

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Jail Appeal No.D-68 of 2021
Confirmation Case No.D-23 of 2021

Present:

Mr. Justice Amjad Ali Sahito
Mr. Justice Khadim Hussain Soomro

Appellant: Rustam through Mr. Noor-ul-Haq Qureshi, Advocate.

Respondent: The State through Mr. Shewak Rathore, Deputy Prosecutor General, Sindh.

Complainant: Ali Asghar, through Mr. Aghis-U-Salam Tahirzada, Advocate.

Date of hearing: 19.11.2024

Date of Judgment: 19.11.2024.

J U D G M E N T

AMJAD ALI SAHITO, J:- Through instant Jail Criminal Appeal filed by the above-named appellant/accused, assailing the judgment dated 31.05.2021, passed by learned Sessions Judge / MCTC Tando Muhammad Khan in Sessions Case No.03 of 2014 (*Re.The State Vs. Rustam*), the outcome of FIR bearing No.51 of 2013, an offence under sections 302 & 504 P.P.C, registered with Police Station, Bulri Shah Karim, whereby he was convicted for an offence punishable under section 302 (b) P.P.C for committing qatl-e-Amd of deceased Muhammad Aalam, and sentenced to death as "Tazir" to hang by neck till he is dead subject to confirmation of this Court and to pay compensation of rupees one lac to the legal heirs of deceased u/s 544-A Cr.P.C or in default thereof, to undergo Simple Imprisonment for one year more. A reference for confirmation of the death sentence was also sent to this Court.

2. Briefly, the facts of the prosecution case are that complainant Ali Asghar has lodged FIR at PS Bulri Shah Kareem alleging therein that on 24.08.2013, he was home and at 05:00 a.m., his brother Alam woke him up saying that he was heading to the fields to water them and the complainant should also reach after offering prayers. It was 05:30 a.m. complainant heard cries coming from the fields near his home whereon he rushed outside and found his brother having an injury on his head and he was lying on the ground. Yousuf Khaskheli and Ali Nawaz were also available there his brother told to the complainant that he was managing water to his field, and appellant Rustam Khaskheli came to him saying that he was not supposed to water the fields and suddenly struck him with a thick wooden stick (lorh ji lath) to his head and on such commotion Yousuf Khaskheli (expired witness) and Ali Nawaz came running, seeing them Rustam Khaskheli ran away, thereafter, a vehicle was arranged to take the injured to Civil Hospital, Hyderabad and he (deceased Muhammad Aalam) was treated there for many days but finally on 29.08.2013 at 09:00 a.m. he succumbed to his injury, his body was brought at Civil Hospital, Tando Muhammad Khan and he (complainant) informed PS Bulri Shah Karim on which ASI Qurban Gopang came. The post-mortem of the dead body was conducted and thereafter, handed over to him for funeral and he (complainant) lodged the complaint on 30.08.2013 after his burial.

3. After completing the investigation of the case, the report under section 173 Cr.P.C. (challan) was submitted by the Investigating Officer against the above-named accused before the concerned Court.

4. The trial Court framed the charge against the appellant/accused, to which he pleaded not guilty and claimed to be tried. In an earlier round of litigation, the learned Trial Court recorded the evidence of three PWs namely Tapedar Abdul Aleem, ASI Qurban Ali Gopang and Dr. Abdul Qudoos Vistro who produced numerous documents in their evidence. Thereafter, the appellant/accused absconded away and after

completing proceedings in terms of sections 87 & 88 Cr.P.C he was declared proclaimed offender and an order dated 12.06.2017 in respect of proceeding with the case under section 512 Cr.P.C was passed. Then evidence of complainant Ali Asghar, witness Ali Nawaz and Mashir Phull was recorded. Learned ADPP filed a statement concerning closing prosecution side dated 29.6.2017. After getting bail from this Court, the appellant/accused joined the trial proceedings and then learned ADPP for the State filed statement dated 10.03.2018 seeking permission to adopt earlier evidence recorded in the absence of the accused under section 512 Cr.P.C which was allowed on the no objection extended by learned defence counsel. Again learned ADPP closed prosecution side vide statement at Ex.21.

5. The appellant after recording his section 342 Cr.P.C statement was sentenced to suffer imprisonment for life vide judgment dated 05.04.2018. However, his Criminal Jail Appeal No.S-92 of 2018 preferred against his conviction was allowed by this Court vide order dated 20.01.2021 and the case was remanded back with directions to record evidence of complainant and witnesses afresh in the presence of appellant Rustam. Pursuant to the directions, the Trial Court recorded evidence afresh of complainant Ali Asghar, Ali Nawaz and Phull. Thereafter the prosecution closed its side vide statement at Ex:28.

