

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Criminal Appeal No.808 of 2019

Appellant; Amanullah Jan S/o. Hazrat Jan through  
Mr. Ajab Khan Khattak, Advocate.

Respondent/ The State; Through Mr. Abrar Ali Khichi, Additional  
Prosecutor General, Sindh.

Date of hearing; 25.01.2024.

Date of Judgment; 31.01.2024.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- The Appellant Amanullah Jan S/o. Hazrat Jan has filed this appeal against the judgment passed by the Model Criminal Trial Court/Extension/3rd Additional District & Sessions Judge Malir, Karachi dated 28.10.2019 in Sessions Case No.719 of 2017 arising out of F.I.R. No.434/2017 U/s. 302/324/109/34 PPC registered at P.S. SSHIA, Malir, Karachi whereby the appellant was convicted and sentenced as under:-

- i) For causing Qatl-e-Amd of deceased Hashim son of Rehmat Khan to life imprisonment under section 302(b) PPC. He shall pay fine of Rs.10,00,000/- (Ten lac rupees) to the legal heirs of the deceased under section 544-A Cr.P.C. and in case of failure to pay such fine, he shall further undergo simple imprisonment for period of six months more.
- ii) For offence under section 324 PPC, he shall suffer Rigorous imprisonment for period of Ten years and shall also liable to pay fine of Rs.500,000/- (Five lacs rupees) which shall be paid to the complainant and in case of failure to pay such fine he shall further undergo simple imprisonment for a period of six month more.

2. The brief facts of prosecution case are that the complainant Shahpur son of Hashim lodged the instant FIR at 1830 hours alleging therein that on 07.09.2017 at about 1730 hours 154 Cr.P.C. recorded the statement at Shaheed Abbasi Hospital that he is the resident of Kachi Abadi Janjhar Goth Scheme-33, Malir Karachi and used to do labour at new Sabzi Mandi. On 07.09.2017 he along with his father Hashim and brother Rahmatullah were going to home from new Sabzi Mandi at about 1550 hours when they reached at Amanullah grocery store

Janjhar Goth Scheme-33 Karachi where accused Amanullah Jan son of Hazrat Jan stopped them and asked that why they are not purchasing grocery items from his shop on which the complainant replied that it is upon his wish from where he wants to purchase the same, on which the accused Amanullah became angry and called his son Javaidullah and brother Wajidullah who started abusing the complainant party, meanwhile accused Amanullah took out the pistol then the accused Javaidullah and Wajidullah abetted the accused Amanullah and said to kill the complainant party on which accused Amanullah with intention to commit murder had fired upon the complainant party. On such firing complainant, his brother Rahmatullah and father Hashim had sustained injuries. Thereafter on commotion the area people had gathered on the spot and started pelting stones over them, then the relatives of the complainant party shifted the complainant party to the Hospital and then the FIR was registered against the accused under section 324/109/34 PPC. Then during the treatment one injured namely Hashim Khan son of Rahmat Khan on 08.09.2017 had expired due to fire arm injury and S.302 (b) was added to the FIR.

3. After completion of investigation charge was framed against the appellant to which he denied the allegations and claimed trial.

4. The prosecution in order to prove its case examined 08 witnesses and exhibited various documents and other items. The statement of the appellant and his co-accused were recorded under Section 342 Cr.P.C whereby they denied the allegations against them. However, the appellant gave evidence on oath and called one DW Mst. Zainab (his wife) in support of his defence case.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier in this judgment and hence, the appellant has filed this appeal against his conviction and sentence. The co-accused were acquitted and no appeal has been filed against their acquittal on the charge of abetment.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 28.10.2019 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 innocent and has been falsely implicated in this case on account of sectarian issues; that the eye witnesses' evidence is unreliable as they are all related to each other and the deceased; that no pistol was recovered from him and it was foisted on him; that it was a case of sudden provocation or otherwise a case of self defence as the complainant party attacked him and that for any or all of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the case of *Alamgir v Gul Zaman and others* (2019 SCMR 1415).

