

25/25

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ATHAR MINALLAH
MR. JUSTICE IRFAN SAADAT KHAN
MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

Criminal Appeal No.188 of 2023

(On appeal against the judgment dated 01.07.2021 passed by the High Court of Sindh, Circuit Court, Hyderabad in Criminal Appeal No.D-68/2015 & Confirmation Case No.D-08/2015)

Muhammad Ashraf

...Appellant (s)

Versus

The State

...Respondent(s)

For the Appellant (s): Ms. Aisha Tasneem, ASC

For the State: Mr. Khadim Hussain, Addl. P.G Sindh

For the Complainant: Nemo

Date of Hearing: 07.04.2025

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JUDGMENT

MALIK SHAHZAD AHMAD KHAN, J.- Muhammad Ashraf, appellant was tried by the learned Sessions Judge, Matiari, pursuant to a case registered vide FIR No.207 dated 28.12.2012 under Section 302 PPC, at Police Station Hala. The learned Trial Court vide its judgment dated 27.07.2015, convicted the appellant under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs of the deceased as envisaged under section 544-A Cr.P.C. The appeal filed by the appellant was dismissed by the learned High Court vide impugned judgment dated 01.07.2021.

2. Arguments heard. Record perused.

3. As per contents of the FIR, on 27.12.2012, a mazda pickup was brought to the shop of the complainant party for repairing work but its work could not be completed till 4.00 a.m on the next

morning. Khair Muhammad complainant (PW-1), Naseer Muhammad (PW-2) and Aamir Ali (PW-3), therefore, slept in the mazda pickup, whereas Moula Bakhsh (deceased), slept inside his shop. On 28.12.2012, at 7.00 a.m, Khair Muhammad complainant (PW-1), Naseer Muhammad (PW-2) and Aamir Ali (PW-3), woke up on hearing the sound of opening of the shutter of their shop and they also heard the caries coming from inside the shop, whereupon they reached at the spot. They saw that Muhammad Ashraf (appellant), was inflicting hatchet blows on the face of brother of the complainant namely Moula Bakhsh (deceased), who succumbed to the injuries at the spot. The appellant while wielding his hatchet, as well as, extending threats to the complainant and the PWs fled away from the spot.

The motive behind the occurrence was that Moula Bakhsh (deceased), used to work at the workshop of the appellant as a mechanic but about 1½ months prior to the occurrence, he left the job from the workshop of the appellant and opened his own workshop adjacent to the workshop of the appellant and due to this grudge, the appellant committed the occurrence, hence the FIR of this case.

4. We have noted that as per contents of the FIR, the occurrence took place on 28.12.2012 at 7.00 a.m but the FIR was lodged on the said day at 12.00 (noon) and as such there is delay of about five (05) hours in lodging the FIR. The distance between the police station and the place of occurrence was only two furlongs. The complainant has categorically stated in the contents of the FIR that Moula Bakhsh succumbed to the injuries at the spot, hence it cannot be held that the abovementioned delay in

lodging the FIR was consumed for the medical treatment of Moula Bakhsh (deceased), in order to save his life. The complainant has further conceded during his cross-examination that after the occurrence, he informed his relatives namely Irshad, Ali Dost and Muhammad Rafique through telephone about the incident, who reached at the spot at 8.15 a.m. He further stated that the police was also informed after arrival of his relatives at the place of occurrence and the police reached at the spot at about 9.15 or 9.30 a.m but even then the FIR was not lodged till 12.00 (noon). All the abovementioned facts show that FIR was lodged after consultation/deliberation and there was no plausible explanation for the gross delay in lodged the FIR. The abovementioned gross delay in lodging the FIR has created doubt regarding the truthfulness of the prosecution story as observed in the cases reported as "Shaukat Hussain v. The State through PG Punjab and another" (2024 SCMR 929) and "Khial Muhammad v. The State" (2024 SCMR 1490).

5. The occurrence took place inside the shop of Mula Bakhsh (deceased) and the same took place in the month of December i.e., on 28.12.2012, at 7.00 a.m. According to sunrise/sunset calendar of District Matiari of Sindh province, the time of sunrise on 28.12.2012 was 7.12 a.m. The prosecution eye-witnesses in order to justify their presence at the odd hours of early morning in the month of December at the spot had stated that on the previous night a mazda pickup was brought to the shop of the complainant party for the repair work and all the abovementioned three eye-witnesses namely Khair Muhammad complainant (PW-1), Naseer Muhammad (PW-2) and Aamir Ali (PW-3), slept in the

abovementioned mazda pickup on the night of occurrence. During his cross-examination, the abovementioned witnesses stated that they slept on the night of occurrence in a mazda pickup in sitting position on the front seat. It is not understandable that as to why the above-mentioned witnesses slept in sitting position on the front seat of the abovementioned vehicle and as to why they did not sleep inside the shop where Moula Bakhsh (deceased) was also sleeping and where the occurrence took place. The abovementioned eye-witnesses have also not given any valid reason for staying inside the abovementioned pickup on the night of occurrence instead of going to their respective houses for sleeping on the night of occurrence. We are, therefore, of the view that the prosecution could not give any valid reason for presence of the abovementioned eye-witnesses at the spot at the relevant time.

