

## **IN THE HIGH COURT OF SINDH AT KARACHI**

Present:

***Mr. Justice Aftab Ahmed Gorar***  
***Mr. Justice Amjad Ali Sahito***

Spl. CrI. Anti-Terrorism Appeal No. 95 of 2017

Appellant: Habib Shah  
Through Mr. Mamoon A.K. Sherwani,  
Advocate

Respondent: The State  
Through Mr. Sagheer Ahmed Abbasi,  
Assistant Prosecutor General, Sindh

Dates of hearing: 11.01.2019 & 12.02.2019

Date of decision: 25.02.2019

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

**Amjad Ali Sahito, J.**- Appellant Habib Shah son of Hazrat Shah was tried by learned Judge, Anti-Terrorism Court No.V, Karachi in Special Case No.152/2014, arisen out of FIR No.467/2013 of Police Station New Karachi Industrial Area (N.K.I.A.) Karachi for offence punishable under Sections 302, 324, 353, 34 PPC, whereby the appellant was convicted and sentenced through impugned judgment dated 28.03.2017, to suffer imprisonment for life for offences punishable and also to pay fine of Rs.100,000/- to be paid to the legal heirs of deceased Tasawar and in case of default of payment of fine, to suffer simple imprisonment for three years. However, he was extended benefit of Section 382-B Cr.PC.

2. Briefly, the facts of the case as depicted in the FIR are that on 03.12.2013, Head Constable Aslam Tanveer of P.S. Sir Syed Karachi reported at P.S. New Karachi Industrial Area that he was working on Intelligence Duty as Head Constable. On the direction of Superintendent of Police New Karachi on 01.12.2013 he reached

the office of Superintendent of Police where ASI Muhammad Arshad, Police Constables Yasir, Naveed, Sultan Tahir, ASI Imam Shah, Police Constable Tasawar were present and told him that on the orders of Superintendent of Police they have to *raiky* of Iqbal @ Akoo, Roshan @ Rosho Abro and Shahzad @ Shahzado. On such directions, they all in private vehicles reached Khamiso Goth, Sector 5-F and prepared two parties: one included complainant with ASI Imam Shah, Police Constables Yasir and Tasawar whereas another party included ASI Arshad, Police Constables Naveed, and Sultan Tahir. They reached the said Goth but could not find the culprits. They informed the Superintendent and returned. When the complainant with his party reached the street of Khamiso Goth near Government Boys Primary School, Head Constable Liaquat Ali, Police Constables Yasir and Danish Kamal of Police Station New Karachi Industrial Area and Police Constable Habib Shah of West Zone on two motorcycles came to the complainant party at about 7.30 pm. Police Constable Habib Shah started firing from his own pistol and police Constable Tasawar sustained injury who in his defence also made fires. Police Constables Danish Kamal and Yasir took the injured Police Constable Tasawar to Abbasi Shaheed Hospital on their motorcycle but he expired. The complainant also came to know that from such firing police Constable Qurban Jilani also sustained injuries. According to him, Police Constable Habib Shah was already suspended and at that time was posted at Headquarter West Zone.

3. The investigation officer after completion of usual investigation submitted the challan against accused persons namely Habib Shah and Liaquat Ali keeping SHO/SIP Rehmatullah Khan, Police Constables Muhammad Yasir and Danish Kamal in column No.2 with blue ink before the learned trial Court for their trial.

4. After completing all the formalities, on 04.12.2014 the charge (Exh.4) was framed against the accused persons under Section

302,337-H(ii),504,148,149 PPC by the learned trial Court, to which both of them pleaded not guilty and claimed to be tried.

