

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

CRIMINAL APPEAL NO.643 OF 2019

Appellants:

- 1) Nadir s/o Nasir alias Chingari
- 2) Muhammad Moosa s/o Nabi Bux  
through Khawaja Naveed Ahmed, Advocate.

Respondent/State:

Through Mr. Muhammad Iqbal Awan, Addl.  
Prosecutor General, Sindh

Date of hearing:

13.03.2024

Date of announcement:

20.03.2024

JUDGMENT

*Mohammad Karim Khan Agha, J.-* Appellants Nadir s/o Nasir alias Chingari and Muhammad Moosa s/o Nabi Bux have preferred this criminal appeal against the impugned judgment dated 03.09.2019 passed by the learned VIIIth Additional Sessions Judge/MCTC No.02 (Central) Karachi in Sessions Case No.126/2016 in respect of F.I.R. No.183/2015 u/s.302/34 registered at PS Supermarket, Karachi; whereby the appellants were convicted u/s.265-H(2) Cr.P.C and sentenced to suffer Imprisonment for life under Section 302(b) PPC with direction to pay Rs.1,00,000/- each as compensation to the legal heirs of deceased under section 544-A Cr.P.C. and in default thereof, they were ordered to suffer SI for 01 years more. However, the benefit of Section 382-B Cr.P.C. was also extended to the appellants.

2. The brief facts of the prosecution case as per FIR are that on 04.12.2015 at about 7.40pm the complainant was coming back from his work towards his house situated in Ilyas Goth and when he reached at some distance away from his house, he heard the voices of firing and people started running here and there. On this he stood on the corner of a street concealing himself and saw that his old neighbors 1) Fatehyab @ Appal son of Abdul Karim, 2) Nadir Son of Nasir @ Chingari, 3) Saqib s/o unknown along with their 3/4 other companions



known faces duly armed having pistols in their hands were coming by foot and went away towards Azad Building. The complainant remained standing there for some time and then carefully went towards his house. Meanwhile, two ambulances also reached there. Then on reaching at home, he was informed that nephew of complainant namely Muhammad Ashraf son of Abdul Sattar and relative namely Daniyal son of Abdul Ghafoor were killed by firing, who were sitting outside the house at main gate of compound. Thus, dead bodies of both persons were shifted to the hospital and the complainant also departed in rickshaw towards hospital with the ambulance in which Muhammad Ashraf was shifted to hospital, where police officer also reached and completed formalities. Then, complainant came to know through phone that dead body of Daniyal had reached at Abbasi Shaheed Hospital and was received after completion of police proceedings. Thereafter, complainant went at PS after burial of the dead bodies for lodging FIR. Hence, FIR of this case was lodged by complainant claiming that due to personal enmity above named accused killed his nephew Muhammad Ashraf and relative Daniyal by firing with firearms.

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

4. In order to prove its case, the prosecution examined 08 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 appellants/accused persons were recorded under Section 342 Cr.P.C. wherein they denied the prosecution allegations and claimed trial. However, the appellants neither examined themselves on oath nor produced any witness in their defence.

5. After hearing the learned counsel for the parties and assessment of evidence available on record, learned trial Court vide judgment dated 03.09.2019 convicted and sentenced the appellants as stated above, hence this appeal has been filed by the appellants against their convictions.

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 appellants has contended that the appellants are innocent and have been falsely implicated in this case on account of enmity hence the unexplained delay of 22 hours in lodging the FIR which gave the chance for the complainant party to cook up a false case against the appellants; that the evidence of the eye witnesses could not be safely relied upon and as such be discarded; that the pistols had been foisted on the appellants by the police and that for any or all of the above reasons the appellants should be acquitted by extending them the benefit of the doubt.

8. Learned Additional 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 if there was any delay in lodging the FIR this had been fully explained; that the eye witnesses evidence was trust worthy, reliable and confidence inspiring and could be safely relied upon; that the medical evidence supported the ocular evidence and that the murder weapons (pistols) had been recovered from the appellants albeit in another case which when matched with the empties recovered at the crime scene lead to a positive FSL report 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 **Qasim Shahzad and another v The State** (2023 SCMR 117), **Khadim Hussain v The State** (PLD 2010 SC 669) and **Muhammad Ilyas v The State** (2011 SCMR 460).

9. I have heard the learned counsel for the appellants as well as learned APC and have also perused the material available on record and 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 Asharaf and Danial (the deceased) were both murdered by firearm on 04.12.2015 at 7.40pm inside compound near main gate kachi abadi illias goth C-1 area near Lyari expressway Liaquatabad Karachi.

