IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.455 OF 2019

Appellant:	Iftikhar @ Hera @ Charlie S/o Muhammad Ashraf through Mr. Sathi M. Ishaque, Advocate.
Complainant:	Muhammad Ameen S/o Allah Ditta through Mrs. Shehla Anjum, Advocate
Respondent/State	Mr. Muhammad Iqbal Awan, Addl. Prosecutor General, Sindh.
Date of hearing:	14.03.2024
Date of announcement:	21.03.2024

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Iftikhar @ Hera @ Charlie son of Muhammad Ashraf has preferred this appeal against the impugned judgment dated 18.07.2019 passed by the Model Criminal Trial Court 1st Additional Sessions Judge, Karachi West in Sessions Case No.275 of 2005 under F.I.R. No.102/2005 u/s. 302 PPC registered at P.S. Pak Colony, Karachi; whereby the appellant was convicted and sentenced to undergo imprisonment for life as Ta'zir with regard to the facts and circumstances of the case being mitigating for lesser punishment, where the accused is first offender and had committed this offence at early young age of 17/18 years. He has already passed considerable period in jail and faced the agony of protracted trial. He is further directed to pay compensation of Rss.10,00,000/- to the legal heirs of deceased Muhammad Younus as provided under Section 544-A Cr.P.C. In case of default of such compensation, the appellant shall suffer six months more S.I. However, benefit of section 382-B Cr.P.C. is extended.

2. The brief facts of the prosecution case as per FIR are that on 19.04.2005 at 1400 hours the complainant Muhammad Ameen in his 154 Cr.P.C. statement recorded at mortuary of Civil Hospital Karachi stated that he is employed as a Security Guard. His youngest brother Muhammad Younus along with his wife is

residing in House No.142 at Central Muslimabad near Muhammadi Masjid old Golimar, Karachi. On same date i.e. 19.04.2005 at 12' O clock (midday) he was present on his duty, when his wife telephoned him and informed that Muhammad Younus had some quarrel in the mohalla and he has received stab wound of dagger and became injured. He called his another brother Muhammad Raza and both of them came to the house of Muhammad Younus at Pak colony where so many mohalla people were already gathered and they told him that at about 11:30 a.m. some quarrel had occurred between Muhammad Younus and mohalla's boy namely Iftikhar alias Heera alias Charli son of Muhammad Ashraf on some unknown matter. During the quarrel Iftikhar took out a dagger and caused its blow on chest of Muhammad Younus which hit him on his heart due to which blood started oozing and he fell down while accused fled from the place. Such statement of the complainant incorporated into the instant FIR.

3. After completion of usual investigation charge was framed against the accused person in which he pleaded not guilty and claimed to be tried.

4. In order to prove its case the prosecution examined 08 witnesses who exhibited various documents and other items in support of the prosecution case where after the prosecution closed its side. The appellant/accused recorded his statement under section 342 Cr.P.C. wherein he denied the prosecution allegations. However, the appellant neither examined himself on oath nor produced any witness in his defence.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 18.07.2019 convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent; that the eye witnesses are unreliable as they are all related to the complainant and the deceased; that the appellant's confession before the police is inadmissible in evidence; that the murder weapon (knife/churri) was foisted on the appellant by the police and that for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the cases of *Nazir Ahmed and*

others vs. The State and other (PLD 2005 Karachi 18), *Muhammad Nawaz and others vs. The State and others* (2016 SCMR 267), *Qaddan and others vs. The State* (2017 SCMR 148), *Dhani Bux v. The State* (SBLR 2011 Sindh 1653) *Sajjad Hussain vs. State* (PLJ 2019 Cr.C. 644 (DB), *Hakim Ali and 4 others vs. The State and another* (1971 SCMR 432) and *Muhammad Asif vs. The Stat.* (2017 SCMR 486).

8. Learned Additional Prosecutor General Sindh and learned counsel for the complainant after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, they contended that there was no delay in lodging the FIR which named the appellant with the specific role of stabbing the deceased; that the eye witnesses evidence was trust worthy, reliable and confidence inspiring and could be fully relied upon; that the murder weapon (knife/ churri) had been recovered on the pointation of the appellant from a hidden place in his house and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions, he placed reliance on the cases of 2023 SCMR 117 *(Qasim Shahzad and another vs. The State and others)*, 2009 SCMR 99 *(Ijaz Ahmad vs. The State)* and PLD 2010 Supreme Court 669 *(Khadim Hussain vs. The State)*.

9. I have heard the learned counsel for the appellant as well as learned APG and learned counsel for the complainant and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence I find that the prosecution has proved beyond a reasonable doubt that Muhammed Younis (the deceased) was murdered by knife/churri/dagger on 19.04.2005 at 11.30am at Gali opposite to house No.142 Central Muslimabad near Muhammedi Masjid Purana Golimar Karachi.

