

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

Criminal Jail Appeal No.D-129 of 2021
(Confirmation Case No.D-28 of 2021)

Present:

Mr. Justice Muhammad Faisal Kama Alam
Mr. Justice Amjad Ali Sahito

Appellant: Aijaz Ali through Mr. Asif Ali Talpur,
Advocate

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

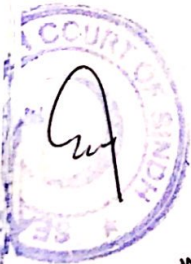
L.Rs of deceased: Through Mr. Haji Khan Jamali, Advocate.

Date of hearing: 03.12.2024

Date of Judgment: 18.12.2024.

J U D G M E N T

AMJAD ALI SAHITO, J:- Through instant Criminal Jail Appeal the above-named appellant/accused has assailed the judgment dated 16.10.2021, passed by learned 1st Additional Sessions Judge / MCTC, Shaheed Benazirabad in Sessions Case No.68 of 2021 (*Re: The State Vs.Aijaz Ali*), emanating from F.I.R. bearing Crime No.296 of 2020, offence Under Sections 302, 311 P.P.C, registered at P.S Sakrand, whereby he was convicted for an offence punishable U/S. 302 (b) P.P.C for committing qatl-e-Amd of deceased Mst. Sahib Khatoon and sentenced to death as "Ta'zir" to hang by neck till he is dead subject to confirmation of this Court and to pay compensation of Rs.2,00,000/- [Rupees Two Lac] to the legal heirs of deceased u/s 544 Cr.P.C or in default thereof, to undergo Simple Imprisonment for six (06) months more. A reference for confirmation of the death sentence was also sent to this Court.



Amjad

2. Briefly, the facts of the prosecution case are that on 29.12.2020 at 1130 hours, complainant ASI Illahi Bux along with his subordinate staff namely PC Hajjan Khan, PC Ghulam Shabir, PC Fayaz Hussain, PC Mushtaque Ahmed and DPC Wajid Mehmood left P.S. Sakrand vide daily diary entry No.46 at 0700 hours on police mobile van for patrolling. While patrolling on Sakrand to Hyderabad Road, they reached Village Sandh Keerio and heard noises of murder and murder from a house adjacent to the left side of the road on the eastern side. The police party stopped the mobile van, alighted from it, entered the house and saw a person had inflicted hatched blows to a woman with the intention to commit her murder, meanwhile, that woman fell down on the ground and that person on seeing police party escaped away with hatchet. The complainant left PC Fayaz Hussain at the crime scene and along with other staff followed the accused, apprehended him after chasing some distance and secured the blood-stained hatchet from the hand of the accused. Due to the non-availability of private mashirs, PC Hajjan Khan and PC Ghulam Shabbir were appointed as mashirs. On inquiry, the accused disclosed his name as Aijaz Ali son of Amb Manganhar, resident of originally Village Punhoon Khan Zaunr, presently Village Sandh Keerio, Taluka Sakrand, and further disclosed that the woman was his mother Mst. Sahib Khatoon @ Bulli wife of Amb Manganhar. The accused further disclosed that she usually went away from the house due to that he has suspicion that she went away for meeting purposes with someone. The accused further disclosed that today he usually went away from his house for some work, but after sometime he returned to the house and saw that his mother was preparing to go somewhere, on which he asked her but she failed to reply satisfactorily, on which accused asked her that he time to time restrained her from going out and today he will not spare her and committed her murder and due to such annoyance accused inflicted hatchet blows on her and committed her murder on account of honour. On arrival of the police party, the accused escaped away but police apprehended him after running and after arrest brought him in his house and saw that Mst. Sahib Khatoon @ Bulli aged about 40/42 years was lying in the



courtyard of the house. The complainant inspected the injuries of the injured and saw that she sustained one hatchet blow on her head, one hatchet blow on her forehead and a hatchet blow injury on her neck and blood was oozing and she died on the spot. Thereafter, the complainant sealed the recovered blood-stained hatchet. The complainant also secured the blood-stained earth of the deceased from the place of the incident and sealed the same in the packet of cigarettes and prepared a memo of the dead body of the deceased, danistnama& lash chakas form in the presence of above-named mashirs. Thereafter, the complainant shifted the dead body of deceased Mst. Sahib Khatoon @ Bali to Taluka Hospital Sakrand for post-mortem through PC Fayaz Hussain. After that complainant appeared at P.S. Sakrand along with the accused and case property and lodged an FIR against the accused.