8. Learned Assistant Prosecutor General Sindh after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, he contended that there were 4 eye witnesses in this case all of whose evidence could be safely relied upon; that the medical evidence supported the ocular evidence and that the murder weapon (pistol) had been recovered from the appellant at the time of his arrest on the spot at the crime scene and in effect he had been caught red handed; that the empties recovered at the crime scene lead to a positive FSL report when matched with the pistol recovered from the appellant on the spot; that it was not a case of grave and sudden provocation nor of self defence and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions, he placed reliance on the cases of *Hayat Muhammad v. State through Additional Advocate General, Khyber Pakhtunkhwa and another* (2021 SCMR 1831), *Muhammad Ikram and another v. The State* (2011 SCMR 1133), *Muhammad Nawaz and another v. The State and others* (PLD 2005 Supreme Court 40) and *Anwar Shamim and another v. The State* (2010 SCMR 1791).

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

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, recovery of empties at the crime scene which lead to a positive FSL report. I find that the prosecution has proved beyond a reasonable doubt



that Hashim (the deceased) was fatally injured by firearm on 07.09.2017 at about 3.50pm and succumbed to his firearm injuries in hospital the next day and Sharpur (Complainant) received firearm injury in front of Amanullah Kiryana Store, Jhanjaar Goth Scheme 33 Karachi.

11. The only question left before me therefore is who murdered the deceased and injured the complainant 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 within 4 hours of the incident. Based on the particular facts and circumstances of the case I do not find such slight delay in lodging the FIR fatal to the prosecution case. This is because after the witnessing the murder and transporting the dead body and the injured to hospital the complainant then gave his S.154 Cr.PC statement at the hospital which later became the FIR as such any slight delay in lodging the FIR has been fully explained. 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 murdering the deceased by firearm and shooting the complainant with the same firearm. Thus there was no time for the complainant to cook up a false case against the appellant. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW which would motivate them to lodge a false case against the appellant.
- (c) In my view the prosecution's case primarily rests on the eye witnesses to the murder whose evidence I shall consider in detail below;
  - (i) **Eye witness PW 1 Sharpur.** He is the complainant and is the son of the deceased. According to his evidence on the fateful day he was coming home from the Sabzi mandi where he worked with his father/deceased and his brother Rehmatullah when at about 3.30pm near the appellant's shop the appellant accosted them and asked him why he was no longer purchasing grocery items from the appellant's shop. He informed the appellant that he could buy cheaper grocery items from other shops and it was up to him where he brought his groceries from. At this the appellant became annoyed and on being instigated by his two sons (acquitted co-accused) he shot the complainant and the deceased. At this commotion the mohalla people gathered and started throwing stones at the appellant and his sons. He and his father were then taken to Abbassi Shahid hospital where he recorded his S.154 Cr.PC statement which later became the FIR. He was treated at the hospital for his firearm wound and his father



was shifted to Liaquat National Hospital where he succumbed to his injuries the next day.

This eye witness knew the appellant before the incident as he used to purchase groceries from him and his house was only a short distance away. He saw the appellant from close range murdering the deceased by pistol so there is no case of mistaken identity and no need to hold an identification parade especially as it was a daylight incident. This eye witness was also injured by the appellant at the scene by firearm as proven by the medical evidence. It is settled by now that the evidence of an injured eye witness is deemed more reliable than usual eye witnesses. In this respect reliance is placed on the case of *Aquil V State* (2023 SCMR 831). The accused is also named 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) and *Qasim Shazad V State* (2023 SCMR 117).

Admittedly the eye witness was related to the deceased who was his father 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), *Ashfaq Ahmed v. The State* (2007 SCMR 641) and *Abdul Wahid versus The State* (2023 SCMR 1278)

This eye witness is not a chance witness as he was residing in his house in the mohalla and also worked at the Subzi Mandi and had every reason to be with his father and other brother who also worked at the Sabzi Mandi. There are no material improvements in his promptly lodged FIR from his evidence at trial. The appellant lived in a shop/house which was only about 150/200 feet away from the complainant's house so his presence was also natural. He was not dented during a lengthy cross examination and he gave his evidence in a natural manner and thus I believe his evidence to be trust worthy, reliable and confidence inspiring and I believe the same.

