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

Before:
Mr. Justice Mohammad Karim Khan Agha

Cr. Appeal No.S-58 of 2012.
Cr. Jail Appeal No.S-59 of 2012

Gohram Zardari

Versus

The State

Appellant : Gohram Zardari	Through Mr. Aijaz Shaikh, Advocate
Respondent : The State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Complainant : Gulzar Ahmed	Through Mr. Nazeer Ahmed Bhatti, Advocate.
Date of hearing	18.04.2017.
Date of judgment	19.04.2017

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Appellant Gohram Zardari was tried by learned Ist. Additional Sessions Judge, Shaheed Benazirabad, in Sessions Case No.216 of 2008, arising out of crime No.54 of 2008, registered at Police Station Daur, for offence under section 302, 34 PPC. Accused / appellant was found guilty by judgment dated 27.01.2012 (the impugned judgment) and was convicted and sentenced to suffer life imprisonment and to pay fine of Rupees one lac. In case of default in payment of fine, the accused / appellant will undergo R.I. for six months more. The accused / appellant was also directed to pay compensation u/s 544-A Cr.P.C. of Rupees two lac to the legal heirs of deceased Muhammad Afzal. In case of default in payment of compensation, accused / appellant to undergo R.I. for six months more. Benefit of Section 382-B Cr.P.C. was also extended to him. The appellant has challenged the impugned judgment through instant appeal.

2. Briefly the facts as narrated in the F.I.R. lodged by complainant Gulzar Ahmed at P.S Daur on 20.07.2008 at 2320 hours are that he is

a clerk in the Education department at Rahim Yar Khan. His uncle Muhammad Afzal aged about 55/60 years, Shahnawaz son of Muhammad Afzal aged about 8/9 years and Mst. Shahnaz d/o Muhammad Afzal aged about 11/12 years are residing in Deh 72-Nasrat, Taluka Daur. One Gohram Zardari, who is neighbour of Muhammad Afzal, had demanded the hand of Mst. Shahnaz from Muhammad Afzal and on refusal he got annoyed. On 19.07.2008 at night time, Shahnawaz and Miss. Shahnaz informed the complainant on telephone that at 1-30 a.m. Gohram Zardari having hatchet entered into their house and awakened Muhammad Afzal and told him that since he had refused to give the hand of Mst. Shahnaz to him, therefore, he will not spare him, then he inflicted hatchet blows to Muhammad Afzal and committed his murder. After receiving such information the complainant alongwith Rehmat Ali and Riaz Ahmed came to the village where incident took place. F.I.R. was recorded by A.S.I Wazir Hussain Shahani of PS Daur.

3. After completing the usual investigation, police submitted the challan against above named accused.

4. Formal charge against the accused was framed by trial court. Accused pleaded not guilty and claimed to be tried.

5. In order to prove its case prosecution examined as many as 07 witnesses and thereafter side of the prosecution was closed vide statement Ex.12.

6. The statement of the accused was recorded under section 342 Cr.P.C, in which he has denied the allegations of the prosecution. According to him, he has been implicated falsely at the instance of Aijaz Hotipoto, Manager of Zardari House Nawabshah. He also gave evidence on oath stating therein that Muhammad Afzal was murdered by unknown persons and the police has arrested son and daughter of deceased and such news was published in the newspaper on 20.07.2008, therefore, he is innocent and he has not committed murder of Muhammad Afzal. The accused did not call any defense witnesses in support of his defense.

7. The learned trial court after hearing the learned counsel for the parties and on the assessment of the entire evidence convicted and sentenced the appellant / accused as stated above in the impugned judgment.

8. The facts of this case as well as evidence produced before the trial Court find an elaborate mention in the judgment passed by the trial Court therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Mr. Aijaz Shaikh, learned counsel for the appellant has contended that there was only one eye witness who did not inspire confidence; that two potential eyewitnesses who had corroborated her had not given evidence which tended to suggest that they would not have supported the prosecution case; that the recovery of the murder weapon was doubtful as it had been recovered from the appellant's house which did not appeal to reason; that no witness had come from the close vicinity and that the Mushirs were related and thus for all the above reasons a doubt had been created in the prosecution case the benefit of which had to be extended to the appellant who as such was entitled to be acquitted.