11. The only question left before me therefore is who murdered the deceased by knife/churri/dagger at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has **not** proved beyond a reasonable doubt the charge against the appellant u/s 302 (b) PPC **but has proved beyond a reasonable doubt the charge against the appellants u/s 302 (c) PPC** for which I now convict him for the following reasons;

(a) That the FIR was lodged after a delay of about 5 hours. Such slight delay has been fully explained by the complainant reaching to the hospital where the deceased was taken and where the post mortem was performed and other legal formalities before the body was returned to him for burial and thereafter the FIR was immediately lodged. Thus based on the particular facts and circumstances of this case I find that the slight delay in lodging the FIR has been adequately explained and as such is not fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(b) The appellant is named in the FIR with the specific role of murdering the deceased by dagger **after a quarrel**. Thus there was no time for the complainant to cook up a false case against the appellant. **Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW** which would motivate him/them to lodge a false case against the appellant. Admittedly the FIR is based on hearsay evidence as the complainant himself was not an eye witness.

(c) The prosecution's case rests on the sole eye witness to the murder and the eye witness who saw the appellant fleeing the murder scene with the knife/churri/dagger whose evidence I shall consider in detail below;

(i) **Eye witness PW 4 Muhammed Ismail. The deceased is his cousin.** According to his evidence on 19.04.2015 he was going to meet his Khaloo when he just passed near Muhammadi Masjid when he saw from about 50 feet the appellant **pulling out the Graiban of the deceased so he rushed to reach them and resolve their problem.** When he reached there he saw the appellant pull out a churri/knife and attack the deceased on the chest with the knife. The appellant ran away and he took the deceased in a taxi to civil hospital who died on the way.

Admittedly the eye witness was related to the deceased who was his cousin however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has not been proven in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State** (2009 SCMR 99) **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152) and **Ashfaq Ahmed v. The State** (2007 SCMR 641).

This eye witness knew the appellant before the incident and it was a day light incident and he saw the appellant from close range when he stabbed the deceased as such there is no case of mistaken identity. He gave his S.161 Cr.PC statement with promptitude which was not materially improved on during the course of his evidence. He was not a chance witness as he was en route to see his Kaloo when he came across the incident and tried to intervene. Admittedly he is not named in the promptly lodged FIR however since the FIR was based on hearsay it is unlikely that an intervening person would be

mentioned in it apart from the bare bones of the attack on the deceased by the appellant. He had no proven enmity or ill will with the appellant which would lead him to give false evidence against the appellant. He gave his evidence in straightforward manner and was not damaged during cross examination. I find his evidence to be reliable, trust worthy and confidence inspiring, especially in relation to the identification of the appellant and believe the same and place reliance on it.

It is well settled by now that I can convict the accused on the evidence of **a sole eye witness** provided that I find his/her evidence to be trust worthy, reliable and confidence inspiring and in this case I have found the evidence of this eye witness to be trust worthy, reliable and confidence inspiring especially in respect of the correct identification of the appellant and as such I believe the same and place reliance on it. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shahzad and another v The State** (2023 SCMR 117).

(ii) **PW 6 Safina. The deceased is his wife.** According to her evidence on 19.04.2005 she was present in her house at old Golimar with her mother in law, father in law and cousin Sohail whilst her husband/deceased was sitting outside. **She heard noise of hues and cries and went outside** where she saw the appellant with a knife running towards his house. She also saw her husband outside in an injured condition who was taken by Sohail and other mohalla people to hospital where he died. She saw that he had been stabbed through the heart. Her mother in law and father in law remained in the house as they could not walk.

This witness although related to the deceased who was her husband was not a chance witness as the incident happened just outside her house. **When she heard the cries outside her house quite naturally she went to investigate as she knew her husband was outside.** It was a day light incident and she saw the appellant running away from a few feet. She knew the appellant from before and saw him running to his house with a knife whilst her husband was lying injured as such there is no case of mistaken identity regarding the appellant. She had no ill will or enmity with the appellant and had no reason to implicate him in a false case. She gave her S.161 Cr.PC statement with promptitude which was not materially improved upon during her evidence. She gave her evidence in a natural manner and was not dented during cross examination. I find this witness to be an honest witness as she could have deliberately improved her statement and subsequent evidence to say that she saw the appellant stab her husband, which she could easily have done, in order to improve the prosecution case yet she failed to do so. Instead she only gave evidence that she saw the accused fleeing from

the murder scene with a knife towards his house. Again I find her evidence to be trust worthy, reliable and confidence inspiring and believe the same especially with respect to the correct identification of the appellant who was fleeing the murder scene with a knife.

Having believed the evidence of the sole eye witness to the murder and having also believed the evidence of the eye witness who saw the appellant fleeing the murder scene with a knife I turn to consider the corroborative/supportive evidence whilst keeping in view that it was it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

> *"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"*

(d) That it does not appeal to logic, commonsense or reason that a real wife and cousin would let the real murderer of their real husband/cousin get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).

