

HIGH COURT OF AZAD JAMMU & KASHMIR  
(Shariat Appellate Bench)

*Criminal Appeal No.47/2006;*  
*Date of Institution 28.12.2006;*  
*New No.12/2017, dated 01.11.2017;*  
*Date of Decision 03.08.2022.*

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Muhammad Sagheer alias Kodoo S/o  
Muhammad Aziz alias Punoo R/o Galitar  
Tehsil Nikyal District Kotli presently in  
Judicial Lockup Kotli.

*Convict-Appellant*

*V E R S U S*

1. State through Police Station Sehnsa.
2. Hafiz Abdul Rasheed Noumani S/o Jaan  
Muhammad Caste Gujjar R/o Kahni  
Syedan Tehsil Sehnsa District Kotli.  
(Complainant)

*Respondents*

3. Additional Advocate General.

*Proforma-Respondent*

APPEAL AGAINST THE IMPUGNED JUDGMENT OF  
ADDITIONAL DISTRICT COURT OF CRIMINAL JURISDICTION  
SEHNSA/CAMP KOTLI DATED 23.12.2006

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**(2)**

*Murder Reference No.46/2006;*  
*Date of Institution 26.12.2006;*  
*New No.13/2017, dated 01.11.2017;*

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The State through Hafiz Abdul Rasheed  
Noumani S/o Jaan Muhammad Caste Gujjar  
R/o Kahni Syedan Tehsil Sehnsa District Kotli.

*Complainant/Appellant*

*V E R S U S*

Muhammad Sagheer alias Kodoo S/o  
Muhammad Aziz alias Puno R/o Galitar Tehsil  
Nikyal District Kotli presently detained in  
Judicial Lockup Kotli.

*Convict-Respondent*

REFERENCE FOR CONFIRMATION OF DEATH SENTENCE

**Before:- Justice Sardar Muhammad Ejaz Khan, J.**  
**Justice Khalid Rasheed Chaudhary, J.**  
*(Division Bench)*

PRESENT:

Ch. Muhammad Ajaib Advocate for the convict-  
appellant.

Mirza Abdul Aziz Ratalvi, Advocate for the  
complainant.

Mr. Shahnawaz Advocate, AAG, for the State.

JUDGMENT:

**Sardar Muhammad Ejaz Khan, J.** The captioned  
appeal No.47/2006 (12/2017) has been filed by the  
convict-appellant, Muhammad Sagheer alias Kodoo  
against the judgment passed by the learned  
Additional District Court of Criminal Jurisdiction,

Sehnsa/Camp, Kotli, on 23.12.2006 whereby convict-appellant was convicted and awarded sentence under Section 20 of the offences against Property (Enforcement of Hudood) Act, 1985 read-with Section 382, APC for 10 years imprisonment along-with fine of Rs.50,000/-, in default of payment of fine, he shall undergo further two years simple imprisonment and for the murder of four deceased namely Mst. Nazeer Begum, Mst. Zaroof Begum, Muhammad Jamil and Ghonsia, he was awarded death sentence on four counts in offence under Section 302 (b) APC, however, he was acquitted of charge in offence under Section 10 ZHA, whereas the reference was sent by the learned Additional District Court of Criminal Jurisdiction, Sehnsa/Camp Kotli, for confirmation of death sentence awarded to the above convict-appellant.

2. Facts of the prosecution case as it gleans from the FIR are that complainant-Hafiz Abdul Rasheed Noumani S/o Jan Muhammad Caste Gujjar

R/o Kehni Syedan Tehsil Sehnsa submitted a written report at Police Station, Sehnsa, on 26.04.2006 alleging therein that he is resident of Kehni Syedan and he has been appointed by Hazrat Sahib as Teacher in Hajiabad Sehnsa 'Daras'. Nowadays he is in the said 'Daras, and on the day of occurrence at about 06.30 A.M. he was present in 'Daras' when Sakhi Muhammad S/o Haji Faqir Muhammad Caste Jutt R/o Saroha informed him to reach home immediately. On this information, the applicant through *Hi ace* rushed to home where his brother Muhammad Saleem told him about the incident that last night i.e. 25/26 April, some unknown persons entered into houses of applicant and his brother Munshi Khan and killed his wife Nazeer Begum, Muhammad Jamil son, Mst. Zarooft Begum sister-in-law and Ghonsia younger niece who were sleeping in the courtyard with hatchet/axe and the articles luggage in two houses were scattered while wearing cloths (trousers) of his

