

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Criminal Appeal No.S-357 of 2010

Appellant: Muhammad Hanif through Mian Taj
Muhammad Keerio, Advocate.

Complainant: Nemo.

Respondent: The State through Ms. Rameshan Oad,
Deputy Prosecutor General Sindh.

Date of hearing: 31.08.2026.

Date of Judgment: 14.09.2026.

J U D G M E N T

ZULFIQAR ALI SANGI-J:- Through the instant Criminal Appeal, the appellants, namely Muhammad Hanif and Aitezaz Hussain, have called in question the judgment dated 15.09.2010, passed by the learned 2nd Additional Sessions Judge, Hyderabad, in Sessions Case No.238 of 1998, whereby they were convicted under Section 302(b), P.P.C. and sentenced to suffer rigorous imprisonment for life. The appellants were, however, extended the benefit of Section 382-B, Cr.P.C. Aggrieved by their conviction and sentence, the appellants preferred the present appeal.

2. During the pendency of the appeal, appellant Aitezaz Hussain expired. Consequently, vide order dated 25.03.2020, his appeal was ordered to be treated as having become infructuous and his case was bifurcated. Thereafter, vide order dated 08.04.2020, it was observed that the said appellant had expired and that, if his legal heirs intended to pursue the appeal on his behalf, they were required to come forward and prosecute the same in accordance with law. No legal heir, however, came forward to pursue the appeal on behalf of the deceased appellant; consequently, his appeal was dismissed. So far as appellant Muhammad Hanif is concerned, it is an admitted position that he has already been released from prison after having served the sentence awarded to him. Learned counsel for the appellant, nevertheless, submits that notwithstanding the appellant having served out the sentence, he seeks adjudication of the appeal on merits, as the conviction recorded against him continues to carry legal and reputational consequences and may operate to his prejudice in his

future rights and interests. It is, therefore, contended that the appeal may be decided on its merits to determine the legality and propriety of the conviction recorded against him.

3. The prosecution case, as set up in the FIR, is that during the night intervening 15/16.05.1998, at about 00:30 hours, the complainant, Mst. Saifullah, was present at her house when she heard four/five firearm shots. On coming outside, she allegedly saw her son, Haider Ali, who informed her that Noor Akbar alias Gadda had been fired upon and injured by two police constables, namely Muhammad Hanif and Aitezaz alias Chachia. The complainant thereafter proceeded towards the place of occurrence and allegedly found Noor Akbar lying injured on the ground near the house of Shumaila. With the assistance of her sons and other persons, the injured was taken to hospital. As adequate treatment was allegedly not available at LMCH, Hyderabad, he was shifted to Karachi, where he succumbed to his injuries on 19.05.1998.

4. Upon completion of investigation, the police submitted report under Section 173, Cr.P.C. before the competent Court. The accused were supplied copies of the relevant documents and were thereafter charged. The charge was framed on 26.07.1999, alleging that on 16.05.1998, at about 00:30 hours, the accused had committed the murder of Noor Akbar alias Gadda by firing four/five shots, thereby committing an offence punishable under Section 302, P.P.C. The accused pleaded not guilty and claimed trial.

5. In order to substantiate its case, the prosecution examined Mst. Saifullah, complainant, as PW-1, who produced the FIR; Haider Ali as PW-2, who produced his statement recorded under Section 164, Cr.P.C.; Rajab Ali as PW-3, who also produced his statement under Section 164, Cr.P.C.; Liaquat Ali as PW-4; Ashfaq, mashir, as PW-5, who produced the mashirnamas relating to the place of occurrence, injuries, dead body and clothes of the deceased; Tapedar Muhammad Akram as PW-6, who produced the site sketch; Dr. Shafqat Ghani as PW-7, who initially examined the injured and issued the provisional medical certificate; Dr. Khurram Siddiqui as PW-8, who treated the deceased at Aga Khan Hospital, Karachi and produced the death certificate and medical record; ASI Muhammad Nazim Rao as PW-9, who produced the arrest and recovery proceedings; and SIP Muhammad Ayub Durrani as PW-10, who produced the firearm expert

and chemical examiner reports. After recording the aforesaid evidence, the prosecution closed its side.