10. In support of his contention, learned counsel for the appellant relied upon the cases of **Tariq Pervez v. The State** (1995 S C M R 1345), **Bashir Ahmed alias Mannu v. The State** (1996 S C M R 308) and **Muhammad Asif v. The State** (2017 S C M R 486).

11. On the other hand, learned A.P.G. fully supported the impugned judgment which according to him was well reasoned and had covered all aspects of the case. He further contended that in support of the prosecution case that there was an eye witness; that the appellant had a motive to murder the deceased; that the medical and chemical evidence supported the prosecution case and corroborated the other ocular prosecution evidence; that the recovery of the murder weapon had been made on the pointation of the appellant and as such the prosecution has proved its case beyond a reasonable doubt and the impugned judgment should be upheld and the appeal dismissed.

12. In support of his contentions, learned A.P.G. has relied upon the cases of **Naik Muhammad Zaman V State** (2007 SCMR 1639) and **Muhammed Ehsan V State** ²⁰⁰⁶ (SCMR 1857) in terms of interested witnesses.

13. Learned counsel for the complainant adopted the arguments of learned APG and submitted that the prosecution had proved its case beyond a reasonable doubt against the appellant and as such the appeal should be dismissed.

14. I have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar.

15. It is worth mentioning at this stage that as per para 11 of the impugned judgment, "The defence has not disputed the time of incident, the place of incident, the number and nature of injuries as sustained by deceased Muhammad Afzal and his consequent death as described by the Medical Officer. Hence, this point stands proved beyond doubt." The real issue before me therefore appears to be whether based on the evidence produced at trial the prosecution has been able to prove beyond a reasonable doubt that it was the appellant who murdered the deceased.

16. PW Shahnaz was the only eye witness who gave evidence for the prosecution. She was the daughter of the deceased who witnessed his murder by the appellant whom she recognized through the glow of the light bulb. She is not a chance witness. I find her evidence to be reliable and confidence inspiring. In my view she was not damaged at all during cross examination and her evidence has largely been corroborated by PW Gulzar Ahmed who although not an eye witness is the complainant who she telephoned straight after the murder and relayed the incident to. Admittedly his evidence is hearsay but it is still of some corroborative value under the circumstances especially as he lodged the FIR and gave similar evidence at trial. Her evidence is also corroborated by the medical report and the evidence of PW 1 Dr. Ali Bux who carried out the post mortem of the deceased. This alone in my view provided that there are no other circumstances which could be fatal to the prosecution case or cause a doubt in a prudent mind would be sufficient to convict the appellant. Reference in this respect can be made to the case of **Muhammad Ehsan v. The State** (2006 S C M R 1857) where it was held at P.1860 at Para 6 as under:

"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. **The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction.** 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".(bold added)

17. It is true that there was *potentially* two other eye witnesses however in my view the fact that they were not called at trial cannot lead to an adverse inference being made that they would not have supported the prosecution case and thus detract from the eye witness evidence of PW Shahnaz.

18. This is because one of the *potential* eye witnesses was her younger brother Shahnawaz who was only 8/9 years of age at the time of the incident and although it states at P.40 of the paper book that he was given up by the prosecution because his statement was identical to that of the complainant the reality of the matter is that he was not capable of testifying. This is evidenced through a certificate dated 22-05-2010 signed by civil judge and judicial magistrate II Nawabshah whereby it was certified to the effect that, witness Shahnawaz was a child who cannot understand the questions and reply given by him and is not giving rational answers and therefore his statement cannot be recorded. He was therefore incapable of giving evidence and thus he was not called.

19. The only other *potential* eye witness was Moula Bux who was also a relative of the deceased who was at the house at the time of the incident however it is stated in cross examination of PW Shahnaz that he was mentally retarded which is largely corroborated by the complainant Gulzar Ahmed who states that Moula Bux was not in his proper senses. Neither such statements given under oath were challenged by the appellant and as such Moula Bux in my view was not a person who was mentally fit to give evidence. Even otherwise he is not cited as an eye witness by Ms Shahnaz in her evidence as she only mentions her brother being present at the time of the incident. As such based on the above reasons in my view the prosecution not examining these two witnesses is not of any major significance. In this respect the cases of **Bashir Ahmed** (Supra) and **Muhammad Asif** (Supra) are distinguishable from the instant case. As is well known it must be borne in mind that each case will turn on its own particular facts and circumstances and no two cases are likely to be identical. In this respect it should also be noted that on account of their young ages and one being a female and both being unarmed neither of the eye witnesses (Shahnaz and Shahnawaz) were in any position to come

to the rescue of the deceased during the deadly assault on him by the appellant (despite him being their father) who warned them not to come near and even threatened to murder Shahnaz and her brother if Shahnaz told anyone about the incident. Likewise the presence of adequate light for Shahnaz to witness the incident and identify the appellant has never been in dispute. As she clearly says in her statement that, "the bulbs were glowing" and this aspect of her testimony has been accepted by the appellant so again the case of **Bashir Ahmed** (Supra) in terms of there being adequate light to witness the incident or see the appellant who she knew and actually spoke to her is distinguishable from the present case.