5. At the trial, in order to establish accusation against the accused, the prosecution examined (PW-1) Complainant Head Constable Aslam Tanveer at Exh.5, he produced FIR of the present case at Exh.5/A, memo of site inspection at Exh.5/B. (PW-2) Yasir Ali at Exh.7. (PW-3) Imam Ali Shah at Exh.8. (PW-4) ASI Noshad Alam at Exh.10, he produced an entry of MLO Abbasi Shaheed Hospital about the death of one person at Exh.10/A, letter to MLO for the cause of death of Tasawar at Exh.10/B, memo of inspection of a dead body at Exh.10/C, superdiginama of a dead body at Exh.10/E, produced road certificate of a dead body at Exh.10/F. (PW-5) Dr. Tariq Jaleesi, Medico-Legal Officer of Abbasi Shaheed Hospital at Exh.12, he produced postmortem report at Exh.12/A, death certificate at Exh.12/B. (PW-6) SIP Liaquat Ali at Exh.13, he produced an entry in roznamcha at Exh.13/A, mashirnama along with arrival entry No.16 at P.S. at Exh.13/B, letter to Chemical Examiner at Exh.13/C, Chemical Report at Exh.13/D. (PW-7) ASI Mukhtiar Tanoli at Exh.15, he produced entry of place of incident at Exh.15/A, Nakshai Nazari at Exh.15/B, photographs of the place of incident at Exh.15/C, copy of station diary at Exh.15/D, notice to witness u/s 160 CrPC at Exh.15/E, mashirnama of seized pistol at Exh.15/F, photocopy of FIR at Exh.15/G. (PW-8) SIP Muhammad Aijaz Ahmed Awan at Exh.16, he produced a copy of the order at Exh.16/A, corrigendum at Exh.16/B. (PW-9) Inspector Tabbasum at Exh.17, he produced to order for submission of challan at Exh.17/A, departure entry No.9 to City Court at Exh.17/B, mashirnama of the arrest of accused at Exh.17/C, a copy of entry No.22 at Exh.17/D, a copy of entry No.7 at Exh.17/E, letter to CRO at Exh.17/F. Thereafter, the prosecution closed its side vide statement at Ex.23.

6. Statements of both the accused were recorded under Section 342 Cr.PC at Ex.24 to 27 respectively, wherein they denied the

prosecution allegations leveled against them and lastly prayed for justice. However, appellant Habib Shah examined himself on oath under Section 340(2) Cr.PC.

7. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced appellant Habib Shah while acquitted co-accused Liaquat Ali by extending him the benefit of doubt vide judgment dated 28.03.2017. The conviction and sentenced recorded by learned trial Court has been impugned by appellant Habib Shah before this Court by way of filing the instant appeal.

8. Mr. Mamoon A.K. Sherwani, learned counsel for the appellant mainly contended that the impugned judgment is against the law and facts of the case; that the appellant is innocent and has falsely been involved in this case by the complainant party at the instance of the superior officer of police; that there is a delay of three days in lodgment of the FIR hence, false implication cannot be ruled out; that prior to the incident, the appellant was suspended hence he has no concern with the alleged incident; that the co-accused namely Liaquat Ali has been acquitted from this case hence, on the same set of evidence, the applicant is also entitled to his acquittal; that during investigation, the admission of the appellant has no value in the eyes of law; that in view of Article 38 and 39 of Qanoon-e-Shahadat that all the witnesses are police officials and known to each other and there is no independent piece available on record to connect the appellant with the commission of offence; that the evidence of prosecution witnesses is full of contradiction and discrepancies which are fatal to the prosecution case. He lastly argued that the prosecution has miserably failed to prove the case against the appellant: thus according to him under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal. Learned counsel for the appellant relied upon the case of Rahat Ali Vs. State (2010 SMCR 584), Sardar Bibi and others Vs. Muneer Ahmed and others (2017 SCMR 344), Muhammad Khan

Vs. Moula Bux and others (1998 SCMR 570), Azeem Khan and others Vs. Mujahid Khan (2016 SCMR 274), Muhammad Asif Vs. The State (2017 SCMR 486), Tariq Pervez Vs. The State (1995 SCMR 1345), Muhammad Saleem Vs. The State (2017 YLR 2251) and Muhammad Jameel Vs. Muhammad Akram and others (2009 SCMR 120).