6. In his statement recorded under Section 342, Cr.P.C., the appellant denied the allegations and maintained his innocence. He also produced a statement under Section 265-F(5), Cr.P.C., along with copies of several FIRs and police papers and, significantly, the judgment whereby he had been acquitted in the separate case registered under the Arms Ordinance concerning the alleged recovery of the pistol from his possession. The appellant, however, did not opt to appear as his own witness on oath. The learned trial Court, upon appraisal of the evidence, convicted the appellant and awarded him the sentence referred to hereinabove.

7. Learned counsel for the appellant contends that the conviction is founded upon evidence which is materially contradictory, substantially improved and inherently doubtful. It is argued that the ocular account is inconsistent with the medical evidence; that the alleged eyewitnesses made material improvements over their statements recorded under Sections 161 and 164, Cr.P.C.; that their statements were recorded after unexplained or inadequately explained delays of several days; that the presence of some of the alleged eyewitnesses at the place of occurrence is itself doubtful; that the alleged motive was introduced subsequently and was admittedly absent from the FIR and earlier statements; and that the alleged recoveries of the weapons, followed by ballistic examination, are vitiated by serious deficiencies in the chain of custody. Learned counsel has further contended that the charge framed against the accused did not attribute any specific role to the appellant independently of the co-accused and that Section 34, P.P.C. was not invoked. According to learned counsel, notwithstanding the form of the charge, the prosecution was required to establish through reliable and confidence-inspiring evidence the individual participation of the appellant and, in particular, that he had himself caused the fatal injuries to the deceased. It is submitted that the prosecution failed to discharge that burden and that the appellant is, therefore, entitled to acquittal.

8. Conversely, learned Deputy Prosecutor General, Sindh, has supported the impugned judgment and submitted that the ocular account, medical evidence and recoveries, when read in conjunction, sufficiently establish the guilt of the appellant. According to learned

Deputy Prosecutor General, the learned trial Court properly appreciated the evidence available on record and rightly recorded the conviction.

9. I have heard the learned counsel for the parties and, with their able assistance, have carefully gone through the entire evidence available on the record.

10. It is a settled principle of criminal jurisprudence that the prosecution is required to prove its case against an accused beyond reasonable doubt and that the burden of proof throughout remains upon the prosecution. An accused is entitled to the benefit of every reasonable doubt emerging from the prosecution evidence. Such benefit is not a matter of grace or concession but is a right accruing to the accused. Even a single circumstance creating reasonable doubt in the mind of a prudent person regarding the guilt of an accused is sufficient to entitle him to such benefit. It is in the light of this settled principle that the evidence on record is required to be examined.

11. The prosecution principally relies upon the evidence of PW-1 Mst. Saifullah, PW-2 Haider Ali, PW-3 Rajab Ali and PW-4 Liaquat Ali. A careful examination of their evidence reveals material discrepancies, omissions and improvements which cannot safely be brushed aside as minor inconsistencies. The testimony of PW-1 does not remain confined to the version contained in the FIR. During her deposition, she introduced a number of facts which were conspicuously absent from the FIR and her earlier version. She stated, inter alia, that Noor Akbar, Haider and Abdul Ghani had gone outside after taking their meals; that Haider subsequently came to her and narrated certain circumstances; that the accused had demanded bhatta from the deceased; that the accused used to tease the female members of their family; and that certain persons were already present at the place of occurrence. Significantly, when confronted with her previous statement, she admitted that these facts had not been stated in the FIR. In particular, the allegation regarding demand of bhatta was conspicuously absent from the earliest version. Likewise, the allegation that the accused used to tease the female members of the family was introduced subsequently. These are not merely peripheral additions, as they concern the circumstances surrounding the occurrence and the alleged motive attributed to the accused.

