

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Crl. Jail Appeal No.S-77 of 2017.
Crl. Jail Appeal No.S-78 of 2017

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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For hearing of main case.

13.09.2021

Mr. Asif Ali Abdul Razak Soomro, advocate for the
appellant.

Mr. Ali Anwar Kandhro, Addl. P. G.

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Learned counsel for the appellant and learned Addl. P. G
have concluded their argument; however, seek some time to put on
record certain case law. Both counsels agree that they will put on
record the case by tomorrow. Let this case be re-listed on 15.9.2021 at
11:00 a.m.



Judge

For hearing of main Case

15-9-2021.

Mr. Ali Anwar Kandhro, Addl. P.G.

Heard. Reserved for judgment.


Judge

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA
Present: Omar Sial, J.

Criminal Jail Appeal No. S - 77 of 2017
Criminal Jail Appeal No. S - 78 of 2017

Appellant : Muhammad Ali Jakhrani
through Mr. Asif Ali Abdul Razak Soomro, Advocate.

Respondent : The State
through Mr. Ali Anwar Kandhro, Addl.P.G.

Date of judgment: ^{نہ} 13th December, 2021

JUDGMENT

Omar Sial, J.: Mian Bux Dahani who was the S.H.O. of the Abad police station, on 1-7-2015 received information that two persons had been murdered in Shahal Khan Jakhrani village in the name of honor. Dahani along with a police party went to the identified spot and saw that the dead bodies of Dur Bibi and Gul Mohammad Jakhrani were lying on the ground outside the home of Shahal Khan Jakhrani. Three empties of a pistol were lying next to the dead body of Dur Bibi whereas a little further away was the dead body of Gul Mohammad with four pistol empties next to it. The empties and blood stained earth were collected and secured on the spot. The dead bodies were examined and the requisite memos made on the spot. According to the information Dahani had received, both murders were committed by Mohammad Ali Jakhrani (the appellant in these proceedings) as he suspected his wife, Dur Bibi of having an affair with Gul Mohammad. Post mortem of the dead bodies was conducted and the next day i.e. 2-7-2015, Dahani (as no relative of the deceased came to lodge an F.I.R.) on behalf of the State registered F.I.R. No. 19 of 2015 under sections 302, 311 and 34 P.P.C. at the Abad police station. The appellant was arrested on 3-7-2015 and a pistol (the crime weapon) with a magazine having three bullets was seized and secured from his person. F.I.R. No. 20 of 2015 under section 23(1)(a) of the Sindh Arms Act, 2013 was thus also registered against him.

2. The appellant pleaded not guilty to the charge and claimed trial in the case arising out of F.I.R. No. 19 of 2015. At trial, the prosecution examined six witnesses to prove its case. Abdul Jabbar Brohi (PW-1) was the *tapedar* who made the sketch of the place of incident. S.I. Mian Bux Dahani (PW-2) was the police officer who lodged the F.I.R. and was also the investigating officer of the case. H.C. Ghulam Yasin Unar (PW-3) was the police officer who witnessed the arrest of the appellant. P.C. Asif Ali (PW-4) was the police officer who witnessed the dead bodies lying at the place of incident. He also witnessed the inspection of the dead bodies by Dahani as well as the recovery of the empties and blood from the place of incident. Dr. Mukhtiar Ahmed Dayo (PW-5) was the doctor who conducted the post mortem on the deceased Gul Mohammad. Roomana Khanzada (PW-6) was the medical officer who conducted the post mortem on the deceased Dur Bibi.

In the trial arising out of F.I.R. No. 20 of 2015, the prosecution examined S.I. Mian Bux Dahani (PW-1) and H.C. Ghulam Yasin Unar (PW-2).

3. The appellant recorded his section 342 Cr.P.C. in both cases in which he stated that the pistol had been foisted upon him and that the witnesses had testified against him on the instance of one Dad Mohammad Jakhrani. He did not agree to examine himself on oath nor did he produce any witness in his defence.