It is further noteworthy that the above-mentioned mazda pickup was neither taken into possession vide any recovery memo by the Investigating Officer nor the same was produced before the learned trial Court at the time of recording of statements of the prosecution eye-witnesses in order to determine that as to whether it had 2 or 3 front seats or not justifying the reason of presence of the eye-witnesses at the spot at the relevant time.

6. It is further noteworthy that the conduct of the prosecution eye-witnesses was highly un-natural. According to the prosecution case, the complainant party was comprising of three male adult persons i.e., Khair Muhammad complainant (PW-1), Naseer Muhammad (PW-2) and Aamir Ali (PW-3), whereas the appellant was alone at the time of occurrence. The appellant was not armed with any formidable firearm weapon and he was carrying a hatchet

at the relevant time. Khair Muhammad complainant (PW-1), was real brother of Moula Bakhsh (deceased), whereas the remaining eye-witnesses were also close relatives of the deceased. According to the postmortem report of Moula Bakhsh (deceased), there were total eight (08) injuries on his body. The abovementioned prosecution witnesses, who were closely related to the deceased kept on standing like silent spectators at the time of occurrence and they gave a free hand to the appellant to inflict the abovementioned injuries on the body of the deceased. As per site plan the abovementioned eye-witnesses were present only at a distance of twenty-one (21) feet and twenty-six (26) feet, respectively from the accused at the time of occurrence but they neither tried to save the deceased from the appellant at the time of occurrence nor they tried to apprehend him after the occurrence. The abovementioned un-natural conduct of the prosecution eye-witnesses shows that in-fact they were not present at the spot at the relevant time, hence their evidence is not worthy of reliance as observed in the judgments reported as "Liaquat Ali v. The State" (2008 SCMR 95), "Pathan v. The State" (2015 SCMR 315) and "Zafar v. The State and others" (2018 SCMR 326).

7. We have further noted that there is conflict between the ocular account and the medical evidence of the prosecution. According to the evidence of the prosecution eye-witnesses, the occurrence took place on 28.12.2012 at 7.00 a.m. Dr. Shafique Hussain (PW-4), on 28.12.2012, at 10.00 a.m, conducted postmortem examination on the dead-body of the deceased. According to his opinion, the probable time that elapsed between the injury and the death was instantaneous, whereas the time that

elapsed between the death and the postmortem examination was 9 to 10 hours, which means that the occurrence took place on 28.12.2012 at 12.00 (night) to 1.00 a.m and as such the medical evidence has contradicted the ocular account of the prosecution.

8. According to the prosecution case, the motive behind the occurrence was that Moula Bakhsh (deceased), was earlier employed at the workshop of Muhammad Ashraf (appellant). About 1½ months prior to the occurrence, the deceased left the workshop of the appellant and established his own workshop adjacent to the workshop of the appellant and due to this grudge, the appellant committed the occurrence. In this respect, we have noted that about 1 ½ months prior to the occurrence, the appellant had established his own workshop but no untoward incident took place during the abovementioned period. The complainant further alleged that as the appellant was unhappy on opening of the workshop by the deceased adjacent to his workshop, therefore, the appellant used to pressurize the deceased to close his shop but no specific time, date and place has been mentioned by any prosecution eye-witness that as to when and where the appellant pressurized the deceased to close his workshop. A vague motive was alleged by the prosecution, which has not been proved in this case.

9. Insofar as the recovery of blood stained hatchet and positive report of Chemical Examiner (Ex.No.18/B), are concerned, without discussing the merits and demerits of these pieces of the prosecution evidence, it is noteworthy that as we have already disbelieved the direct prosecution evidence, therefore, the conviction and sentence of the appellant cannot be maintained

merely on the basis of alleged recovery of hatchet and positive FSL report. Reference in this context may be made to the judgments reported as "Dr. Israr-ul-Haq v. Muhammad Fayyaz" (2007 SCMR 1427), 'Muhammad Afzal alias Abdullah and others vs The State and others' (2009 SCMR 436), 'Abdul Mateen vs Sahib Khan and others' (PLD 2006 Supreme Court 538) and 'Nek Muhammad and another vs The State' (PLD 1995 Supreme Court 516).

10. Keeping in view all the above-mentioned facts, we have come to this irresistible conclusion that the prosecution has failed to prove its case against the appellant beyond the shadow of doubt. It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story. Consequently, this appeal is allowed and the impugned judgment is set aside. The appellant is acquitted of the charge while giving him the benefit of doubt. He shall be released from the jail forthwith unless required to be detained in any other case.

Islamabad, the
07th of April, 2025
~~Not~~ Approved For Reporting
Ahtzaz