12. The evidence of PW-2 Haider Ali likewise does not inspire the requisite confidence. During cross-examination, the witness stated that he had reached the place of occurrence first and that his mother arrived approximately one and a half minutes thereafter. This account is materially at variance with the tenor of his earlier statements, from which it appears that, after informing his mother, the family members proceeded towards the place of occurrence together. More importantly, PW-2 introduced several facts during his deposition which did not form part of his statements recorded under Sections 161 and 164, Cr.P.C. These included the circumstances relating to his return to the place of occurrence, the manner in which the injured was taken to hospital, the alleged absence of adequate treatment at the hospital and other connected circumstances. Such material improvements necessarily affect the evidentiary worth of his testimony.

13. PW-3 Rajab Ali also made material improvements in his deposition. He admitted that his statement under Section 161, Cr.P.C. was recorded after approximately six/seven days of the occurrence, whereas his statement under Section 164, Cr.P.C. was recorded after approximately thirteen/fourteen days. He further admitted that the allegation regarding demand of bhatta by the accused had not been stated by him in either of his earlier statements. Of considerable significance is the fact that his identity documents reflected his residence at Sadiqabad/Rahim Yar Khan, rather than Hyderabad. His assertion regarding his presence at Hyderabad at the relevant time, therefore, required independent and convincing corroboration. No satisfactory evidence has, however, been brought on record to establish his presence at the place of occurrence or to explain the considerable delay in recording his statements.

14. PW-4 Liaquat Ali likewise admitted that his statement under Section 161, Cr.P.C. was recorded after approximately five/six days of the occurrence. Several portions of his deposition were confronted with his previous statement and were found to have been omitted therefrom. Thus, the testimony of the alleged eyewitnesses, when examined collectively, does not constitute a consistent and confidence-inspiring account. Rather, it is marked by material omissions, improvements and unexplained or inadequately explained delays.

15. The delay in recording the statements of the alleged eyewitnesses assumes particular significance in the facts and circumstances of the present case. The occurrence allegedly took place

on 16.05.1998, yet the statements of material witnesses were recorded several days thereafter. PW-3 specifically admitted a delay of approximately seven days, while PW-4 stated that his statement was recorded after five/six days. The Investigating Officer attempted to explain the delay by stating that some witnesses were not available and that he had been informed that they were in Punjab. Such explanation does not satisfactorily remove the doubt arising from the delayed examination of the witnesses. In the circumstances of the present case, the possibility of consultation, deliberation or subsequent introduction of witnesses cannot safely be excluded. The Supreme Court has repeatedly emphasized that unexplained delay in recording the statement of an alleged eyewitness may adversely affect the evidentiary value of such testimony. In ***Rahat Ali v. The State (2010 SCMR 584)***, delayed recording of a witness's statement, in the absence of satisfactory explanation, was treated as a circumstance affecting the credibility of the witness. Similar principles were enunciated in ***Saeed Muhammad Shah v. The State (1993 SCMR 550)***. Applying the said principles to the facts of the present case, the prosecution has failed to furnish an explanation sufficient to dispel the reasonable doubt arising from the delayed recording of the statements of the alleged eyewitnesses.

16. Another significant circumstance is the non-examination of independent and natural witnesses. The prosecution itself asserts that immediately after the firing, a number of persons from the locality had gathered at the place of occurrence. Nevertheless, none of those independent persons was examined. No convincing explanation has been furnished for withholding such natural witnesses, particularly when the incident allegedly occurred in a populated residential locality. The principle that withholding natural and independent witnesses, without plausible explanation, may cast doubt upon the prosecution case has been recognized in ***Mondar Khan Babar v. Piya Ali and others (SBLR 2018 Sindh 311)***. In the present circumstances, the non-association of independent persons assumes significance and further detracts from the reliability of the prosecution version.

