

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Cr. Jail Appeal No.D- 15 of 2017
[Confirmation Case No.06 of 2017]

Nangji

Versus

The State

Appellant Nangji	through Mr. Wazeer Hussain Khoso Advocate
Respondent the State	through Ms. Safa Hisbani, Assistant Prosecutor General, Sindh
Complainant Veersi	through Mr. Muhammad Sachal R. Awan Advocate
Date of hearing	24.06.2021
Date of judgment	30.06.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.-This criminal jail appeal is directed against the judgment dated 21.02.2017, passed by learned Sessions Judge, Badin, in Sessions Case No.143 of 2016 (Re: The State V Nangji), emanating from Crime No.66 of 2016, registered at Police Station Tando Bago, under sections 302, 504 PPC, whereby the accused / appellant has been convicted u/s 302(b) PPC and sentenced to death as Ta'zir, however, subject to confirmation by this Court. He was also directed to pay compensation of Rs.300,000/- to the heirs of the deceased as provided under section 544-A Cr.P.C. The accused / appellant was also convicted u/s 504 P.P.C and sentenced to suffer Rigorous Imprisonment for 01 year.

2. The facts of the prosecution case in brief, are that complainant Veersi appeared at Police Station Tando Bago on 23.06.2016 at 1130 hours and lodged FIR stating therein that his daughter Shrimati Keshu wife of Nangji aged about 23/24 years had two daughters and was residing with her husband in village Thuhi. She always complained against her husband Nangji that he used to maltreat her without any reason. On 20-06-2016, the complainant and one Aadoo son of Kirshan went to the village of accused, where they met Shrimati Keshu, daughter of complainant and stayed overnight there. On 21-6-2016 they woke up early in the morning. Shrimati Keshu also woke up and served them tea. In the meantime at 5-00 a.m accused Nangji took out the hatchet lying under a cot, asked Shrimati Keshu why she had given the tea to her relatives first and had given tea to him afterwards. Saying so, he caused sharp side hatchet blow to Shrimati Keshu, which hit her on the right side of neck and she fell down. Accused abused the complainant party, hence due to fear they left. Thereafter, the complainant came to know that Geno Kolhi and others had taken his daughter for treatment. The complainant went to Civil Hospital Hyderabad, where during treatment on 23.06.2016 Shrimati Keshu expired, wherefrom he brought the dead body to Government Hospital Tando Bago and then he came to P.S and lodged the FIR.

3. Police arrested the accused / appellant and after usual investigation, submitted formal challan before the concerned court. After completing necessary formalities, learned trial court framed charge against the accused / appellant, to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution has examined 8 witnesses, who 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 allegations leveled against him and claimed his false implication by the complainant and the police. However, neither he examined himself on oath nor called any DW's in support of his defence case.

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 as mentioned earlier in this judgment vide Judgment dated 21.02.2017 hence the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 21.02.2017 passed by the trial court and,

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 of any wrong doing and that he has been falsely implicated in this case by the complainant party; that there was an unexplained delay of over two days in lodging the FIR which enabled the complainant to cook up a false case against him in collusion with the police; that none of the PW eye witnesses was present at the scene of the incident and have falsely implicated him; the PW's, even if they were present, are all related and as such their evidence cannot be safely relied upon; that the conduct of the eye witness PW's of leaving after the attack on the deceased does not ring true and even if they were present their evidence cannot be believed; that the appellant himself was not at home at the time of the incident; that the appellant was arrested from his house and not near Sin Nali Mori near village Turee as alleged by the prosecution; that the medical evidence contradicts the ocular evidence; that the hatchet was foisted on him by the police who were hand in glove with the complainant and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of **Najaf Ali Shah V The State** (2021 SCMR 736), **Zafar V The State and others** (2018 SCMR 326), **Nadeem alias Kala V The State and others** (2018 SCMR 153), **Muhammad Asif V The State** (2017 SCMR 486), **Pathan V The State** (2015 SCMR 315), **Nasrullah alias Nasro V The State** (2017 SCMR 724) and **Arshad Khan V The State** (2017 SCMR 564).

8. On the other hand learned Assistant Prosecutor General and the complainant have fully supported the impugned judgment and contended that the two eye witnesses to the incident were reliable and confidence inspiring and had fully implicated the appellant in the murder of the deceased by attacking her with a hatchet which caused her severe injuries which lead to the death of the deceased two days later in hospital; that the eye witnesses were corroborated by the medical evidence; that the appellant produced the murder weapon (hatchet) on his pointation which was hidden in a secret place which only he could have known about; that the chemical report relating to the blood stained earth recovered at the wardat, blood on the recovered hatchet and blood on the deceased clothes were all positive and as such the prosecution had proved its case beyond a reasonable doubt against the appellant and as such his appeal should be dismissed and his conviction and sentence maintained. In particular they stressed that due to the cold bloodied and brutal attack on the deceased which lead to her death the death sentence was fully

attracted in this case. In support of their contentions they have placed reliance on **Zahid Iqbal V State** (2017 SCMR 1543) and **Zar Bahadar V State** (1978 SCMR 136).

