

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL JAIL APPEAL NO. S-234 OF 2017  
MUHAMMAD SIDDIQUE @ ABLI V/S THE STATE

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

**COMPOSITION OF BENCH**

**HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA**

**(S.B.)**

Date of last hearing (heard/reserved): 04-12-2023

Decided on: 11-12-2023

(a) Judgment approved for reporting

YES



**C E R T I F I C A T E**

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: -

- (i) This slip is only to be used when some action is to be taken.
- (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
- (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No. S - 234 of 2017

MUHAMMAD SIDDIQUE @ ABLI  
SON OF KEWRO QAMBRANI.

THROUGH SENIOR SUPERINTENDENT, CENTRAL PRISON,  
HYDERABAD.

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APPELLANT

VERSUS

=====

THE STATE

RESPONDENT

499

Soo

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

Cr. Jail Appeal No.S-234 of 2027

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

04.12.2023.

Ms. Ambreen Siyal, Advocate for appellant along with appellant present on bail.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.

I have heard the learned counsel for the appellant and learned A.P.G. Learned counsel for the complainant despite intimation notice preferred to remain absent. Reserved for judgment.

\*Hafiz Fahad\*

*Collaboration rule of Court not rule of law* 501

IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD

Criminal Jail Appeal No. S- 234 of 2017

MUHAMMAD SIDDIQUE @ ABLI

Versus

THE STATE

Appellant : Muhammad Siddique alias Abli s/o Kewro Qambrani (present on bail).	Through Ms. Ambreen Siyal, Advocate.
Respondent : The State	Through Ms. Sana Memon, Assistant Prosecutor General, Sindh.
None present for complainant despite being on notice.	
Date of hearing	04.12.2023
Date of judgment	11.12.2023

J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J.**-This Criminal Jail Appeal is directed against the judgment dated 27.09.2017, passed by the learned 1<sup>st</sup> Additional Sessions Judge, Mirpurkhas, in Sessions Case No. 182 of 2012 (re: The State versus Muhammad Siddique alias Abli), emanating from Crime No.26 of 2012, registered at Police Station Mehmoodabad Mirpurkhas, under section 302, 504 PPC, whereby the appellant Muhammad Siddique alias Abli has been convicted u/s 302(b) PPC as Ta'zir and sentenced to suffer imprisonment for life for committing the murder of deceased Ghanshamdas. He was also



directed to pay Rs.3,00,000/- (Rupees Three Lac) as compensation to the legal heirs of deceased as provided u/s 544-A Cr.P.C; and, in case of non-payment of said compensation, the appellant shall further undergo S.I for 05 months more. However, benefit of Section 382-B Cr.P.C was also extended to the appellant.

2. The brief facts of the prosecution case as mentioned in the FIR are as under:-

*"On 27.07.2012 at 2210 hours, complainant Rano lodged FIR, alleging therein he is Security Guard in Campus of University. Ghansham is his brother-in-law, who resides with him. Muhammad Siddique alias Abli Sheedi also resides in their Muhallah. His brother-in-law Ghansham had told him that he prohibited Muhammad Siddique for playing songs on mobile phone in Muhallah, on which there was exchange of hot words and Muhammad Siddique threatened to Ghansham. On 27.07.2012 at 2230 hours, the complainant along with his brother-in-law Ghansham, Lalchand and Din Muhammad Makrani was sitting at the house of Din Muhammad. Meanwhile, Muhammad Siddique alias Abli came there ridding on his motorcycle, abused the Ghansham and stated that since he (Ghansham) has prohibited him from playing songs, so he (accused) will not spare him today and then took out pistol from his fold and opened straight fire at Ghansham with intention to kill him, which hit on right side of his back, who fell down on the ground while crying and Muhammad Siddique alias Abli went away ridding on his motorcycle. Thereafter the complainant party saw that Ghansham had received fire arm injury on right side of his back and blood was oozing. They took Ghansham to Civil Hospital Mirpurkhas and obtained letter for his treatment, from where he was referred to Hyderabad. Thereafter, the complainant went to Police Station and lodged the report."*

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

4. At trial, the prosecution in order to prove its case examined 09 witnesses and exhibited numerous documents and other items. The statement of accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed his false implication by the complainant. However, neither the appellant examined himself on Oath nor led any evidence in his defense.

5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellant as stated earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

6. Learned trial Court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of political victimization; that there is an unexplained delay in lodging the FIR; that there are material contradictions in the prosecution case; that the alleged eye witnesses are not reliable and their evidence should be discarded; that the pistol was foisted on the appellant and that for any or all of the above reasons the appellant be acquitted of the charge by extending him the benefit of the doubt. In support of her contentions she placed reliance on the cases of **Tajamal Hussain Shah versus The State and another** [2022 SCMR 1567], **Muhammad Arif versus The State** [2019 SCMR 631], **Amanat Ali versus The State** [2017 SCMR 1976] and, **Haleem and others versus The State** [2017 SCMR 709].

