

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S- 249 of 2017
Criminal Revision Application No.S- 179 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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06.05.2024.

M/s Aijaz Shaikh and Kamran Baig, Advocates for appellant
alongwith appellant (on bail).

Mr. Shahid Shaikh, Additional Prosecutor General, Sindh.

M/s Sameeullah Rind and Bilal Mustafa Chandio, Advocates
for complainant alongwith complainant.

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With regard to appeal against conviction and criminal revision
application, I have heard the learned counsel for appellant, learned
A.P.G for State as well as learned counsel for the complainant.
Reserved for Judgment.

Tufail

HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD

Cr. Appeal No.S-249 of 2017

[Irfan Ali versus The State]

Cr. Revision Application No.S-179 of 2017

[Fateh Muhammad Rind & another versus Irfan Ali Rind & another]

Appellant/Respondent : Through Mr. Aijaz Shaikh advocate
a/w Mr. Kamran Baig advocate

Complainant / Applicants : Through Mr. Sameeullah Rind advocate
a/w Mr. Bilal Mustafa advocate

The State : Through Mr. Shahid Ahmed Shaikh
Additional Prosecutor General Sindh

Date of hearing : 06.05.2024

Date of decision : 10.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- Appellant Irfan Ali has challenged the Judgment dated 13.10.2017 passed by the learned Sessions Judge Shaheed Benazirabad in Sessions Case No.360 of 2014 (*Re: The State versus Irfan Ali*), outcome of Crime No.17 of 2014 registered at P.S Taluka Nawabshah under Sections 324, 337-H(ii), 337-F(iii), 337-F(vi) and 337-L(ii) PPC, whereby he has been convicted and sentenced as follows:

- (i) *The accused Irfan Rind is sentenced for (05) years R.I and fine of Rs.50,000/- (fifty thousand) for committing offence U/s 324 PPC. In default of fine payment he shall suffer 06 months more S.I.*
- (ii) *The accused Irfan Rind is sentenced for (03) years R.I for committing offence U/s 337-F(i) PPC. He is also directed to pay Rs.50,000/- (fifty thousand) as Daman to injured Fateh Muhammad. In case of non payment of Daman he will suffer S.I till Daman is paid.*
- (iii) *The accused Irfan Rind is sentenced for (05) years R.I for committing offence U/s 337-F(vi) PPC. He is also directed to pay Rs.1,00,000/- (one lac) as Daman to injured Fateh Muhammad. In case of default in payment Daman he will suffer S.I till Daman is paid.*

However, all the above sentences have been ordered to run concurrently and benefit of Section 382-B Cr.PC has also been

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extended to appellant; whereas injured Fateh Muhammad Rind and complainant Ali Asghar have also preferred the captioned revision application for enhancement of aforesaid sentences.

2. The brief facts of the case are that on 03.02.2014 at about 1000 hours complainant Ali Asghar appeared at P.S Nawabshah and lodged the subject FIR by alleging that there is dispute between them and Irfan Rind as such Irfan Rind used to tell his brother Fateh Muhammad to withdraw from such case and land also otherwise he will kill him; that yesterday at evening Raees Muhammad Ayoub Rind called them, hence his brother Fateh Muhammad Rind aged about 50 years and cousins Ali Khan s/o Muhammad Saleh Rind took their motorcycles and were going towards Raees Muhammad Rind; that Fateh Muhammad was going in front of them, when at about 6pm they reached at Sijawal Shakh road near Government Tubewell, they saw three persons standing at road each one namely Irfan Ali S/o Abdul Haleem Rind having Pistol in his hand and two unknown persons having Rifle and Kalashnikov in their hands and a 125 black coloured motorcycle was also standing beside them, who stopped Fateh Muhammad and meanwhile Irfan Ali made straight fires at Fateh Muhammad with intention to commit his murder, hence Fateh Muhammad fell down from his motorcycle; that they made hakals to accused persons who issued murderous threats to them meanwhile his cousin Gul Muhammad S/o Muhammad Idrees also reached there on his motorcycle, who beseeched the accused with the name of Almighty Allah on which Irfan Rind told Fateh Muhammad that today he has been saved but in future he will not leave him then accused persons went away on their motorcycle by making aerial firing, then they saw that Fateh Muhammad had firearm injuries on both arms, shoulder and right side of flank; they immediately shifted him to Civil Hospital Nawabshah for treatment and remained busy their whole night and today appeared at P.S and complained that above accused persons with their common intention caused pistol injuries to his brother in order to commit his murder and also created harassment by making aerial firing; that

two unknown person were also seen by them perfectly and they will be identified; complaint is that investigation may be carried out.

3. After usual investigation police submitted the challan and the learned trial Court after completing necessary formalities framed the charge against the appellant/respondent to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined five (05) witnesses, who exhibited numerous documents and other items. Then statement of accused under Section 342 Cr.P.C was recorded whereby he denied the allegations leveled against him and claimed his false implication on account of enmity. However, he neither examined himself on Oath nor led any evidence in his defense.

