

J.Cr.A.No.104/I/2010

**IN THE FEDERAL SHARIAT COURT**  
(*Appellate Jurisdiction*)

**PRESENT**

MR. JUSTICE RIAZ AHMAD KHAN,  
CHIEF JUSTICE.

JUSTICE MRS. ASHRAF JAHAN

**CRIMINAL APPEAL NO.104/I/2010**

1. Attiq-ur-Rehman S/o Nazeer Ahmed Abbassi
2. Imran Khan S/o Rafiullah Ghori .... Appellants.

*Versus*

The State .... Respondent.

For the Appellants	...	Ms. Nasreen Zafar, Advocate
For the State	...	Mr. Ali Haider, Assistant Prosecutor General Sindh.
FIR NO., date & Police Station	...	36, dated 05.05.2002, P.S. B-Section, Latifabad, Hyderabad
Date of the Judgment of Trial Court	...	14.10.2010
Date of Institution	...	11.12.2010
Date of Hearing	...	28.11.2016
Date of Decision	...	02.12.2016

....

**JUDGMENT**

**MRS ASHRAF JAHAN, J:** - This judgment will dispose of Criminal Jail Appeal No.104/I/2010, filed against the judgment dated 14.10.2010 passed by the learned 1<sup>st</sup> Additional Sessions Judge, Hyderabad, in Crime No.36/2002, under Section 17 (4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 of Police Station B-Section, Latifabad, Hyderabad, whereby both the appellants were convicted and sentenced for imprisonment for life and to pay Rs.100,000/- (Rupees One Lac) each as compensation payable to the legal heirs of the deceased. The benefit of Section 382-B, Cr.P.C., however, was extended to them.

2. The facts constituting the background of the present appeal are that on 05.05.2002 complainant Mirza Amir Baig lodged FIR alleging therein that he used to reside in Unit No.6 Latifabad Hyderabad and had a furniture shop in Unit No.7, Latifabad Hyderabad. On the day of incident, he went to his showroom at 11.00 a.m., whereas his wife and daughter-in-law Naveeda Arshad were at home. At about 11.45 a.m., his daughter-in-law came to his showroom and informed that at about 11.30 a.m., she heard the noise of her mother-in-law Kamal Fatima, whereupon she came down and found three persons giving her blows with hatchet (without handle) and knife. She identified one of the culprits as Imran, whereas the two other persons were unknown. On seeing her coming down, they left hatchet and knife and ran away. She raised cries, upon which, neighbour Aziz Ahmed and other persons came in the house and she narrated the incident to them. Upon receiving such information, the complainant rushed to his house where he found his wife lying dead on

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the ground in TV lounge. She had injuries with sharp edged weapons visible on her neck and other parts of her body and sufficient quantity of blood was there. Meanwhile, police from P.S. B-Section also came there and conducted legal formalities. The dead body of his wife was sent to Bhattai Hospital for postmortem. After burial, he came to police station to lodge the report.

3. After conducting usual investigation, police submitted challan against accused Attiqur Rehman, Muhammad Afzal and Imran Khan. Learned Trial Court on 01.04.2005 framed the charge against all the above named accused under Section 17 (4) Offences Against Property (Enforcement of Hudood) Ordinance, 1979, to which they pleaded not guilty and claimed trial. During the proceedings, accused Muhammad Afzal expired, therefore, proceedings against him were abated by the learned 1<sup>st</sup> Additional Sessions Judge, Hyderabad, vide order dated 27.01.2010.

4. The prosecution in support of its case examined complainant Mirza Amir Baig as Ex.6, he produced FIR as Ex.6/A. Evidence of PW-2 Aziz Khan was recorded as Ex.7, he produced Danistnama as Ex.7/A. Evidence of PW-3 Naveeda Arshad was recorded as Ex.8. PW-4 Dr. Atiya Soomro was examined as Ex.9, she produced Police letter as Ex.9/A, postmortem report as Ex.9/B and Corrigendum as Ex.9/C. Evidence of PW-5 Aslam Parvez was recorded as Ex.10, he produced Mushirnama of arrest of accused Imran Khan as Ex.10/A. PW-6 Riyaz Ahmed recorded his evidence as Ex.11 and produced Mushirnama of recovery of robbed articles as Ex-11/A, Mushirnama of clothes as Ex-11/B, Memo of identification parade of accused Attiq ur Rehman as Ex.11/C and the memo of identification parade of accused Muhammad

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Afzal as Ex.11/D. Evidence of PW-7 SIP Salahuddin was recorded as Ex.12. PW-8 ASI Nisar Ahmed as Ex.14. PW-9 PC Riaz Khan as Ex/15, he produced mushirnama of arrest of accused Attiqur Rehman as Ex.15/A, mushirnama of recovery of Chhuri as Ex/15-B. PW-10, Sirajuddin was examined as Ex.16, who produced mushirnama of place of incident as Ex.16/A. PW-11 SIP Khalid Hussain Narejo as Ex/17, he produced Chemical Examiner's Report as Ex.17/A. PW-12 Mr. Asim Saeed Khan, Civil Judge, Karachi East was examined as Ex.18 who produced memo of identification parade of accused Attiqur Rehman and Muhammad Afzal as Ex.18/A, and 18/B, respectively.

