

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.818 OF 2019

Appellant: Talib Hussain s/o Ali Bux
Through Syed Hussain Haider, Advocate.

Respondent/State: Through Mr. Muhammad Iqbal Awan, Addl.
Prosecutor General, Sindh

Date of hearing: 05.03.2024

Date of announcement: 13.03.2024

JUDGMENT

Mohammad Karim Khan Agha, J.- Appellant Talib Hussain has preferred this appeal against the impugned judgment dated 05.11.2019 passed by the learned 1st Additional Sessions Judge (South) Karachi in Sessions Case No.06/2015 under F.I.R. No.192/2014 u/s. 302/324/34 registered at PS Kharadar Karachi; whereby the appellant was convicted u/s.265-H(i) Cr.P.C punishable under Section 302(b), 324 r/w Section 34 PPC and awarded life imprisonment for committing murder with direction to pay compensation to the legal heirs of deceased u/s. 544-A Cr.P.C. in the sum of Rs.3,00,000/- and in default thereof, he was ordered to suffer SI for 06 months more. Appellant was also convicted for committing an offence punishable under Section 324 r/w section 34 PPC and sentenced to suffer R.I. for 05 years with direction to pay fine of Rs.50,000/- and in default thereof he was ordered to suffer SI for 06 months more. Both the sentences run concurrently. However, the benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. The brief facts of the prosecution case as per FIR are that on 25.06.2014 at night, he alongwith his son Muhammad Ali Raza, who is a computer engineer, was standing at Young Husband Road Opposite Chaman Naswar Shop near Naz Hotel, Kharadar Karachi when at about 2315 hours two person riding on motorcycle and three persons riding on another motorcycle came from Allah Rakha Park, on first motorcycle, Talib Hussain and Raheem Dino both sons of Ali Bux were riding, who reside in interior Sindh with whom they had ancestral

enmity. Accused Talib Hussain and Raheem Dino were armed with pistols and they gave Lalkara to the complainant that he would not be spared alive and thereafter they started firing upon the complainant and his son, but the complainant laid down on the ground, while one of the fires of the accused hit to neck of his son Muhammad Ali Raza, who fell down, whereas these both accused along with three unknown companions, identifiable, fled away on the motorcycles towards G-Allana Road. Thereafter the complainant with the help others shifted his injured son to Civil Hospital Karachi through Cheepa ambulance where he expired in operation theater, hence this FIR was lodged.

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

4. In order to prove its case, the prosecution examined 06 witnesses who exhibited various documents and other items 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. wherein he denied the prosecution allegations and claimed trial. The appellant examined himself on oath but did not produce any witness in his defence.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 05.11.2019 convicted and sentenced the appellant as stated above, hence this appeal has been filed.

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 on account enmity; that the eye witnesses are planted witnesses and their evidence be discarded especially as they are all related to the deceased and have enmity with appellant; that S.103 Cr.PC has been violated; that no recovery of any weapon was made from the appellant; that there are material contradictions in the evidence of the witnesses which renders their evidence unreliable 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.

8. Learned Assistant Prosecutor General Sindh who was also representing the complainant, 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 three eye witnesses in this case all of whose evidence could be safely relied upon and the medical evidence supported the ocular evidence 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 *Nasir Ahmed vs. The State* (2023 SCMR 478), *Aman Ullah and another vs. The State and others* (2023 SCMR 723), *Qasim Shahzad and another vs. The State and others* (2023 SCMR 117), *Nasir Iqbal @ Nasra vs. The State* (2016 SCMR 2152) and *Ashfaq Ahmed vs. The State* (2007 SCMR 64).

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 and recovery of empties at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Muhammed Ali Raza (the deceased) was seriously injured by firearm on 25.06.2014 at about 23.15 hours at Young husband road, inside Chaman Naswar shop near Naz hotel Kharadar Karachi who died from his fired arm injuries whilst undergoing treatment in civil hospital on the same night.

11. The only question left before me therefore is who murdered the deceased by firearm and attempted to murder 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 a few hours of the incident and the S.154 Cr.PC statement was recorded whilst the complainant was in hospital where his son was being treated and subsequently died. Any slight delay in lodging the FIR where the complainant went to the hospital to attend to his injured son where he lodged the FIR I find to

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be fully explained based on the particular facts and circumstances of the case and as such this slight delay in lodging the FIR is not 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) The appellant is named in the promptly lodged FIR with the specific role of murdering the deceased by firearm along with his absconding co-accused and firing at the complainant with attempt to murder him. Thus there was no time for the complainant to cook up a false case against the appellant.
- (c) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder and attempt to murder whose evidence I shall consider in detail below;

