Delay in FIR Explained

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HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Cr. Appeal No.S-139 of 2019

[Qadir Bakhsh @ Dau versus The State]

Appellant	:	**Through Mr. Wazeer Hussain Khoso advocate**
Complainant	:	**Through Syed Shafique Ahmed Shah advocate**
State	:	**Through Ms. Sana Memon A.P.G**
Date of hearing	:	**12.06.2023**
Date of Decision	:	**16.06.2023**

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J. - Through captioned appeal, appellant has impugned the judgment dated 03.06.2019, passed by learned Sessions Judge / Model Criminal Trial Court Tando Muhammad Khan (**Trial Court**) in Sessions Case No.05 of 2018 [**The State versus Qadir Bakhsh @ Dau**], arising out Crime No.151 of 2018 registered at P.S Tando Ghulam Hyder for offences punishable under Section 302 PPC, whereby he has been convicted under Section 265-H(ii) Cr.P.C and sentenced to imprisonment for life as Ta'zir under Section 302(b) PPC alongwith directions to pay Rs.1,00,000/- to the legal heirs of the deceased; however, he has been awarded benefit of Section 382-B Cr.P.C.

2. The brief facts of the case are that Complainant Muhammad Usman lodged the above FIR on 10.10.2018, alleging therein that on same day at about 11:30 am he alongwith his cousin Allah Jurio, Nooro and Dodo Chandio @ Mehro were sitting at Abadpur Stop when Dau @ Qadir Bakhsh (**appellant**) came there and first exchanged hot words with Allah Jurio (**deceased**) on account of dispute over government plot and then took a piece of brick from the earth and hit the same with full force at the face and head of Allah Jurio, who received injuries and became unconscious and fell down thereafter accused Dau @ Qadir Bakhsh escaped away; they took the injured Allah Jurio and went at P.S whereby police referred the injured to Taluka Hospital Tando Ghulam Hyder from where he was referred to Civil Hospital Hyderabad, however, he succumbed to the injuries and died on the away.

3. After registration of FIR, investigation was conducted and on its completion challan was submitted before the learned Judicial Magistrate concerned, who took the cognizance of the matter and sent up the R&Ps to learned trial Court, whereby copies were supplied to accused and formal charge was framed against him, to which he pleaded not guilty and claimed trial. In support of their case, prosecution examined six (06) witnesses at **Ex.03 to 10**,

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who produced and recognized certain documents at **Ex.03/A to 10/G**, then prosecution closed its side at **Ex.11**. The statement of accused, as required under Section 342 Cr.P.C, was recorded at **Ex.12**, wherein he denied the allegations leveled against him by the prosecution witnesses, however, neither he produced any witness in his defense nor examined himself on Oath. The learned trial Court finally, after hearing the learned Counsel for parties and assessing the evidence on record convicted and sentenced the appellant, as mentioned supra.

4. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

5. Learned Counsel for the appellants argued that the impugned judgment is contrary to law and facts of the case and against the principles of criminal justice; that that none of the alleged eye witnesses were actually presence and have falsely implicated the appellant in this case; even other wise there are material contradictions in the evidence of the alleged eye witnesses which renders their evidence unreliable; that the real facts are that the deceased was an addict and he fell down on the road and as such sustained the injuries which he later died from when reaching hospital; that the ocular evidence is not supported by the medical evidence and as such for any or all of the above reasons 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 **Rafaat Shah V The State** (2022 P.Cr.L.J Note 39), **Abdul Majeed alias Jawa V The State** (2022 YLR 1938), **Muhammad Shafi alias Kuddoo V The State and others** (2019 SCMR 1045), **Muhammad Asif V The State** (2017 SCMR 486), **Muhammad Idrees and another V The State** (2021 SCMR 612), **Saeedo alias Saindad V The State** (2022 YLR 1540), **Muhammad Akram V The State** (2009 SCMR 230) and **Tariq Pervez V The State** (1995 SCMR 1345).