5. After completing the evidence of prosecution witnesses, the side was closed vide statement of Deputy District Public Prosecutor dated 16.09.2010. Statements under Section 342, Cr.P.C. of accused Attiqur Rehman and Imran Khan were recorded as Ex.23 and 24, respectively, wherein they denied the case of prosecution and pleaded that they have been involved in this case falsely but at the same time they neither examined themselves on oath nor examined any witness in their defence.

6. At the conclusion of trial, the Trial Court convicted the appellants vide judgment dated 14.10.2010, which is impugned before this Court.

7. We have heard the learned counsel appearing for the appellants and the learned counsel for the State.

8. It is contended by the learned counsel for the appellants that both the present appellants are not the real culprits but it could be accused Muhammad Afzal who might have committed this offence. She further contended that as there are material contradictions in the evidence of

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prosecution witnesses; therefore, the prosecution has failed to prove the charge against the appellants.

9. On the other hand, it is contended by the learned State counsel that there is direct evidence against the present appellants connecting them with the commission of crime, therefore, the Trial Court has rightly convicted them in the present case, and in so far the minor contradictions are concerned, they are negligible. In support of his contentions, he has relied upon the following case laws:

- (i) PLD 2003 SC 704 (*Muhammad Amjad v. State*)
- (ii) 1995 SCMR 1793 (*Zakir Khan v. State*)
- (iii) 2005 SCMR 810 (*Elahi Bakhsh v. State*)
- (iv) 2007 SCMR 808 (*Ghulam Nabi v. The State*)

10. As per prosecution story, brutal murder of deceased Kamal Fatima was committed in the course of the present crime. So far as the death is concerned, this fact is even not disputed by either side. But the moot point is as to whether the present appellants are involved in causing murder of deceased or not. In this respect, the star witness of the prosecution is Naveeda Arshad who is the daughter-in-law of deceased and complainant. She in her evidence has clearly and categorically deposed that present appellant Imran alongwith two accused has committed the murder. For ready reference the relevant portion of her evidence is reproduced as under:

*"I heard her cries of my mother –in-law, then I saw from the upper storey that accused Imran (who was also working in our furniture shop and was known to me previously) and two unknown accused persons were also with him who were running from our house towards outside, clothes of all three accused persons were blood stained, out of three accused persons, one of accused having Chhuri/knife who*

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*was apprehended by Mohallah people on my cries and later on I came to know his name as Atiqur Rehman. I also saw that accused Imran and other one were empty handed, then I came down from upper storey to ground floor and found that my mother-in-law was seriously injured, blood was oozing from her body”*

11. The perusal of evidence reveals that Naveeda Arshad in clear words has implicated the present appellant Imran along with two other accused persons whom she had later on identified at the time of identification parade before the IIIrd Extra Joint Civil Judge & FCM, Hyderabad. The above witness was cross-examined by the learned counsel for the appellants but her evidence on all material points has gone unshaken. It has come in evidence that accused Imran was earlier working at the furniture shop of the complainant, therefore, he was familiar with the family members. The availability of the accused persons at the time of incident in the house of complainant causing murder of deceased Kamal Fatima and recovery of weapons used in crime have neither been disputed nor challenged by the defence counsel during cross-examination. It is also apparent from the facts of this case that the PW Naveeda Arshad has no enmity, personal grudge or motive against the appellants to implicate them maliciously.

12. The F.I.R. has been lodged promptly against appellant Imran and his two associates. No enmity of appellants with the complainant party prior to the incident is neither alleged nor proved by the defence. Simply it was suggested that the accused have been falsely implicated due to the enmity but no details or nature of enmity is disclosed.

13. So far as the evidence of remaining PWs is concerned, there appears no material contradiction in their evidence. We have perused the record minutely and have not been able to find any material discrepancy

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or contradiction in the prosecution evidence or any misreading or non-reading of the evidence by the Trial Court coming to the conclusion regarding guilt of present appellants. On the contrary it appears that the evidence brought on record by the prosecution is confidence-inspiring and sufficient to prove the charge against the present appellants. It is admitted position that a callous murder has been committed and the ocular and circumstantial evidence connects the present appellants with the commission of crime.

14. In the light of foregoing reasons we do not find any substance in the present appeal and the same is accordingly dismissed.

JUSTICE MRS ASHRAF JAHAN

MR. JUSTICE RIAZ AHMAD KHAN  
CHIEF JUSTICE

*Karachi*  
Dated, 02.12.2016  
Daud/\*\*