4. On 31-8-2017 the learned 2nd Additional Sessions Judge, Jacobabad announced his judgment by virtue of which the appellant was sentenced to rigorous imprisonment for life as well as directed to pay a fine of Rs. 200,000 and if he failed to pay the fine he would have to spend another six months in prison. In the case arising out of F.I.R. No. 20 of 2015 he was sentenced to fourteen years in prison. The appellant has impugned both these judgments through these proceedings.

5. I have heard the learned counsel for the appellant as well as the learned Addl.P.G. Their respective arguments are not being reproduced here for the sake of brevity however are reflected in my observations and findings below.

The case arising out of F.I.R. No. 19 of 2015

6. There are no eye-witnesses in this case. The only evidence collected and produced by the prosecution is (i) that some unknown person had informed

Dahani that the appellant had murdered the two victims in the case (ii) empties were collected lying next to the dead bodies (iii) six out of the seven empties were opined to have been fired from the pistol seized from the appellant upon his arrest.

7. The testimony of Dahani reflects that the dead bodies of the two deceased were handed over to their respective legal heirs after the post mortem. Neither did the legal heirs of both the deceased lodge an F.I.R. in the matter nor did they record any statement. PW 4 P.C. Asif Ali testified that when they saw the bodies, Lal Khan, the father of deceased Gul Mohammad, was present on the spot however the complainant did not associate the father or any other person who was present there to witness the inspection of the dead bodies or the recovery made. PW-4 P.C. Asif Ali testified in his examination in chief that the memos of inspection of the dead bodies as well as that of recovery were prepared by S.I. Dahani, the complainant. However contrary to what he stated, in his cross examination he admitted that they were prepared by him (Asif Ali). Even the placement of the dead bodies on the scene of offence, as testified by Dahani, does not reconcile with that depicted in the sketch of the place of incident, as exhibited at trial.

8. The allegation against the appellant is that he killed his wife and her ostensible lover. However, no evidence came on record except the empties matching the pistol seized from the appellant. The investigating officer did not look into whether the allegation of having an affair was correct. He did not, it seems, even attempt to unearth the truth of the matter. The legal heirs of both deceased were present, at least at the time of taking the bodies, yet the best evidence which the investigating officer had was also let go of.

9. I have noticed a growing trend of similar nature. In cases involving honor killings, legal heirs of the victims are not coming forward to give evidence and in many cases even though the witnesses are inclined towards appearing as witnesses, certain harsh realities of life prevent them from doing so. Cases of such a nature require much better investigation and a higher level of prosecution. The police should make efforts to seek evidence and not simply back off on the ground that no one was willing to come and record their statement. If people do not provide the relevant information they should be proceeded against. Culprits

of such killings, have come up with ingenious ideas to avoid justice. Courts, however, have to make their decisions on the basis of evidence which is on record and as strongly as one might feel that a person is involved in an honor killing, the same must be proved through evidence and it would not be open to the court to decide cases on its own assumptions and perceptions. That perhaps would fall within the ambit of judicial over reach.

10. Another aspect in this case is the recovery of the empties from the place of incidence. Out of the seven empties which were recovered, six matched with the pistol recovered from the appellant whereas the seventh had come from an unknown weapon. In my view the sole evidence that six empties that matched with the pistol of the appellant is not strong enough to sustain the conviction against the appellant on the charge of murder. In view of the above, the appellant is acquitted in the case arising out of F.I.R. No. 19 of 2015 as in my opinion the prosecution was unable to prove its case beyond reasonable doubt.

The case arising out of F.I.R. No. 20 of 2015

11. While the recovery of an unlicensed weapon may not have been sufficient to sustain a charge of murder, no argument has been raised by the learned counsel that an un-licensed pistol was not recovered from the appellant at the time of his arrest. However, keeping in view the fact that the prosecution was unable to prove the case of murder against the appellant, a lenient view is taken and his sentence is reduced to seven years. Benefit of section 382-B Cr.P.C. is extended to him.

In conclusion:

- (i) Criminal Jail Appeal No. S-77 of 2017 stands allowed.
- (ii) The sentence in Criminal Jail Appeal No. S-78 of 2017 stands reduced to seven years instead of fourteen years. The appellant may be released if he has already served this sentence.


JUDGE

Announced by me
13.12.2017
(Chandrabhan (Secy.))