8. Learned Assistant Prosecutor General Sindh on behalf of the State, who was also looking after the interests of the complainant, after going through the entire evidence of the prosecution witnesses as well as other record of the case has fully supported the impugned judgment. In particular she has contended that the delay in lodging the FIR has been fully explained; that there are three eye witnesses all of whose evidence can be safely relied upon who directly implicate the appellant in the murder of the deceased; that the medical evidence supports the ocular evidence; that the pistol (murder weapon) was recovered on the pointation of the appellant and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and the appeal be dismissed. In support of her



contentions, she placed reliance on the case of **Abdul Wahid versus The State** [2023 SCMR 1278].

9. I have heard the learned counsel for the appellant as well as learned A.P.G and have also perused the material available on record and 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 blood and empty at the crime scene which lead to both positive FSL report and chemical reports I find that the prosecution has proved beyond a reasonable doubt that Ghansham (the deceased) was intentionally shot by firearm in order to cause his death/murder on 26.07.2012 at 2230 hours in front of the house of Din Muhammed Makrani, Nasir Town, Mirpurkhas which lead to his death on 28.07.2012 from his firearm injury whilst he was receiving treatment in hospital.

11. The only question left before me therefore is who murdered the deceased 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) That the FIR was lodged with a delay of one day however based on the particular facts and circumstances of the case I do not find such delay fatal to the prosecution case. This is because after the shooting of the deceased he was immediately rushed to civil hospital Mirpurkhas for treatment and then shifted to civil hospital Hyderabad where he succumbed to his injuries on 28.07.2012. The FIR was lodged after the hospital arrangements had been made for the deceased and accordingly the FIR was lodged under Section 324 PPC before the death of the deceased. Only when the deceased died a day later was Section 302 PPC added to the FIR. Notably the FIR was lodged **prior** to the death of the deceased and as such any delay in the lodging of the FIR based on the particular facts and circumstances of the case has been fully explained leaving no chance for the complainant to cook up a false case against the appellant who he had no enmity or ill will with. 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 promptly lodged FIR with the specific role of shooting the deceased by firearm on account of a dispute with the deceased about playing loud music. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant which would motivate him to lodge a false case against the appellant.
- (c) In my view the prosecution's case rests on the eye witnesses to the murder whose evidence we shall consider in detail below;
  - (i) **Eye witness PW 1 Rano. He is the complainant in the case and is the brother in law of the deceased.** According to his evidence the deceased had informed him a couple of days before the incident that he had exchanged hot words with the appellant on account of the appellant playing his music loudly and the appellant warned him of dire consequences. That on 26.07.2012 he, along with the deceased and his brother Lalchand were returning to their village at about 10.30pm and were by the house of Din Muhammed Makrani when the appellant came there on his motorbike. The appellant got off his motor bike and told the deceased that he had wronged him by stopping him from playing his music and made a fire shot with a pistol which hit the deceased who fell down. The appellant then fled the scene and the deceased was taken to Mirpurkhas Hospital and thereafter to the LUMS hospital in Hyderabad. He then lodged the FIR but on the next day the deceased expired.

**This eye witness knew the appellant before the incident, and saw the appellant from a few feet away over a few minutes when the appellant shot the deceased so there is no case of mistaken identity and no need to hold an identification parade especially as he named the accused with specific a role in the promptly lodged FIR. In this respect reliance is placed on the cases of Amanullah v State (2023 SCMR 527), Qasim Shazad V State (2023 SCMR 117).**

Admittedly the eye witness was related to the deceased who was his son in law however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has not been proven in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State (2009 SCMR 99) Nasir Iqbal alias Nasra and another v. The**



**State (2016 SCMR 2152) and Ashfaq Ahmed v. The State (2007 SCMR 641),**

The complainant is **not** a chance witness. He lived in the same village as his son in law and was coming home with him after first going to the city so he had every reason to be where he was at the time of the incident. Any delay in registering the FIR is fully explained as mentioned above. His evidence reflects that of his FIR and there have been no material improvements in the same so as to render his evidence unreliable. He had no proven enmity with the appellant and had no reason to falsely implicate him in the murder of the deceased. His evidence was not dented despite lengthy cross examination which was given in a natural and straight forward manner. I find his evidence to be reliable, trust worthy and confidence inspiring and I believe the same and I can convict on his evidence alone. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State (2006 SCMR 1857)**. As also found in **Farooq Khan v. The State (2008 SCMR 917)**, 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 witness to be of good quality. As was held in the case of **Muhammad Mansha v. The State (2001 SCMR 199)**.