wife Nazeer Begum and his sister-in-law Mst. Zarooof Begum had been taken off from their bodies. Unknown accused-persons committed *Zina-bil-Jabar* with them and they have also stolen gold ornaments i.e. chain, two earrings and ring amounting to Rs.50,000/- while his brother Munshi Khan went for earning his livelihood who himself will tell the detail of his stolen things. Dead bodies are lying at the spot, hence, proceedings under law may be initiated.

3. On this report, a case illat No. 46/06 under section 302, 34 APC 17(4) (Enforcement of Hudood) Act, and 10 of Zina Act, was registered against unknown accused-persons while dead bodies were shifted to THQ Hospital Charhoi where autopsy of the dead bodies of Nazeer Begum, Muhammad Jamil, Mst. Zarooof Begum & Ghonsia was conducted. The investigating agency visited at the spot and collected the material used in the crime through different recovery memos while site

plan of the place of occurrence was prepared by Patwari and later on, recovered articles were sent to Forensic Lab Lahore for chemical examination. During investigation the police arrested the accused-appellant, Muhammad Sagheer alias Kodoo and on his pointation articles i.e. a cash amount of Rs.22000/-, one wristwatch OMAX, chain, 30 bore Pistol with magazine, two stitched male dresses, gold ornaments, chain, earrings, ring etc. were recovered in presence of the complainant, his brother Munshi Khan and other witnesses and their statements under Section 161 of Cr.P.C were recorded while accused-Sagheer alias Kodoo with his free will got recorded his confessional statement under Section 164 of Cr.P.C. before the SDM, Sehnsa in which he fully confessed his crime and bluntly stated that he not only committed murder of four persons but also committed Zina-bil-Jabbar with Nazeer Begum and Mst. Zarooof Begum when they were taking their

last breaths. After completion of investigation, a challan was submitted before the Additional District Court of Criminal Jurisdiction Sehnsa/Camp Kotli on 01.08.2006 in offences under sections 302 APC, 17(4) (Enforcement of Hudood) Act, and 10 ZHA. On 08.08.2006, the convict-appellant was examined under section 265-D, Cr.P.C, wherein he pleaded not guilty and opted for the trial of the case. The trial Court directed the prosecution to lead the evidence. The prosecution produced Hafiz Abdul Rasheed Nomani (P.W-1), Munshi Khan (P.W-2), Muhammad Taj (P.W-3), Abdul Majeed (P.W-4), Abdul Haleem (P.W-5), Muhammad Altaf (P.W-6), Ashiq Husain (P.W-7), Muhammad Kabeer Patwari (P.W-8), Lady Dr. Hamira Saleem CMO (P.W-9), Dr. Tasveer Hussain Shah THQ Hospital Sehnsa (P.W-10), Ansar Yaqoob SDM, Sehnsa, (P.W-11), Muhammad Azeem Head Constable No.163 (P.W-12), Muhammad Riaz Constable No.101 (P.W-13), Zahoor Ahmed

S.H.O./SI (P.W-14), Raja Shabir Ahmed D.S.P. (P.W-15) and Mirza Shoukat Hayyat Inspector/S.H.O. (P.W-16).

4. After conclusion of evidence, the accused-appellant was examined under Section 342 of Cr.P.C. who denied the guilt of offence and after that he was provided an opportunity of defence evidence but he failed to do so whereas the statement of accused-appellant was recorded under Section 340 (2) of Cr.P.C. on 13.12.2006. After conclusion of trial the accused-appellant was convicted and sentence as mentioned in pre-*paras* vide impugned judgment dated 23.12.2006.

5. Heard. Record perused.

6. This is case of circumstantial evidence. Before attending the merits of the case, we deem it proper to mention here that though the alleged crime was an unseen incident and Muhammad Sagheer's conviction rests on circumstantial

evidence, it is settled law that even in a case involving death sentence, conviction can follow on circumstantial evidence, but that such circumstantial evidence should provide all links in an unbroken chain where one end of the chain touches the dead body and the other the neck of the accused. It is yet to be determined that whether under this yardstick the prosecution proved its case beyond any shadow of doubt.