3. After completing the investigation of the case, the police report u/s 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. To establish an accusation against the accused, the prosecution examined as many as 07 witnesses and thereafter the prosecution closed its side.

5. The statement of the appellant was recorded under Section 342 Cr.P.C., wherein he denied the prosecution allegation levelled against him and claimed his innocence. The appellant did not examine himself on oath under section 340 (2) Cr.P.C. However, in his defense he examined DW-1 Mst. Khanzadi and DW-2 Sher Muhammad Manganhar.

6. 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 in the preceding paragraph. 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.

7. Learned counsel for the appellant has mainly contended that the appellant is innocent and has falsely been implicated in this case; that it is an unseen incident and based on circumstantial evidence, the police party have implicated the appellant in this case; that though the name of the appellant finds a place in the FIR but no strong circumstantial evidence was available on record to connect the appellant with the commission of an offence; that no incriminating articles were recovered from the appellant but only "hatchet" has been foisted upon him; that no independent person has been shown as a witness to believe that the appellant has committed the offence. Lastly, he contended that the prosecution has miserably failed to prove its case against the appellant and thus, according to him, the appellant is entitled to his acquittal.

8. On the contrary, the learned Deputy Prosecutor General, Sindh as well as learned counsel for the complainant made submissions on the dismissal of instant appeal for the reason that there is no illegality or irregularity appears to have been committed by the learned Trial Court and impugned Judgment is well reasoned & speaking one; that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt; that the strong circumstantial evidence is available to connect the appellant with the commission of offence. Lastly prayed for dismissal of instant appeal.

9. We have heard learned counsel for the respective parties and gone through the material available on record.

10. On the evaluation of the material brought on record it appears that the case of the prosecution depends upon the ocular and medical evidence as well as circumstantial account. As to the ocular account, the prosecution depends upon the evidence of complainant / PW-2 Illahi Bux, PW-3 PC Hajjan, PW-4 PC Fayyaz Hussain and other PWs. To prove the case, the



prosecution examined the complainant Illahi Bux who deposed that During patrolling via Sakrand to Hyderabad Road they reached village SandhKeerio where they heard noise of murder, murder from a house adjacent to the road. At 0730 hours entered in the house and saw that a person causing hatchet blow injuries to a woman with intent to commit her murder and she fell down on the ground. The person on seeing the police tried to escape away but the complainant and PC Fayaz Hussain followed and apprehended him with the blood-stained hatchet. Due to the non-availability of private mashirs, PC Hajjan Khan and PC Ghulam Shabir were appointed as mashirs. On enquiry, the accused disclosed his name as Aijaz son of Amb Manganhar originally a resident of village Punhoon Khan Zaur and presently resident of village Sandh Keerio Taluka Sakrand. The accused disclosed that the said lady was his mother Mst. Sahib Khatoon and she left the house and, therefore, are suspected of meeting with someone. Accused/appellant further disclosed that on the alleged day, he returned back into the house and found that her mother was ready/dressed upto go somewhere on which she suspected and he was annoyed on her act and caused her hatchet blow injuries by leveling allegation of honour killing.

11. The complainant inspected the dead body of the deceased Mst. Sahib Khatoon aged about 40/42 years lying in the courtyard and saw that she had sustained injuries on the right side of the parietal region, head, and neck and died on the spot. He prepared a mashirnama of the dead body of the deceased which he produced as Ex.4/B. Thereafter, he secured blood stained earth of the deceased, sealed the same in the packet of cigarettes and prepared a memo of the arrest of the accused, recovery of blood stained earth of the deceased and blood stained hatchet in the presence of above named mashirs and obtained their signatures on it and sealed parcels. He produced a mashirnama of the arrest of the accused and recovery as Ex.4/C. He also prepared danistnama of the deceased which he produced as Ex.4/D. Thereafter, he shifted the dead body of the deceased through PC Fayaz Hussain to Taluka Hospital Sakrand for post mortem wherefrom the dead body of the



