

[Balochistan (Turbat Bench)]

Before Rozi Khan Barrech and Muhammad Najam-ud-Din Mengal, JJ

ABID---Appellant

Versus

The STATE---Respondent

Criminal Appeal No. 79 of 2022, decided on 13th March, 2025.

(a) Penal Code (XLV of 1860)---

----Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Ocular account proved---Accused were charged for committing murder of the brother of complainant by inflicting axe blows---Complainant, who was brother of the deceased, mostly reiterated the contents of his fard-e-bayan---Evidence of complainant had not only brought the criminal law into motion, but he also fully corroborated the statement of sole eye-witness/son of deceased qua the occurrence and confirmed his presence along with his deceased father at the relevant time---Complainant had also confirmed that he was informed by a witness about the occurrence, who was working in a nearby plant---Statements of three witnesses established that the presence of sole eye-witness of the occurrence at the relevant time was natural, who at the relevant time was grazing his cattle, while his father was present there for taking the left over wood from a deserted Army camp, and the presence of the other witness working in the nearby plant, had also been established near the place of occurrence---Though, said witness had not witnessed the crime directly, but the fact remained that he was present nearby the place of occurrence and immediately on getting information he rushed there and found the deceased in injured condition---Said witness had confirmed the presence of sole eye-witness of the occurrence at the relevant time, while complainant after getting information immediately reached to the place of occurrence and confirmed the presence of other witnesses at the place of occurrence---All the three important witnesses had fully corroborated the statement of each other with regard to time and place of occurrence and the manner in which the occurrence took place---Despite lengthy cross-examination, the witnesses remained firm in their deposition with regard to date, time, place of occurrence and the culprits---Circumstances established that the prosecution had successfully proved the charge against the appellant beyond any shadow of reasonable doubt---Appeal against conviction was dismissed accordingly.

(b) Penal Code (XLV of 1860)---

----Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Minor witness, evidence of---Reliance---Accused were charged for committing murder of the brother of complainant by inflicting axe blows---Undoubtedly, son of deceased was a minor, but his examination in chief and the replies of questions during cross-examination transpired that he was mentally mature and fit to answer the questions correctly and even during cross-examination he replied the questions correctly, which established the soundness of his mind and his statement could not be thrown aside merely on the ground of his minor age of 12/13 years rather his statement above alone enough to establish the charge against the culprit---Even otherwise, there was nothing on record showing that this witness was tutored by his elders---Rule of prudence required that the testimony of child witness should not be relied upon unless it was corroborated by some cogent evidence on the record---However, in the case in hand the statement of child witness had fully been corroborated by the direct evidence of complainant and a witness as well as the medical evidence---Thus, nothing adverse had come on record to disbelieve the evidence of said minor witness---Circumstances established that the prosecution had successfully proved the charge against the appellant beyond any shadow of reasonable doubt---Appeal against conviction was dismissed accordingly.

Muzammil Shah v. State 1991 MLD 1944 rel.

(c) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Recovery of weapon of offence---Reliance---Accused were charged for committing murder of the brother of complainant by inflicting axe blows---Case of prosecution had been strengthened from the recovery of crime weapon i.e. axe from the possession of appellant on the day of occurrence---Circumstances established that the prosecution had successfully proved the charge against the appellant beyond any shadow of reasonable doubt---Appeal against conviction was dismissed accordingly.

(d) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Qatl-i-amd, common intention---Appreciation of evidence---Interested witnesses, evidence of---Reliance---Scope---Accused were charged for committing murder of the brother of complainant by inflicting axe blows---Statements of closely related witnesses of the complainant or deceased could not be discarded from consideration solely on such ground---Witnesses had been found entirely independent and truthful in the present case, therefore, their testimony without looking for any other corroborative evidence, would alone be sufficient to establish the charge---Evidence of related witnesses, who were not found inimical, and their evidence was confidence-inspiring would hardly need any corroboration---Complainant was real brother of the deceased, while eye-witness was the son of deceased---Parties were known to each other previously, being residents of same vicinity, thus the question of mistaken identity of the real culprits did not arise---It was hard to believe that both witnesses would substitute the appellant for the real culprits, who had committed murder of their deceased brother and father, respectively---Circumstances established that the prosecution had successfully proved the charge against the appellant beyond any shadow of reasonable doubt---Appeal against conviction was dismissed accordingly.

Muhammad Akram v. The State 2015 YLR 116; Allah Ditta's v. The State PLD 2002 SC 52 and Haji Ali Shan v. The State 2001 PCr.LJ 1320 rel.

Jadain Dashti for Appellant.

Sudheer Ahmed, D.P.G for the State.

Date of hearing: 28th January, 2025.