20. From the evidence of the PW's it also emerges that the appellant had a clear motive for murdering the deceased in that the deceased a few days earlier had refused to give his daughter's (PW Shahnaz's) hand to the appellant in marriage which angered the appellant. This fact is corroborated by the complainant and PW Shahnaz. The appellant has tried to blame other separate persons on different occasions for the murder including Shahnaz and Shahnawaz, Moula Bux and a certain Halepoto being behind the murder and not himself however none of such persons have been shown to have any motive to murder the deceased. Furthermore, no enmity or animus on the part of the PW's (especially Shahnaz and Gulzar Ahmed) towards the appellant has come on record to cause them to fabricate this case against the appellant.

21. The Chemical report also corroborates the other medical evidence and ocular evidence. The fact that the mushirs to an extent may have been interested witnesses in my view is of little, if any, significance and is certainly not fatal to the prosecution case. In this respect reliance can be placed on **Naik Muhammad's case** (Supra).

22. The hatchet which was used in the murder was produced by the appellant from a hedge from outside his house which was on a common path as per the evidence of PW Bishart Ali Mallah who was the IO which is corroborated by PW Hasan Bux who was mushir. In this respect, based on the particular facts and circumstances of this case, I consider the recovery of the hatchet in this case to be distinguishable from the recovery of the murder weapon in the case of **Muhammad Asif** (Supra) where the murder weapon was locked in the accused's house. This is because as mentioned earlier each case has

to be judged on its own particular facts and circumstances and no two cases are likely to be identical. In this case the appellant had not placed the hatchet in his house. Instead he had dumped it in a hedge close to his house which others had access to so to an extent, keeping in view his panic after the murder and being clearly identified by Shahnaz and Shahnawaz, he has attempted to dispose of the hatchet by putting it in a place where others could have easy and ready access to it apart from himself and thus has attempted to disassociate himself from it. To a certain extent it is also relevant that he was the person who lead the police and the mushirs to the place where the hatchet was hidden as logically if he had carried out the murder alone, which was the case, only he would have known where the hatchet was hidden.

23. A review of the evidence shows that in my view the eye witness was trust worthy, reliable and inspired confidence and was not damaged in cross examination. Like wise was the position with the other PW's. Eye witness Shahnaz is corroborated by PW Gulzar Ahmed who is also the complainant, the medical evidence and chemical evidence. The murder weapon has also been recovered.

24. When considered in a holistic manner the prosecution evidence, in my view, from start to finish sets out a believable and reliable unbroken chain of events from the murder of the deceased to the conviction of the appellant at trial.

25. There appear to be very few, and only then, minor contradictions in the prosecution evidence and again, very few, and even then only minor procedural irregularities committed by the police during the course of the investigations none of which in my view are fatal to the prosecution's case or caste any doubt on the prosecutions evidence. In this regard reference may be made to the case of **Zakir Khan & others v. The State** (1995 SCMR 1793).

26. Most certainly if there is any doubt in the prosecution's case the benefit of such doubt, as set out in the case of **Tariq Pervez** (Supra) must go to the appellant as of right as opposed to concession. However in considering this aspect of the case I am guided by the case of **Faheem Ahmed Farooqui V State** (2008 SCMR 1572) where it was held as under at P.1576 at Para D

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not

required, **a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful.** Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt."(bold added)

27. In this case I am of the view that when the evidence is read and considered in totality there would be no doubt in a reasonable and prudent person's mind that the appellant was guilty of the offense for which he has been convicted by the trial court.

28 Thus, for the reasons discussed above I find that the prosecution has proved its case beyond a reasonable doubt against the appellant, up hold the impugned judgment and hereby dismiss this appeal.

Hyderabad:

Dated: 19-04-2017