6. Statement of the appellant recorded under Section 342 Cr.P.C., wherein he denied the prosecution allegation levelled against him and claimed his innocence. However, he neither examined himself on oath under section 340(2) Cr.P.C. nor led any evidence in his defence.

7. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant in a manner as stated above. The conviction and sentence, recorded by the learned trial Court, have been impugned by the appellant before this Court by way of filing the instant Criminal Jail Appeal.

8. Mr. Noor-ul-Haq Qureshi, learned counsel appearing on behalf of the appellant preferred his submissions at length. After arguing through the entire prosecution's evidence, he has drawn attention towards some important aspects of the case. His entire arguments encompassed several important aspects of the case. He further submitted that there is a delay of six days in the registration of the FIR. He has also contended that on 24.08.2013 early in the morning the incident has taken place but matter was reported to the police on 29.08.2013 at about 09:00 a.m.; that from 24.08.2013 to 29.08.2013 before registration of the FIR the complainant party did not bother to inform the police about the happening of the incident; even the claim of the complainant was that the injured was provided treatment at the Civil Hospital Hyderabad but no record was produced by the complainant party; that there are major contradictions in the evidence of the complainant party and witnesses all are claiming to be the eyewitnesses of the incident and PWs/eyewitnesses claim that they first appeared at place of incident, on the other hand, the other witnesses stated that they have witnessed the incident thereafter the PWs came there at the place of incident; that the medical report is unclear, the complainant party has managed to implicate the present appellant after six days of the incident; that entire case was based on presumption and full of doubts, as such, the appellant deserved to be acquitted on the benefit of doubt and it is duty of the prosecution to prove the case beyond shadow of doubt.

9. On the other hand, learned counsel for the complainant contended that the contradictions, if any, are minor in nature and can be overlooked; however, when it was confronted with him that the incident took place on 24.08.2013 whether any information was conveyed to the police about the incident or any letter was obtained by the complainant for the treatment of deceased Muhammad Aalam, he has replied in negative and admitted that no entry was made in the Roznamcha about the incident by the complainant at the police station and first time on 29.08.2013 he has introduced the story wherein he has

implicated the present appellant/accused. According to him, the prosecution's witnesses have proved its case with the motive as well as ocular and medical evidence against the appellant, as such, he is not entitled for his acquittal. He, therefore, prayed for the dismissal of the instant appeal.

10. On the contrary, learned Deputy Prosecutor General, Sindh has supported the impugned judgment submitting that there is no illegality or irregularity in the trial as well as in the impugned judgment. According to him, the prosecution succeeded in establishing the factual aspects of the case by producing sufficient material during the trial. Lastly, he prayed that the impugned judgment may be maintained.

11. We have heard learned counsel for the respective parties, and have perused available records.

12. The case in hand is that on 24.08.2013 the complainant was at home and at about 05:00 a.m. early in the morning his brother Muhammad Aalam woke him up saying that he was heading to the fields to water them and that the complainant should also reach after offering prayer at about 05:30 a.m. meanwhile he heard cries coming from the fields near his home. The complainant rushed outside and found his brother having an injury on his head and he was lying on the ground. In the presence of the PWs Yousuf Khaskheli and Ali Nawaz, his brother told him that he was managing water to his fields, Rustam Khaskheli the present appellant came to him saying that he was not supposed to water the fields and suddenly struck with a thick wooden stick (lorh ji lath) on his head and on such commotion Yousuf Khaskheli (expired witness) and Ali Nawaz came running seeing them the appellant ran away the injured was shifted to Civil Hospital Hyderabad and he was treated there for many days and finally on 29.08.2013 at about 09:00 a.m. he succumbed to his injuries and thereafter complainant Ali Asghar lodged the FIR at police station Bulri Shah Karim.

13. Admittedly, the FIR was delayed about six days and on the very first day, viz.24.08.2013 the complainant and other witnesses failed to appear at the Police Station for lodgment of the FIR and even the complainant failed to take a letter from the police station for medical treatment of the injured Muhammad Aalam. But straightaway they approached to Civil Hospital Hyderabad for medical treatment. When it was confronted with the learned counsel for the complainant that any entry was made by the complainant or any eyewitness that the present appellant is involved in the commission of an offence, he replied in negative.

