

JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Appeal No.S- 133 of 2014

Ali Sher	Vs	The State
Appellant Ali Sher	:	Through Mr. Haji Khan Khoso, Advocate.
Respondent the State	:	Through Mr. Shahid Ahmed Shaikh, D.P.G.
Complainant Gul Hassan	:	Mr. Subhan Ali Advocate holds brief on behalf of Mr. Bilawal Ali Ghunio, Advocate.
Date of hearing & judgment	:	26.02.2019.

**J U D G M E N T**

**ZULFIQAR AHMAD KHAN, J:-** Through instant Criminal Appeal, Appellant Ali Sher Khoso impugned the judgment dated 30.10.2014 passed by learned Additional Sessions Judge, Matiari in Sessions Case No.110/2012 (The State v. Ali Sher), emanating from Crime No.04/2010, registered at Police Station Oderolal u/s 302, 504 PPC, where he was convicted u/s 302(b) PPC and sentenced to undergo R.I for life and to pay the fine of Rs.200,000/- as compensation u/s 544-A Cr.P.C. It was directed that in case the amount of fine is received from the accused, the same shall be distributed amongst the legal heirs of the deceased according to their share. In case of default in payment of fine, the appellant was directed to suffer further SI for six months. However, benefit of Section 382-B Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 04.02.2010 at 1730 hours complainant Gul Hassan lodged his report alleging therein that he and his brother namely Ghulam Muhammad cultivating the land of Zamindar Lala Umar Jan on harp basis, present appellant Ali Sher

Khoso was annoyed on their harp and was restraining the complainant party not to cultivate the said land as he will cultivate the same on harp basis and on this point accused scuffled with the complainant and his brother and issued threats by saying that if they will come on the land, they would be murdered. It is further alleged that on 04.02.2010, the complainant and his brother were on water turn on that land at about 0330 hours in the evening time, the complainant leaving his brother Ghulam Muhammad on that land, proceeded to look after the water. Thereafter, after covering some distance, the complainant met with his relatives Ghulam Qadir s/o Tufail Dars and Ali Gul s/o Gulsher standing on the way and was talking with them, where they saw the present appellant armed with pistol came there and told Ghulam Muhammad as to why he has come in the land and he will not spare him and pointed pistol towards the brother of complainant. The complainant party raised hakals not to kill the person but accused Ali Sher within their sight made fire from pistol upon Ghulam Muhammad and on seeing the complainant and PWs coming near, the accused ran away in the banana crop. The complainant party then saw Ghulam Muhammad lying on the ground on whose left side of chest fire injury was available from which blood was oozing and his brother was expired. They took the dead body to Oderolal Hospital and informed the police and after completing the codal formalities, complainant lodged the FIR against the present appellant. It was recorded vide crime No.04/2010 for offence u/s 302, 504 PPC.

3. During investigation, place of wardat was visited by the Investigation Officer in presence of mashirs, postmortem examination of the deceased was conducted, 161 Cr.P.C. statements of the PWs were recorded and on the conclusion of investigation challan was submitted against the accused.

4. Charge was framed against accused Ali Sher on 10.09.2010 at Ex.02, to which accused pleaded not guilty and claimed for trial vide plea at Ex.03.

5. In order to prove its' case, the prosecution examined PW-1 complainant Gul Hassan at Ex.5, who produced receipt of receiving of dead body at Ex.5/A and FIR at Ex.5/B, PW-2 Ghulam Qadir at Ex.6, who produced his 164 Cr.P.C. statement at Ex.6/A. PW-3 Ali Gul at Ex.7, who produced his 164 Cr.P.C statement at Ex.7/A. PW-4 Hussain Bux at Ex.8, who produced mashirnama of inspection of dead body at Ex.8/A, mashirnama of recovery of clothes of deceased at Ex.8/B, mashirnama of injuries at Ex.8/C, inquest report at Ex.8/D, mashirnama of site inspection at Ex.8/E, mashirnama of arrest of accused at Ex.8/F, attested photocopy of mashirnama of recovery at Ex.8/G and letter of court at Ex.8/H. PW-5 ASI Photo Khan at Ex.9, who produced lash chakas form at Ex.9/A, his letter addressed to MLO at Ex.9/B, receipt of receiving of dead body at Ex.9/C, receipt of delivery of dead body at Ex.9/D, and copies of entries of departure and arrival in daily diary at Ex.9E and 9/F respectively. PW-6 Dr. Nizamuddin at Ex.10, who produced the postmortem report of deceased at Ex.10/A. PW-7 SIP Muhammad Saleem at Ex.11. Thereafter, the learned Assistant District Public Prosecutor closed the side of prosecution vide statement at Ex.12.

6. The statement of accused was recorded u/s 342 Cr.P.C. at Ex.13, in which he claimed his innocence. However, he did not examine himself on Oath nor lead any defence.

7. After hearing the learned counsel for the parties and assessment of evidence, trial court convicted and sentenced the appellant as stated above.

8. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

9. Mr. Haji Khan Khoso, learned counsel for the appellant mainly contended that the appellant is innocent and has falsely been implicated in the case in hand on account of enmity; that the impugned judgment passed

by the learned trial court is against the law, facts and principles of criminal justice; that the appellant has been roped in this false case on political basis and in order to save Kamdar; that the reports of chemical examiner and ballistic expert were not properly tendered in the evidence; that there are material contradictions in the evidence of prosecution witnesses which have not been considered by the learned trial court at the time of pronouncing the judgment; that the impugned judgment has been passed in a hasty manner and is the result of misreading and non-reading of evidence; that there is no any independent and admissible evidence on the record to support the case of prosecution; that the recovery has been foisted upon the appellant and in fact no recovery whatsoever had been affected; that all the witnesses are related inter se and interested to the complainant; that a number of discrepancies have been brought on record to shatter the prosecution testimony. He has lastly prayed for acquittal of the accused.

10. Conversely, Mr. Shahid Ahmed Shaikh, learned D.P.G. argued that the prosecution had proved its' case against the appellant beyond any reasonable doubt; there are minor contradictions in the evidence of prosecution which cannot be deemed as fatal; ocular evidence corroborates the medical evidence. He has supported the impugned judgment and pray for dismissal of the instant appeal.

11. I have learned counsel for the appellant, learned D.P.G. for the State and perused the entire evidence minutely available on the record.

12. I have scrutinized the prosecution evidence carefully. The complainant Gul Hassan in the F.I.R. as well as his evidence deposed that appellant Ali Sher in their presence fired from his pistol upon his brother Ghulam Muhammad, who after receiving injury on his left side chest fell down on the ground and died. P.Ws. Ali Gul and Ghulam Qadir also gave same count of

incident in their evidence. However, perusal of their cross-examinations, following material contradictions were found:

- i. As per F.I.R, the incident was occurred on 04.02.2010, accused was arrested on 05.02.2010, whereas recovery of crime weapon i.e. pistol was made on 09.02.2010. The I.O. has also recovered one empty from the place of incident. However, no Ballistic Expert's report is available to show that the crime weapon was same and whether the empty bullet was fired from the said pistol.
- ii. Both eye-witnesses namely Ali Gul and Ghulam Qadir have deposed that the appellant made straight fire upon the deceased from a distance of 10/12 and 8/10 feet, where Medical Officer Dr. Nizamuddin, who conducted post-mortem upon the dead body of the deceased, in his cross-examination stated that "deceased was fired upon from the distance of few inches."
- iii. P.W-4 Hussain Bux, who is Mashir of recovery, has deposed that on 05.02.2010, police inspected the place of incident and collect one empty of pistol and bloodstained earth; where I.O./SIP Muhammad Saleem (P.W-7 Ex.11) in his cross-examination has contradicted the said mashir as well as eye-witnesses by stating that "it is correct that complainant never came to me at Police Station to inform that his deceased brother had received bullet injury and the information was given to me by him through phone. It is correct that bloodstained clothes, bloodstained earth, one pistol with magazine and three live bullets are lying as case property in the Court and not a single empty is available in the Court as case property. It is correct that detailed description of recovered weapon is not mentioned by me in mashirnama of recovery nor the name of manufacturing company is mentioned by me in mashirnama."
- iv. That Lala Umar Jan, the owner of the land, which is claiming to be under cultivation of both parties, was not examined by the prosecution to substantiate the said assertion that there was a dispute between the rival parties to harp the land.
- v. That as per the F.I.R. and evidence of the complainant and eye-witnesses, the place of incident was being watered. Then how the

blood stained earth as well as the blood of the deceased was obtained for chemical examination.

vi. That I.O./ASI Photo Khan (Ex.09) in his deposition has stated that on 04.02.2010, he was posted as ASI at P.S Oderolal, when complainant Gul Hassan came and stated that Ghulam Muhammad Dars has been caused injuries by accused Ali Sher and he has taken the injured to hospital Oderolal Station. Where in the station diary (available at page-80 of the paper book), no name of accused who per complainant, caused murder of the deceased, is mentioned.

vii. That mashirnama of recovery of crime weapon is available on record (page-71), however, no station diary with regard to proceeding for recovery purpose is available on record.

13. In view of the contradictions as discussed above, the prosecution has miserably failed beyond shadow of reasonable doubt, to bring home charge as alleged against the appellant. During the course of arguments, I specifically asked a question from the learned DPG to point out any active role of appellant in the commission of the offence except his presence at the occurrence, he has not replied satisfactorily and even he failed to establish any premeditation of the appellant. Therefore, there is no sufficient/convincing evidence on record that appellant Ali Sher has committed the offence in the fashion as alleged by the prosecution and the prosecution case appears to be doubtful, and benefit of the same should be extended in his favour as of right as opposed to concession as was held in the case of **Tariq Pervez V The State** (1995 SCMR 1345), wherein it was observed as under:-

*“ It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”*

18. For what has been discussed above, by short order passed in Court dated 26.02.2019, the captioned criminal appeal was allowed, the conviction and sentence awarded to the appellant through impugned judgment dated

30.10.2014 were set aside and the appellant was directed to be released forthwith, and above are the reasons of the same.

JUDGE

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