*"A bare perusal would reveal that the language as employed in the said Article 17(1)(b) is free from any ambiguity and no scholarly interpretation is required. The provisions as reproduced hereinabove of the said Article would make it abundantly clear that particular number of witnesses shall not be required for the proof of any fact meaning thereby that a fact can be proved only by a single witness "it is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality witnesses, case where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the Presiding Judge come into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify to the truth of the case for the*



*prosecution. The Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving facts". (Principles and Digest of the Law of Evidence by M. Monir, page 1458.*

- (ii) **Eye witness PW 2 Lalchand. Ramzan.** The deceased was his brother and he is also related to the complainant. His evidence corroborates that of the complainant in all material respects. He is named in the promptly lodged FIR as an eye witness. He gave his Section 161 Cr.PC eye witness statement with promptitude which was not materially improved on during his evidence. He is not a chance witness. He had no ill will or enmity to involve the appellant in a false case. He gave his evidence in a natural and straight forward manner and was not dented during the same. He knew the appellant from before so there was no need for an identity parade as he saw the appellant shoot the deceased from close range. I find his evidence to be reliable, trustworthy and confidence inspiring and I believe the same and place reliance on it. The same considerations apply to his evidence as to the evidence of the complainant.
- (iii) **PW 3 Din Muhammed. He is an independent witness.** He is named in the FIR. The incident happened outside his house so he is not a chance witness. Like the other two eye witnesses he saw the appellant, who he knew, shoot the deceased. He gave his Section 161 Cr.PC eye witness statement which was not materially improved upon at trial and he was not dented during his cross examination. His evidence corroborates the other eye witnesses mentioned above in all material respects with regard to the shooting and the same considerations apply to his evidence as to the two other eye witnesses and as such I rely believe and upon the same.

Having believed the eye-witnesses evidence I turn to consider the corroborative/supportive evidence whilst keeping in view that it was it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784), at P.786 para 4 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"*

Like wise in the case of **Sikandar Ali Lashari & another v. The State** (SBLR 2020 Sindh 981) it was held as under at P.1026 Para 4;

*"Each criminal case has its own peculiar facts. If eye witness account is found trustworthy then there is hardly any need for corroboration"*

Thus, based on my believing the evidence of the 3 PW eye witnesses mentioned above by way of abundant caution what other supportive/corroborative material is their against the appellant?

- (d) That it does not appeal to logic, commonsense or reason that a brother would let the real murderer of his 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 and post mortem report fully supports the eye-witness/ prosecution evidence that the deceased received a firearm injury which lead to his death.
- (f) That on his arrest a few days after the incident the accused lead the police to the murder weapon which was a pistol on his own pointation which was hidden at in the bushes outside his house in a place which the police would not be aware of.
- (g) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case, for instance, by foisting the pistol on him. 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).
- (h) That the empty recovered at the crime scene when matched with the recovered pistol lead to a positive FSL report.
- (i) That the blood stained earth recovered at the wardat and clothes recovered from the deceased were sent for chemical examination which report found the blood recovered at the scene and on the clothes to be human blood.
- (j) The motive for the murder has come on record. Namely, that the appellant was annoyed with the deceased for admonishing him for loudly playing his music and disturbing the tranquility of the neighbor hood.
- (k) 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) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides



a believable corroborated unbroken chain of events from the deceased telling the appellant to stop playing loud music which annoyed the appellant to the appellant shooting the deceased with a pistol to the death of the deceased through firearm injury to the recovery of the murder weapon (pistol) on the pointation of the appellant in a hidden place to the empty recovered at the crime scene leading to a positive FSL report when matched with the recovered pistol on the pointation of the appellant.

- (1) 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 during his cross examination was that the murder took place in the Otaq of Mir Muhammed Shah Talpur on account of politician rivalry and that Mir Muhammed Shah Talpur falsely implicated him in this case. The appellant however did not mention this in his section 342 Cr.PC statement, did not give evidence on oath and did not call any DW in support of his defence case. In fact apart from bald allegations he did not produce an iota of evidence to support his defence case. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence I disbelieve the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and sentenced and as such his appeal is **dismissed**. The appellant on bail shall be arrested by SHO PS Mehmoodabad District Mirpurkhas who shall return the appellant on bail to Central Prison Hyderabad to serve out the remainder of his sentence. A copy of this judgment shall be sent to SSP Mirpurkhas for compliance.