6. On the other hand learned APG, duly assisted by learned Counsel for the Complainant, supported the impugned judgment and argued that prosecution has fully established its case against the appellant through two reliable eye witnesses; that occurrence occurred in daylight and parties were known to each other as such there is no chance of misidentification; that the medical evidence corroborates/supports the ocular evidence; that the murder weapon was recovered from the scene of the crime stained in blood along with the deceased's teeth; and there are no material contradictions in the evidence of the witness and as such the same can safely be relied upon; that there is no delay in registration of FIR and as such the prosecution had proved its case the appellant beyond a reasonable doubt and the appeal be dismissed. In support of their contentions they placed reliance on the cases of (i) **QASIM SHAHZAD and another versus The STATE** (2023 SCMR 117), (ii) **AMANULLAH versus The STATE** (2023 SCMR 527), (iii)

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ABDUL KHALIQUE versus The STATE (2020 SCMR 178), (iv) **GHAFFAR MAHESAR versus The STATE** (2022 SCMR 1280), (v) **SHAMSHER AHMAD and another versus The STATE** (2022 SCMR 1931), (vi) **AZHAR HUSSAIN and another versus The STATE** (2022 SCMR 1907) and (vii) **SAJID MEHMOOD versus The STATE** (2022 SCMR 1882).

7. I have considered the submissions of the parties and have perused the material available on record as well as the case law cited at the bar.

8. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports, the blood, brick and teeth recovered at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Allah Jurio (the deceased) received at least one blow to his face, including nose ,eyes, teeth and head by a brick at Eid Pur Stop Adjacent to Talhar-Hyderabad main road Taluka Tando Ghulam Hyder on 10.10.2018 at 1130 hours which lead to his death a few hours later in hospital.

9. The only question left before me therefore is whether it was the appellant who murdered the deceased by hitting him in the face, including nose, eyes, teeth and head by a brick at the said time, date and location?

10. 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 for the following reasons;

(a) That the complainant took his cousin immediately to the local PS in injured condition in order to get a hospital letter for his injuries. A police report proves this fact. It is true that the name of the appellant (or any other person) does not appear in the initial police report as causing the injury but the main concern of the complainant was to get his unconscious relative treated at hospital through a police letter. The complainant then proceeded to the hospital with his injured relative who was given first aid before being sent to the Civil Hospital in Hyderabad where he was pronounced dead on arrival. Thereafter the Post mortem of the deceased was carried out at Matli hospital and the body handed back to the complainant for burial. After the burial, on the same day the FIR was lodged by the complainant and as such we find the slight delay in lodging the FIR has been fully explained and this delay is not fatal to the prosecution case based on the particular facts and circumstances of this particular case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi V The State** (2011 SCMR 872).

(b) That the promptly lodged FIR names the appellant with the specific role of murdering his cousin by hitting him in the face and head with a brick.

(c) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether I believe their evidence whose evidence I shall consider in detail below;

(i) **Eye witness PW 2 Muhammed Usman. He is the complainant and the cousin of the deceased.** According to his evidence there was a dispute between the deceased and the

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accused over a government plot and on the fateful day (10.10.2018) he, the deceased, Nooro and Dodo Chandio @Mehr where sitting at Abupur Stop at about 11.30am when the accused came and exchanged hot words with the deceased over the government plot. He along with Noor and Dodo Chandio @Mehr **saw** the accused take out a piece of brick from the earth and hit the deceased with full force on his face and head. He saw the deceased fall down bleeding from his mouth and nose and the accused drop the piece of brick and escape. He took the unconscious deceased to PS Tando Ghulam Haider in injured condition where they received a police letter to take the deceased to hospital for treatment. This is corroborated by a police PW and the entry which he made at the PS. They took the deceased to Tando Ghulam Haider and then Civil Hospital Hyderabad where he was pronounced dead on arrival. The deceased's body was shifted back on the same day to Matli hospital where the post mortem was carried out.

From the evidence it transpires that this witness is related to the deceased who is his cousin however no enmity or dispute has been proven between the eye witness and the appellant although there were differences between the deceased and the appellant and thus his mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness **knew the appellant before the incident** which occurred at 11.30am in broad day light when there would have been sufficient light to easily identify the appellant. The incident occurred quite close to him and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant who was arrested the next day.