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his evidence to be trust worthy reliable and confidence inspiring. In this respect reliance is placed on the case of *Muhammad Ehsan v. The State* (2006 SCMR 1857). As also found in the cases of *Farooq Khan v. The State* (2008 SCMR 917), *Niaz-ud-Din and another v. The State and another* (2011 SCMR 725) *Muhammad Ismail vs. The State* (2017 SCMR 713) and *Qasim Shazad V State* (2023 SCMR 117). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witness to be of good quality and believe the same.



However there are yet other eye witnesses.

(ii) Eye witness PW 2 Rehamatullah. He is the brother of the deceased and the complainant. His evidence corroborates the evidence of the complainant in all material respects. He is named as an eye witness in the promptly lodged FIR and his Section 161 Cr.PC eye witness statement was given promptly. He also knew the accused from before in this day light incident. He was also a natural witness and not a chance witness as he worked in the Subzi Mandi and lived in the Mohalla. He was not dented during cross examination and as such the same considerations apply to his evidence to that of the complainant as discussed above. Namely, I find it to be trust worthy, reliable and confidence inspiring and as such I believe the same

(iii) Eye witness PW 3 Yousuf Khan. He is cousin of the complainant. His evidence corroborates the evidence of the complainant and PW 2 Rehamatullah in all material respects. He was a natural witness as he was also working in the Subzi mandi and was going to his home which was close to the house of the complainant and the appellant's grocery store. He also witnessed the arrival of the police who arrested the appellant on the spot and recovered a pistol from him along with 4 empties at the crime scene. He gave his S.161 Cr.PC statement with promptitude and he had no reason to falsely implicate the appellant in this day light incident which he witnessed from close range. He was also not dented during cross examination and as such the same considerations apply to his evidence to that of the complainant and PW 2 Rehamatullah as discussed above. Namely, I find it to be trust worthy, reliable and confidence inspiring and as such I believe the same

(iv) Eye witness PW 5 Fazil also corroborates the evidence of the above mentioned eye witnesses. He was also not a chance witness as he worked in Sabzi Mandi and lived in the mohalla and had no enmity with the appellant and as such had no reason to implicate him in a false case. Hence I also believe and place reliance on his eye witness evidence.

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

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

Thus, based on my believing the evidence of the 4 eye witnesses as mentioned above what other supportive/corroborative material is their against the appellant?

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- (d) That it does not appeal to logic, commonsense or reason that brothers would let the real murderer of their father get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).
  - (e) That the medical evidence fully supports the eye-witness/prosecution evidence that the deceased died from receiving a firearm injury on the part of his body as mentioned by the eyewitnesses and the injured eye witnesses also received his injury from a firearm. In any event it is well settled by now that if the medical evidence is in conflict with the ocular evidence the ocular evidence will take precedence over the medical evidence. In this respect reliance is placed on the case of **Imran Mehmood versus The State and another** [2023 SCMR 795].
  - (f) That the appellant was arrested on the spot and the murder weapon (pistol) was recovered from him at the same time.
  - (g) That the recovered empties when matched with the pistol recovered from the appellant produced a positive FSL report.
  - (h) That there was no ill will or enmity between the police and the appellant and as such the police had no reason to falsely implicate the appellant in this case, for instance, by 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). Thus, I believe the evidence of the police witnesses being PW 6 Hussain who went immediately to the hospital after receiving news of the incident and recorded the S.154 Cr.PC statement of the complainant, PW 5 Muhammed Yaseen who was the first responder who made the arrest of the appellant from the spot and recovered and sealed the pistol from him and also collected the empties at the crime scene and PW Asim Hussain who was the IO of the case none of whom were dented despite lengthy cross examinations and gave their evidence in natural manner and whose evidence I believe and place reliance on.
  - (i) That nearly all the relevant police entries have been exhibited.
  - (j) The motive for the murder has come on record through the FIR and witness evidence. Namely, that the appellant had a dispute with the complainant/deceased over their switching their grocery business away from the appellants shop to some where else in the Subzi Mandi which naturally caused a loss to the appellants business.
  - (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) **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669) and **Maskeen Ullah and another versus**