(e) The promptly recorded S.154 Cr.PC statement of the complainant which became the FIR was not materially improved on during the complainant's evidence and he was not damaged during cross examination. Admittedly, his evidence is only hearsay but it is also fully corroborative of the eye witness evidence

(f) That the medical evidence, post mortem report and MLC fully support the eye-witness/prosecution evidence that the deceased died from receiving **a single stab injury to his chest** which was where the eye witnesses in their evidence stated he was stabbed.

(g) That the appellant was arrested one day after the incident and 6 days after his arrest he confessed to the crime to the police and then lead the police on his pointation to where he had hidden the murder weapon (knife/churri/dagger) in his own house. Admittedly, the confession before the police is inadmissible in evidence however his pointation of the murder weapon hidden in his house in a place which only he could have known about is evidence against the appellant.

(h) As per chemical report the knife/churri/dagger which was found on the pointation of the appellant was also found to be stained with human blood.

(i) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case. For instance by foisting the churri/knife/dagger on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474).Thus, I believe the evidence of the IO and other police witnesses who were not dented during cross examination.

(j) The motive for the murder has come on record in both the FIR and the evidence of eye witnesses PW 4 Muhammed Ismail and PW 6 Safina that **following a quarrel between the appellant and the deceased the appellant stabbed the deceased.**

(k) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669).The evidence of the PW's provides a believable corroborated unbroken chain of events from the **appellant quarreling with the deceased outside the house of the deceased to the appellant stabbing** the deceased and then running away and later being arrested to the appellant pointing out the murder weapon in a hidden place.

(l) The contention of the appellant being a Juvenile has been dealt with in the impugned Judgment dated 18.07.2019 at para 30 with which finding I fully agree and concur with.

(m) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can caste doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was falsely implicated in this case and that he did not commit the murder but rather it was some one else. The appellant however did not reveal where he was at the time of the murder and who he was with. Furthermore, the appellant did not give evidence on oath and did not call a single witness in support of his defence case. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

(n) I find from the evidence on record however that that there was no prior ill will or enmity between the appellant and the deceased; that as admitted in the FIR and by the PW eye witnesses referred to above a sudden quarrel broke out between the appellant and the deceased which lead the appellant after being provoked by the quarrel suddenly to give one stab wound to the chest of the deceased without premeditation with a knife which was already on the person of the appellant and hence I find that the case falls within the purview of S.302 © PPC and find that the prosecution has proved its case in respect of this offence against the appellant beyond a reasonable doubt and hereby convict him and sentence him for this offence. In this respect reliance is placed on the case of **Azmat Ullah V The State** (2014 SCMR 1178) which held as under;

> *"A bare perusal of the FIR, the statements made by the eye-witnesses before the learned trial Court and the findings recorded by the learned courts below clearly shows that there was no background of any ill-will or bitterness between the appellant and his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a churri*

his deceased brother and that the incident in issue had erupted all of a sudden without any premeditation whatsoever. The medical evidence shows that the deceased had received one blow of a churri on his chest whereas another blow was received by him on the outer aspect of his left upper arm. The doctor conducting the post-mortem of the dead body had categorically observed that both the injuries found on the dead body of the deceased could be a result of one blow of chhurri. These factors of the case squarely attract Exception 4 contained in the erstwhile provisions of section 300, PPC. It has already been held by this Court in the case of Ali Muhammad v. Ali Muhammad and another (PLD 1996 SC 274) that the cases falling in the exceptions contained in the erstwhile provisions of section 300, PPC, now, attract the provisions of section 302(c) PPC. The case in hand was surely a case of lack of premeditation, the incident was one of a sudden fight which was a result of heat of passion developed upon a sudden quarrel and no undue advantage had been taken by the appellant nor had he acted in a brutal or unusual manner. In these circumstances Exception 4 contained in the erstwhile section 300, PPC squarely stood attracted to the case in hand and, thus, the case against the appellant fell within the purview of the provisions of section 302(c) PPC."(bold added)

Further reliance is placed on the cases of **Raza and another v The State** (2020 SCMR 1185) and **Alamgir v Gul Zaman and others** (2019 SCMR 1415).

13. Based on the above discussion I find that the prosecution has not proved its case against appellant under S.302 (b) PPC but the prosecution has proved its case against the appellant under S.302 (c) PPC beyond a reasonable doubt and as such the appellant's conviction under S.302 (b) PPC is converted in to a conviction under S.302 (c) PPC and the appellant is sentenced to RI for 14 years with the benefit of S.382 (B) Cr.PC. The bail of the appellant is hereby recalled and SHO PS Pak Colony is directed to arrest the appellant and return him to Central prison Karachi to serve out the remainder of his sentence if any remains to be so served out. A copy of this Judgment shall be sent to SSP District West for compliance.

14. The appeal is disposed of as modified above.