This eye witness was not a chance witness as he lived in the area and had every reason to be where he was at the time of the incident. He gave his S.154 Cr.PC statement with promptitude and had no time to cook up a false case against the appellant who he had no enmity or ill will with any way which might lead him to falsely implicate the appellant in this case. His S.154 Cr.PC statement was not materially improved upon during the course of his evidence. He named the accused in his FIR along with a specific role. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who hit and murdered the deceased with a brick.

I can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. 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) and **Muhammad Ismail vs. The State** (2017 SCMR 713). 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 witness to be of good quality and believe the same. **In this case however there is more than one eye witness.**

(ii) **Eye witness PW 3 Daro @ Mehro. He is an independent witness who is not related to either the deceased or the appellant.** He had no enmity with the appellant or any other

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reason to implicate the appellant in a false case. According to his evidence on 10.10.2018 @ 11.30am he was present in his shop which is situated at Abd Pur Stop when he heard hue and cry and abuses. He came out of his shop and saw and heard an exchange of hot words between the appellant and the deceased. He saw the appellant take out a piece of brick from the earth and saw the appellant hit the deceased with the brick with full force on his face who fell down screaming. He then saw the deceased escape. The deceased was bleeding from his mouth and nose and was unconscious.

This eye witness knew the appellant before the incident which occurred at 11.30am in broad day light when there would have been sufficient light to easily identify the appellant. The incident occurred quite close to him and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant.

This eye witness was not a chance witness as he owned the shop in front of which the incident took place. He gave his S.161 Cr.PC statement within a day and had no time to cook up a false case against the appellant who he had no enmity or ill will with any way which might lead him to falsely implicate the appellant in this case. His S.161 Cr.PC statement was not materially improved upon during the course of his evidence. He is named by the accused in the FIR as being an eye witness. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who hit and murdered the deceased with a brick. It is true that he states that he saw the appellant throw the brick and that was no one was with him. However as to throwing the brick I consider this to be only a minor contradiction. He does not name the complainant as being presence at the time of the incident however this is because as explained in his evidence he did not know what the complainant looked like at the time of the incident which accounts for this issue.

Thus, based on my believing the evidence of the 2 eyewitnesses what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of Muhammad Waris v The State (2008 SCMR 784).

(d) That it does not appeal to logic, commonsense or reason that a real relative would let the real murderer of his cousin get away Scott 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 medical reports as discussed above fully support the eye-witness / prosecution evidence. It confirms that the deceased died from a blow to his head from a hard and blunt substance. A brick would meet this description. He had bleeding from nose and mouth which contained blood clots. He had lost 3 teeth and died from brain damage and hemmooarge.

(f) That the blooded murder weapon being the brick was recovered at the scene of the crime which produced a positive chemical report.

(g) That the three teeth of the deceased were recovered from the scene of the crime which ties in with both the oral and medical evidence.

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(h) That it has not been proven through evidence that any particular police PW's had any enmity or ill will towards the appellant and had any reason to falsely implicate him in this case, for instance, by planting the brick and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(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) 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 time the appellant quarreled with the deceased to the appellant hitting the deceased in the face with a brick to the deceased dying of his injuries to the arrest of the appellant to the brick and teeth being found at the crime scene...

(j) It is true that an eye witness was dropped however in a case where the prosecution has already called 2 compelling eye witnesses based on the particular fact and circumstances of this case I do not consider the dropping of an eye witness to be of much consequence since the prosecution was satisfied that it had proved its case through the 2 eye witnesses which it had already called and the prosecution is not obliged to call all eye witnesses just for the sake of it which would unnecessarily prolong the trial.

(k) That the appellant had a motive to attack the deceased being the dispute over the government plot.

(l) 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 is simply one of false implication in that the accused was tending his cattle at the time of the incident however he did not give evidence on oath or call any DW to support his defence. Another part of his defence was that his father was present and saw the deceased collapse because he was intoxicated and fall on his face which caused the injuries which lead to his death. Significantly, his father was not called as a DW to this effect and the medical evidence found no evidence of intoxication. Thus, for the reasons mentioned above I disbelieve the defence case which I find to be implausible in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

11. Thus, based on the above discussion, I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction and sentence and dismiss the appeal.

12. The appeal is disposed of in the above terms.