7. In the instant case complainant-Abdul Rasheed submitted a written report at Police Station Sehnsa on 26.04.2006 alleging therein that some unidentified accused-persons murdered his four family members namely Mst. Nazeer Begum (wife), Muhammad Jamil (son), Mst. Zarooof Begum (sister-in-law), and Ghonsia (niece) with sharp edge weapon (hatchet) while the accused-persons committed Zina-bil-Jabar with his wife and *sister-in-law* and also stole gold ornaments, cash amount of Rs.50,000/- etc. On this report, a case illat

No.46/2006 was registered against the unknown persons on 26.06.2006 and the dead bodies were shifted to THQ Hospital Charhoi where autopsy of Nazeer Begum (*Exh. "POO"*), Zarooof Begum (*Exh. "PRR"*) & Ghonsia (*Exh. "PSS"*) was conducted by Dr. Umaira Saleem (P.W-9) while autopsy of Muhammad Jamil having age of five months (*Exh. "PFF"*) was conducted by Dr. Tasveer Hussain Shah CMO THQ Sehnsa (P.W-10). The cause of death of Nazeer Begum was reported by concerned CMO (P.W-9) due to use of sharp edge weapon and blunt weapon and cause of death of Zarooof Begum & Ghonsia appears to have been reported by concerned CMO lady Dr. Umaira Saleem (P.W-9) due to use of sharp edge weapon while cause of death of Muhammad Jamil appears to have been mentioned in autopsy report due to fracture of skull bone conducted by Dr. Tasveer Hussain Shah CMO THQ Sehnsa (P.W-10).

8. The investigating agency got prepared site plan (*Exh.PBB/ 1*) from the concerned Patwari and collected the articles through different recovery memos, which were sent to the Chemical Examiner and thereafter, the accused-appellant was apprehended by the concerned police on 06.07.2006 . The statement of accused-appellant was recorded under Section 164 of Cr.P.C. by SDM Sehnsa (P.W-11) on 14.07.2006 where he got recorded his confessional statement as stated above pertaining to murder of four persons in a brutal manner as has been alleged by the complainant in his report.

9. On the pointation of accused-appellant, the investigating agency recovered the stolen articles i.e. cash amount of Rs.22,000/-, wristwatch OMAX No.4619, 30 bore pistol along-with magazine, two stitched male suits, which were recovered in presence of witnesses from his house situated at Chaksawari through recovery memo

(*Exh. "PC"*) on 20.06.2006 while the same were identified by the complainant, Hafiz Abdul Rasheed and Munshi Khan. The other stolen gold ornaments, which were sold by the accused-appellant at Raja Bazar Hamna jeweller Rawalpindi were recovered on 25.06.2006 on his instance vide recovery memo *Exh. "PD"*. Crime weapon hatchet/axe was also recovered vide recovery memo *Exh. "PR"* on 26.04.2006.

10. We have examined the statements of the prosecution witnesses and after examining the same, we are of the unanimous view that recoveries made by the investigating agency through different articles i.e. cash amount, gold ornaments, stitched cloths & wristwatch on the pointation of the convict-appellant fully corroborate the evidence of the prosecution witnesses. These recovered articles were identified by complainant-Hafiz Abdul Rasheed and his brother Munshi Khan. For example the accused-appellant in his statement

before the SDM Sehnsa stated that he took the hatchet/axe from the house of the deceased persons, its handle was broken who rolled around it shopper and cloth, which was recovered drenched in blood vide recovery memo *Exh. "PR"* and receipt of wristwatch OMAX No.4619 *Exh. "PX"* produced by the complainant matches with the article, which was recovered on the pointation of accused-appellant through recovery memo *Exh. "PC"* and other recovery proceedings were conducted by the investigating agency. The disclosure made by the convict-appellant was voluntary and the subsequent recovery of the above said articles (*Exh. "PC" & Exh. "PD"*) made from his residential house and Raja Bazar Humna Jewellers Rawalpindi is plainly believable as all the P.Ws have replied the questions put to them during the cross-examination in straightforward manner. We do not find any discrepancy in their statements rather they appear to have corroborated each other

