

Motive not proved

622

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Khadim Hussain Tunio,

**CRIMINAL APPEAL NO.515 OF 2022.
CRIMINAL JAIL APPEAL NO.519 OF 2022.
CONFIRMATION CASE NO.09 OF 2022.**

Appellant: Sheeraz Ali S/o. Sartaj @ Maroo Shoro through Zulfiqar Ali Langah, Advocate.

Complainant: Abdullah S/o. Ali Muhammad through M/s. Muneer Iqbal and Ahrar Jawaid Bhutto, Advocates.

Respondent: The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.

Date of Hearing: 15.05.2023

Date of Announcement: 17.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Sheeraz Ali S/o. Sartaj @ Maroo Shoro was tried before the Additional Sessions Judge-I/Model Criminal Trial Court, Thatta in Sessions Case No.01 of 2018 arising out of Crime No.99 of 2015 U/s. 302, 114, 337-H(2) and 504 read with Section 34 PPC registered at Police Station Mirpur Bathoro and vide judgment dated 30.08.2022 appellant Sheeraz Ali S/o. Sartaj @ Maroo Shoro was awarded death sentence. The appellant/accused was also ordered to pay an amount of Rs.1,00,000/- to the legal heirs of the deceased as compensation in terms of Section 544-A Cr.P.C. In case of default the appellant will suffer S.I. for 06 months more.

2. The brief facts of the case are that by having the background of exchange of hot words with complainant's son deceased Ghulam Sarwar alias Babu Khorr of accused Sartaj alias Maroo Shoro and accused Sheeraz Ali Shoro on 01.11.2015 over the removing of motorcycle from their way, as they were on white colour XLI Car and on the same day at 1215 hours,

at the hotel of Qurban Khor near Civil Hospital Bathoro, Taluka Mirpur Bathoro, District Sujawal, accused Sartaj Ali alias Maroo Shoro (died) armed with Kalashnikov, Sheeraz Ali Shoro with pistol, Malak Sarfraz Shoro with repeater, Hanif Shoro with pistol, Sardar Ali Shoro (died), Deedar alias Jabal Mallah and absconding accused Noor Muhammad Shoro with pistol and Ghani Mohrio, in furtherance of common intention, attacked upon deceased Ghulam Sarwar alias Babu Khorr and at the instigation of accused Sardar Ali Shoro (who died during course of investigation), accused Sheeraz Ali Shoro caused death of deceased Ghulam Sarwar alias Babu Khorr by causing firearm injury with pistol and thereafter they all made aerial firing just to cause the harassment amongst the people(s).

3. After completion of investigation I.O. submitted charge sheet against the accused Sheeraz Ali S/o. Sartaj @ Maroo Shoro to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 11 witnesses and exhibited various documents and other items. The statement of the appellant/accused was recorded under Section 342 Cr.P.C in which he denied all the allegations levelled against him and claimed trial. However, he did not give evidence on oath and did not call any D.W. in support of his defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed these appeals against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 30.08.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated by the complainant; that there was a delay in lodging the FIR which gave the

complainant party the time to cook up a false case against the appellant in league with the police; that the alleged eye witnesses were not present and their evidence can be discarded; that the ocular evidence was not supported by the medical evidence; that the so called recovered pistol was foisted on the appellant; that no motive has been proven and that for any or all of the above reasons the appellant should be acquitted of the charge by extending the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Muhammad Imran v The State** (2020 SCMR 857), **Muhammad Hayat v The State** (2023 YLR 280), **Haris v Zahoor Khan** (2023 P. Cr. L.J. 174), **Saif Ullah v The State** (2023 YLR 24), **Muhammad Arshad alias Accha v The State** (2023 P Cr. L. J Note 8), **Tariq Mehmood alias Asif Khan v The State** (2023 YLR Note 13), **Hasnat Ahmed v The State** (2023 YLR 585) and **Shah Jehan v Gulistan** (2023 YLR Note 3).

8. On the other hand learned Additional Prosecutor General and learned counsel for the complainant have contended that the prosecution has proved its case beyond a reasonable doubt and have fully supported the impugned judgment. In particular, they have contended that the evidence of the eye witnesses to the murder could be safely relied upon; that the medical evidence supported the ocular evidence; that the murder weapon was recovered on the pointation of the appellant which lead to a positive FSL report when matched with the empties recovered at the scene of the murder; that the prosecution had both asserted and proved the motive behind the murder namely the earlier altercation between the deceased and the appellant and as such the appeal be dismissed and the confirmation reference answered in the affirmative as it was a cold bloodied murder. In support of their contentions, they placed reliance on the cases of **Imran Mehmood v The State** (2023 SCMR 795), **Qasim Shahzad v The State** (2023 SCMR 117), **Muhammad Bashir v The State** (2023 SCMR 190), **Ijaz Ahmad v The State** (2009 SCMR 99), **Noor Muhammad v The State** (1999 SCMR 2722), **Ghulam Murtaza Meerani v The State** (2022 MLD 1382), **Nasir Ahmed v The State** (2023 SCMR 478) and **Farooq Khan v The State** (2008 SCMR 917).