deceased was referred to PMC Hospital Nawabshah due to the non-availability of WMLO at Taluka Hospital Sakrand. He also, issued a letter, lash chakas form of the deceased as Ex:3/A which is a letter, lash chakas form of deceased. Then he alongwith the accused and case property returned to P.S. vide daily diary entry No. 14 at about 1130 hours. He produced daily diary entry No.14 as Ex.4/E. He lodged an FIR against the accused on behalf of the State. He produced FIR as Ex.4/F. On the same date at about 1230 hours PC, Fayyaz Hussain arrived at P.S. and produced the blood-stained clothes of the deceased and the receipt of handing over the dead body of the deceased to her brother. The complainant recorded entry No. 18 in the daily dairy regarding the arrival of P.S. Fayaz Hussain at P.S. at 1245 hours. He produced daily diary entry No.18 as Ex.4/G. He secured the clothes of the deceased and sealed the same in the presence of the same mashirs and prepared mashirnama of the clothes of the deceased and obtained signatures of mashirs on it. He produced maṣhirnama of clothes of the deceased as Ex.4/H. He also handed over the sealed parcels viz. blood-stained hatchet, blood-stained earth and clothes of deceased to WHC of P.S. for keeping the same in malkhana of P.S. who recorded such entry in register No.19 which he produced as Ex:4/1. Thereafter, he handed over the entire case papers to SIP Khan Muhammad Rind of the Homicidal Branch for further investigation. On 30:12.2020 SIP Khan Muhammad Rind inspected the place of incident on his pointation at about 1100 hours in the presence of the same mashirs.

12. To support the contentions raised by the complainant, the prosecution examined PW-3 PC Hajjan and PW-4 PC Fayyaz Hussain, both have also supported the version of the complainant and confirmed that in their presence accused had committed the offence and subsequently was apprehended and thereafter brought at PS and F.I.R was registered against him. The ocular account of the occurrence had been furnished before the trial Court by eyewitnesses/PWs namely ASI Illahi Bux, PC Hajjan and PC Fayyaz Hussain. The said eye witness had advanced a reasonable explanation for their presence at the

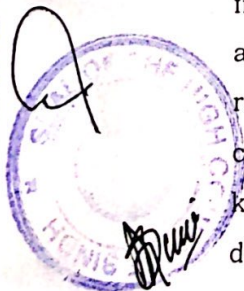


place of occurrence at the relevant time and had made consistent statements before the trial Court which evidence had inspired confidence of the trial Court.

13. In cross-examination the complainant ASI Illahi Bux admitted that he had heard hue and cries within a distance of 40 feet and thereafter he along with staff went inside the house of the deceased, and on seeing the police party the accused escaped to the neighborer house, however, the accused has only covered twenty steps of the northern side and thereafter he was arrested. The complainant also admitted that he had lodged the F.I.R. within 20 minutes of the incident. Later on, the complainant showed the place of the incident to the Investigating Officer of the case and denied the suggestions that the appellant was falsely implicated in this case by him.

14. The almost same questions were put to the PWs who have also denied the suggestions that the appellant has been falsely implicated. In the instant matter, the eyewitnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in a clear-cut manner. The incident took place in the day time and the presence of the witnesses has not been denied so also the witnesses have given details in the manner in a confident and inspiring manner and only the scope available to the appellant is to satisfactorily establish that the witnesses in-fact are not the eyewitnesses of the incident but they are interested one. In the instant matter, while recording a statement under Section 342 Cr.P.C the appellant has only stated that he is innocent and has not committed the murder of his mother and all story is managed one.

15. The height of injustice and cruelty can be judged from the act of the appellant on the day of the incident when the appellant returned to his house and found that her mother was ready/dressed up to go somewhere, which he suspected and caused hatchet below injuries by leveling allegations of honour killing. However, the appellant was not sure as to whether the deceased was going to meet with her paramour or someone else



as he suspected that she was going to meet someone and only on this score did the appellant commit the murder of her mother/ a young lady aged about 42/43 years.

