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## IN THE HIGH COURT OF SINDH, KARACHI

*Present:*

*Mr. Justice Mohammad Karim Khan Agha  
Justice Mrs. Kausar Sultana Hussain.*

### Special Criminal Anti-Terrorism Appeals No.04 & 05 of 2019

Appellant in both Appeals: Muhammad Rehan S/o Abdul Rafique through  
Mr. Mallag Assa Dashti, Advocate

The State: Through Mr. Muhammad Iqbal Awan, Additional  
Prosecutor General, Sindh

### Criminal Revision Application No.36 of 2019

Appellant State: Through Mr. Muhammad Iqbal Awan, Additional  
Prosecutor General, Sindh .

Respondent: Muhammad Rehan S/o Abdul Rafique through  
Mr. Mallag Assa Dashti, Advocate

Date of Hearing: 23.11.2021

Date of Judgment: 30.11.2021

## J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** The Appellant Muhammad Rehan has filed these appeals whereby he was convicted in the Court of Anti-Terrorism Court No.VIII, Karachi in Special Cases No.AJ-200/2015 (New Special Case No.283/2015) in FIR No.124/2015 u/s. 302/324/353/34 PPC R/w Section 7 ATA, 1997 and Special Case No.AJ-223/2015 (New Special Case No.293/2015) in FIR No.130/2015 u/s. 23 (1) (a) Sindh Arms Act, 2013 registered at P.S. Super Market, Karachi vide Judgment dated 12.12.2018 and was sentenced to suffer life imprisonment for the offence punishable u/s. 7(i)(a) of ATA, 1997 R/w Section 302 PPC with fine of Rs.500,000/- and in case of non-payment, he shall suffer imprisonment for 03 years more. He was also convicted u/s. 353 PPC and sentenced R.I. for 02 years. He was also convicted u/s. 23 (1) (a) Sindh



Arms Act, 2013 and sentenced to R.I. for 10 years with fine of Rs.200,000/- and in case of non-payment, he shall suffer imprisonment for 01 year more. All sentences were ordered to run concurrently. However, he was also given the benefit of Section 382-B Cr.P.C. On the other hand the State has also filed Criminal Revision Application No.36 of 2019 for the enhancement of the sentence of the appellant awarded to him in the above said judgment from life imprisonment to the death penalty.

2. The brief facts of the prosecution case are that on 23.08.2015 while patrolling PC Atif Raza (complainant) and PC Maqsood Khan (deceased) reached at SM Toufeeque road near Narang Cinema Liaquatabad Karachi at about 0115 hours when they tried to stop the motorcycle riders due to suspicion of having committed crimes. Instead of stopping however, the accused sitting behind the driver started firing upon them with intention to commit their murder, as a result of which, PC Maqsood Khan received fire shot injury. PC Atif Raza also fired in retaliation. Both the accused fell down from the motorcycle. One of the accused called his companion and said "Rehan! Standup and run". The accused left their motorcycle No.MAX-3123 maker Pak Hero of black colour at the spot and escaped by foot in the street of Narang Cinema. The complainant saw that PC Maqsood Khan was lying on the ground unconscious and was profusely bleeding. The complainant informed duty officer SIP Ghous Bux about the incident. In the meanwhile SIP Ghous Bux with an Ambulance reached at the spot and injured PC Maqsood Khan was brought to Aga Khan Hospital, Karachi where he succumbed to his injuries and died. His dead body was then shifted to Abbasi Shaheed Hospital for postmortem. The complainant further stated that he can identify the accused persons if seen again. Such statement of complainant u/s. 154 Cr.P.C. was recorded by SIP Ghous Bux at Abbasi Shaheed Hospital, which was incorporated in book at P.S. Super Market, Karachi being Crime No.124/2015 U/s.302/324/353/34 PPC.