9. We have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh and learned

counsel for the complainant and 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 our reassessment of the evidence of the PW's, especially the medical evidence, the blood stained earth and empties recovered at the scene of the crime we find that the prosecution has proved beyond a reasonable doubt that on 01.11.2015 at about 1215pm outside the Hotel of Qurban Khor near Civil hospital Mirpur Bathoro Ghulam Sarwar alias Babu (the deceased) was murdered by firearm and died en route to hospital on account of the firearm injury which he received.

11. The only question left before us therefore is whether it was the appellant or some other person who murdered the deceased by firearm at the said time, date and location?

12. 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 keeping in view that each criminal case must be decided on its own particular facts, circumstances and evidence on record for the following reasons;

(a) That the FIR was lodged on the same day as the incident. The slight delay in lodging the FIR we find based on the particular facts and circumstances of this case has been fully explained. This is because the complainant first had to take his deceased son to the hospital as he might have been saved. Thereafter on expiry of the deceased the legal formalities and postmortem was carried out before the body was handed back to the complainant who after burying the deceased on the same day he then lodged the FIR. He had told the police that he would do so at the hospital and he was as good as his word as such based on the particular facts and circumstances of this case we do not find that the slight delay in lodging the FIR is 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) That the appellant along with his co-accused is named with a specific role in the FIR. Namely, making straight fire on the deceased with a pistol which lead to the death of the deceased.

(c) We find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether we believe their evidence especially in connection with the

correct identification of the appellant whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Abdullah. He is the complainant and is the father of the deceased.** According to his evidence on 01.11.2015 he was sitting at the hotel of Quarban Ali Khorr in front of civil Hospital Mirpur Bathoro with Ismail and Gulab when the deceased at about 11am came to the hotel and told them that he was beaten up after an altercation with the appellant and some co-accused because his bike was in the way of the appellants and co-accused car. That at 12.15pm he was still at the hotel when two cars arrived and the appellant and the co-accused all armed got out and started abusing the deceased where after they started making aerial fire and he and the others fled behind the hotel. One of the co-accused instigated the other co-accused not to spare the deceased whereupon he saw the appellant make straight fire at the deceased with his pistol who fell down. The appellant and the co-accused again made aerial firing and then fled. The deceased had an injury on his forehead just above the right eye who he took to hospital where he died.

From the evidence it transpires that this witness is related to the deceased however no enmity or dispute has been proven between the eye witness and the appellant and thus his mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663), **Ijaz Ahmed** (Supra) **Farooq Khan** (Supra) and **Qasim Shahzad** (Supra)

This eye witness **knew the appellant before** the incident which occurred at about 12.15pm in broad day light close to where the eye witness was standing. The incident went on for a few minutes and the eye witness was close to the incident and would have got a good look at the appellant who he already knew. Thus, there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. His presence at the scene of the incident is corroborated by PW's Gulab, Ismail and Qurban whose hotel he was at and who were also present at the time of the incident.

This eye witness was not a chance witness as he is related to the owner of the hotel and the deceased and living in the same area and had every reason to be with the other PW eye witnesses and the deceased at the hotel at the time of the incident. As noted earlier based on the particular facts and circumstances of the case, he lodged his FIR with relative promptitude where he named the appellant as the person who he saw shoot the deceased and his FIR was not materially improved on during his evidence. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such we find his

evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who murdered the deceased. As in the FIR he also gives the motive for the murder namely the enmity between the appellant and the deceased over the earlier altercation.

We can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if 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), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) **Muhammad Ismail vs. The State** (2017 SCMR 713) and **Qasim Shahzad V State** (2023 SCMR 117). 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 eye witness to be of good quality and believe the same. **In this case however there is more than one eye witness.**

(ii) **Eye witness PW 2 Ismail. He is also related to the deceased.** His evidence corroborates that of **PW 1 Abdullah** in all material respects. He knew the appellant from before the incident which was in day light and he saw the appellant fire on the deceased from a short distance so would have been easily able to recognize him. He is named as an eye witness in the FIR. He has no relationship or enmity with the appellant and had no reason to implicate the appellant in a false case. He gave his Section 161 Cr.PC statement two days after the incident which was not materially improved upon during the course of his evidence. He was also not a chance witness as he had every reason to be drinking tea at the hotel with his relatives who all lived close by. His evidence was not dented despite a lengthy cross examination. We believe his evidence in respect of the incident and in particular the correct identification of the appellant as the person who shot the deceased. The same considerations apply to his evidence as the evidence of **PW 1 Abdullah.**

(iii) **Eye witness PW 3 Gulab. He is also related to the complainant and the deceased.** His evidence corroborates that of **PW 1 Abdullah** and **PW 2 Ismail** in all material respects. He knew the appellant from before the incident which was in day light and he saw the appellant fire on the deceased from a short distance so would have been easily able to recognize him. He is named as an eye witness in the FIR. He has no relationship or enmity with the appellant and had no reason to implicate the appellant in a false case. He gave his Section 161 Cr.PC statement two days after the incident which was not materially improved upon during the course of his evidence. He was also not a chance witness as he had every reason to be drinking tea at the hotel with his relatives who all lived close by. His evidence was not dented despite a lengthy cross examination. We believe his

evidence in respect of the incident and in particular the correct identification of the appellant as the person who shot the deceased. The same considerations apply to his evidence as the evidence of PW 1 Abdullah and PW 2 Ismail.