5. After hearing the parties and assessing the evidence on record the trial court convicted and sentenced the appellant/respondent as reproduced under opening paragraph of this Judgment, hence appellant has preferred captioned appeal against his conviction while injured and complainant preferred revision application for enhancement of said sentences. Since captioned appeal and revision have been preferred against the same judgment, as such both are being decided through this common judgment.

6. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account enmity hence the FIR was lodged after a delay of 16 hours which gave the complainant's side the chance to cook up a false case against the appellant; that the eye witnesses are planted witnesses and there evidence be discarded especially as they are all related to the deceased; that the ocular evidence contradicts the medical evidence; that the recovery of empties is of no assistance when no fire arm has been recovered and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In the event that this court upheld the conviction of the appellant no case had been made out to revise the sentences handed down by the trial court as the court had rightly exercised its discretion in terms of sentencing based on the

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particular facts and circumstances of the case and the revision application be dismissed. In support of his contentions, he placed reliance on the cases of (i) HASHIM QASIM and another vs. The STATE [2017 SCMR 986], (ii) FAHEEM AHMED FAROOQUI vs. The STATE [2008 SCMR 1572] and (iii) SAINDAD and 2 others vs. The STATE [1972 SCMR 74].

7. Learned APG as well as learned counsel for the complainant, after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, they contended that the FIR was lodged promptly which gave no opportunity for the appellants to make up a false case against the appellant; that their were two eye witnesses to the shooting incident one of whom was injured on the spot both of whose evidence could be safely relied upon; that the medical evidence supported the ocular evidence; that empties were recovered from the crime scene which supported the prosecution case and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions, they placed reliance on the cases of (i) MOHIBULLAH alias GANDHGEER and others vs. The STATE [2024 MLD 525], (ii) QUTUB KHAN vs. The STATE and another [2024 P Cr.L.J 516], (iii) QASIM SHAHZAD and another vs. The STATE and others [2023 SCMR 117], (iv) SAJID MEHMOOD vs. The STATE [2022 SCMR 1882] and (v) LIAQAT vs. The STATE [2006 SCMR 33].

8. With regard to the enhance of the sentence under S. 324 PPC from 5 years the learned APG contended that the trial court had correctly exercised its discretion in awarding the appellant 5 years for this offence and that the revision application be dismissed. On the other hand learned counsel for the complainant contended that the trial court had erred in exercising its discretion under S. 324 PPC based on the particular facts and circumstances of the case whereby the appellant fired 4 shots at the injured Fateh and as such is sentence should be increased. In support of his contentions he

placed reliance on the case of SHEQAB MUHAMMAD vs. The STATE and others [2020 SCMR 1486]

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9. I have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh and learned counsel for the complainant and have gone through the entire evidence which has been read out by the learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, recovery of empties at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Fateh Muhammed (Fateh) was injured by firearm on 07.02.2014 at about 6pm at village Pai Khan Rind near tube well Manzoor Khan Rind, Deh 08 Dad Taluka Nawabshah.

11. The only question left before me therefore is who injured Fateh by firearm at the said time, date and location?

12. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) Admittedly the FIR was lodged after a delay of 16 hours of the incident however based on the particular facts and circumstances of the case I find that his delay has been fully explained as initially his injured brother/Fateh had to be taken to hospital for treatment which was about 25KM's away and would have taken considerable time to reach where he remained overnight receiving treatment after receiving 4 gunshot wounds and then once Fateh was out of danger the complainant went to lodge the FIR at the PS which was again a return distance of 25 KM's and as such I find that this delay is not fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).
- (b) The appellant is named in the FIR with the specific role of making direct fire on Fateh which lead to him sustaining firearm injuries.

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(c) In my view the prosecution's case primarily rests on the eye witnesses to the attempted murder whose evidence I shall consider in detail below;

- (i) **Eye witness PW 1 Ali Asghar. He is the complainant and is the brother of the injured Fateh.** According to his evidence prior to this incident the accused had a dispute with Fateh over agricultural land who had threatened Fateh to withdraw the land and the cases otherwise he will murder him. On 07.02.2014 their nekmard had called a fesla and he and Ali khan were going there on one bike whilst his brother Fateh was going on another bike. At about 6pm when they reached Government tube well near village Sujwal Shaikh link road he saw accused with a pistol and two unknown persons with a rifle and KK. Accused signaled Fateh to stop whereupon accused made straight fire at Fateh with intention to murder him as well as firing at them. The accused then escaped by making aerial firing. They then shifted Fateh to hospital where they were busy in treatment overnight and then he went to lodge the FIR.