3. On 01.09.2015 ASI Aslam Khan appeared at P.S. and produced accused Muhammad Rehan before SHO Shaoib Qureshi and informed him that he is involved in the commission of murder of PC Maqsood Khan, therefore, he was arrested in the present offence under a memo prepared in presence of mashirs. On 09.09.2015 accused Muhammad Rehan voluntarily led the police party to Shama Paper Cutting and Binding Factory situated at Gujjar Nala Liaquatabad, Karachi and produced a 30 bore pistol with magazine containing one live bullet which was used in the commission of offence. Such FIR was registered at P.S. Super Market bearing Crime No.130/2015.
4. After usual investigation the matter was challaned and the appellant was sent up to face trial. He pleaded not guilty and claimed trial.
5. The prosecution in order to prove its case examined 13 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied all the prosecution allegations and claimed false implication. The accused declined to give statement on oath under section 340(2) Cr.P.C in disproof of the prosecution allegations and did not produce any witness in support of his case.
6. After appreciating the evidence on record the trial court convicted and sentenced the appellant as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction and the State had filed a Criminal Revision application for enhancement of sentence.
7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.



8. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case by the police; that the sole eyewitness was not able to correctly identify the appellant as it was a night time incident and as such his identification of the appellant before the identification parade cannot be safely relied upon; that the pistol was foisted on the appellant; that the police had caused wounds to the accused at the PS and he was not shot during any encounter with the police; that there are major contradictions in the evidence of the PW's and as such their evidence cannot be safely relied upon; that the co-accused who had been assigned a similar role as the appellant, had been acquitted by the trial court and as such the appellant was equally entitled to the same relief and thus for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of an unreported judgment (**Muhammad Umar and Muhammad Fazil alias Rana v. The State**) bearing Special Criminal Anti-Terrorism Appeals No.213 to 216 of 2016 (Confirmation Case No.05 of 2016) dated 16.05.2019, **Mian Sohail Ahmed and others v. The State and others** (2019 SCMR 956), **Mehmood Ahmad and 3 others v. The State and another** (1995 SCMR 127), **Javed Khan alias Bacha and another v. The State** (2017 SCMR 524), **Ihsan Ullah and others v. The State and others** (2021 P Cr.LJ 1470), **Liaqat Ali and others v. The State and others** (2021 SCMR 455), **Tariq Pervez v. The State** (1995 SCMR 1345), **Syed Mehroz Mehdi Zaidi v. The State** (2020 P Cr.LJ 1609), **Irfan alias Shani v. The State and another** (2020 YLR 372), **Khalil Ahmed and another v. The State and another** (2021 P Cr.LJ 1424) and **Imran v. The State through VIIIth Anti-Terrorism Court inside Central Prison, at Karachi** (2021 P Cr.LJ 1384).

9. On the other hand learned Additional Prosecutor General appearing on behalf of the State has fully supported the impugned judgment. He has contended that the sole eyewitness has correctly identified the appellant as the person who fired upon and murdered the



deceased police officer whose evidence was reliable, trustworthy and confidence inspiring and should be believed; that the appellant was wounded by the eyewitness at the time of the encounter between the appellant and the police as evidenced by his MLC report; that the appellant on his pointation took the police to the pistol which was the murder weapon when compared with the pistol empty recovered at the scene lead to a positive FSL report and as such the prosecution had proved its case beyond a reasonable doubt and the appeal should be dismissed. He did however under instructions not press the State's criminal revision application for enhancement of sentence. In support of his contentions, he placed reliance on the cases of **Muhammad Yaqoob v. The State** (2021 SCMR 1387), **Muhammad Zaman v. The State** (2007 SCMR 813) and **Muhammad Ehsan v. The State** (2006 SCMR 1857).

10. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General and have gone through the entire evidence which has been read out by counsel for the appellant, and the impugned judgment with the able assistance of learned counsel and have considered the relevant law including the case-laws cited at the bar.

