HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Cr. Jail Appeal No.S-02 of 2017
[Haji versus The State]

Appellant	:	Through Mr. Aijaz Ali Magsi, Advocate.
Complainant	:	None present.
State	:	Through Mr. Shahid Ahmed Shaikh, Addl. Prosecutor General, Sindh.
Date of hearing	:	16.10.2023
Date of Judgment	:	23.10.2023

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J U D G M E N T

MOHAMMAD KARIM KHAN AGHA J.- Through this jail appeal appellant has impugned the Judgment dated 29.12.2016 passed by Sessions Judge, Mirpurkhas (Trial Court) in Sessions Case No.32 of 2013 [**The State versus Haji S/o Sohrab Shar**] outcome of Crime No.48 of 2012 registered at P.S Phulladiyoon for offence punishable under Sections 302, 114 and 34 PPC, whereby he was convicted and sentenced to undergo rigorous imprisonment for Life as Tazir with benefit of Section 382-B Cr.P.C with further directions to pay rupees One Lac as compensation to the legal heirs of deceased and in case of failure in payment thereof, he has to undergo simple imprisonment for six months more.

2. The brief facts of the case, as per FIR, are that on 23.11.2012 at about 0830 hours at watercourse situated on the lands of Noor-ul-Haque Dars near village Essan Khan Shar, the deceased Ghulam Rasool was cutting a tree with permission of his zamindar, which was objected by the present appellant as well as proclaimed offender Ameer and as such present appellant at the instance of above proclaimed offender made a direct fire at Ghulam Rasool, which caused death of Ghulam Rasool.

3. After usual investigation, the case was challaned and the appellant was sent up to face trial. The appellant plead not guilty to the charge and claimed trial. In order to prove its case, the prosecution examined six (06)

witnesses who exhibited various documents and other items. The statement of appellant under Section 342 Cr.P.C was recorded in which he denied the allegations of prosecution witnesses. The appellant has also examined himself on Oath under Section 340(2) Cr.P.C however, he did not produce any witness in his defense. The learned trial Court after hearing the learned counsel for the parties and appreciating the evidence on record convicted and sentenced the appellant, as mentioned supra, hence the appellant has filed this appeal against conviction.

4. Learned counsel for the appellant contended that the impugned judgment is result of misreading and non-reading of material available on record; that prosecution case is not free from doubts; that there was delay in registration of FIR, but same has been ignored by the learned trial Court; that present appellant has falsely been implicated in present crime; that there are material contradictions in the evidence of prosecution witnesses which makes the case highly doubtful and the appellant entitled to be awarded benefit of said doubts; that evidence of complainant and his witnesses shows that there was no enmity between complainant party and present appellant, hence motive is not proved and that deceased was actually murdered by Chohan community on account of matrimonial dispute between complainant party and said Chohan community. He prayed for acquittal of the appellant.

5. Despite notice, no one has appeared on behalf of the Complainant. However, learned A.P.G vehemently opposed the appeal and prayed for its dismissal by arguing that appellant is nominated in FIR with specific role of causing death of an innocent person; that prosecution witnesses have fully supported the version of FIR and there are no contradictions in their evidence; that medical evidence is supported by the ocular evidence and that it does not attract a prudent mind that Complainant has left the real culprit of his case, as alleged by the appellant, and has implicated the appellant. He has relied upon the cases reported in **Amanullah v State** (2023 SCMR 527), **Qasim Shazad V State** (2023 SCMR 117) and **Muhammed Bashir V State** (2023 SCMR 190).

6. I have heard the learned counsel for the appellant as well as learned A.P.G and have also perused the material available on record and the case law cited at the bar.

7. Based on my reassessment of the evidence of the PW's, especially the PW eye witnesses, medical evidence, recovery of blood and empties at the crime scene which lead to both positive FSL report and chemical report I find that the prosecution has proved beyond a reasonable doubt that Ghulam Rasool (the deceased) was murdered by firearm at about 0830 hours on 23.11.2012 at watercourse situated on the land of Noor-ul-Haque Dars near village Essan Khan Shah.

8. The only question left before me therefore is who murdered the deceased by firearm at the said time, date and location?

9. 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 with a delay of one day however based on the particular facts and circumstances of the case I do not find such delay fatal to the prosecution case. This is because after the shooting/murder the dead body was initially taken to the house of the complainant before being transported by the police to hospital where a post mortem took take place where after the body was returned to the relatives for burial. After the burial the complainant lodged the FIR and as such any delay in the lodging of the FIR based on the particular facts and circumstances of the case 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 FIR with a specific role along with his absconding co-accused and other PW eye witnesses by the complainant which FIR as discussed above was lodged with promptitude. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant which would motivate him to lodge a false case against the appellant.