11. The only question left before me therefore is who murdered the deceased 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 appellants for which they were convicted for the following reasons;

- (a) That the FIR was lodged after a delay of 22 hours. Such delay can be fatal to the prosecution case unless the delay is explained. In this case the deceased were immediately taken to hospitals, and in the case of deceased Ashraf the complainant went to that hospital, and their post mortems carried out before being returned to their relatives. After burial the complainant lodged the FIR. Thus based on the particular facts and circumstances of this case I find that the delay in lodging the FIR has been adequately explained and as such 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 Nazir is named in the FIR with the role of running away duly armed after the murders of the deceased whilst the other appellant Moosa according to the complainant fell within the category of unknown persons. Thus it appears that the complainant has not gone out of his way to implicate both the appellants. Even otherwise **no specific/proven enmity** has come on record between the appellants and the complainant or any PW which would motivate him/them to lodge a false case against the appellants.
- (c) The prosecution's case rests on the sole eye witness to the murder whose evidence I shall consider in detail below;

- (i) **Eye witness PW 2 Babar Ali. He is an independent witness** According to his evidence the incident took place on 04.12.2015 when he was present outside the compound of his house with both the deceased at about 7.30/8pm. He went inside his house for a drink and then heard firing. He came out and saw both the deceased in blood lying on the earth. He saw the appellants having black colored pistols who started firing on him so he took cover in his house. He then came out from his house and saw the deceased being taken to hospital by ambulance.

This eye witness knew the appellants before the incident and saw the appellants from a few feet away just after they had fired on the deceased by pistol whose bodies were lying on the ground and then who fired at him where after he sought cover in his house and as such there is no case of mistaken identity. This eye witness is not a chance witness as he was sitting with the deceased outside his own house. He gave his S.161 Cr.PC eye witness statement the next day which was not materially improved upon during his evidence. He gave his evidence in a straightforward manner and was not dented during cross examination. He had no ill will or enmity with the appellants and had no reason to implicate them in a false case. He was not related to the deceased. The fact that he was not named in the FIR which was lodged after 22 hours indicates that no consultation took place as otherwise he would have been



named in the FIR in order to strengthen the prosecution's case. I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on it.

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/her evidence to be trust worthy reliable and confidence inspiring, and in this case I have found the evidence of this sole eye witness to be trust worthy reliable and confidence inspiring especially in respect of the correct identification of the appellants and the appellants shooting the deceased as such I believe the same and place reliance on it. In this respect reliance is placed on the case of *Muhammad Ehsan v. The State* (2006 SCMR 1857), *Farooq Khan v. The State* (2008 SCMR 917), *Niaz-ud-Din and another v. The State and another* (2011 SCMR 725), *Muhammad Ismail vs. The State* (2017 SCMR 713) and *Qasim Shahzad and another v The State* (2023 SCMR 117).

- (ii) Eye witness Abdul Rasid. He is the complainant in this case and one of the deceased Ashraf is his nephew. According to his evidence on his way home on 04.12.2015 at about 7.45pm he heard fire shots which lead to people scattering. He took shelter in the street. He saw appellant Nadir and others running away from the crime scene with pistols heading towards a building named Aazadi. His brother in law told him that his nephew (Ashraf) had been killed in the firing. He went to the hospital where his nephew Ashraf had been taken who was dead.

Admittedly he is not an eye witness to the murder. Instead he came just after the incident and saw appellant Nadir and other co-accused running away from the crime scene with pistols. He lodged the FIR with relative promptitude based on the particular facts and circumstances of the case with any delay already being explained above. He did not make any material improvements in his FIR during the course of his evidence. He was not a chance witness as on his way to his house. He did not pretend to be an eye witness to the murder of the deceased which he could easily have done in order to strengthen the prosecution case against the appellants as such I find him to be an honest witness. He also did not name appellant Moosa as one of the persons he saw running away. It appears that he might have had some enmity with the appellant Nadir and was related to the deceased. The fact that he saw the incident from 200 yards away and it was 7.45pm in December indicates that it must have been quite dark and difficult for him to see the accused. As such taking these circumstances into account I only give his evidence a little weight in corroborating the evidence of eye witness PW 2 Babar Ali in terms of identifying appellant Nadir from running away from the crime scene after murdering the deceased.



Having believed the eye-witnesses evidence I turn to consider the corroborative/supportive evidence whilst keeping in view that it was 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 2 PW eye witnesses (though with different weight) 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 an uncle would let the real murderer of his nephew 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 and post mortem report fully support the eye-witness/ prosecution evidence that both the deceased died from receiving a firearm injuries.
- (f) That the appellants were absconders and were each arrested later at different times in separate arms cases. The pistols recovered from the appellants at the time of their arrest matched the empties recovered at the crime scene through independent FSL reports.
- (g) That there was no ill will or enmity between the police and the appellants and as such the police witnesses had no reason to falsely implicate the appellants in this case, for instance, by foisting the pistols on them. 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 other police witnesses who were not dented during cross examination.
- (h) 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 convictions of the appellants. In this respect reliance is placed on the cases of Zakir Khan V State (1995 SCMR 1793) and Khadim Hussain v. The State (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the deceased sitting outside the house of PW 2 Babar Ali with him to the accused shooting the deceased both of whom died to the recovery of empties on the spot to recovery of the pistols from the accused when they were later arrested in another case to those recovered pistols matching with the empties recovered at the spot through separate FSL reports.
- (i) 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 caste doubt on or dent the



prosecution case. The defence case as set out by the appellants in their S.342 Cr.PC statements are that they were falsely implicated in this case by the police at the instance of the complainant as there was a dispute between the Ramzani groups and others. No question in this regard was put to any PW during cross examination. Neither the appellants gave evidence on oath or called any DW in support of their defence case which defence I find to be an after thought in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above and as such 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 both the appellants beyond a reasonable doubt for the offence for which they have been convicted and sentenced in the impugned judgment and as such the appeal is dismissed.