

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.414 of 2019

Present:

Mr. Justice Mohammad Karim Khan Agha

Appellant: Raja Ikram-ul-Haq S/o. Muhammad Shareef,  
through Mr. Mamoon A.K. Sherwani, Advocate.

Respondent/State; Mr. Muhammad Iqbal Awan, Additional Prosecutor  
General, Sindh.

Date of hearing: 30.01.2024.

Date of announcement: 06.02.2024.

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Raja Ikram-ul-Haq S/o. Muhammad Shareef has preferred this appeal against the impugned judgment dated 11.07.2019 passed by the Model Criminal Trial Court/Ist Additional District & Sessions Judge Malir, Karachi in Sessions Case No.945/2015 arising out of F.I.R. No.246/2015 U/s. 302/201/109/34 PPC registered at P.S. Steel Town, Karachi whereby the appellant was convicted and sentenced to Life Imprisonment along with fine of Rs.25,00,000/- (Twenty Five Lac. Only) which would be paid to the legal heirs of deceased and in case of default of payment, he shall suffer S.I. for six months more. The benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the complainant as per FIR are that I reside at the above address and my son Arsalan Aijaz aged 26 years was doing job in Bahria Town. On 19.09.2015 my son Hafiz Arsalan came back from duty as per routine and he had gone to Market from house with his friend Waqar Ahmed Lodhi and after that he did not return at house and as usual I slept. On 20.09.2015 I woke up in the morning and found that my son Hafiz Arsalan was not available at home. On enquiry, family members told that Arsalan did not come at home since night, upon which we got worried then contacted with Arsalan's friend Waqar Ahmed Lodhi whereupon Waqar Ahmed told that at about 09:30 pm I and Arsalan came to Makki Madni Cloth House Gulshan-e-Hadeed Phase-1 on motorcycle then he went to girl Hammara and started to chit chat with her. Meanwhile, my friend Asad Hussain Ali came in his taxi and stopped near me and we also started chit

chat, during which, I saw that one white color corolla car was parking and in which one person namely Muhammad Ikram was sitting on front seat while 2/3 other unknown persons were present in the car, I and Asad can identify them on seeing again. Girl Hammara Malik gestured towards car then car came and stopped near Hammara Malik and Arsalan. Raja Muhammad Ikram stepped down from car and boarded Arsalan in said car and took him away with them. Arsalan messaged me to come at Pakistan Market Steel Town and immediately pick up from house of Raja Ikram. I remained waiting him but Arsalan not phoned me. I tried to contact with Arsalan on his phone No.0300-2423683 but no contact took place with Arsalan and then at 1:30 am came at my home and slept, after that I have no any information about him. My son Hafiz Arsalan intended to marry with girl Hammara Malik D/o. Nisar Ahmed as she is already divorced. The family members of girl had refused to give hand of girl on the saying of Raja Ikram. Raja Muhammad Ikram has given his house to girl Hammara Malik and her family members situated in Gulshan-e-Hadeed Phase-II for living and he used to make frequent visits and much interference in their house of girl. On account of seeking hand of girl, Raja Muhammad Ikram was biased and jealous, he/my son also mentioned one or sometime about him. Therefore, on telling of Waqar Ahmed we got worried and I started to search my son Arsalan, contacted with area police and also contacted with Raja Muhammad Ikram on phone 0345-3329814 he said that he is towards city Karachi then we got search his mobile location through our sources that he was available at Gulshan-e-Hadeed but he was concealing his presence from us. Hence we kept continuing our search that today on 21.09.2015 we received information about dead body of some person at Hill near Kashan and then we went and saw that same was dead body of my son Arsalan who has received bullets of firearms on chest and temple. On receiving information, area police and numbers of people arrived on the spot, where after hearing facts and circumstances, then Arsalan's friends Qamar Qayyum and Zohaib told me that on 19.09.2015 at about 11:30 pm we were waiting at Sindh Bank for rickshaw, suddenly heard firing reports and after short while one white color corolla car came from hill side and Raja Muhammad Ikram was sitting on front seat of car while other persons were also present in the car and same car went towards Allahwali Ghowrangi. After all these facts and information, my certain doubt is that 1) girl Hammara Malik her father Nisar Ahmed S/o. Muhammad Mazhar and her brother Moazam Ali on the grudge/annoyance of seeking the hand of Hammara Malik all in collusion with each other, have got committed murder of my son Hafiz Arsalan through



Raja Muhammad Ikram and his companions identified by facts on 19.09.2015 they took away my son in car at Makki Madni Market, Gulshan-e-Hadeed Phase-I at outside hill of Gulshan-e-Hadeed caused bullets of firearms to him. Now I have come to report that action may be taken.

