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ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO

Cr. Appeal No. S-14 of 2023

Date _____ Order with signature of Judge _____

For hearing of main case.

15-01-2025

Mr. Ashfaq Hussain Abro, advocate for the appellant

Mr. Ali Anwar Kandhro, Additional Prosecutor General for the
State

Arguments heard. Reserved for judgment.



Judge

Abdul Salam/P.A ****

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.S- 14 of 2023

Appellant : Faiz Muhammad Rahoojo,
Through Mr. Ashfaq Hussain Abro, Advocate.

The State : Through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Date of hearing : 15.01.2025.

Date of Decision : 22.01.2025.

J U D G M E N T

Omar Sial, J.- Faiz Mohammad Rahoojo, along with five accomplices, was accused of hitting Din Mohammad on his head with an axe and thereby killing him. The incident occurred on 09.06.2009, but not until 15.06.2009 was F.I.R. No. 48 of 2009 registered at the Madeji police station on information provided by his maternal nephew, Abdul Qadir.

2. Abdul Qadir, the complainant and alleged eye-witness of the incident, in the F.I.R. he lodged recorded that on 09.06.2009, he and Din Muhammad (maternal uncle), Mohammad Mureed (father), and Jhangal (brother-in-law), were returning home from a market when six men ambushed them. Abdul Qadir and others recognized the six men as Faiz Mohammad, Mohammad Nawaz, Sajjan, Khair Mohammad, Saeed Ahmed, and Sohrab. On Sohrab's instigation, Faiz Mohammad struck Din Mohammad's head with a hatchet while the five others beat him with cudgels. Din Mohammad died on 20.07.2009, allegedly due to this beating.

3. All the accused, except Faiz Mohammad, were arrested and tried in the court of the 3rd Additional Sessions Judge, Shikarpur. The court concluded that the prosecution had failed to prove its case against the

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accused, and thus, they were acquitted on 15.03.2012. Subsequently, Faiz Mohammad, arrested, was tried alone by the 1st Additional Sessions Judge, Shikarpur, who convicted and sentenced him under section 302(b) to life imprisonment on 07.02.2023.

4. I have heard the learned counsel for the appellant and the learned Additional Prosecutor General. At an earlier date, the complainant came to court and said he would not engage private counsel. For brevity, the counsel's arguments are not reproduced but are reflected in my observations and findings below.

5. The biggest hurdle the prosecution has faced in this case is that the doctor who had examined the deceased and the investigating officer of the case both died before their testimony could be recorded.

6. Learned counsel for the appellant has stressed that the appellant should be acquitted on the grounds of consistency as the learned trial court did not believe the witnesses when the co-accused were tried. He has a strong argument there. The record reflects that after the acquittal of the co-accused, an acquittal appeal was filed by the complainant, but he failed to pursue it, and hence, the acquittal appeal was dismissed, not on merits, but for non-prosecution. The acquittal obtained finality. It is logical that when the trial court did not believe the witnesses in the first round of litigation, how could it believe them in the second round? Especially when the judgment was rendered not even on a "reasonable doubt" standard but on a failure of the prosecution to prove its case. I have considered this aspect of the case while deciding this appeal.

7. There seems to be little doubt that Din Mohammad was hit on the head with a hatchet. The question that remained unanswered at trial was whether the blow on his head was the cause of his death or not. Din Mohammad was injured on 09.06.2009. He was taken to a nearby hospital in Madeji, where first-aid was administered. Here, he was treated by Dr. Ramesh Lal. Dr. Lal had died, and thus, taking advantage of Article 62 of the Qanun-e-Shahadat Order, Dr. Abdullah verified that the signatures and handwriting on the medical certificate