(iv) **Eye witness PW 4 Qurban.** He is also related to the complainant and the deceased. His evidence corroborates that of PW 1 Abdullah, PW 2 Ismail and PW 3 Gulab in all material respects. He knew the appellant from before the incident which was in day light and he saw the appellant fire on the deceased from a short distance so would have been easily able to recognize him. He is named as an eye witness in the FIR. He has no relationship or enmity with the appellant and had no reason to implicate the appellant in a false case. He gave his Section 161 Cr.PC statement two days after the incident which was not materially improved upon during the course of his evidence. He was also not a chance witness as he was the owner of the hotel where the other eye witnesses were drinking tea when the incident occurred and as such he had every reason to be present at his own hotel at the time of the incident. His evidence was not dented despite a lengthy cross examination. We believe his evidence in respect of the incident and in particular the correct identification of the appellant as the person who shot the deceased. The same considerations apply to his evidence as the evidence of PW 1 Abdullah , PW 2 Ismail and PW 3 Gulab.

Thus, based on our believing the evidence of the 4 eyewitnesses what other evidence/material supportive/corroborative or other wise is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of Muhammad Waris v The State (2008 SCMR 784)

(d) That apart from the actual murder the evidence of the eye witnesses is fully corroborated by the PW 8 Muhammed Arab who collected the empties and blood at the scene of the crime and PW 7 Muhammed Amin who was the mashir of inspection of the wardat, recovery of blood and empties at wardat and memo of arrest.

(e) That it does not appeal to logic, commonsense or reason that a father would let the real murderer of his son get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammad Ashraf V State (2021 SCMR 758)**

(f) That the medical evidence and medical reports fully support the eye-witness/ prosecution evidence in that the deceased received one bullet injury to the head above the right eye brow which lead to his death. As noted by MLO PW 9 Dr.Ghulam Mustafa there was also no blackening around the wound which indicate that the distance of the fire was as mentioned in the evidence of the eye witnesses i.e beyond 3 feet.

(g) That the murder weapon namely the pistol was recovered by the appellant on his pointation which was hidden in bushes at a abandoned school which only he could have known about and as such could not have been foisted on him.

(h) That some of the empties which were recovered from the crime scene when matched with the pistol recovered by the appellant on his pointation lead to a positive FSL report in that the recovered empties were fired from the recovered pistol which was also found to be in working order.

(i) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case for instance by foisting the pistol on him and in such circumstances it has been held that the evidence of the police witnesses can be fully relied upon and as such we rely on the police witness evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474)

(j) 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 affect 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 **Qasim Shahzad V State** (2023 SCMR 117). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the deceased arrived outside the hotel to the appellant also arriving there and shooting him with a pistol which lead to his death to the appellant making his escape good to the arrest of the appellant to the appellant leading the police to the murder weapon which lead to a positive FSL report when matched with the empties recovered at the crime scene.

(k) The fact that the other co-accused were either acquitted or only convicted of aerial fire is of no assistance to the appellant as his case is on an entirely different footing. Namely, 4 eye witnesses identified him as the only person who shot at the deceased which shot hit the deceased in the head and which fire shot lead to the death of the deceased.

(l) 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 false implication. The appellant, however, did not examine himself on oath and did not call any DW or even produce a shred of evidence in support of his defence case. Thus, for the reasons mentioned above we disbelieve the defence case of false implication as an after thought in the face of 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. ↵

13. Thus, based on the above discussion we have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and hereby maintain his convictions.

14. With regard to sentencing we note that the motive for the murder of the deceased has not been fully proven through admissible evidence i.e of the earlier altercation with the appellant and the other co-accused and that in such like cases the superior courts have often reduced the sentence from death to life imprisonment. In this respect reliance is placed on the case of **Akbar Ali v. The State** (2021 SCMR 104) and **Shamsher Ahmad v. The State** (2022 SCMR 1931). It is of significance that it was not a particularly brutal murder as only one fire shot was made at the deceased and as such we reduce the sentence of the appellant from the death penalty to life imprisonment with all other fines and sentences remaining in tact.

15. As such the appeal is dismissed and the confirmation reference is answered in the negative however the appellant shall have the benefit of S.382 (B) Cr.PC and any remissions applicable to him under the law.