9. On the other hand, Mr. Sagheer Ahmed Abbasi, learned Assistant Prosecutor General, Sindh representing the State supported the impugned judgment passed by the learned trial Court and contended that there was no malafide on the part of complainant to implicate the present appellant in this case falsely; that the name of the appellant transpired in the FIR with the specific role of firing from his weapon upon the deceased; that the ocular testimony of the complainant and eyewitnesses is supported with the medical evidence. He lastly contended that the learned trial Court has rightly appreciated the evidence, convicted and sentenced to the appellant in accordance with law and lastly prayed for dismissal of the instant appeal.

10. We have heard the learned counsel for the parties and perused the available record with their able assistance. A perusal of record reveals that the case of prosecution mainly depends upon the ocular testimony furnished by the prosecution in shape of statement of the complainant (PW-1) Aslam Tanveer and eyewitnesses (PW-2) Muhammad Yasir (PW-3) Imam Ali Shah which is corroborated by the evidence of Medical Officer Dr. Tariq Jaleesi (PW-5) and rest of the other witnesses. (PW-1) the complainant in his evidence deposed that on 01.12.2013, he was posted at P.S. Sir Syed as Head Constable. On the said date, he was called by SP New Karachi along with operator Lutuf Ali. he went to the SP office where ASI Arshad, ASI Imam PC Naveed PC Yasir PC Salman and deceased PC Tasawar were present and stated that a team was constituted comprising aforementioned police officers/officials for *raiky* of narcotic dealers Iqbal @ Akko and

Roshan @ Roshu. ASI Imam Shah took all the police officials at the house of above-mentioned drug dealers and started *raiky* where we parked four bikes in Khamisa Goth and then proceeded in rickshaw. When we reached near Government School, we heard a call to stop the rickshaw then the fire was made by Habib Shah (appellant) which hit PC Tasawar and he has sustained firearms injury on his chest. PC Tasawar (deceased) also fired in his defence. PC Tasawar (deceased) was shifted to hospital but he was died on the way due to firearms injury. The relatives of the deceased Tasawar reached the hospital where after completing all formalities, the dead body of the deceased was handed over to them. The relatives of the deceased took away the dead body to their native place, hence he (Aslam Tanveer) lodged the FIR on behalf of the State. He has identified the accused persons namely Habib Shah and Liaquat Ali in Court. In cross-examination, he admitted that FIR was registered after 03 days of the incident. He further admitted in his cross-examination that he knew PC Tasawar for the last 10 years and there is no enmity between Habib Shah and PC Tasawar. (PW-2) Yasir Ali also supported the version of the complainant, who in his evidence, deposed that on an eventful day, he was posted at SP Office. On the same day, he received a telephone call from Incharge SIP Amir Shah through a telephone operator. He was called by SP office at about 6:45 PM. He reached SP Office where SIP ASI Arshad, ASI Imam Shah, PC Naveed, PC Ayoub, PC Salman Tahir, and PC Tasawar were already present and they were directed by SIP Arshad to go to have *raiky*, as such, they proceeded on two motorcycles and parked the motorcycles at Khamiso Goth then they came out from the street where they saw that one drunk person was moving revolver in his finger and one *Thela* was kept on ground. ASI Arshad and ASI Imam Shah apprehended him and snatched pistol from him whereas *Thela* was checked, it was containing *charras*. In the meanwhile, a rickshaw was passing, who was stopped. ASI Arshad PC Ayoub and PC Tasawar took that drunk person to office. They have also hired a

rickshaw and were going towards parking where motorcycles were parked when they reached near Government School, four persons present on two motorcycles. They followed them and stopped rickshaw. ASI introduced himself to them but those persons came towards rickshaw and started firing, one was PC Habib Shah. PC Tasawar also fired two to three shots after he sustained the injury. He has also identified the accused person in the Court. In cross-examination, he has denied the suggestion that at the time of the incident there was darkness. He further admitted that he had no enmity with PC Habib Shah. (PW-3) Imam Ali Shah also supported the version of the complainant and he, in his examination chief, deposed that the appellant Habib Shah fired two to three shots in which one bullet hit to PC Tasawar. However, he in his cross-examination, denied that there was darkness. ASI Noshad Alam completed death formalities of PC Tasawar. The prosecution examined SIP Mukhtiar, SIO of the case. He started the investigation and appellant Habib Shah after getting pre-arrest bail has joined the investigation and subsequently, he has produced the pistol which as per him used in the commission of the offence.