3. After completion of usual investigation charge was framed against the accused person in which he pleaded not guilty and claimed to be tried.

4. In order to prove its case the prosecution examined 07 PWs who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The statement of the appellant/accused was recorded under Section 342 Cr.P.C. in which he denied all the allegations against him however he did not give evidence on oath or call any witness in support of his defence case.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 11.07.2019 convicted and sentenced the appellant as stated above, hence this appeal has been filed against conviction.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not 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; that the FIR was lodged after an unexplained delay of 2 days which gave the complainant ample opportunity to consult and cook up a false case against him; that there was no eye witness to the murder; that it is a case of last seen evidence; that the evidence of the last seen witnesses is unreliable especially as they were all friends of the deceased; that the prosecution evidence does not meet the legal standards of last seen evidence; that the pistol recovered from the appellant on his pointation produced a negative FSL report when matched with the empties recovered at the crime scene; that the CDR evidence is not authenticated by any source and as such based on all or any of the above circumstances the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Muhammad Abid v. The State and another** (PLD 2018 Supreme Court 813), **Fayyaz Ahmad v. The State** (2017 SCMR 2026), **Sajjad Hussain v. The State and others** (2022 SCMR 1540), **Abdul**

Ghafoor v. The State (2022 SCMR 1527), Pervaiz Khan and another v. The State (2022 SCMR 393), Muhammad Ali v. The State (2015 SCMR 137), Muhammad Akram v. The State (2009 SCMR 230), Tariq Pervez v. The State (1995 SCMR 1345), Muhammad Yaqoob v. Manzoor Hussain and 3 others (2008 SCMR 1549), Rohtas Khan v. The State (2010 SCMR 566) and The State through P.G. Sindh and others v. Ahmed Omar Shaikh and others (2021 SCMR 873).

8. Learned Additional Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has supported the impugned judgment. He mainly contended that the delay in lodging the FIR has been explained; that although there is no eye witness in this case it is a case of last seen evidence which legal requirements have been fully met which has been corroborated/supported by the by the CDR record and the fact that the appellant absconded immediately after the incident for over 4 years; that the medical evidence supported the prosecution case and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and the appeal be dismissed. In support of his contentions, he placed reliance on the cases of Binyamin alias Khari and others v. The State (2007 SCMR 778), Arbab Tasleem v. The State (PLD 2010 Supreme Court 642), Nadeem v. The State (2005 SD 742) and Zulfiqar and others v. The State and 10 others (1991 SCMR 326).

9. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports, recovery of blood and empties at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Hafiz Arsalan (the deceased) was murdered by firearm on or about 19.09.2015 at about 11pm at Kashan Hills Karachi.

10. The only question left before me is whether it was the appellant who murdered or played a role in murdering the deceased by firearm at the said time, date and location?

11. By way of background it should be noted that originally Ammara Malik (Ammara) the lady who the deceased had a love interest in and two other co-accused who were alleged to have been in the car with the appellant when the deceased was last seen with the appellant in the car were challoned. The appellant however absconded and the trial continued against the other three accused all of whom were acquitted and whose appeal against acquittal was



dismissed. The appellant then surrendered about 4 years later and was tried alone through an amended charge. By the time of the appellant's trial the complainant was old, in a wheel chair and unable to speak and hence his evidence in the earlier trial along with exhibits including the FIR were taken on record in this trial vide order dated 06.07.2019 and adopted under Section 512 Cr.PC which order was not challenged. I have however given very little weight to the evidence of the complainant as he was not subject to cross examination whose evidence is in any event was largely hearsay based on the evidence of PW 1 Waqar Ahmed. It is also well settled by now that an FIR is not a substantive piece of evidence.

12. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances and in accordance with the settled law for the following reasons;

- (a) The FIR was lodged after a delay of 2 days however this is not uncommon in cases where a person goes missing as the first priority of the complainant is to try and find their loved ones rather than go straight to the police as happened in this case and as such I do not find the delay in lodging the FIR by the complainant fatal to the prosecution case. Furthermore, the complainant had no ill will or enmity with the appellant and had no reason to implicate him in a false case.
- (b) Admittedly there is no eye witness to the murder.
- (c) The prosecutions case primarily revolves around the doctrine of last seen evidence i.e in this case that according to a number of prosecution witnesses the deceased left from outside Ammara's house with the appellant and others in a car and was again seen a few hours later and then the dead body of the deceased was found about a day later which leads to the only possible inference that the appellant was the person who murdered the deceased or at least played a part in the murder of the deceased.

The law on last seen evidence is well set out in the case of *Fayyaz Ahmed V State* (2017 SCMR 2026) where it was held as under;

*"The last seen evidence is one of such categories of evidence. In this category of cases some fundamental principles must be followed and the Prosecution is under-legal obligation to fulfill the same, some of which may be cited below:-*

- (i) *There must be cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused and those reasons must be palpable and prima facie furnished by the Prosecution.*

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- (ii) *The proximity of the crime seen plays a vital role because if within a short distance the deceased is done to death then, ordinarily the inference would be that he did not part ways or separated from the accused and onus in this regard would shift to the accused to furnish those circumstances under which, the deceased left him and parted ways in the course of transit.*
- (iii) *The timing of that the deceased was last seen with the accused and subsequently his murder, must be reasonably close to each other to exclude any possibility of the deceased getting away from the accused or the accused getting away from him.*
- (iv) *There must be some reasons and objects on account of which the deceased accompanied the accused for accomplishment of the same towards a particular destination, otherwise giving company by the deceased to the accused would become a question mark.*
- (v) *Additionally there must be some motive on the part of the accused to kill the deceased otherwise the Prosecution has to furnish evidence that it was during the transit that something happened abnormal or unpleasant which motivated the accused in killing the deceased.*
- (vi) *The quick reporting of the matter without any undue delay is essential, otherwise the prosecution story would become doubtful for the reason that the story of last seen was tailored or designed falsely, involving accused person.*

*Beside the above, circumstantial evidence of last seen must be corroborated by independent evidence, coming from unimpeachable source because uncorroborated last seen evidence is a weak type of evidence in cases involving capital punishment.*

- (vii) *The recovery of the crime weapon from the accused and the opinion of the expert must be carried out in a transparent and fair manner to exclude all possible doubts, which may arise if it is not done in a proper and fair manner.*
- (viii) *The Court has also to seriously consider that whether the deceased was having any contributory role in the cause of his death inviting the trouble, if it was not a pre-planned and calculated murder.”(Bold added)*

In the later case of **Muhammed Abid V State** (PLD 2018 SC 813) which delved further into the doctrine of “last seen together” evidence it was held as under;

*“The foundation of the “last seen together” theory is based on principles of probability and cause and connection and requires 1. cogent reasons that the deceased in normal and ordinary course was supposed to accompany the accused. 2. proximity of the*



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*crime scene. 3. small time gap between the sighting and crime. 4. no possibility of third person interference 5. motive 6. time of death of victim. The circumstance of last seen together does not by itself necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime" (bold added).*

The last scene evidence in this case is as under;