11. Based on our reassessment of the evidence of the PW's, especially PW 1 eyewitness Atif Raza, the other prosecution witnesses especially PW 5 Dr. Shireen Chand (MLO) and other medical reports including the post mortem report of the deceased, recovery of empties at the scene which lead to a positive FSL report, we find that the prosecution has proved its case beyond a reasonable doubt that PC Maqsood Khan (the deceased) was shot and murdered by firearm at about 0115 hours on 23.08.2015 at main Toufiq Road, near Narang cinema, Liaquatabad Karachi while he was discharging his lawful official duties. The fact that no blood was recovered from the scene, we find as inconsequential as it has come in evidence that the deceased was wearing a bullet proof jacket which



absorbed his blood. In this respect reliance is placed on the case of **Abdul Majeed v. The State** (2008 SCMR 1228).

12. The only question left before us therefore is who murdered the deceased by firearm at the said time, date and location?

13. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons keeping in view that each criminal case must be decided on its own particular facts and circumstances;

(a) That the FIR was lodged with promptitude which gave the complainant no time to cook up a false case against the appellant with other police officials especially as the complainant had no enmity with the appellant and had no reason to implicate him in a false case.

(b) In our view the prosecution's case primarily rests on the eye witness to the murder and his correct identification of the appellant whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 PC Atif Raza.** He was the complainant. According to his evidence he was on patrol on a motor bike with the deceased when they signaled two suspected persons on a motor bike to stop. The motor bike stopped and the person sitting on the rear seat took out his pistol and fired at them which shot hit the deceased who was sitting behind him on the motor bike and who then fell to the ground. In retaliation he fired from his official SMG at the accused persons. Both the accused person's fell down and he heard one of the accused persons say, "Rehan stand up and run," which is also the name of the appellant. The accused ran away leaving their motor bike. He came to the injured Maqsood and saw that he had been shot in his neck. He called for assistance and the injured was taken to Aga Khan Hospital where he was declared dead.

The eye witness lodged the FIR with promptitude where he specifically narrates that one of the accused stated, "Rehan stand up and move". He has made no material improvements in his evidence from his FIR which was lodged on behalf of the State. He was not a chance witness as he was a uniformed police officer on patrol in the area with the deceased on a motor bike performing his official duties.



He was not related to the appellant and had no ill will or enmity with the appellant in order to implicate him in a false case. We believe that he was present at the scene during the incident. **The only issue before us is whether he was correctly able to identify the appellant as the person who shot and murdered the deceased keeping in view that it was a night time incident.** In his own evidence he states as under;

*"It is incorrect to say that there was darkness at the place of incident. **Voluntarily says, there were street light and ample light.**"(bold added)*

The fact that light was available at the scene of the incident is also corroborated by **PW 4 Mohammed Jaffer** who was one of the police first responders at the scene who stated in his evidence as under;

*"It is incorrect to suggest that there was no light at the place of incident. **Voluntarily says street lights were there. However some times the street lights were off. When I reached at the place of the incident street lights were on.**"(bold added)*

As such sufficient light was available for the eye witness to identify the appellant and his co-accused who both had unmuffled faces and who he would have got a good look at as he was closed to them when they stopped their motor bike and made firing and specifically stated in his evidence that he could recognize them if he saw them again. In the case of **Muhammed Yaqoob (Supra)** the Supreme Court has recently held as under with respect to night time incidents at P.1390;

*"Presence of electric lights at the mosque presented ample opportunity for the identification of assailants, each named in the crime report. Darkness by itself does not provide immunity to an offender if the witnesses otherwise succeed to capture/ascertain his identity through available means, conspicuously mentioned in the crime report".*

The eye witness picked out the appellant at an identity parade only two weeks after the incident and within one week of the appellant's arrest with a specific role. The slight delay in the identification parade is not of much consequence and in this respect reliance is placed on the case of **Muhammad Zaman (Supra)**. The identification parade in our view was also carried out in accordance with law and the factum of the eyewitness picking out the appellant at the



identification parade with the specific role of shooting the deceased is corroborated by **PW 8 Zaheer Ahmed** who was the Judicial Magistrate who carried out the identification parade along with his memo of identification who was honest enough in his evidence to record complaints made by the appellant at the time of the identification parade.