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

10. Based on our reassessment of the evidence of the PW's, especially the PW eye witnesses, and the medical evidence of PW 5 Dr. Raheela Batool and PW 6 Dr. Nizaran, post mortem and other medical reports, and recovery of blood at the wardat and the later recovery of the hatchet which both lead to positive chemical reports we find that the prosecution has proved beyond a reasonable doubt that on 21.06.2016 at 5am (dawn time) in the house of the accused situated in village Thuhi, Deh Adoori, Taluka Tando Bago, District Badin Mrs. Shrimati Keshu (the deceased) was attacked and sustained hatchet injuries to her neck which later lead to her death on 23.06.2016 at 1am at civil hospital Hyderabad.

11. The only question left before us therefore is who caused the injuries to the deceased by hatchet blows which lead to her death at the aforesaid 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 for which he was convicted for the following reasons;

(a) The FIR was lodged after a delay of two days. It is settled by now that delay in lodging the FIR might only be fatal to the prosecutions case if such delay is not fully explained. In this case we find that the delay in lodging the FIR has been fully explained by the complainant PW 1 Versi. According to his evidence the deceased was attacked at the house of the appellant at about 5am on 21.06.2016 by the appellant with a hatchet. He and his Uncle PW 2 Aado (who was also present) were abused by the appellant who was angry and armed whilst they were unarmed and as such left the appellants house. At this stage the deceased was only injured. The complainant was informed later by the brother of the appellant that his injured daughter had been taken to Lal Bati Hospital Hyderabad/Civil Hospital. At this point in time his daughter was only injured and as such at this stage there was no immediate need to register an FIR as the complainants priority was to go to the hospital where his injured daughter had been admitted and care for her. He then on the following morning of the incident on 22.06.2016 reached the hospital and quite naturally as a father stayed with his injured daughter. On 23.06.2016 at 1.30am his daughter succumbed to her injuries. He then arranged for her body to be taken from the Hospital in Hyderabad to Taluka Hospital Tando Bago where her post mortem was conducted which would have taken some time especially as it takes time to arrange transportation of a dead body in the

middle of the night and the distance by road from Hyderabad to Badin when driving by vehicle takes about 2 hours which would explain the delay in the post mortem. Thereafter he left his daughter at the hospital in Badin and registered his FIR at 11.30 am on 23.06.2016. Significantly the injuries to his daughter had already been reported and noted by the police within one hour of the incident as per evidence of PW 4 Umro. Exhibit 12 A is also a copy of daily register dated 21.06.2016 where at 0630 it is recorded that Geno brought the injured daughter of the complainant to PS Tando Bago where he got issued letter for medical treatment and it is stated in the entry that the injuries were caused to the deceased by the accused and that legal action be taken later which corroborates the complainants version of Geno calling him and telling him that his injured daughter was taken to hospital for treatment which entry is only one hour after the incident which is corroborated by the evidence of PW 8 Haji Muhammed who was the IO of the case. The contemplated action would have been if the deceased died from her injuries which she did where after an FIR was lodged by the complainant. The complainant was also with his injured daughter the whole time before lodging the FIR and not with the police so it was not possible to cook up a false case against the appellant in collusion with the police. As such we find that the delay in the complainant lodging the FIR based on the particular facts and circumstances of this case have been fully explained and as such delay in lodging the FIR is not fatal to the prosecution case. The appellant is named in the FIR with a specific role and even otherwise no specific/proven enmity has come on record between the appellant and the complainant which would lead to the complainant lodging a false case against the appellant.

(b) In our view the prosecution's case rests on the eye witnesses to the attack on the deceased which proved fatal whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Versi.** He is the complainant in the case and the father of the deceased. According to his evidence on 20.06.2016 at 5pm he and his uncle Aado went to the house of the accused who was his daughter's husband and where his daughter was residing with the accused as there were marital differences between his daughter and the accused. He stayed overnight with PW Aado. They awoke at 5am in the morning on 21.06.2016. His daughter served them tea where upon the accused became angry and asked her why she had served his relatives first rather than him. **He saw the accused cause hatchet blows on the back side neck, in front just below the neck and on the shoulder of his daughter who became injured and fell down.** He saw blood oozing from her wounds. The accused abused them so he and Aado left the house out of fear as the accused was armed and PW Aado and he were unarmed. He was informed shortly after the incident that his injured daughter had been taken to hospital so there was no need to report the matter to the police or call for medical assistance at this stage and he proceeded to the hospital where his daughter later succumbed to her injuries.