17. The manner in which the identity of accused Aitezaz alias Chachia was allegedly established also requires consideration. The complainant stated that she came to know that "Chachia" was Aitezaz when the dead body was brought back to Hyderabad, whereas the FIR

had already been lodged before that stage. This creates an apparent inconsistency concerning the manner and timing of identification of the said accused. Although the proceedings against the deceased appellant are no longer before the Court, this circumstance remains relevant insofar as it bears upon the reliability of the prosecution's original account and the manner in which the assailants were identified.

18. The medical evidence also fails to furnish the requisite corroboration to the ocular account. PW-7, Dr. Shafqat Ghani, initially examined the injured and found firearm injuries on different parts of his body. He stated that the firing distance could range approximately between three and twelve feet. On the other hand, the site plan prepared by the Tapedar shows the firing point attributed to appellant Muhammad Hanif at a distance of approximately two feet from the point where the deceased was lying, while the point relating to the recovered empties was shown at approximately three feet. The site plan itself is not free from doubt. PW-6 admitted during cross-examination that the points shown by him in the sketch and referred to in his deposition were, generally, not correctly depicted. Furthermore, no firing point attributed to accused Aitezaz was shown in the sketch. This omission is material because the prosecution case was that the deceased had been fired upon by two persons. The physical evidence relating to the positions of the alleged assailants, the empties and the injured, therefore, does not present a clear and consistent picture. There is, furthermore, inconsistency between the medical evidence furnished by PW-7 and the subsequent medical record produced by PW-8, Dr. Khurram Siddiqui. The description of the entry and exit wounds contained in the subsequent medical record does not fully correspond with the description furnished by PW-7. While medical evidence ordinarily provides corroboration regarding the nature, seat and manner of injuries, it does not, by itself, establish the identity of the assailant. Where the medical evidence does not materially support the ocular account, the prosecution must rely upon other evidence of unimpeachable character. In the present case, such independent corroboration is conspicuously lacking.

19. The alleged recovery of crime empties and pistols also fails to furnish a safe link connecting the appellant with the commission of the offence. According to the prosecution, the empties were secured from the place of occurrence on 16.05.1998, whereas the alleged

pistols were recovered from the accused on 24.05.1998 and the articles were thereafter sent to the forensic/firearm expert on 03.06.1998. The prosecution has failed to establish the safe custody of the crime empties during the intervening period from 16.05.1998 until their dispatch for examination. Similarly, after the alleged recovery of the pistols on 24.05.1998, the prosecution has not satisfactorily established where, and in whose custody, the weapons remained until they were dispatched to the expert. The police officer admitted that he himself had sealed the recovered property but could not state to whom the sealed articles were subsequently handed over. The constable through whom the articles were allegedly transmitted to the expert was also not examined. Consequently, an important link in the chain of custody remains unproved. The deficiency assumes greater significance because the alleged recovery proceedings were conducted by police officials themselves and no independent private mashir was associated with the recovery of the pistols. The prosecution has also not furnished a convincing explanation concerning the circumstances in which the accused police officials were allegedly arrested while running and were thereafter subjected to recovery proceedings. These circumstances required closer scrutiny, particularly when the recoveries were relied upon as corroborative evidence.

20. The appellant's acquittal in the separate proceedings under the Arms Ordinance relating to the alleged recovery of the pistol attributed to him cannot, by itself, determine his guilt or innocence in the present murder case. Nevertheless, the circumstances surrounding that recovery, when considered together with the absence of an unimpeachable chain of custody in the present case, are relevant in determining whether the alleged weapon can safely be relied upon as corroborative evidence. In the circumstances, the recovery does not furnish the degree of corroboration required to sustain a conviction for murder. The firearm expert's report, therefore, cannot be treated as conclusive in the circumstances of the present case. The probative value of forensic evidence depends substantially upon the integrity and safe custody of the material submitted for examination. Where the prosecution fails to establish that the crime empties and the recovered weapon remained securely sealed and untampered with from the time of recovery until examination, the evidentiary value of the resulting report is materially diminished. In ***Fayaz Ahmed v. The State (2003 PCr.LJ 733)***, deficiencies concerning the handling and dispatch of crime empties and the subsequent recovery of a weapon were treated

as circumstances undermining reliance upon the firearm expert's report. The same principle is attracted to the present case, where the prosecution has failed to establish an unbroken chain connecting the alleged crime empties recovered on 16.05.1998 with the pistol allegedly recovered from the appellant on 24.05.1998 and ultimately sent to the expert on 03.06.1998.