- (i) PW 1 Waqar Ahmed who is a friend of the appellant although not related to him states in his evidence that the deceased used to like one girl named Ammara and wanted to marry her however the accused was not ready and willing for such marriage. On 19.09.2015 at about 20.30 hours he went and collected the deceased from his house and had dinner with him. Thereafter at 2130 hours he and the deceased came at Makki Madni cloth house Gulshan-e-Hadeed Phase II where Ammara and her friend Rabia Paracha were also present. He waited for the deceased at the corner of the street whilst the deceased met Ammara. During this period his friend PW Asad Alvi who was a taxi driver came and met him and they chit chatted as confirmed in the evidence of PW Asad Alvi. He also saw there the accused in the front seat of a white corolla with some others. At about 9.30pm the accused came out of the car and took the deceased with him. The deceased went willingly as he knew the accused and there was no display of weapons from either side. This fact was also corroborated by PW 5 Asad Alvi. There was no struggle and the deceased went along with the accused. Both this witness and PW 5 Asad Alvi knew the accused from before. They were quite close to him and saw him for a reasonable period of time and as such there was no case of mistaken identity and no need for an identification parade under the circumstances and they corroborate each other in all material respects in their evidence in relation to the deceased leaving in the white corolla car from outside the house with the accused which house was being rented from him by Ammara. Neither of these witnesses had any ill will or enmity with the accused and had no reason to implicate the accused in a false case. Admittedly they are friends of the deceased but it is well settled by now that unless there is some proven enmity with the accused their evidence can be treated on its own value and worth and in this case no such enmity has been proven. Admittedly witness Waqar gave his S.161 Cr.PC statement about 5 days after the lodging of the FIR which usually might be fatal to his evidence however based on the particular facts and circumstances of this case I find it not to be so as this witness is the person whose evidence the FIR lodged by the complainant is based on and as such in effect was given two days after the incident. Both of these witnesses are named in the FIR. The other witness PW 5 Asad Alvi gave his evidence within two days of the FIR. Both them gave their evidence in a natural manner and were not dented during a lengthy cross examination. In fact at the end of the cross examination of PW 1 Waqar Ahmed the line of cross examination indicates that the accused was actually present when he picked up the deceased from outside Ammara's house. As such I find their evidence to be reliable and believe the same hence I find it proven.



that the deceased left from outside Ammara's house on 19.09.2015 at about 9.30pm in a white corolla with the accused.

- (ii) The next important witness is PW 2 Qayyum Qamar. According to his evidence on 19.09.2015 he had gone to the cattle Puri organized at Gulshan-e-Hadeed chowk with his friend Zohaib. At about 2300 hours they were standing near Sindh bank Gulsha-e-Hadeed waiting for a rickshaw when they heard two fire shots. About 2 to 3 minutes later he saw one white Toyota corolla coming from the hill side and when the car crossed them he saw the accused sitting on the adjacent seat of the driver.
- (iii) This witness knew the accused as he was a resident of his area and was a political figure. Hence no identification parade was required. He gave his S.161 Cr.PC statement with promptitude and is also named in the FIR. Admittedly it must have been quite dark but since he knew the accused from before and he saw him at close range I find that he has correctly identified the appellant as being in the corolla car a few minutes after hearing two fire shots from the hills from where the car came and where the body of the deceased was found 2 days later.
- (iv) Thus, the appellant was seen again 2 hours after he left from outside Ammara's house and within a few minutes of two fire shots being heard from the hills which was the direction from which the deceased was scene in the car and the body was found.
- (v) The timing is thus two hours.
- (vi) The body was found not far from Ammara's rented house and from the hills where the shots were heard.
- (vii) The motive for the murder was the fact that the accused was jealous of the attention which the deceased was giving to Ammara who the accused also had love intentions toward who he was letting his house to and paying all her expenditure.
- (viii) It was quite natural for the deceased to go with the appellant because they knew each other.

Thus, I find that all the legal requirement of last seen evidence have been proven by the prosecution. Further reliance is placed on the case of Binyamin (Supra).

**Further corroborative/circumstantial evidence against the appellant.**

1. The appellant absconded with his family immediately after the incident and even lost his job at the Pakistan Steel Mills and went to the Punjab for no credible reason which is against normal human conduct.
2. He only surrendered himself to face trial 4 years after the murder once his co-accused had been acquitted to take advantage of their acquittal

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3. CDR evidence on the day of the incident connects him with acquitted co-accused Ammara on the day of the murder.
4. Most significantly wastup messages are on record which shows that even after the murder the appellant was in touch with Ammara with the suggestion that it was "too hot" for him to return for the time being which indicates that he had something to hide in connection with the offence.
5. The medical evidence supports the fact that the deceased was murdered by two fire shots as confirmed by witness Qamar.
6. The fact that the three co-accused have been acquitted is of no assistance to the appellant. This is because the only evidence against Ammara is that she saw the deceased off in the car with the accused. The other two acquitted co-accused could not be safely identified as they were not known by the witnesses and they gave no hulia of them. Thus, the evidence against the appellant is far more compelling and is on a much greater footing to that of his acquitted co-accused.

13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt based on last seen evidence and I hereby dismiss his appeal and uphold the impugned judgment.

14. The appeal stands disposed of in the above terms.