impeccably. The investigating officer also took into his possession various articles soon after from the place of occurrence. The statements of P.Ws run smoothly leaving behind the impression of creditworthiness, forthrightness and uprightness. Medical report also corroborates the prosecution version because death of Muhammad Jamil was occurred due to head injury, which also establishes from the statement of the accused-appellant made before the Magistrate under Section 164 of Cr.P.C. that when he tried to keep shut him, he could not stop weeping then he threw him in the cattle shed and no voice was listened. All the P.Ws are independent witnesses and there is nothing on record that P.Ws have any ill will, grudge or enmity against the convict-appellant.

11. We have examined the confessional statement and found that Ansar Yaqoob, Magistrate (P.W-11) after observing the requisite requirement of law recorded the same who also

appeared before the Court and stated that confessional statement was voluntary and true, which was recorded with free will of the accused-appellant. Even otherwise, any lapse by the Magistrate in recording the confessional statement cannot always be treated as fatal to evidentiary value of the confessional statement. When the Court is satisfied that lapse on the part of the Magistrate is not adversely affected the voluntariness and truthfulness of the confession. Reliance can be placed on cases reported as [1999 SCMR 1744] and [1992 SCMR 1983]. We do not find any infirmity in the confessional statement rather accused-appellant voluntarily made confessional statement before the Magistrate (P.W-11).

12. It is relevant to mention here that prosecution has brought other strong circumstantial evidence against the convict-appellant as discussed earlier. Circumstantial

evidence in this case produced by the prosecution during the trial is of impeachable character and the convict-appellant also made voluntarily confessional statement before the Magistrate while the chain required to be assembled by the prosecution on the basis of circumstantial evidence stands built uninterruptedly each loop whereof, perfectly fits in other loop, thus, creating a series of links well-imbedded *inter se*. In the case of circumstantial evidence as stated earlier that the evidence and chain so built by the prosecution on the basis of evidence produced by it during trial, must touch on one end the dead body of the deceased and the other end with the neck of the accused. This is what has exactly happened in the instant case, the prosecution case stands more than proven on the basis of circumstantial evidence and it can easily be concluded that prosecution had fully succeeded in establishing the guilt of convict-appellant beyond any shadow of doubt. The learned

trial Court recorded well-reasoned judgment, which does not call for any legal interference by this Court.

13. It is not out of place to mention here that the convict-appellant is involved in series of criminal cases. It appears that the convict-appellant was convicted and awarded death sentence two counts as '*Tazir*' in a case illat No.20/2006 registered at Police Station, Nar, in offences under Sections 302 (b), 392, APC vide judgment dated 30.04.2007, which was upheld by Shariat Court vide its judgment dated 18.02.2014 while a case illat No.33/2006 registered at Police Station Islamgharh against the convict-appellant in offences under Sections 302/459 APC 17 (4) EHA is under trial before the competent Court of law, hence, the gravity of offence regarding murder of four innocent persons in the case in hand is not only inhuman and barbaric but it is also an entirely ruthless crime followed by cold blooded murder and

an affront to the human dignity of the society. The brutal nature of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the Courts while considering the confirmation of the sentence of death. Four innocent persons who were defenceless appear to have been done to death in a brutal and inhuman manner, which makes this case a '*rarest of the rare*' case which calls for no punishment other than the capital punishment, hence, we have left no option except to confirm the sentence of death imposed upon the convict-appellant by the learned trial Court.

14. For what has been discussed above, we are of the unanimous view that the conviction and sentence awarded to the convict-appellant by the learned trial Court through the impugned judgment dated 23.12.2006 is hereby upheld and death

sentence awarded to the convict-appellant is confirmed. Resultantly, the appeal No.47/2006 (12/2017) filed by the convict-appellant is dismissed while murder reference No.46/2006 (13/2017) is answered in affirmative. A copy of this judgment shall be annexed with the other relevant file.

Muzaffarabad:  
03.08.2022 (ZEB)

-Sd-  
**JUDGE**  
(E)

-Sd-  
**JUDGE**  
(K)