

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D- 18 of 2019
[Confirmation Case No.02 of 2019]

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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01.03.2023

Mr. Saad Salman Ghani, Advocate for the appellant.

Mr. Shahzado Saleem Nahiyoan, Additional Prosecutor General, Sindh.

We have heard the learned counsel for the appellant and the learned
A.P.G. Reserved for judgment.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain

Cr. Appeal No.D- 18 of 2019
[Confirmation Case No.02 of 2019]

Ghulam Hussain

Versub

The State

Appellant Ghulam Hussain S/o Pehlwan	through Mr. Saad Salman Ghani Advocate
Respondent the State	through Mr. Shahzado Saleem Nahiyoona, Additional Prosecutor General, Sindh
Date of hearing	01.03.2022
Date of judgment	14.03.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This criminal appeal is directed against the judgment dated 01.02.2019, passed by the learned Additional Sessions Judge, Sehwan, in Sessions Case No.235 of 2016 (re: The State V Ghulam Hussain), emanating from Crime No.08 of 2016, registered at Police Station Thebath, under section 302 PPC, whereby the accused / appellant Ghulam Hussain S/o Pehlwan has been convicted u/s 302(b) PPC and sentenced to death; however, subject to confirmation by this Court. The appellant was also directed to pay fine of Rs.200,000/-, in case of non-payment of the same, he was directed to suffer S.I for six months more.

2. The facts of the prosecution case are as under:

"The complainant SIP Liaquat Ali Kumbhar lodged FIR at Police Station Thebath on behalf of State, stating therein that on 23.08.2016 at morning time, he alongwith his staff HC Hamzo Khan, PC Mir Suhrah, PC Muhammad Sulleman, PC Khuda Bux and PC Zulfiqar Ali were available at P.S, when at about 0730 hours, one Ghulam Hussain son of Pehlwan by caste Chahwan resident of Laki Shah Saddar came at P.S, having spade stained with blood in his hand, whose clothes were also stained with blood and disclosed that his wife Mst. Zahidan, aged about 37/38 years, had illicit terms with one Arab son of Idrees Mallah; that he (Ghulam Hussain) asked his wife not to meet with Arab and if she did not disconnect her terms with him, she will be murdered as "KARI", but she did not listen him. On the day of incident at 07:00 am, his wife Mst. Zahidan was putting dung of cattle in the plot of house, he took spade and inflicted the same on her head and committed her murder and thereafter he surrendered himself alongwith said spade before police. On such narration of accused Ghulam Hussain he was arrested and spade was taken into possession by police. The complainant arranged the clothes and same were got worn by accused and blood stained clothes of accused as well as the spade, were sealed. Such memo of arrest and recovery was prepared in presence of mashirs HC Hamzo Khan and PC Mir Suhrah and such information was conveyed to high-up through phone. Thereafter, accused was made to sit in the lockup and at 0745 hours complainant party proceeded towards the house of accused for necessary formalities. They saw the dead body of deceased Mst. Zahidan and such memo of dead body, Danistnama and Lash Chakas Form were prepared and dead body of deceased was taken in a private vehicle under the supervision of HC Hamzo Khan towards Taluka Hospital, Selwan for postmortem. After postmortem, dead body was handed over by HC Hamzo Khan to one Muhammad Hussain, uncle of deceased. HC Hamzo Khan also produced clothes of deceased which were sealed and then such memo was prepared. Thereafter, on the orders of high-up, complainant lodged FIR against the accused on behalf of State, for the reason that no private person or relative of deceased Mst. Zahidan was ready to lodge the FIR."

3. After usual investigation, police submitted formal challan of the case before the concerned court. After completing necessary formalities, learned trial court framed charge against the accused, to which he pleaded not guilty and claimed trial.

4. At trial, in order to prove its case, prosecution examined 08 witnesses and exhibited numerous documents and other items and thereafter prosecution side was closed. The statement of the accused / appellant was recorded under Section 342 Cr.P.C. in which he denied the prosecution allegations leveled against him and claimed his false implication in the commission of alleged crime at the instanced of one Arab Mallah, who was inimical to him as well as his family. He did not

examine himself on oath in disproof of the prosecution case; however, he examined one DW Riaz Ahmed in his defense.

5. On conclusion of the trial, learned trial court after hearing learned counsel for the parties and appraisal of prosecution evidence brought on record, convicted and sentenced the accused / appellant vide impugned judgment, as set out in the earlier para of this judgment, hence the appellant has preferred this appeal against his conviction.