This eye witness knew the appellant before the incident and saw the appellant from close range firing at his brother Fateh with a pistol which fire hit Fateh. Since it was a day light incident and the witness saw the accused fire at Fateh from close range (10 to 15 paces) with a pistol there is no case of mistaken identity and no need to hold identification. The accused is also named with specific a role in the FIR. In this respect reliance is placed on the cases of **Amanullah v State** (2023 SCMR 527) and **Qasim Shazad V State** (2023 SCMR 117).

Admittedly the eye witness was related to the deceased who was his brother and also there appears to be enmity between the parties over agricultural land and hence I have considered the evidence of this witness with some caution.

This eye witness is not a chance witness as he was going with his injured brother Fateh to sort out their dispute with Irfan with their local nekmard when the incident took place. There are no material improvements in his FIR from his evidence. He was not dented during a lengthy cross examination and he gave his evidence in a natural manner and thus I believe his evidence to be trust worthy, reliable and confidence inspiring and I believe the same.

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his evidence to be trust worthy reliable and confidence inspiring. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and**

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another v. The State and another (2011 SCMR 725) Muhammad Ismail vs. The State (2017 SCMR 713) and Qasim Shazad V State (2023 SCMR 117). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witnesses to be of good quality and believe the same.

- (ii) Eye witness PW 2 Fateh Muhammed. He is the brother of the complainant and was fired upon by the accused and injured. His evidence corroborates the evidence of the complainant in all material respects. He is named as the injured eye witness in the FIR. He states in his evidence that he was fired upon from about 4 feet which accounts for the blackening in one of his firearm wounds. He states that he was shot at on his arms, shoulder and stomach which accords with the medical evidence. His evidence was not materially improved on from his S.161 Cr.PC statement. Ordinarily I would have given no weight to his evidence since his S.161 Cr.PC statement was recorded 13 days after the incident however since he is named in the promptly lodged FIR and according to his evidence he was recuperating in the Aga Khan hospital from his 4 bullet injuries and it is settled by now that the evidence of an injured eye witness is deemed more reliable than usual eye witnesses. In this respect reliance is placed on the case of **Aquil V State** (2023 SCMR 831). He was not also dented during cross examination. He also knew the accused from before in this day light incident and he was injured by the accused which injury is supported by the medical evidence and his evidence is corroborated by the complainant I give some weight to his evidence.

Having believed the evidence of the two eye witnesses (albeit one with lesser weight) which is discussed above I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784) as under;

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"

- (d) That it does not appeal to logic, commonsense or reason that one brother would let the real person who seriously injured his other real brother get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).
- (e) That the medical evidence fully support the eye-witness/prosecution evidence that the injured Fateh received firearm injuries on the parts of his body as mentioned by the eyewitness complainant and Fateh who himself was the injured eye witness. In any event it is well settled by now that

if the medical evidence is in conflict with the ocular evidence the ocular evidence will take precedence over the medical evidence if it is found to be trust worthy reliable and confidence inspiring (which it is in this case). In this respect reliance is placed on the case of **Imran Mehmood versus The State and another** [2023 SCMR 795].

- (f) That there was no ill will or enmity between the police and the appellant and as such the police had no reason to falsely implicate the appellant in this case, for instance, by planting the empties at the crime scene. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO who was not dented during cross examination.
- (g) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669) and **Maskeen Ullah and another versus The State and another** (2023 SCMR 1568). The evidence of the PW's provides a believable corroborated unbroken chain of events from the agricultural dispute between the appellant and Fateh to the appellant shooting Fateh and seriously injuring him to the recovery of empties at the crime scene to the appellant initially absconding before being arrested.
- (h) That from the evidence it does not appear that the accused has denied his presence at the crime scene at the time of the murder of the deceased.
- (i) The motive for the attack on Fateh by the appellant has come on record through the FIR and witness evidence. Namely, that the appellant had a dispute with Fateh over agricultural land which was also the subject of civil litigation which the appellant wanted the injured Fateh to withdraw.
- (j) The appellant has a long CRO of similar type cases and even further cases were lodged against him whilst he was on bail in this case.
- (k) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can caste doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was falsely implicated in this case due to enmity and nothing more. He did not give evidence on oath or call any DW in support of his defence case and thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

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13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and sentenced in the impugned judgment and as such his appeal is dismissed.

14. In so far as the criminal revision application is concerned it is noted that the injured Fateh despite receiving 4 bullet wounds none of these hit vital parts of his body and he was not in danger of death. As per record Fateh only spent one day in hospital before discharging himself and no evidence of his treatment at the Aga Khan hospital was placed on record and as such I find no reason to interfere with any of the sentences handed down to the appellant in the impugned judgment and the criminal revision application is dismissed.

15. The appellant who is on bail shall be taken to custody by SHO P.S Taluka Nawabshah and returned to prison to serve out the remainder of his sentence. A copy of this judgment shall be sent to SSP Shaheed Benazirabad for compliance.