16. The direct evidence also finds corroboration from the medical evidence with regard to the cause of death and the time of the incident as well as the weapon used in the commission of offence. It is established from the evidence of PW-1 Dr. Zakia Women Medical Officer, RHC Mehar Ali Jamali, who received the dead body of the deceased on 29.12.2020 along with lash chakas form from complainant ASI Illahi Bux Dahri of PS Sakrand for postmortem. She produced the original lash chakas form and letter issued by the police. On the very same day, she has conducted the postmortem of the deceased and found the following injuries:-

1. *Incised wound 7 cm x 5 cm bone deep exposing bone of skull at the vertex.*
2. *Deep incised wound on forehead just above right eye brow 13 cm x 3 cm extending from inner border of left eye to the parietal area of right side of skull bone with cutting. Brain matter was visible.*
3. *Incised wound at the neck 14 cm x 4 cm extending from middle of neck up-to the tip of shoulder of right side cutting all the muscles, trachea, great vessel and clavicle bone of right side.*

17. On external examination of the head/neck of deceased Mst. Sahib Khatoon, the said Dr. Zakia Ayoob found that the skull bone was cut, membranes were cut, brain matter was coming out from the wound, a cavity was full of blood, neck muscles were cut, great vessels of the right side were cut, trachea was also cut and clavicle bone of right side was cut. After completing the postmortem, she declared that the death of the deceased was occurred due to shock and hemorrhagic consequent upon the above-mentioned injuries caused by sharp edge object. All the injuries on the deceased were ante-mortem and sufficient to cause death in the ordinary course of nature. She further disclosed that she received the dead body at 10:30 am and started postmortem at 10:45 am and ended at 11:50 am



on 29.12.2020. The probable time injuries and death were instantaneous and between death and post-mortem was about three (03) hours, which is suffice to say that the cause of death of the deceased was unnatural and thus, this also corroborates the evidence furnished by the complainant and his witnesses. Hence, this piece of evidence connects the appellant with the commission of the offence.

18. Furthermore, the crime weapon viz. blood stained hatchet was also recovered from the possession of the appellant and the Investigating Officer also received the report in positive which was sent to the Chemical Examiner for analysis of dry blood Kameez, shalwar with elastic, dupatta, jacket and soil so also the recovered hatchet, which also supports the version of the complainant. There was no reason for the complainant to have falsely implicated the appellant in a case carrying capital punishment. The version given by the complainant inspires confidence in all respects and the same can safely be acted upon in the given situation. We find absolutely no fault in the evidence given by the complainant which gets further corroboration through the reliable evidence led by the prosecution on this point.

19. So far the contention raised by learned counsel for the appellant that the complainant and PWs are police officials and no private person was cited as the witness is concerned, in this regard, complainant ASI Illahi Bux and PWs PC Hajjan and PC Fayaz Hussain deposed at trial about the non-availability of private persons at the place of the incident for witnessing the arrest and recovery proceedings, therefore, the officials of police available at the place of incident acted as mashirs of arrest and recovery. Non-association of two private mashirs for witnessing arrest and recovery proceedings is not fatal for the case of the prosecution. It is well settled that police witnesses were as good and respectable as other public witnesses and their statements could not be discarded merely for the reason they were the officials of police, unless animosity or previous ill will of the officials of police who witnessed arrest and recovery proceedings and motive for falsely involving the accused has been brought on



record. In the instant case, no previous ill will or animosity of complainant and mashirs of arrest and recovery with the appellant for falsely involving him in this case by foisting case property has been brought on record, therefore, the testimonies of the complainant and PWs cannot be discarded merely for the reason that they were officials of police. Apart from this, the ocular evidence adduced by the prosecution through the complainant and PWs gets further support from the medical evidence as discussed above.

20. The minor discrepancies in the statements of PWs would not discredit it the overwhelming evidence adduced at trial. It is a natural phenomenon that no two persons can observe the same facts in the same line and even if they do, the chances of their being able to describe it in the same words are very rare. Thus, the minor lapses in the human memory owing to the passage of time between the occurrence and recording of evidence, which do not in any manner, shake the edifice of the case, cannot be allowed to be fatal to the prosecution case.

