as appellant was annoyed with Shahnawaz on his desire to marry with Mst. Hameeda daughter of Muhammad Umar.

3/- After registration of the F.I.R. investigation was started. During investigation 161, Cr.P.C statements of the P.Ws were recorded. Appellant and two acquitted accused persons were arrested on 16.6.2004. On the conclusion of investigation, challan was submitted against the accused under Section 302/34, P.P.C.

4/- A formal charge was framed against the accused and the accused pleaded 'not guilty' and claimed to be tried. At the trial, prosecution examined P.W-1 complainant Nizamuddin as Ex.6, who produced NC as Ex.6/A,, P.W-2 Nooruddin as Ex.9, P.W-3 Noor Hussain as Ex.10, P.W-4 Muhammad Yaqoob as Ex.11, P.W-5 mashir Muhammad Afzal as Ex.12, who produced mashirnama of dead body, mashirnama of identification of dead body, inquest report, mashirnama of clothes of deceased, mashirnama of arrest of all three accused, attested copy of entry No.11 as Exs.12/A to 12/G respectively. P.W-6 Dr. Muhammad Qureshi Dero as Ex.14, who produced postmortem examination report of deceased as Ex.14/A respectively. P.W-7 Ali Asghar, Tapedar, as Ex.15, who produced sketch of wardat as Ex.15/A, P.W-8 SIP Sabgatullah

Jatoi as Ex.16, who produced positive report of chemical examiner as Ex.16/A and side of the prosecution was closed as Ex.17.

5/- Thereafter, statements of the accused under Section 342, Cr.P.C were recorded by the trial Court as Exs.18 to 20, in which accused persons claimed false implication in the case and denied the prosecution allegations. They have stated that the prosecution witnesses are interested and set up they have deposed against them falsely. Accused declined to give evidence on oath, no witness in defence was examined. After hearing the learned Counsel for the parties, learned trial Court convicted and sentenced appellant Muhammad Juman and acquitted co-accused Muhammad Rajib and Liaquat Ali vide judgment dated 31.3.2007.

6/- Mr. Ali Nawaz Ghanghro, learned advocate for appellant Juman contended that the incident was unwitnessed. There was delay of 9 days in lodging of the F.I.R, for which no plausible explanation has been furnished. P.Ws Noor Hussain and Nooruddin are highly interested and related to the deceased and evidence of these witnesses is not corroborated by some other independent piece of evidence. He has submitted that last seen evidence is a weak piece of evidence, which is not corroborated by some independent piece of evidence. Admission of the appellant before the police during investigation is inadmissible in evidence. No incriminating article was recovered from the possession of accused Juman after his arrest. Motive has also not been established at the trial. Co-accused on the same set of evidence have been acquitted. Prosecution case is highly doubtful.

7/- Conversely, Mr. Imtiaz Ahmed Shahani, learned State Counsel argued that prosecution has proved its case against the appellant. Case of co-accused, who were acquitted by the trial Court was distinguishable. Deceased was lastly seen by P.Ws Noor Hussain and Nooruddin in the company of accused persons. Motive has been established by prosecution and prayed for dismissal of the appeal.

8/- I have carefully heard the arguments advanced by the learned Counsel for the parties, perused the impugned judgment recorded by the learned 1<sup>st</sup> Additional Sessions Judge, Dadu.

