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ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.S- 146 of 2013

DATE	ORDER WITH SIGNATURE OF JUDGE
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29.04.2024.

Appellant has been produced in custody by the jail authorities.
Mr. Altaf Hussain Chandio, Advocate for appellant.
Mr. Shahid Shaikh, Additional P.G for State alongwith
Inspector Mehmood Ahmed SHO PS Badin

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I have heard the learned counsel for appellant and learned
A.P.G for State who is also representing the complainant in the
interest of justice as the complainant Ghulam Muhammad present in
Court has reposed his full faith and confidence in learned A.P.G.
Reserved for judgment.

Tufail

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-146 of 2013

[Ali Gohar versus The State]

Appellant : Through Mr. Altaf Hussain Chandio advocate

Complainant : In person

The State : Through Mr. Shahid Al med Shaikh
Additional Prosecutor General Sindh

Date of hearing : 29.04.2024

Date of decision : 03.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- Appellant has challenged the Judgment dated 08.10.2013 passed by the learned IIIrd Additional Sessions Judge Shaheed Benazirabad in Sessions Case No.02 of 1997 (*Re: The State versus Gul Sher & Crs*), outcome of Crime No.28 of 1995 registered at P.S Daulatpur under Sections 302, 324 and 34 PPC, whereby he (appellant) alongwith co-accused Dhani Bux @ Dhanoo was convicted and sentenced under Section 302(b) PPC as Tazir to suffer imprisonment for life with further directions to pay Rs.2,00,000/- each as compensation to the legal heirs of both deceased persons, however benefit of Section 382-B Cr.P.C was extended to them.

2. The brief facts of the case are that on 14.07.1995 complainant Ghulam Muhammad appeared at P.S Daulatpur and narrated that he alongwith his brothers and father is residing near Pakistan Buma Shell Diesel Company near Railway Line Daulatpur; that on same day they after taking dinner with guest Waris went to sleep when at about 01:30am they woke up on the barking of dogs and saw two persons duly armed with Kalashnikovs, who entered in the house; that on the light of bulbs they identified both said persons as Gulsher Dahri and Dhani Bux alias Dhanoo Dahri; that they also

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saw other two persons, who were standing at main gate, who were identified as Habibullah and Ali Gohar (**appellant**); that accused Gul Sher abused and raised hakals and told that they came to know that we want to kill them as such they would not spare us; that accused Gul Sher and Dhani Bux alias Dhanoo made firing upon the brother namely Abdul Ghafoor, which hit him and he fell down on the ground while crying; **that accused Habibullah and Ali Gohar (appellant) made firing upon my father Muhammad Daim which hit him and he fell down while crying**; that thereafter my mother Mst. Jamul with Holy Quran requested the accused persons not to commit murder of her sons; then accused Gul Sher made fire upon his mother which hit her and she fell down while crying, then accused persons escaped away; that thereafter he and PWs saw that Abdul Ghafoor had received injuries on his abdomen and legs and he died at the spot, **whereas his father Muhammad Daim received injuries on his face, head, abdomen and legs and he also died at the spot**; that his mother Mst. Jamul had received injury on her right arm near shoulder and she was injured; that thereafter he left the PWs with dead bodies and appeared at P.S and lodged the subject FIR.

3. After usual investigation police submitted the challan showing all accused as absconders. However, later on present appellant Ali Gohar and co-accused Dhani Bux alias Dhanoo (who died whilst serving his sentence in jail) were arrested and their case was notified for inside jail trial. Whereas accused Gul Sher died as such proceedings against him were abated while accused Habibullah remained absconder.

4 After completing necessary formalities, learned trial Court framed the charge against present appellant and co-accused Dhani Bux alias Dhanoo, to which they pleaded not guilty and claimed trial.

5. In order to prove its case the prosecution examined seven (07) witnesses, who exhibited numerous documents and other items. Then statements of accused under Section 342 Cr.P.C were recorded

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whereby they denied the allegations leveled against them and claimed their false implication by the complainant party. However, they neither examined themselves on Oath nor led any evidence in their defense.

6. After hearing the parties and assessing the evidence on record the learned trial Court convicted and sentenced the present appellant as well as co-accused (since died) as stated in opening paragraph of this Judgment, hence appellant has preferred this Appeal against his conviction.

7. Learned counsel for the appellant has contended that the appellant is innocent and that he has been falsely implicated in this case by the complainant on account of enmity; that the eye witnesses are unreliable and could not have correctly identified the appellant even if he was present and even one eye witness has been declared hostile; that no recovery was made from the appellant and as such recovery of empties at the crime scene; that the appellant according to his S.342 Cr.PC statement was only 7 years old at the time of the trial and as such could not have committed such a brutal and that for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the cases of In support of his arguments he relied upon the cases of (i) MST. YASMEEN vs. The STATE [2020 SCMR 505], (ii) NAJAF ALI SHAH vs. The STATE [2021 SCMR 736], (iii) SARFRAZ and another vs. The STATE [2023 SCMR 670] and (iv) Mst. ASIA BIBI vs. The STATE [PLD 2019 SC 64].