JUDGMENT

MUHAMMAD NAJAM-UD-DIN MENGAL, J.---This judgment disposes of Criminal Appeal No.79 of 2022 filed by the appellant (convict) Abid Son of Wali Dad, against the judgment dated 4th November 2022, ("the impugned judgment") passed by learned Additional Sessions Judge Gwadar ("the trial Court"), whereby the appellant was convicted under Section 302(c), P.P.C as Tazir and sentenced to suffer imprisonment for life i.e. for the period of 25-years and to pay Rs.500,000/- as compensation as envisaged under the provisions of Section 544-A, Cr.P.C. to the legal heirs of deceased Raheem Bakhsh and in default thereof to further suffer six months S.I., with the benefit of Section 382-B, Cr.P.C., while co-accused Javid son of Wali Dad was acquitted of the charge.

2. Facts of the case are that on 13th January 2022, the complainant Noor Bakhsh son of Dad Karim, lodged FIR No.1/2022 at Police Station Saddar Gwadar, under Sections 324, 337A, 337D, 337F, 34, P.P.C with the averments that near to his house there is a Military camp/picket, which was closed yesterday and they had left some wood after vacating that camp. At the time of loading their belongings, brother of the complainant had helped the army personnel and they had given that wood to the brother of complainant. On the following day i.e. 13.01.2022 at about 09.30 a.m., his brother deceased Rahim Bakhsh went for collecting the leftover wood in Army Camp situated at Chibb Rekani Gwadar, where found collecting that wood by the accused persons Abid and Javed, who were restrained by the deceased, which annoyed the accused persons, who started fighting with him and accused

(convict) Abid being equipped with Axe, hit upon the head of his deceased brother, due to which he sustained injury. The incident was witnessed by his nephew Imran, who was grazing his cattle nearby the place of occurrence, thus he immediately informed Haji Akbar and Naik Bakht present nearby the Crash Plant, who informed the complainant, thus he rushed to the place of occurrence and found his brother unconscious in injured condition and his head was bleeding, thus the injured was shifted to hospital for treatment and accordingly above FIR was lodged under Sections 324, 337A, 337D, 337F, 34, P.P.C. However, subsequently the injured succumbed to his injuries, thus Section 302, P.P.C was inserted in the FIR.

3. Pursuant to above FIR, the appellant (convict) and acquitted accused were arrested, investigated and challaned in the trial court. At the trial, the prosecution produced eight (08) witnesses, whereafter the appellant and acquitted accused were examined under Section 342, Cr.P.C. They neither recorded their statements on oath under Section 340(2), Cr.P.C. nor produced any witness in their defence. On conclusion of trial and after hearing arguments, the trial Court convicted and sentenced the appellant as mentioned in para-1 above and acquitted the accused Javed, whereafter the appellant has filed the instant appeal.

4. Mr. Jadain Dashti, Advocate, appearing on behalf of appellant contended that the prosecution has absolutely failed to establish the charge against the appellant; that the statements of interested and related witnesses are lacking independent corroboration, who otherwise made contradictory statements with each other; that the prosecution has produced sole eye-witness of the alleged occurrence i.e. PW-2 Imran, who is minor and under the age of 12-years, thus the appellant cannot be convicted and sentenced on the basis of this untrustworthy statement of PW-2 being minor as well as interested witness; that the PWs could not justify their presence at the site and the appellant has been dragged in this false case due to some misunderstanding; that the defense so taken and established has not been taken into consideration by the learned trial Court; that the case of prosecution is replete with legal defects, discrepancies and infirmities, which has made the case of prosecution as doubtful, but while delivering the impugned judgement the benefits of such doubts have not been extended to the appellant and he was convicted and sentenced through the impugned judgement, which requires interference of this Court.

5. Learned Deputy Prosecutor General while supporting the impugned judgement contended that the prosecution through consistent and confidence inspiring evidence has proved the charge against the appellant beyond the shadow of reasonable doubt; that the FIR has been lodged promptly, wherein the appellant was specifically nominated with the role of hitting upon the head of deceased with Axe, besides at the time of his arrest, the recovery of crime weapon was also effected from his possession; that the prosecution has produced direct and circumstantial evidence, which was corroborated by medical evidence; that the defence has failed to point out any contradiction, infirmity or dishonest improvement in the prosecution evidence, thus rightly he was convicted and sentenced through impugned judgement, which otherwise is not open for interference by this Court.