issued to Din Mohammad were indeed those of Dr. Lal. The medical certificate issued by Dr. Lal shows that Din Mohammad had come to the hospital when the "injury was fresh and caused by a sharp cutting weapon." The certificate further shows that Din Mohammad was referred to the CMC Hospital for further management, admission, and expert opinion. The CMC Hospital did not do much, and the next day, i.e., 10.06.2009, Din Mohammad was sent to a hospital in Karachi. Din Mohammad died on 20.07.2009. No evidence was given at trial to prove what transpired between 09.06.2009 and 20.07.2009. The deceased's family declined to have a post-mortem performed and buried the deceased in Karachi. A certificate showing the cause of death was also not issued. The record reflects that the doctor who had treated the deceased in Karachi was summoned by the court but declined to come; hence, his testimony was not recorded. While a post-mortem may not be necessary in many cases of murder, in a case where there is a gap of over a month between the incident and the death, doubt is created as there is no evidence to show whether the hit on Din Mohammad's head was the cause of his death or not. While a strong presumption may exist that it was, the lack of evidence produced by the prosecution to establish the same creates a doubt that must go in the accused's favor. No reason was attributed to the doctor in Karachi not testifying. Article 129 illustration (g) of the Qanun-e-Shahadat Order, 1984 becomes relevant in such a situation.

8. Learned counsel for the appellant has highlighted discrepancies between the witness statements. He has stressed that medical reports do not reconcile with the ocular version. He says this because the witnesses alleged that apart from the blow caused by the appellant, the remaining accused had also beaten Din Mohammad for ten to fifteen minutes with the instruments they carried. The medical evidence led at trial, however, showed one head injury. The learned counsel is correct in his submission. This was the primary reason the learned trial court swayed to acquit the remaining accused. A weak and incomplete investigation could have caused the anomaly. Such was the apathy of the investigating officer that he did not care to record

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the statement of the injured while he was injured, nor did he make any effort to investigate the hospitals or doctors who had treated the deceased. No effort was made to recover the crime weapon.

9. As far as the appellant is concerned, his conduct reflects poorly on him after the incident. He remained an absconder for nearly ten years and appeared only when his colleagues were acquitted; in his section 342 Cr.P.C. statement, he only emphasized the acquittal. He did not produce any witnesses to support him. Because of his disappearance for such a long time, the prosecution case was weakened due to the death of two important witnesses. The appellant's conduct is deprecated.

10. This has been a difficult case to adjudicate for several reasons. A history spanning more than a decade; a shabbily conducted investigation; the trial for the same incident being conducted twice with ten years in between; material lapses at trial; deaths of essential witnesses and a previous acquittal of co-accused on the same set of evidence; have all contributed to the difficulty. Established law says that the benefit of the doubt must go to the accused. Investigating lapses created a material weakness in the prosecution case during the period 9.6.2009 and 20-07-2009. The record lacks admissible evidence in this crucial period. Then, the testimonies of the complainant and the investigating officer also adversely impacted the prosecution case. It almost seems that the concerned police officials were insensitive, unprofessional, incapable, and incompetent persons for recording the kind of testimonies they did at trial. This was disastrous for the prosecution because poor investigation had already left many loopholes.

11. While a powerful presumption of the guilt of the accused exists, I am unable to eliminate doubt as far as the cause of death is concerned. I, therefore, acquit him of the charge of murder under section 302(b) PPC. On the other hand, I believe sufficient evidence was gathered at trial to establish an offence under section 337-A(v) P.P.C. The acquittal of the remaining co-accused will not impede as they were accused of hitting the deceased but were exonerated of the

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charge of murder because of medical and ocular evidence not reconciling. The appellant also got the same concession, i.e., being acquitted of the murder charge. However, his case differs from the remaining co-accused as far as causing injuries was concerned. The injuries he was said to have inflicted were proved through evidence.

12. After analyzing the entire evidence, I am of the view that while the benefit of the doubt regarding the cause of death can be most reluctantly given to the appellant, there is sufficient evidence to show that he did indeed strike and injure Din Mohammad on his head. I, therefore, set aside his conviction under section 302(b) P.P.C. but convict him for causing *shajjah-i-ammah*, as defined in section 337-A(v) P.P.C. He is sentenced to ten years of rigorous imprisonment as *taazir* and shall also pay *arsh* equal to one-third of the *diyat* to the legal heirs of the deceased. The benefit of section 382-B, Cr.PC may be given to him.

13. The appeal is dismissed with the modification in the conviction and sentence as given in the preceding paragraph.

OS
22/1/25
JUDGE

Qazi Tahir PA