8. Learned Additional Prosecutor General Sindh who was also representing the complainant who was present in court and had reposed full faith and confidence in him 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 the FIR was lodged promptly, the eye witness evidence was trust worthy reliable and confidence inspiring and was to be believed; that the medical evidence supported the ocular

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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 (i) MUHAMMAD SADIQ vs. The STATE [2022 SCMR 690], (ii) ABDUL KHALIQUE vs. The STATE [2020 SCMR 178] and ANWAR SHAMIM and another vs. The STATE [2010 SCMR 1791].

9. I have heard the learned counsel for the appellant as well as learned APG 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, the blood and empties recovered at the scene of the crime I find that the prosecution has proved beyond a reasonable doubt that Abdul Ghafoor and Muhammed Daim Dahri (the deceased) were murdered by firearm and PW 4 Mst Jamul was injured by firearm on 14.07.1995 at 1.30am at the house of the complainant in Deh Daulatpur Taluka Daulatpur.

11. The only question left before me therefore is whether the appellant played a role in the murder of deceased Muhammed Daim Dahri 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) The FIR was lodged within 1 hour of the incident as such there was no delay in lodging the FIR which could give time for the complainant to cook up a false case against the appellant.
- (b) The appellant is named in the promptly lodged FIR with the specific role of firing on and murdering the deceased Muhammed Daim Dahri. Even otherwise **no specific/proven enmity** has come on record between the appellant and the complainant or any PW which would motivate him/them to lodge a false case or give false evidence against the appellant.
- (c) The prosecution's case rests on the eye witnesses to the murder whose evidence I shall consider in detail below in so far as it relates to this appellant;

(i) Eye witness PW 4 Mst Jamul. She is the wife of the

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deceased **Muhammed Daim Dahri**. According to her evidence on 14.07 at about 1.30 am **Waris** had come as a guest to her house. After taking dinner her sons **Ghulam Muhammed** (complainant), **Younis**, **Abdul Ghafoor** (deceased) and her husband **Diam** (deceased) went to bed. Later they were awoken by barking dogs. **She saw the absconder Habibullah and appellant fire on her husband deceased Daim. Electric bulbs were on and the faces of the accused were open.** Deceased accused **Gul Sher** fired at her and hit her on her right arm/shoulder. Her husband deceased **Diam** was dead and had received numerous firearm injuries.

Admittedly the eye witness was related to the deceased who was her husband 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) and **Ashfaq Ahmed v. The State** (2007 SCMR 641).

This eye witness **knew the appellant before the incident** as they both lived in the same village. Although it was a night time incident **as per evidence the light bulbs were on and the face of the appellant was open.** The appellant and the co-accused remained in her house for 15 minutes so she would have got a good look at the appellant from close range and as such there was no case of mistaken identity and no need to conduct an identification parade. She gave her S.161 Cr.PC statement on the same day which was not materially improved on in her evidence which is also in conformity with the promptly lodged FIR by the complainant. It was her own home where she was living with her husband and sons and as such she was a natural witness as opposed to a chance witness. She also received a firearm injury during the attack which is corroborated by the medical evidence and as such her presence at the scene of the incident is not doubted and it is settled by now that the evidence of an injured eye witness is more reliable than an ordinary eye witness. In this respect reliance is placed on the cases of **Aquil V State** (2023 SCMR 831) and **Taj versus The State** [2012 SCMR 43]. She gave her evidence in a natural manner and was not dented during cross examination. She has no proven enmity to implicate the appellant in a false case. I find her evidence to be trust worthy, reliable and confidence inspiring and I 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 eye witness to be trust worthy, reliable

and confidence inspiring especially in respect of the correct identification of the appellant and as such I believe the same and place reliance on it. In this respect reliance is placed on the cases 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). Her evidence is also of good quality and it is settled by now that it is not the length of the evidence which is of importance but its quality.

There are however 2 other eye witnesses.

(ii) **Eye witness PW 6 Waris.** He was a relative of PW 4 Mst Jamul and was staying over night in her house. His evidence corroborated her evidence in all material respects. He was a relative of Mst Jamul from a nearby village and had brought his wife for medical treatment and as such he cannot be deemed to be a chance witness. In this respect reliance is placed on the case of **Anwar Shamim** (Supra) especially as his evidence inspires confidence. **He also in his evidence recognized the appellant under light bulbs and as he knew him there was no case of mistaken identification.** He gave his S.161 Cr.PC statement timely and there are no material contradictions between his S.161 Cr.PC statement and his evidence at trial. He had no enmity or ill will to falsely implicate the appellant in a false case. He gave his evidence in a straightforward manner and was not dented during cross examination and as such I believe his evidence and place reliance on it.