6. Heard the learned counsel for parties and perused the available record with their valuable assistance. The prosecution in order to establish the charge has produced medical, direct and circumstantial evidence. It would be more fruitful to first dilate upon medical evidence. The medical evidence has been produced through PW-6 Dr. Yaseen, Medical Officer, D.H.Q. Hospital Gwadar, PW-5 Dad Shah, Medical Technician and PW-7 Dr. Abdul Rauf, Medical Officer, D.H.Q. Hospital Gwadar. So far as the unnatural death of deceased Rahim Bakhsh, is concerned, the same is not disputed. Even the defense has also not denied the unnatural death of deceased, but however, pleaded innocence and false implication in the case. Admittedly, soon after the occurrence the deceased was shifted to D.H.Q. Hospital Gwadar in injured condition, where PW-6 Dr. Yaseen, Medical Officer after giving first aid, referred him to Karachi for better medical treatment and issued MLC Ex.P/6-A with regard to injuries received by the deceased. The perusal of MLC confirms that the deceased received head injury. PW-5 Dad Shah, Medical Technician, on the directions of PW-6 Dr. Yaseen accompanied the complainant party and injured towards Karachi for medical treatment of deceased Raheem Bakhsh. According to PW-5 he accompanied the complainant party and injured in an Ambulance, but in the way towards Karachi at the area of Hangol, the deceased succumbed to his injuries and died. Whereafter, the deceased was brought to Gwadar, where PW-7 Dr. Abdul Rauf, Medical Officer, D.H.Q. Hospital Gwadar after examining the dead

body issued Death Certificate as Ex.P/7-A, wherein it was opined the cause of death of deceased as head injury and excessive blood flow.

7. Now adverting to the ocular account of testimony, the complainant Noor Bakhsh appeared as PW-1, who is the brother of deceased Raheem Bakhsh. This witness mostly reiterated the contents of his fard-e-bayan and brought on record that on the day of occurrence he was present in his fields, located nearby the place of occurrence, when pursuant to receipt of information about the occurrence, he rushed to the place of occurrence, where found his brother in the pool of blood in injured condition and unconscious. According to PW-1 near to their house there was a Military camp/picket, which was shuttered down yesterday and his deceased brother helped them in boarding their luggage, who left some wood and gave to his deceased brother. On the day of occurrence, when his deceased brother went over there to collect the left over wood, but he found both the accused persons collecting the wood, due to which he (deceased) restrained them and apprised the situation that the said wood were left for him by the Army personnel, but the accused persons became annoyed, started quarreling with deceased and the accused Abid hit on the head of deceased with Axe, due to which he sustained injury and whilst shifting to Karachi, he succumbed to his injuries. The evidence of PW-1 has not only brought the criminal law into motion, but also he fully corroborated the statement of sole eye-witness of the occurrence and confirmed his presence along with his deceased father at the relevant time and this witness has also confirmed that he was informed by PW-3 Ali Akbar with regard to occurrence, who was working in the nearby crash plant.

8. The star witness of prosecution is PW-2 Imran, who is the son of deceased, aged about 11/12-years. According to this witness on the day of occurrence he was grazing his cattle nearby the Army Camp, while his father also went there to collect wood, but his father found collecting wood by the accused Abid and Javed, who were restrained by his deceased father, but accused Abid being equipped with Axe, hit upon the head of his father, who became injured. PW-2 further stated that he became panic and went to nearby crash plant and informed Haji Akbar and Naik Bakht, who came at the place of occurrence and then he along with complainant and Ali Akbar (PW-3) took his father to Hospital. PW-2 was cross-examined at sufficient, but he remained consistent on his view. PW-2 during cross-examination has further confirmed that he himself seen the accused hitting his deceased father.

9. Another important witness of the prosecution case is PW-3 Muhammad Akbar, who at the relevant time was present in a Crash Plant nearby the place of occurrence. PW-3 confirmed that PW-2 informed him about the occurrence, due to which he along with his brother Naik Bakht rushed to the place of occurrence at Army Chowki, where found Raheem Bakhsh lying in injured condition. Whereafter, he informed the brother of injured Raheem Bakhsh namely PW-1 Noor Bakhsh and soon after his arrival at the place of occurrence, they shifted the injured to hospital. In his cross-examination PW-3 confirmed that he was informed by PW-2 Imran, whose age was 12/13 years.

10. We have taken into consideration the statements of PW-1, PW-2 and PW-3 and it has been established that the presence of sole eye-witness of the occurrence at the relevant time is natural, who at the relevant time was grazing his cattle, while his father was present there for taking the left over wood from the deserted Army Camp, while PW-3 working in the nearby Crash Plant, his presence has also been established nearby the place of occurrence. Though, PW-3 has not witnessed the crime directly, but the fact remains that he was present nearby the place of occurrence and immediately on getting information he rushed there and found the deceased Raheem Bakhsh in injured condition. PW-3 has confirmed the presence of sole eye-witness of the occurrence at the relevant time, while PW-1 after getting information immediately reached to the place of occurrence and confirmed the presence of PW-2 and PW-3 at the place of occurrence. All the three important witnesses have fully corroborated the statement of each other with regard to time and place of occurrence and the manner in which the occurrence took place. Despite lengthy cross-examination, the witnesses remained firm in their deposition with regard to date, time, place of occurrence and the culprits.