Being the father of the deceased it was quite natural for him to visit her at her marital home especially as he knew that her husband mal treated her and thus he is a natural witness and not a chance witness.

He knew the appellant as he was married to his daughter. The incident happened at about 5.30 am (dawn) in June and hence there would have been sufficient light for him to have seen the accused

and clearly identify him and as such there was no case of mistaken identity and no need for an identification parade. It would also have been sufficiently quiet at about 5.30am for him to hear the accused shouting at his wife in anger as to why she had served the complainant and Aado tea before him and he would have been able to easily recognize his daughter's husband's voice. PW 7 Anbji Sodho who was the tapedar who made a sketch of the wardat also shows that the eye witnesses would have got a clear view of the complainant at a relatively short distance.

The appellant was also named and given the same specific role in the FIR lodged after the incident. The fact that he could see the incident clearly was corroborated by the evidence of the other eye witness PW 2 Aado who was also with him and saw the same incident.

Admittedly the eye witness was related to the deceased 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. Reliance is placed on **Ijaz Ahmed V The State** (2009 SCMR 99) and **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152)

His evidence largely reflects that of his FIR and there have been no significant improvements in the same so as to render his evidence unreliable. He had no proven enmity with the appellant and had no reason to falsely implicate him in the murder of his daughter. His evidence was not dented despite lengthy cross examination. He did not intervene in the attack because he was unarmed and the accused was angry and was armed and his daughter had only been injured at this stage and not murdered. His evidence is natural and straightforward and we find his evidence to be reliable, trust worthy and confidence inspiring and we believe the same. We can convict on this evidence alone provided that there is some corroborative/supportive evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

(ii) **Eye witness PW 2 Aado.** He is a relative of the complainant. In his evidence he states that he accompanied the complainant to the house of the accused on 20.06.2016 who wanted see his daughter who was married to the accused who she had quarreled with. He and the complainant reached the accused house at 5pm and stayed over night. According to his evidence early in the morning the deceased served him and the complainant tea which annoyed the accused who asked her why she had served them tea before him. **He saw the accused take a hatchet and cause three hatchet blows to the deceased. One on the back side of her neck, another on the front side just under the neck and another on her shoulder. He saw the deceased become injured who he saw falling down with blood oozing from her wounds.** The accused abused them so they left the house. He corroborates the evidence of eye witness PW 1 Versi in all material respects. He gave his S.161 statement within 2 days of the incident and there have been no material improvements in his evidence from his statement. He is named in the FIR as an eye witness and the same considerations apply to him as for eye witness PW 1 Versi.

Thus, based on our believing the evidence of the 2 PW eye witnesses what other supportive/corroborative material is there against the appellant?

(c) That evidence of PW 4 Umro who is a mashir in this case also supports the eye witness PW's evidence of the deceased being seriously injured in the hatchet attack but not killed. On 21.06.2016 at 6.40am (just over an hour after the incident) and around the time that the complainant was informed that his daughter was injured and had been taken to hospital PW 4 Umro acted as mashir when the deceased was brought to PP Dehi in injured condition. **He saw that the deceased had sustained injuries on back side of neck, back side of right shoulder and chest.** Her memo of injuries was recorded by the police who then sent her for medical examination which is set out below for ease of reference;

MEMO OF INJURIES 21-06-2016 at 0640 Hours

In presence of undersigned mashirs, alongwith SIP Haji Muhammad Pitafi I/c P.P Dehi have seen injuries on the body of the injured Shirimati Keshu wife of Nangji Kolhi in accordance with the entry kept at PS Tando Bago vide Daily Diary No.38 dated 21.6.2016 at 0630 hours. Details of the injuries are given below:-

DETAIL OF INJURIES

Injuries sustained / received by Shirimati Keshu

1. One injury on right side of the neck, like incise, blood oozing.
2. One injury on right side shoulder and neck blood discharged.
3. One injury on neck towards chest, like incise, blood discharged.

Note: Memo of Injuries prepared in presence of mashirs, read over to them who after finding it correct signed the same."(bold added)

On being referred to her by the police for medical examination and treatment PW 5 Dr. Raheela Batool who was WMO at Civil Hospital Badin in her evidence found the following injuries when she examined the deceased;

- "(i) **Incised wound at the base of neck** about 2 cm x 1 cm x 0.5 cm right side cavity deep.
- (ii) **Incised wound** about 12 cm x 4 cm x 5 cm at the back of neck, muscle deep exposing the bone.
- (iii) **Incised wound** about 1 cm x 0.5 cm on the posterior aspect of the shoulder and skin deep.

The nature of injuries was kept reserved and the injured was referred to LUH Hyderabad for further management and X-ray. **The duration of injury was about 5 to 7 hours and the kind of weapon used was sharp object.** I issued such provisional medical certificate which I produce at Exh.9-B. It is same, correct and bears my signature."