(i) Eye witness PW 3 Muhammed Sharif. He is the complainant and is the father of the deceased. According to his evidence on the fateful day he left his house for a walk and then sat at Chabootra of Chaman Naswar near Naz hotel Kharadar when at about 2300 his son/deceased met him and they had some chit chat. Already PW Muhamed Yaseen was sitting with him. At about 2315 three persons came on one motor bike and two persons came on another. He recognized two of the motor bike riders as the appellant and Rahim Dino. The appellant threatened the complainant and told him that he would not spare him and then fired on him and his son/deceased with a pistol. He took cover but he saw that his son had received firearm injury on his neck. The motor bike riders then made their escape good. PW Muhammed Yaseen and others took him and his son to hospital where after some time his son succumbed to his injuries. The police arrived at the hospital and he recorded his S.154 Cr.PC statement which later became the FIR. According to his evidence the appellant murdered his son due to old enmity and he exhibited numerous FIR's in respect of the cases which he had lodged against the appellant and his family.

This eye witness knew the appellant before the incident as he was related to him and 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. 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 son and there was enmity between the appellant and the eye witness although most of it tended to flow from the appellant's side and thus I am put on caution as to the evidence of this eye witness.

This eye witness however is not a chance witness as he was residing in the neighborhood and had met his son/deceased after his walk who was shot in front of him. There are no

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material improvements in his promptly lodged FIR from his evidence. He was not dented during a lengthy cross examination and he gave his evidence in a natural manner

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 witnesses to be of good quality and believe the same.

However there are yet other eye witnesses.

(ii) Eye witness PW 4 Muhammed Yaseen. He an independent witness. He has no enmity with the appellant and no reason to implicate him in a false case. His evidence corroborates the evidence of the complainant in most material respects regarding the shooting incident. He gave his S.161 Cr.PC eye witness statement with promptitude which was not materially improved upon during his evidence. He did not know the accused before the incident and did not know about any enmity between the complainant and the accused. The honesty in his evidence is found in the fact that he does not claim to know who fired on the deceased by name when he could easily have done so if he wanted to go out of his way to strengthen the prosecution case. He was a natural witness and not a chance witness as he lived in the neighbor hood and had met the complainant for a chat. He was not also 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 with regard to the shooting incident

(iii) Eye witness PW 5 Zulfiqar Ali. He is related to the complainant and deceased. He was living in the neighbor hood and went to buy medicines at time when the incident occurred. According to his evidence on the fateful day at about 2245/2300 or 2315 when he reached Nagori medical store in front of chaman Nawar shop near Naz hotel young husband road he heard the complainant being threatened and heard firing. He saw the complainant and the deceased lying on the ground and he saw the appellant and absconding Rahim Dino making firing. He saw that the deceased had an injury on his neck and confirms the presence of PW 4 Muhammed Yaseen at the crime scene.

He appears to be a natural witness as he lived in the area and was out buying medicines at the time. He corroborates the

other eye witnesses as to the incident and importantly identified the appellant and the co-accused who he knew from before as being present at the crime scene. He was not also dented during cross examination and as such the same considerations apply his evidence to that of the complainant and PW 4 Zulfiqar Ali. Namely, I find it to be trust worthy, reliable and confidence inspiring and as such I believe the same

Having believed the evidence of the three 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 3 eye witnesses as mentioned above what other supportive/corroborative material is their against the appellant?

- (d) That it does not appeal to logic, commonsense or reason that a father would let the real murderer of his son 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 corroborates/supports the ocular evidence.
- (f) The fact that empties were found at the crime scene from 9mm pistol also supports/corroborates the eye witnesses evidence as to the murder.
- (g) 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. 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 IO and the duty officer who were not dented during cross examination and whose evidence ties in with the prosecution case.
- (h) The motive for the murder has come on record. Namely, that the complainant had filed cases against the appellant and the appellant was threatening the complainant to withdraw these cases which he had refused to do.
- (i) 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 complainant sitting with his son and a friend to the appellant and the absconding co-accused firing at the complainant and his son/deceased as they would not withdraw the cases which they had lodged against him to the deceased being murdered through firearm injury to the empties being collected at the crime scene to the appellant being arrested from jail where he was facing another case.

- (j) That the absconson of the appellant in this case where he was declared as an absconder is circumstantial evidence against the appellant.
- (k) The appellant has a very long CRO for such like cases.
- (l) The fact that no one was prepared to act as an independent mashir has almost become a judicially recognized fact as these days no member of the public wishes to associate themselves with such like cases and run the risk of being called to give evidence. Even otherwise, it was a late night incident with hardly any one around.
- (m) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was falsely implicated in this case due to a dispute over land but no witness or document concerning any land dispute was ever placed on record. He claims that he was not present at the time of the incident but he has produced no witness to support where he actually was at the time of the incident. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion, I 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.