11. Learned counsel for appellant has taken the objection with regard to credibility of trustworthiness of the statement of sole eye-witness, who is minor and being unsound and

immature, his statement solely cannot be made basis for awarding conviction to the appellant. Undoubtedly, PW-2 is a minor, but his examination in chief and the replies of questions during cross-examination transpires that he was mentally mature and fit to answer the questions correctly and even during cross-examination he replied the questions correctly, which establishes the soundness of his mind and his statement cannot be thrown aside merely on the ground of his being minor age of 12/13 years rather alone his statement is enough to establish the charge against the culprit. Even otherwise, there is nothing on record showing that this witness was tutored by his elders. We are conscious of the fact that the rule of prudence requires that the testimony of child witness should not be relied upon unless it is corroborated by some cogent evidence on the record. However, in the case in hand the statement of child witness has fully been corroborated by the direct evidence of PW-1 (complainant) and PW-3 Muhammad Akbar as well as the medical evidence. Thus, nothing adverse has come on record to disbelieve the evidence of PW-2. Reliance in this regard is placed on the case of Muzammil Shah v. State, 1991 MLD 1944, wherein it has been held as under:

"10. We have gone through the evidence of Mst. Irshad (P.W.5) with care. Before recording her statement, the learned trial Judge had recorded a note after putting her certain questions that he was satisfied that the witness was intelligent and was capable of making rational answers to questions put to her. Besides, she has been subjected to fairly lengthy cross-examination which she had withstood to an astonishing degree. A perusal of her statement shows that she made the statement in a frank and straightforward manner. Curiously there was no suggestion to her in her cross-examination that she did not know the appellant. Then there are no circumstances to indicate that she might have been tutored. She had seen the appellant in the course of committing sodomy over the victim with his trousers loosened. She was intelligent enough to understand as to what had been done to her brother and neither she nor her father had any motive to falsely implicate him. We see no reason whatsoever why the statement of such a child witness should not be believed though a suggestion was made to Naeem Gul (P.W.4) that there was enmity of her relatives with the appellant. Nonetheless, the appellant when examined under section 342, Cr.P.C. did not take up this plea. We have-not been able to discover any valid reason to reject the testimony of Mst. Irshad (PW.5)."

12. The case of prosecution has further been strengthened from the recovery of crime weapon i.e. Axe from the possession of appellant Abid on the day of occurrence.

13. Adverting to the defence plea of the appellants, suffice to observe here that the appellant throughout the case has taken the plea of his false implication, but has failed to take any specific plea with regard to his false implication, while to the contrary the prosecution has produced the direct evidence of the son of deceased, who witnessed the crime directly in his eyes, but since he was tender age, thus could not retaliate to save his father, hence the solid, concrete and cogent evidence produced by the prosecution cannot be brushed aside on the basis of mere denial of the appellant.

14. The plea of the learned counsel for the appellant that only interested witnesses were produced by the prosecution and the case of prosecution is lacking independent corroboration, suffice to state here that by now it is well settled principle of law that the statements of closely related witnesses of the complainant or deceased cannot be discarded from consideration solely on such ground and they have been found entirely independent and truthful, therefore, their testimony without looking for any other corroborative evidence, would alone be sufficient to establish the charge. The evidence of related witnesses who are not found inimical and are confidence-inspiring would hardly need any corroboration. Reliance in this regard is placed on the case of Muhammad Akram v. The State reported in 2015 YLR 116. It is also necessary to mention here that PW- 1/complainant is real brother of the deceased, while PW-2 is the son of deceased. The parties were known to each other previously, being residents of same vicinity and thus the question of mistaken identity of the real culprits does not arise. It is hard to believe that both PWs would substitute the appellant for the real culprits, who had committed murder of his deceased brother and father. Reliance in this regard may be placed on the case of Allah Ditta's v. The State, PLD 2002 SC 52 and the case of Haji Ali Shan v. The State 2001 PCr.LJ 1320.

15. On reappraisal of the evidence available on record it is concluded that the prosecution

has successfully proved the charge against the appellant beyond any shadow of reasonable doubt; that all the witnesses remained firm in their deposition; that they fully supported the prosecution version and the defence has failed to cause any dent in the same; that the trial Court after proper appraisal of evidence available on record has rightly awarded conviction and sentence to the appellant; that the appellant has failed to point out any material contradiction and discrepancy which could benefit the defence version; that there is no error of law, misreading or non-reading of evidence in judgment passed by the trial Court calling for interference by this Court.

For the above reasons, the appeal being devoid of merits, is dismissed.

JK/48/Bal.

Appeal dismissed.