6. The evidence produced before the trial court finds an elaborate mention in the impugned judgment, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated by the complainant in collusion with Mr. Arab Mallah on account of a marital dispute; that there was no eye witness to the murder of his wife; that he had retracted his confession made before the judicial magistrate; that the necessary legal procedural formalities required in respect of his confession before the magistrate had been violated and as such his confession before the judicial magistrate could not be safely relied upon; that the alleged murder weapon being the spade had been foisted on him by the police and as such for any or all of the above reasons the appellant should be acquitted by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Azeem Khan and another V Mujahid Khan and others** (2016 SCMR 274), **Iftikhar Hussain and others V The State** (2004 SCMR 1185), **Khalid Javed and another V The State** (2003 SCMR 1419), **Naveed Asghar and 2 others V The State** (PLD 2021 Supreme Court 600), **Muhammad Asif V The State** (2017 SCMR 486), **Adnan Abbasi V The State** (2022 PCr.LJ 376), **Ghulam Hyder through Superintendent, Central Prison V The State** (2020 YLR 2411) and **Muhammad Shah V The State** (2010 SCMR 1009).

8. Learned APG appearing for the State has fully supported the impugned judgment. In particular, he has contended that the appellant himself surrendered before the police along with the murder weapon being the spade and confessed his guilt to the

murder of his wife; that although the appellant had retracted his judicial confession at trial it could be safely relied upon as it was made voluntarily with the object of telling the truth; that the medical evidence supported the prosecution case; that the appellant has murdered his wife as a result of matrimonial dispute concerning their daughter and as such the motive had also been proved 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 case of **Bashir Ahmed and others V The State and another** (2022 SCMR 1187).

9. We have heard the arguments of the learned counsel for the appellant and learned Additional Prosecutor General Sindh and have gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. Based on our reassessment of the evidence especially that of the PW's, the medical evidence and blood recovered at the crime scene and the recovery of the murder weapon we find that the prosecution has proved beyond a reasonable doubt that Ms Zahidan (the deceased) was murdered by being hit by a spade on 23.08.2016 at about 7.00am in her house situate in deh Laki Shah Saddar, Taluka Manjhand.

11. The only question left before us therefore is whether it was the appellant who murdered the deceased by hitting her with a spade at the said time, date and location?

12. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

- (a) The appellant as per the evidence of PW 1 Liaqut Ai who was the IO and the complainant, PW 2 Hamzo Khan who was a police mashir and PW 7 Khuda Bux who was also a

police officer all state in their evidence that 23.08.2016 the appellant came to the PS where they were working holding a spade and confessed to murdering his wife. No proven enmity has been made out against any of these three police officers who all gave their evidence in line with each other which was not dented during cross examinations, were not related to either the deceased or the appellant, gave their Section 161 Cr.PC statements and lodged FIR as the case may be on the same day and were not materially improved on during their evidence and had no reason to falsely implicate the appellant in this case and in such circumstances it has been held that the police evidence can be safely relied upon. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474). As such we believe the police evidence in respect of the appellant coming to the police station with bloodied clothes and blooded spade but give no weight to the appellant's confession before the police that he murdered his wife which is inadmissible in evidence. **Significantly**, the appellant whilst at the PS did not nominate any other person as having committed the crime. No relative was prepared to lodge the FIR so it was only natural that the police did so with promptitude after checking the statement of the appellant that his wife had been murdered at his house. Namely, the complainant who was also the IO in the case went to the appellant's house where he was living with the deceased who was his wife and found her dead with head injuries. The police carried out necessary formalities at the scene under Mashirnama before the body was sent for post mortem. Again we fully believe the evidence of the police in this respect which has not at all been contradicted, challenged or brought into any doubt.

(b) One day after the lodging of the FIR and the arrest of the appellant he was produced before a judicial magistrate in order to record his confession which is reproduced as under for ease of reference;

Section 164 Cr.PC Statement (Confession) of the appellant before PW 6 Suhail Ahmed Judicial magistrate in material part;

"Question 7; Why are you making this confession;

Ans; I admit in accordance with my conscience.

" Question No.8; What do you have to say

Ans: Yesterday in the morning time of seven or eight O'clock, I inflicted blow of spade upon my house wife namely Zahidan in my house and committed murder and following commission of murder, I voluntarily produced myself along with spade before Police Station for arrest, I alone committed the murder of my wife Zahidan and nobody else was with me in commission of this offence and I killed Zahidan in the name of honour."