Significantly, her evidence went unchallenged.

The deceased succumbed to her injuries and her post mortem was conducted by PW 6 Dr.Naziran on 23.06.2016 who stated in his evidence about the injuries to the deceased as is set out below for ease of reference;

"I found the following injuries on the dead body:

- i. **An incised wound** measuring 12 cm x 4 cm x bone deep on posterior aspect of **neck** (lower part) Transverse in direction.
- ii. **An incised wound** measuring 3 cm x 1 cm x bone deep (bone exposed) on right side of **upper chest** oblique in direction.
- iii. **An incised wound** measuring 1 cm x 0.5 cm skin deep on posterior aspect of **right shoulder**.

A tracheotomy ring was placed in tracheotomy operation. I found the internal injuries as under:

Injury No.1. Skin, muscles and blood vessels of posterior aspect of neck were cut. Cervical vertebrae exposed but in tact. Injury No.2. skin and muscle cut and fracture of medial end of right clavicle. All these injuries were ante mortem in nature and caused by sharp cutting substances. On internal examination, the other organs were found healthy. From external and internal postmortem examination of deceased I am of the opinion that the cause of death was cardio respiratory failure due to hemorrhage shock due to injuries Nos.1 and 2 which was sufficient for cause death in ordinary course of life. Both those injuries were ante mortem in nature. The probable duration between injuries and death was about 24-30 hours."

Once again the medical evidence of this PW also went unchallenged.

When all three medical reports/sets of evidence are read to together we find that the medical evidence fully corroborates the ocular eye witness evidence and the weapon which caused the injuries was a sharp cutting one such as a hatchet.

(d) That the accused was arrested by PW 8 Haji Muhammed on the same day as the FIR was lodged and after confessing his guilt before the police he lead the police to the place where he had hidden the hatchet which he used on the attack on his wife which was recovered by the police. Only he would have known where the hatchet was hidden which was also blood stained. The required police entries and mashirnama's have all been exhibited and evidence in respect of the mashirnama's has been provided by PW 4 Umro who was the mashir in respect of most mashirnama's.

(e) PW 8 Haji Muhammed who was the IO of the case also fully corroborates the evidence of the 2 PW eye witnesses **except** that he did not witness the incident. He did however give evidence of going to the hospital where he saw the dead body and the wardat where he carried out other legal formalities such as collecting blood samples and then recording S.161 Cr.PC statements of the PW's etc.

(f). No enmity has been suggested against any police officer and or the mashir and as such neither the police nor the mashir had any reason to falsely implicate the accused in this case and as such their evidence can be safely relied upon. If the police had wanted to falsely implicate the appellant they would have planted the hatchet on him at the time of his arrest rather than going through a time consuming charade of recovery on pointation of the appellant.

(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 **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 appellants attack on the deceased with a hatchet to the deceased being referred to hospital to the deceased succumbing to her injuries to the lodging of the FIR to the arrest of the appellant to the recovery of the murder weapon on the pointation of the appellant.

(h) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate him in this case by for example making up his arrest or foisting the hatchet on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mustaq Ahmed V The State** (2020 SCMR 474).

(i) That it does not appeal to reason, logic or commonsense that a father who was an eye witnesses would let the murderer of his daughter go scot free by substituting him with an innocent person (the appellant). In this respect reliance is placed on **Allah Ditta V State** (PLD 2002 SC 52).

(j) That it also does not appeal to reason, logic and commonsense that a husband if he had not committed the attack on his wife which caused her serious injury (which was committed by someone else in his absence as claimed by the appellant) would not have visited his wife once to find out about her condition in hospital despite her remaining nearly two days in hospital and he was still a free man not under arrest. Such conduct on the part of the appellant is inexplicable.

(k) 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 simply one of false implication which has not been substantiated whatsoever by the appellant. The appellant claims that he was not at his house at the time of the incident but he has not produced any evidence to show that he was not at his house at the time of the incident and was elsewhere. Thus, for the reasons mentioned above we disbelieve the defence case as an afterthought. Thus, in the face of two reliable, trust worthy and confidence inspiring eye witnesses the defence case (which we disbelieve) has not at all dented the prosecution case.

13. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above 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.

14. With regard to sentencing the motive for the murder has been proved by the prosecution which was set out in the FIR and also in the evidence of the eye witnesses. Namely, that the appellant attacked his wife in anger because she served tea to her father and uncle before she served the appellant with tea.

15. The appellants attack on his wife was a brutal one which inflicted three wounds by hatchet on mainly vital parts of her body which lead to her death. It was a merciless attack on a young mother for the most petty of reasons and as such the appellant is not deserving of any leniency and as such the impugned judgment is upheld, the appeal is dismissed, the convictions and sentences in the impugned judgment are maintained and the confirmation reference is answered in the affirmative.

16. The appeal stands disposed of in the above terms.