(c) In my view the prosecution's case rests on the eye witnesses to the murder whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Mirran.** He is the complainant in the case and is the father of the deceased. According to his evidence on 23.11.12 at about 8.30 in the morning he was with PW Abdul Ghani and Ramzan when he heard noise of fire. He went to the firing and saw the accused who had a gun in his hand had fired on the deceased and during cross examination confirmed that he saw the second fire shot hitting the deceased. His son fell down whilst the accused escaped from the scene. According to his evidence the accused fired on the deceased because he was cutting down a tree which was on his land. As his son was already dead he brought him to his house and his other son informed the police who arrived at his home within about

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30 minutes and took the dead body to hospital for post mortem. The body was returned to him and after burial he lodged the FIR,

He knew the appellant before the incident, it was a day light incident and he was not far away when the appellant shot the deceased so there is no case of mistaken identity and no need to hold an identification parade especially as he named the accused with specific role in the promptly lodged FIR. In this respect reliance is placed on the case of **Qasim Shahzad** (Supra) and **Amanullah** (Supra),

Admittedly the eye witness was related to the deceased who was his son 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. 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),

The complainant is **not** a chance witness. He lived in the same village as his son/deceased and also worked in agriculture so he had every reason to be where he was at the time of the incident. Any delay in registering the FIR is fully explained as mentioned above. His evidence reflects that of his FIR and there have been no material improvements in the same so as to render his evidence unreliable. He had no proven enmity with the appellant and had no reason to falsely implicate him in the murder of the deceased. His evidence was not dented despite lengthy cross examination which was given in a natural and straight forward manner. We find his evidence to be reliable, trust worthy and confidence inspiring and we believe the same and we can convict on his evidence alone. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in **Farooq Khan v. The State** (2008 SCMR 917), what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this eye witness to be of good quality. As was held in the case of **Muhammad Mansha v. The State** (2001 SCMR 199) .

> *"A bare perusal would reveal that the language as employed in the said Article 17(1)(b) is free from any ambiguity and no scholarly interpretation is required. The provisions as reproduced hereinabove of the said Article would make it abundantly clear that particular number of witnesses shall not be required for the proof of any fact meaning thereby that a fact can be proved only by a single witness "it is not seldom that a crime has been committed in the presence of only one witness, leaving aside those cases which are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality witnesses, case where the testimony of a single witness only*

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could be available in proof of the crime, would go unpunished. It is here that the discretion of the Presiding Judge come into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. The Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving facts". (Principles and Digest of the Law of Evidence by M. Monir, page 1458.

(ii) **Eye witness PW 2 Ramzan.** He is the cousin of PW 1 Mirran who is the complainant in the case. According to his evidence on 23.11.12 at 8.30am he saw the deceased cutting a tree of Babul on the watercourse. On the instigation of the absconding co-accused the accused fired from his gun at the deceased. Both fire shots hit the deceased on his stomach and he fell down. The accused and co-accused managed to escape. The complainant brought the deceased to his home who died.

This witness saw the incident in day light from a short distance. He is named in the FIR as an eye witness which was lodged with promptitude. He knew the accused from before. He gave his S.161 Cr.Pc statement on the same day which was not materially improved on at trial. The same considerations apply to his evidence as to PW 1 Mirran the complainant. We find his evidence to be trust worthy, reliable and confidence inspiring and we believe the same and place reliance on it.

Having believed the eye-witness evidence we 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), at P.786 para 4 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"

Like wise in the case of **Sikandar Ali Lashari & another v. The State** (SBLR 2020 Sindh 981) it was held as under at P.1026 Para 4;

"Each criminal case has its own peculiar facts. If eye witness account is found trustworthy then there is hardly any need for corroboration"

Thus, based on our believing the evidence of the 2 PW eye witnesses by way of abundant caution 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 and post mortem report fully supports the eye-witness/ prosecution evidence that the deceased received two firearm injuries and these mainly resulted from pellets i.e a shot gun.

(f) That on his arrest a few days after the incident the accused confessed to the offence and lead the police to the murder weapon which was a shot gun on his own pointation which was hidden at his house in a place where which the police would not be aware of.

(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, for instance, by foisting the shot gun 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).

(h) That the empties recovered at the crime scene when matched with the recovered shot gun lead to a positive FSL report.

(i) That the blood stained earth recovered at the wardat and clothes recovered from the deceased were sent for chemical examination which report found the blood recovered at the scene and on the clothes to be human blood.

(j) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we 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 shooting of the deceased and to the arrest of the appellant to the appellant leading the police to the hidden murder weapon to the empties recovered at the crime scene leading to a positive FSL report when matched with the recovered shot gun on the pointation of the appellant.

(k) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we 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 appellant during his cross examination and evidence under oath was that the deceased had been murdered by a member of the Chohans due to a matrimonial dispute/abduction of a lady from the Chohan community by the deceased. The

appellant however did not even know the name of the allegedly abducted lady and called no DW in support of his defence case concerning the abduction of the lady from the Chohan community. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence we disbelieve the defence case which has not at all dented the prosecution case.

10. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above, 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 and as such his appeal is **dismissed**.

Sajjad Ali Jessar