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Although this confession was retracted at trial it is well settled by now that we can rely on this retracted judicial confession as against its maker if we find that (a) it was made voluntarily and (b) it was made with the object of telling the truth based on the prosecution case and that even minor irregularities in recording the confession before the judicial magistrate can be ignored. In this respect reliance is placed on the cases of **Ch. Muhammad V Yaqoob V The State** (1992 SCMR 1983), **Bahadur V State** (PLD 1996 SC 336) **Muhammad Amin V The State** (PLD 2006 SC 219), **Manjeet Singh V State** (PLD 2006 SC 30) and **Azeem Khan V Mujahid Khan** (2016 SCMR 274).

In this case the appellant on the same day walked into the police station with the murder weapon and admitted his guilt before the police stating that he had murdered his wife at their home with a spade which he had brought with him when he surrendered to the police. The police rushed to his home and found his wife dead with head injuries which medical evidence suggest could have been caused by a spade. The appellant was then arrested and one day later produced before the magistrate where he also confessed in the above terms. There is no evidence that his confession was not voluntary being made on account of mal treatment or on account of coercion or inducement and as such we find it to be voluntary and truthful based on the particular fact and circumstances of the case and the evidence which the prosecution has brought on record. **Thus, we believe and place reliance on the appellants retracted judicial confession especially as there were no material procedural irregularities in the manner in which the appellants confession was recorded** in that he was produced before a magistrate and was aware of this fact, his hand cuffs were removed, no police men was in the room, he was given adequate reflection time, he was told that his confession could be used against him in evidence in a court of law, he was checked for evidence of mal treatment and none was found, he was told that he would not be handed back to the police whether he confessed or not and indeed from the evidence he was sent to judicial custody after his confession.

- (c) The appellant surrendered before the police so there is no case of mistaken identity or him being fixed by the police.
- (d) When the appellant surrendered before the police he also produced the blood stained spade which was sealed and the chemical examiner found it to have human blood on it. Likewise the blood stained clothes of the appellant were seized under memo when he reached the PS which as per chemical report was stained with human blood as with the clothes of the deceased. The police had no enmity with the appellant and had no reason to foist any of these items on him.

- (e) That the medical evidence fully corroborates the confession of the appellant in terms of the manner in which the appellant died and the weapon (spade) which was used to murder the deceased.
- (f) It is true that that PW 5 Rimsha who was the daughter of the appellant was declared hostile however we give no significance to this as she would not like to give evidence against her real father especially as during cross examination she was expecting a compromise. However importantly she did state that her father (appellant) and her mother (deceased) used to quarrel over her marriage.
- (g) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we 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 time the appellant appeared at the PS in blood stained clothes with a blood stained spade and confessed to murdering his wife to the police locking up the appellant whilst they checked whether the appellant was telling the truth to the police going to the vardat to find the deceased wife dead in the manner in which the appellant had stated before them to the appellant's judicial confession before a magistrate one day later to the recovery of the murder weapon from the appellant's own hands being the spade as supported by the medical evidence.
- (h) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is two fold (a) that his wife fell into an electric cutting machine which is simply unbelievable especially as no electric cutting machine was recovered and (b) that he had been fixed by the complainant in collusion with a Mr. Arab Mallah who was allegedly having illicit relations with his wife however no evidence of this has been produced and the DW called by the appellant only gave hearsay evidence and was also related to him and his evidence appears to be an after thought in order to save the skin of the appellant. Notably the appellant himself did not give evidence on oath in support of his defence case. Thus, for the reasons mentioned above we disbelieve the defence case of false implication in the face of reliable, trust worthy and confidence inspiring prosecution evidence, albeit mainly circumstantial, including the confession of the appellant which we rely upon and which is corroborated/supported by the medical evidence and

recovery of the spade from the appellant himself which was the murder weapon.

13. Thus, based on the above discussion we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction. We also note that the crime was a particularly brutal one whereby the appellant hit his wife three times around her head and once on her shoulder with a spade on account of the fact that his wife was in disagreement with him over who his daughter should marry/his suspicions over his wife and thus the prosecution has also proved the motive for the murder and thus in order to discourage such brutal senseless crimes we upheld the death penalty handed down to the appellant and as such his sentence is also maintained.

14. As such the appeal is dismissed and the confirmation reference is answered in the affirmative.