The State and another (2023 SCMR 1568). The evidence of the PW's provides a believable corroborated unbroken chain of events from the appellant arguing with the complainant/deceased about him not purchasing groceries from him to him being instigated by his sons to shoot the complainant and the deceased to the appellant doing so to the arrest of the appellant on the spot caught red handed with the murder weapon (pistol) to the empties recovered at the crime scene when matched with the recovered crime weapon (pistol) leading to a positive FSL report.

- (l) That defence case itself also supports the prosecution case. The appellant chose to give evidence on oath and also called his wife as a DW. In the appellant's evidence under oath he admits his presence at the shop when the complainant, the deceased and his brother Rehamatullah confront him except over sectarian issues. According to him a large number of people from the mohalla who were of the same community as the complainant's side started to throw stones at him and attack him. In his defence he pulled his pistol from his shalwar and aimed it at the crowd in order to scare them away. According to him the **pistol was unloaded and was grabbed from him by the crowd** who continued to hurl stones at his shop and his family and that he was rescued by the police who took him to hospital where his injuries were confirmed by medical certificate. He contended that it was a case of sudden provocation and an offence under S.302 © at the most or otherwise self defence. In short his case is that the complainants were the aggressor side and as such there are two different versions of how the incident transpired.
- (m) The appellant through his evidence under oath has admitted his presence at the scene of the crime; the presence of the claimant and the other eye witnesses at the scene of the crime; that he drew a pistol at a threatening crowd which was throwing stones at him and his shop. When I place his evidence and version of events in juxtaposition with the prosecution evidence and case I find that I disbelieve the defence case for the following reasons;
  - (i) No proven enmity has come on record as to why the complainant and the mohalla people would attack him.
  - (ii) No proven enmity has come on record as to why the police should involve him in a false case for example by foisting a pistol on him.
  - (iii) That it is not believable that he would have on his person and draw an **unloaded** pistol. What use is there in carrying an unloaded pistol. It does not appeal to logic, reason, commonsense or natural human conduct
  - (iv) It would be almost impossible for the mohalla people to take his pistol from him which they would have believed had real ammunition (and which according to the prosecution case the pistol was in fact loaded as would be expected and was fired with real ammunition)



- (v) That the injuries of the appellant are consistent with being hit by bricks which were thrown from the mohallā people as per the prosecution case and evidence.
  - (vi) His wife in her evidence mentions that the appellant and their son passed out during this incident but the appellant does not allude to this in his evidence which is a striking omission. The evidence of the appellant's wife is also meant to save his skin and is of little, if any, evidentiary value.
  - (vii) How could it have been a case of sudden provocation or self defence if according to the appellants own evidence under oath he was disarmed and the pistol in any event was unloaded. In such a scenario it he could not have fired any weapon. This can only mean that his evidence under oath was a complete pack of lies which denudes the defence case of all credibility and reliability. The fact that the appellant was instigated by his co-accused sons to fire on the deceased also rules out any defence of sudden and grave provocation.
  - (viii) In any event the fact that the appellant fired four times and murdered one person and injured another rules out the offence of grave and sudden provocation as was held in the case of **Muhammed Nawaz** (Supra). Furthermore, failure to buy items from your store and buying them from someone else's store can hardly be considered a grave and sudden provocation.
  - (ix) It is also well settled by now that if you take a specific defence such as grave and sudden provocation and/or self defence you must prove it. In this respect reliance is placed on the case of **Anwar Shamim** (Supra). I find that the appellant has miserably failed to prove such defenses which as per his own evidence under oath are untrue.
- (n) The acquittal of the appellants' co-accused is of no assistance to the appellant as the acquitted co-accused played a much minor role compared to that of the appellant in that they were only accused of instigating/abetting the appellant to fire at the complainant and the deceased and they played no role in firing on the deceased or attacking the deceased or the complainant and as such there case was on a completely different footing.

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