9/- From the close scrutiny of the evidence, it transpires that complainant Nizamuddin has stated that 15/16 days prior to this incident he alongwith his brothers Muhammad Yaqoob and deceased Shahnawaz went to the house of Muhammad Umar Solangi and Muhammad Umar gave his daughter in the sum of Rs.60,000/- to the brother of the complainant, namely, Shahnawaz (now deceased). Cash of Rs.15000/- was paid to Muhammad Umar. Remaining amount was to be paid on 7.6.2004. During their stay in the house of Muhammad Umar, complainant has deposed that Muhammad Juman came and threatened Shahnawaz not to contract marriage with daughter of Muhammad Umar, else he would be murdered. Complainant has further deposed that his brother Shah Nawaz went to the house of Muhammad Umar on 7.6.2004 for making payment of Rs.20,000/-, but did not return back. On 9.6.2004 he came to know that unknown dead body was lying in Taluka Hospital, Mehar. He alongwith his nephew Assadullah went to Taluka Hospital, Mehar and found his brother Shahnawaz lying dead. After postmortem examination, the dead body was handed over to the complainant. Complainant continued search of the culprits. On 16.6.2004 his co-villagers, namely, Noor Hussain and Nooruddin informed him that on 7.6.2004 they had seen deceased at Seeta Road in the company of accused Muhammad Juman, Liaquat and Rajib. They further told the complainant that they went to Kotri. Complainant went to the Police Post Sindhi Butra and lodged the entry. Complainant has implicated accused Juman and stated that he did not know remaining accused. In the cross-examination complainant has admitted that P.Ws Noor Hussain and Nooruddin are his caste-fellows and co-villagers and K. N. Shah is the busy bus stand. He has also admitted that he had lodged F.I.R on the basis of the information received from P.Ws Nooruddin and Noor Hussain. He has denied the suggestion for deposing falsely against the accused.

10/- P.W Nooruddin has deposed that on 7.6.2004 he alongwith P.W Noor Hussain were going on motorcycle to Seeta. At about 11.45 a.m., they reached at abandoned Railway station and saw on katcha path deceased Shahnawaz was standing with Juman, Liaquat and Rajib. He has further stated that thereafter he went to Kotri. On 16.6.2004 he came to know about the death of Shahnawaz and informed the complainant. In the cross-examination he has admitted that complainant is his relative.

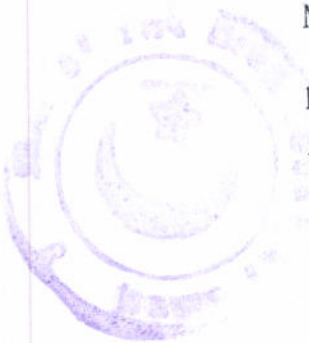


He has admitted that he has not stated in his 161, Cr.P.C statement that on 7.6.2004 he alongwith P.W Noor Hussain went to Kotri. He has further replied that he had not seen the accused persons while committing the murder of Shahnawaz. However, he has admitted that during the days of the incident he was posted at Sehwan town.

11/- P.W Noor Hussain has deposed that on 7.6.2004 he alongwith P.W Nooruddin was going to Radhan to Bali. At 11.30 a.m., they reached at abandoned railway station, where they saw deceased in the company of the accused persons. They were chitchatting. Then he went to Kotri in a Van. On 20.6.2004 returned back to the village and came to know about the murder of Shahnawaz. He has also admitted in cross-examination that complainant is his relative. However, he has denied the suggestion for deposing falsely against the accused.

12/- P.W Muhammad. Yaqoob has deposed that deceased was his brother. Deceased intended to get hand of Mst. Hameeda daughter of Muhammad Umar in the consideration of Rs.60,000/-. He alongwith deceased Shahnawaz and complainant went to the house of Muhammad Umar for demanding hand of his daughter and paid Rs.15000/- to Muhammad Umar father of Mst. Hameeda. In the meanwhile, it is stated accused Muhammad Juman came in the house of Muhammad Umar and raised objection to that arrangement. On 7.6.2004 he has deposed that his brother deceased Shahnawaz went to Muhammad Umar for payment of Rs.20,000/-, but never returned back and dead body of his brother was found lying in the hospital.

13/- ASI Muhammad Afzal deposed that on 08.6.2004 he was posted as Incharge, Police Post Sindhi Butra. He received information from SHO PS Thariri Muhabat that one dead body was lying near abandoned railway station. He went to the pointed place and found dead body and after completing formalities brought the dead body to the hospital, where dead body was identified. Postmortem examination was conducted and dead body was handed over to L.Rs of the deceased. On 16.6.2004 one Nizamuddin appeared at Police Post Sindhi Butra and narrated the incident. He kept such entry in the Roznamcha and sent the same to police station for incorporating it in 154, Cr.P.C Book. He has further deposed that on 16.6.2004 accused Rajib, Liaquat and Juman surrendered before the police and admitted that they have committed murder of



deceased Shahnawaz on 7.6.2004. He arrested the accused persons in presence of mashirs, prepared such mashirnama. In the cross-examination, he admitted that he found no blood at the place where dead body was lying. He has admitted that no article was recovered by him.