21. The plea taken by the appellant in his statement under Section 342 Cr.P.C is only he has denied the allegation of murder of deceased Mst. Sahib Khatoon. The evidence collected by the I.O. finds corroboration from the evidence of prosecution witnesses coupled with medical evidence leading towards the end that the appellant is the real culprit, who has given incise wound to deceased Mst. Sahib Khatoon from his hatchet. Resultantly, she died in his house and after committing the murder, the appellant tried to escape from the occurrence however, a police party apprehended him along with a blood-stained hatchet.

22. While examining the depositions of the prosecution witnesses it transpires that they have fully implicated the appellant for having caused a hatchet blow on the head and neck of deceased Mst. Sahib Khatoon and such ocular version is also corroborated by the testimony of the Medical Officer who conducted the post-mortem of the deceased. In such a situation, the Court has to see the quality and not the quantity of evidence, hence, in our view the incident took place on account of honour



killing which is undisputed. In the existing position of affairs, we would like to reproduce the definition of section 300 PPC as under:-

“300. Qatl-i-amd. --- *Whoever, with the intention of causing death or with the intention of causing bodily injury to a person, by doing an act which in the ordinary course of nature is likely to cause death or with the knowledge that his act is so imminently dangerous that it must in all probability cause death, causes the death of such person, is said to commit qatl-i-amd.”*

23. From the reading of the above provision of law it reflects that section 300 PPC gave three situations and divided into three parts mentioned below where the act would fall under the definition of Qatl-i-Amd.

- a. *If a person causes death of any person with intention to kill him;*
- b. *If the act is done with intention to cause bodily injury to any person and such injury, in the ordinary course of nature is likely to cause death;*
- c. *If the act is done with knowledge that the act is imminently dangerous and it must in all probability cause the death.*

24. On perusal of the above part it reflects that there should be the intention to kill and for the remaining parts there should also be the intention to cause such bodily injury, which in the ordinary course of nature cause death. However, from the perusal of the evidence of the eyewitnesses, it appears that not a single witness deposed that the appellant entered his house with the intention to kill her mother nor it appears from the scenario of the offence. But suddenly he committed the offence, hence in the present case preparation and intention are lacking. There is no premeditated intention but an incident taking place by flaring up emotions. If single mitigating circumstance available in a particular case would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. If a single doubt or ground was available, creating reasonable doubt in the mind of the Court/Judge to award either the death penalty or life



imprisonment, it would be a sufficient circumstance to adopt an alternative course. (2014 SCMR 1034).

25. For the above-stated reasons/mitigating circumstances maintaining the death sentence would be unwarranted in the peculiar circumstances of this case and life imprisonment would be the appropriate imprisonment.

26. For what has been discussed above, instant Cr. Jail Appeal is **dismissed** however, with modification that the conviction and sentence awarded to the appellant for offence under section 302 (b) PPC through impugned judgment dated 16.10.2021, is converted from **death to Imprisonment for life**. However, the fine amount of Rs.2,00,000/- [Rupees Two Hundred Thousand] is ordered to be paid to the legal heirs of the deceased as compensation provided under section 544-A Cr.P.C; in case of failure whereof, the appellant shall suffer S.I. for six months more. The benefit of section 382-B Cr.P.C is also extended to the appellant.

27. As a result of our above findings, the reference as provided under section 374 Cr.P.C. submitted by the Trial Court for confirmation of the death sentence answered in negative and disposed of accordingly.

Sd/- AMJAD ALI SAHITO.

JUDGE. 18/12/2024.

Sd/-MUHAMMAD FAISAL KAMAL ALAM .

JUDGE. 18/12.

Abdullahchanna/PS
Hyderabad
Dated 18.12.2024.



(SHIV)
Assistant Registrar
High Court of Andhra,
Circuit Court, Hyderabad.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Jail Appeal No. D- 129/2021

Conf Case No.28/2021

Aijaz Ali S/O Amb Mangarhar

Confined in Central Prison Hyderabad.Appellant.

Versus.



The State.Respondent.

Sessions Case No.68/2021

Crime No.296/2020 U/S 302

(b) PPC Police Station Sakrand.