21. PW-5 Ashfaq, the mashir, also does not materially advance the prosecution case. His presence at the place of occurrence is itself rendered doubtful by the evidence of the other witnesses. The Investigating Officer admitted that although a number of persons had gathered at the spot, the complainant insisted upon associating particular persons as mashirs. The mashir also failed to satisfactorily explain the manner in which the recovered articles were sealed and preserved. A mashirnama may constitute a contemporaneous record of a particular proceeding; however, unless the witness who prepared or witnessed the recovery satisfactorily supports the relevant fact in his deposition and the prosecution establishes the requisite chain of custody, the document cannot, by itself, cure deficiencies in the substantive evidence. The mashirnama concerning the clothes of the deceased was prepared on 26.05.1998, several days after the occurrence, and the circumstances in which the clothes allegedly came into the possession of the complainant have not been satisfactorily explained.

22. The complainant further admitted during cross-examination that she had earlier stated that the deceased was not involved in any criminal case but, when confronted with the documentary record, conceded that her earlier statement was incorrect. The defence produced a number of FIRs relating to the deceased. It is correct that previous criminal involvement of the deceased does not, in itself, establish the innocence of the appellant. Nevertheless, where a prosecution witness makes demonstrably incorrect assertions on material aspects and subsequently admits the same upon confrontation, such evidence requires cautious and independent scrutiny. In ***Khalid Mehmood alias Baboo v. The State (NLR 1985 Cr. 339 (Peshawar))***, the principle was recognized that where a witness is found to have committed material falsehoods or perjured himself on material particulars, his remaining assertions cannot be accepted mechanically without independent corroboration. In the present case, the cumulative effect of the contradictions and

improvements is substantial. The inconsistencies do not relate merely to peripheral details which might ordinarily be attributed to lapse of time or normal errors of observation. Rather, they concern the presence of the witnesses, the manner in which the injured was allegedly discovered and taken to hospital, the identity of the accused, the alleged motive and the circumstances surrounding the recoveries.

23. The alleged motive also does not withstand scrutiny. The prosecution attempted to establish that the accused had demanded bhatta from the deceased and that they had also teased the female members of the complainant's family. However, the witnesses admitted that these allegations were not contained in the FIR or their earlier statements. The alleged motive thus appears to have been introduced subsequently. It is well settled that motive is not invariably a sine qua non for conviction where direct and trustworthy ocular evidence is available. However, where the ocular account itself is doubtful, failure to establish the alleged motive becomes a circumstance which cannot be disregarded. In ***Fayaz Ahmed v. The State (2003 PCr.LJ 733)***, the principle has been recognized that material improvements and contradictions introduced at trial cannot safely constitute the basis of conviction. Likewise, in ***Akhter Ali v. The State (2008 SCMR 06)***, material improvements made during trial were held to affect the worth of testimony and to require corroboration. Similar principles were reiterated in ***Muhammad Rafique v. The State (2010 SCMR 385)*** and ***Saeed Muhammad Shah v. The State (1993 SCMR 550)***, wherein improvements made to strengthen the prosecution case, particularly on material particulars, were held to render the evidence unsafe where unsupported by independent corroboration.