14/- Ali Asghar, Tapedar, has also been examined by the prosecution. He has produced sketch of place of wardat.

15/- Sabghatullah, Investigating Officer has deposed that on 16.6.2004 he received a copy of F.I.R, mashirnama of arrest of the accused and other investigation papers for further investigation. On 18.6.2004 he recorded 161, Cr.P.C statement of P.Ws Noor Hussain, Nooruddin, Muhammad Yaqoob and Assadullah. After completion of investigation submitted challan against accused. Investigating officer has produced positive chemical report. In the cross-examination he has admitted that there was no eyewitness of the incident. He has further replied that no recovery was effected from any of the accused.

16/- From the perusal of the above-mentioned evidence it is crystal clear that prosecution evidence has not been properly appreciated by the trial Court in accordance with settled principles of law. From the evidence of the complainant it transpires that complainant has only implicated accused Juman and clearly stated that remaining accused persons present in the Court were not same. In these circumstances, no reliance can be placed upon such type of the evidence of the complainant, who is an interested witness. P.Ws Nooruddin and Noor Hussain have not furnished proper explanation for which purpose they had gone to abandoned Railway station and why they did not narrate the fact to the complainant promptly that they had seen the deceased in the company of accused persons at abandoned Railway station. Motive has also not been established. Entire episode relates to hand of the daughter of Muhammad Umar. Said Muhammad Umar has not been examined by the prosecution. It is prosecution case that accused Juman was annoyed with deceased, then it is unbelievable that deceased went with accused Juman to abandoned place. It is settled law that when the basic foundation of prosecution case crumbled down, the motive becomes inconsequential. It is very surprising to observe that accused admitted guilt before the Investigating Officer during





the investigation and such piece of evidence has been brought on record by the learned trial Court and it has been believed. Under the law admission before the police officer during investigation is inadmissible in evidence under Articles 38 and 39 of the Qanoon-e-Shahadat Order, 1984, which are reproduced hereunder :-

*"38. Confessions to police officer not to be proved. No confession made to a police-officer shall be proved as against a person accused of any offence.*

*39. Confession by accused while in custody of police not to be proved against him. Subject to Article 40, no confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person."*

17/- Moreover, after arrest of accused no incriminating article was recovered from the possession of the accused. Evidence of complainant is not confidence inspiring for the reasons that he is interested, brother of deceased and did not implicate co-accused at trial. P.Ws Nooruddin and Noor Hussain have admitted that they are related to the complainant, therefore, their evidence required corroboration from some independent piece of evidence. Prosecution case rests upon circumstantial evidence in the shape of last seen evidence of P.Ws Noor Hussain and Nooruddin. The conditions precedent before recording conviction could be based on circumstantial evidence, must be fully satisfied. They are :-

- (1) *the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must or should and not maybe established;*
- (2) *the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;*
- (3) *the circumstances should be of a conclusive nature and tendency;*
- (4) *they should exclude every possible hypothesis except the one to be proved; and*
- (5) *there must be a chain of evidence so complete, as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.*

18/- In the view of my above discussion, I have come to conclusion that prosecution failed to establish that deceased was last seen with the accused Juman, because there is a long gap and possibility of other persons coming in between exists. In the absence of other positive evidence to conclude that accused Juman and deceased were last seen together, it would be hazardous to come to a conclusion of guilt of accused.

Moreover, on same set of evidence co-accused Muhammad Rajib and Liaquat Ali were acquitted by the trial Court. The learned trial Court failed completely to appreciate all features of the case as well as quality and credibility of the evidence brought on record. Error in appreciation of evidence is apparent on face of record.

19/- For my above-stated reasons, I hold that prosecution has failed to prove its charge against the accused Juman beyond reasonable doubt. Judgment of conviction is based upon misappreciation of evidence and apparent violation of settled canons of Criminal Jurisprudence.

20/- Consequently, this appeal is allowed. Impugned conviction and sentence are hereby set aside and appellant Juman is acquitted of the charge. He shall be released forthwith if not required in any other case.



*Naimaullah Thalpoor*

JUDGE