(iii) **Eye witness PW 3 Ghulam Muhammed is the complainant in the case.** He is also related to the deceased. He lodged his FIR within one hour of the incident and his evidence ties in with the same stating **that he saw the incident under light bulbs and saw the appellant and Habibullah shoot the deceased Diam which ties in with the evidence of the other eye witnesses except that he refused to identify the appellant in court which lead to him being declared hostile.** To my mind the correct statement of this witness can be found in the FIR as it was lodged only one hour after the incident and as such he had no time to cook up a false case. It reflects the truth as to what actually transpired although the FIR is not a substantive piece of evidence itself. It appears that this witness has been won over however this does not lead to me discarding completely his testimony. In fact I find that it supports fully the incident as narrated by the two other eye witnesses and as such I rely on it **except in respect of the identification of the appellant.** In this respect reliance is placed on the case of **Abdul**

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Khalique v. The State (2020 SCMR 178) which found as under:-

4. The ocular account in this case has been furnished by complainant Muhammad Sadiq (PW1), Rasheed Ahmad (PW2) and Abdul Rehman (PW3). All the three eye-witnesses remained consistent on all the material aspects so far as role of petitioner of causing dagger blows on the person of Khalil Ahmad (deceased) is concerned. Though complainant Muhammad Sadiq (PW1) was declared hostile, but to the extent of petitioner, his testimony endorses the statements of other two eye-witnesses. The medical evidence adduced by Dr. Nizamuddin (PW6) who medically examined Khalil Ahmad in injured condition and Dr. Salihuddin (PW7) who conducted autopsy on the dead body of Khalil Ahmad supports the ocular account. During the course of investigation, a dagger was recovered on the pointation of the petitioner, which was blood stained".

Furthermore, the case of **Sher Muhammad v. The State** (1968 P.Cr.L.J 221) held as under in respect of hostile witnesses:-

"It may be mentioned that Sultan Khan (P.W.) had been declared hostile to the prosecution in the trial Court and was cross-examined by the learned Public Prosecutor. It was then established that he had made a statement in the committing Court favouring the prosecution story and his statement made, before that Court was transferred as evidence under section 228 of the Code of Criminal Procedure. His refusal to support the prosecution, therefore, at the trial stage, cannot be pressed into service to belie the prosecution allegation in the circumstances of this case." (bold added)

In yet another case of **Muhammad Suleman and 4 others v. The State** (PLD 2007 SC 223) it was held as under with respect to hostile witnesses:-

"12. There is no cavil to the proposition that the testimony of a hostile witness or a witness, who was not examined being won over was either produced by the defence or was examined as Court witness, must not be left out of consideration for mere reason that he did not support the prosecution rather the evidence of such a witness must be considered with utmost care and caution. The testimony of a witness who speaks in the different tune at different times is certainly not reliable unless strong confirmatory evidence of independent character is available on record."

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The upshot of the above discussion is that I believe the evidence of PW 4 Mst Jamul and PW 6 Waris as to the correct identification of the appellant as one of the persons who shot and murdered deceased Diam and rely on the evidence of eye witness PW 3 Ghulam Muhammed only to the extent of the incident and find that him being declared as a hostile witness does not make much of a difference based on the particular facts and circumstances of the case and the two other eye witnesses identification of the appellant.

As such I find that the prosecution through its eye witnesses has proved beyond a reasonable doubt that the appellant was correctly identified as one of the persons along with absconding co-accused Habibullah who shot and murdered deceased Dias

Having believed the evidence of the two eye witnesses mentioned above as to the correct identification of the appellant and the third eye witness as to the actual incident 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 trustworthy there is hardly any need to look for any corroboration"

- (d) That it does not appeal to logic, commonsense or reason that a real wife would let the real murderer of her husband 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 the deceased Diam died from receiving numerous firearm injuries.
- (f) That PW 5 Hadi Bux who was the mashir of the case fully corroborates the aftermath of the incident when he reaches the house/crime scene and finds the deceased murdered by firearm and PW 4 Mst Jamul injured by firearm and the police carrying out the relevant legal formalities before sending the deceased and the injured to hospital.
- (g) That there was no ill will or enmity between the police and the appellant and as such they 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 even though in this case it was only used to identify certain writings on documents made by expired or retired police officers who were involved in the investigation. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474).

- (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 conviction of the appellant. 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 appellant and his co-accused firing on the deceased and PW 4 Ms Jumul to the death of the deceased which is fully supported by the medical evidence.
- (i) The motive for the murder appears to be a dispute over some land.
- (j) I do not believe that the appellant was only 7 years old when he faced trial. This would have been brought up by the trial court judge or the defence counsel in this capital case as it would have been obvious that the appellant if he was 7 years old was not 18 years old. This was raised for the first time in the appellant's S.342 Cr.PC statement. He produced no document or witness to prove that he was only 7 years old and as such I find this contention to be an after thought and disbelieve the same.
- (k) 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 simply false implication on account of enmity. The appellant did not give evidence on oath or call a single defence witness in support of his claim of false implication on account of enmity. 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 offence for which he has been convicted and sentenced in the impugned judgment and as such his appeal is dismissed.