24. I have also noticed that the charge framed against the accused did not attribute any specific or distinct role to either of them. The charge, in general terms, alleged that the accused had committed the murder of Noor Akbar by firing four/five shots. Significantly, Section 34, P.P.C. was not invoked. In a case resting predominantly upon ocular testimony, particularly where more than one accused is facing trial, the prosecution is required to establish through reliable and legally admissible evidence the individual participation and culpable role of each accused beyond reasonable doubt. Mere association with a co-accused, without satisfactory proof of one's own participation in the commission of the offence, cannot furnish a lawful basis for sustaining a conviction. It is a settled proposition of criminal jurisprudence that

the prosecution must stand on its own legs and cannot derive strength from the weakness of the defence. The accused is not required to prove his innocence; it is sufficient if the prosecution evidence itself gives rise to a reasonable doubt. In ***Muhammad Riaz and others v. The State (2003 PLR 980 Lahore)***, it was recognized that for extending the benefit of doubt it is not necessary that there should be a multiplicity of circumstances; even a single circumstance creating reasonable doubt in the mind of a prudent person regarding the guilt of an accused entitles him to such benefit as a matter of right. Likewise, in ***Muhammad Akram v. The State (2009 SCMR 230)***, the Supreme Court reiterated that the prosecution must prove its case beyond reasonable doubt and that every reasonable doubt must necessarily operate in favour of the accused.

25. In the present case, the prosecution evidence, when examined as a whole and assessed cumulatively, falls materially short of the standard required for sustaining a conviction under Section 302(b), P.P.C. The ocular account suffers from material contradictions, omissions and improvements. The statements of material witnesses were recorded after considerable delay without a satisfactory explanation. The presence of one of the alleged eyewitnesses at the place of occurrence is itself doubtful. Independent and natural witnesses from the locality were not examined. The alleged motive was introduced subsequently and was not part of the earliest prosecution version. The manner of identification of one of the accused is also attended by an apparent inconsistency. The site plan contains material deficiencies, including the absence of a firing point attributed to the alleged second assailant. The medical evidence does not furnish the requisite corroboration to the ocular account. The chain of custody relating to the crime empties and recovered weapons has not been satisfactorily established. The constable allegedly responsible for transmitting the articles to the forensic expert was not examined, thereby leaving an important link unproved. The recoveries were conducted through police officials without satisfactory independent corroboration. The separate acquittal of the appellant in the Arms Ordinance case, though not determinative of the present case, further assumes relevance when considered alongside the deficiencies surrounding the alleged recovery.

26. It is true that each individual discrepancy, viewed in isolation, might perhaps be capable of explanation. Criminal cases, however, are

not to be decided by dissecting the evidence into isolated fragments; rather, the evidence must be examined in its entirety and its cumulative effect must be assessed. When the aforesaid circumstances are considered collectively, they do not merely create a remote or fanciful possibility of doubt. They give rise to serious and reasonable doubt regarding the truthfulness and reliability of the prosecution case and, more particularly, regarding the individual participation of appellant Muhammad Hanif in the alleged occurrence. The prosecution was required to establish, through reliable and confidence-inspiring evidence, that appellant Muhammad Hanif was the person who caused the fatal firearm injuries to Noor Akbar. The evidence available on record does not safely establish this essential fact beyond reasonable doubt. Suspicion, however strong, cannot substitute proof. The conviction of an accused, particularly for an offence carrying the severe punishment of imprisonment for life, cannot be sustained upon evidence which leaves material and reasonable doubt concerning his individual participation.

27. Consequently, I am of the considered view that the learned trial Court, while recording the conviction, did not adequately appreciate the material contradictions, improvements, unexplained delays and deficiencies in the recovery and forensic evidence. The cumulative effect of these infirmities renders the prosecution evidence unsafe and insufficient to sustain the conviction of appellant Muhammad Hanif. For the foregoing reasons, this Criminal Appeal is allowed. The judgment dated 15.09.2010, passed by the learned 2nd Additional Sessions Judge, Hyderabad, in Sessions Case No.238 of 1998, to the extent of appellant Muhammad Hanif, whereby he was convicted under Section 302(b), P.P.C. and sentenced to suffer rigorous imprisonment for life, is hereby set aside. The appellant Muhammad Hanif is acquitted of the charge by extending to him the benefit of doubt. The appellant has already been released from prison after having served the sentence awarded to him. Accordingly, no further order is required regarding his custody. The case property, if any, shall be dealt with strictly in accordance with law.

JUDGE

****Hafiz Fahad****