14. In cross-examination, the complainant Ali Asghar deposed that around 05:30 a.m. he heard cries coming from the fields near his home. He rushed outside and found his brother having an injury on his head and he was lying on the ground. There were also available Yousuf Khaskheli and Ali Nawaz whereas PW Ali Nawaz claimed that on 24.08.2013 he was in his home and sleeping then at about 05:30 a.m. he heard cries coming from the fields near his home. He rushed outside and saw Muhammad Alam having an injury on his head there was also available Rustam Khaskheli who on seeing them ran away. He had a wooden stick in his hand in the meantime Ali Asghar and Yousuf also reached. They arranged a Suzuki and shifted the injured to Civil Hospital Hyderabad. From the above, it is clear that on the one hand, the claim of the complainant Ali Asghar is that Yousuf and Ali Nawaz were present there but on the other hand witness Ali Nawaz claimed that Ali Asghar and Yousuf also arrived there. Furthermore, PW Ali Asghar admitted in his cross-examination that *"It is correct to suggest that there are 300/400 houses surrounding the place of incident. The villagers informed at police station regarding the incident before lodging of FIR.* He has admitted that police did not visit LUMHS Hyderabad before lodging the FIR.

15. The injured was alive for six days and even the dying declaration of the injured was not recorded by the police or by

any doctor to believe about happening of the incident. The complainant Ali Asghar also admitted that the distance between his land and the land of the accused is about four acres. The complainant claimed that the deceased had informed him that he was going to water/irrigate the land whereas ASI PW-2 Qurban Ali in cross examination admitted that he had visited the place of incident wherein peddy crop was standing in the land and peddy was ready for harvesting. He has also admitted that a non-cognizable report was not registered regarding the commission of this incident at Bulri Shah Karim before the registration of the FIR. Furthermore all the documents viz. Danishnama, inquest Report, memo of injuries, and medical reports were prepared on 29.08.2013 whereas the incident took place on 24.08.2013.

16. On reappraisal of the evidence, it is observed that the F.I.R was lodged on the statement of the deceased Muhammad Aalam when he was found in injured condition by his brother Ali Asghar (PW-7)/Ex:25. On cries PWs Yousuf Khaskheli and Ali Nawaz came running, seeing them appellant Rustam went away along with Lathi. Surprisingly complainant and PWs were total in three numbers but they did not bother to arrest/apprehend the appellant and produce him at the police station but allowed him to leave the place of incident. It seems to be that they were not present at the place of the incident. In blood relations, if one brother sees that his brother was injured by the accused/appellant naturally he will react, but no reaction was shown by the eyewitnesses, hence their presence at the place of the incident is doubtful. Further complainant party arranged a vehicle and shifted Muhammad Alam to Civil Hospital where he was medically treated however on 29.08.2013 he succumbed to injury. The medical officer in his cross-examination stated that the brothers of the dead body disclosed to him that Muhammad Aalam was injured and initially treated at LUMHS. He did not find a bandage over the injury of the dead body even he did not find the skull of the dead body operated on at LUMHS before the arrival of the dead body at Hospital Tando

Muhammad Khan. He stated that from examination of the dead body, he could not determine the duration between the injury caused and the death occurred. He admitted that he was not shown a record regarding the treatment of the dead body at LUMHS before conducting a post-mortem, as such, the claim of the complainant that firstly his deceased brother Muhammad Alam had been admitted in Civil Hospital Hyderabad for his treatment where he succumbed to his injuries on 29.08.2013 is not supported by a doctor.

17. It is pertinent to record here that motive in a murder trial is also an essential factor in bringing the guilt of the accused at home but here in this case the prosecution has failed to prove the significant factor of motive of the accused in murdering the brother of complainant namely Muhammad Aalam. On the assessment of the prosecution's evidence, the entire case of prosecution appears to be a suspicious one and the present appellant was involved based on allegedly being present at the place of the incident and motive set up by the prosecution that due to a dispute over the agricultural land/water rotation, the present appellant/ accused committed the offence; however, no evidence has been brought on the record regarding the motive and involvement of the appellant. The I.O. of the case deposed that the paddy crop was ready for harvesting. Further, they claim that they have not seen while inflicting lathi (lorh ji lath) to the injured person but based on cries the complainant and PWs went there, the incident took place early in the morning viz.05:30 a.m.

18. The overall discussion involved a conclusion that the prosecution has failed to prove the guilt against the present appellant beyond any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there doesn't need to be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession, but as a matter of right. The reliance is

placed on the case of **Muhammad Masha v. The State (2018 SCMR-772)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

“4. Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, ”it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State(1995 SCMR-1345), Ghulam Qadir and 2 others v. The State(2008 SCMR-1221), Muhammad Akram v. The State(2009 SCMR-230) and Muhammad Zaman v. The State(2014 SCMR-749).

19. In this case, the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellant guilty of the offence. Resultantly, the instant jail appeal was allowed through our short order dated 19.11.2024. Consequently, the conviction and sentence awarded to the appellant were set-aside and he was acquitted of the charge by extending the benefit of the doubt. He was ordered to be released forthwith if he was not required in any other custody case/crime.

20. As a result of our above findings, the reference bearing No.23/2021 submitted by the trial Court for confirmation of the death sentence to the appellant is answered in **NEGATIVE**.

JUDGE

JUDGE