We find that the eyewitness gave his evidence in a straight forward and natural manner and was not dented during cross examination and was even honest enough to admit that he did not know if his fire had hit the appellant.

Thus, for the reasons mentioned above we find the evidence of the eyewitness to be reliable, trustworthy and confidence inspiring and we believe the same **especially with regard to the correct identification of the appellant as the person who shot and murdered the deceased** and can convict on this evidence provided that there is some corroborative/ supportive evidence. 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) and **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this sole eyewitness to be of good quality.

**Thus, based on our believing the evidence of the PW eyewitness what other supportive/corroborative material is there against the appellant?**

(c) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased was brought to the hospital suffering from one firearm injury to the neck. The fact that there was no blackening around the wound also supports the prosecution case that the firing was from about 5 to 6 feet after the motor bike which the appellant was riding had been signaled to stop.

(d) That the appellant took the police to the secret place where he had hidden the pistol which was the murder weapon which only he could have known about and for which he did not have a license.

(e) That the pistol empty recovered at the wardat straight after the incident when matched with the pistol recovered by the appellant on his pointation lead to a positive FSL report.

(f) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we 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 PW 1 Atif Raza asking the accused to stop their motor bike to the appellant firing at the deceased to PW 1 Atif Khan returning fire to the death of the deceased to the arrest of the appellant to the recovery of the pistol on the pointation of the appellant to the positive FSL report.

(g) That the police PW's had no enmity or ill-will towards the appellant and had no reason to falsely implicate him in this case for example by making up his arrest or foisting the pistol on him and in such circumstances it has been held that the evidence of the PWs can be fully relied upon. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(h) That the motor bike of the accused that they were riding at the time of the incident was seized on the spot by the police as the accused fell off the motor bike at the scene of the incident and left it behind whilst they escaped on foot.

(i) We have considered the fact that the appellant's co-accused was acquitted in this case despite him positively being picked out at the identification parade by the eye witness as the driver of the motor bike however we consider that his case is on a different footing to that of the appellant. This is because the appellant was given the specific role of shooting and murdering the deceased whereas the acquitted co-accused who was only the driver of the motor bike made no fire on any one and might not have shared the intention of the appellant to murder the deceased. No pistol was also recovered from him on his arrest or later. The acquittal of the co-accused most likely led to the appellant being handed down by the trial court the lesser sentence of life imprisonment as opposed to the death penalty for the murder of the deceased which is the usual sentence for a conviction of murder where there are no mitigating circumstances recognized by the law.

(j) With regard to the alleged firearm injury to the appellant at the time of the encounter with the police we have ruled this evidence out of consideration as no question was put to the appellant on this aspect of the case at the time of recording his S.342 Cr.PC statement which is well settled by now to be a mandatory requirement of the law.

(k) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or



dent the prosecution case. The defence case is simply one of false implication by the police on refusal to pay a bribe however not a shred of evidence has come on record to support this defence. The appellant had also claimed that he was attending a wedding at the time of the incident but no person who also attended that wedding was produced as a DW and no family member even came forward to support any part of his defense case. The fact that the appellant claims that he was shot by the police whilst in custody is not borne out by any medical report and even otherwise it would be strange for the police to shoot the accused whilst in custody at all let alone in the buttock. The appellant did not give evidence on oath or call any DW in support of his defense case. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought in the face of a reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

14. Thus, based on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eyewitness evidence and other corroborative/supportive evidence mentioned above, we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction and sentences.

15. As such the appeal is dismissed, the conviction and sentences are maintained. The Criminal Revision application is also disposed of as not pressed.

16. The appeal and criminal revision application stand disposed of in the above terms.

ANNOUNCED IN OPEN COURT ON 30-11-2021