11. There can be no denial to legally established principle of law that it is always the direct evidence which is material to decide a fact (charge). The failure of direct evidence is always sufficient to hold a criminal charge as 'not proved' but where the direct evidence remains in the field with test of its being natural & confidence inspiring then requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can safely be placed on the case of ***Muhammad Ehsan vs. the State (2006 SCMR-1857)***, wherein the Hon'ble Supreme Court of Pakistan has held that:

*"5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and **not a mandatory rule to be applied invariably in each case** rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as*

*in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence”.*

12. The direct evidence, as detailed above, is in shape of evidence of complainant Head Constable Aslam Tanveer and PWs PC Yasir Ali and ASI Imam Shah, who were called by the SP New Karachi and deputed for recky of narcotics dealers Iqbal @ Akku and Roshan @ Roshu where an unfortunate incident took place at about 7:30 PM, therefore, the availability of eyewitnesses at the venue of occurrence on the relevant time is quite natural. ASI Imam Shah produced entry No.11 at Exh.9-A which shows that the operator of SP New Karachi directed to ASI Imam Shah to appear at SP Office, New Karachi. Complainant and PWs categorically stuck with their claim from the beginning that they along with deceased were present at the place of incident and HC Habib Shah fired upon PC Tasawar and PC Tasawar also fired in his defence. The complainant has explained for delay of lodgment of FIR as per him the relatives of the deceased Tasawar came to the hospital and after formalities, the dead body was handed over to them. Since the relatives of deceased took away the dead body to the native village hence he has lodged the FIR. This version of the complainant being supported by the other PWs hence, the witnesses cannot be termed to be chance witnesses rather would fall within the category of natural witnesses. In the instant matter, all these witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manners. Besides this, these eyewitnesses have also explained the mode and manner of taking place the occurrence qua the culpabilities of the appellant. Although, they were cross-examined by the defence at length wherein the learned counsel for the defence asked the multiple questions to shatter their confidence so also their presence at the scene of occurrence but could not extract anything from the complainant and eyewitnesses and they remained consistent on all material points. The parties are known to each other, so there was no chance of mistaken identity of the appellant. We would not



hesitate that where the witnesses fall within the category of natural witnesses and detail the manner of the incident in a confidence-inspiring manner then only escape available to the accused is that to satisfactory establish that witnesses, in fact, are not the witnesses of truth but interest one. The reliance in this context is placed upon the case of **Abid Ali & 2 others Vs. The State (2011 SCMR 2008)** wherein the Hon'ble Supreme Court of Pakistan has held that:-

*21. To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be a universal principle that in every case interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that **a particular witness was present on the scene of crime and that he is making true statement.** A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement, which is illogical and unbelievable, **no prudent man despite his nobility** would accept such statement.*

13. Moreover, nothing has been brought on the record by the defence while enjoying opportunity of cross-examination as well leading defence, which could make it believable that there had been such a grave reason for complainant/Head Constable Aslam Tanveer to involve the appellant Habib Shah falsely at cost of safe escape of killer of one police Constable but it has also come on record that prior to the incident, the appellant was suspended and sent to Khawaja Ajmair Nagri police headquarter as there was allegation against the appellant that he has opened drug addas which was closed by the SHO and PW-2 Yasir Ali in his evidence deposed that they have arrested one person who was drunk and was moving revolver in his finger along with charras when they were taking away the accused then PC Habib Shah fired upon them. Moreover, nothing has been brought on the record which may reflect that the deep-rooted enmity was existing between the parties. The minor discrepancies in statements of all these eyewitnesses are not enough to demolish the case of prosecution

because the discrepancies always occur on account of lapse of time which can well be ignored.

14. Furthermore, the complainant and other eyewitnesses in their evidence deposed that appellant Habib Shah directly fired a pistol shot upon the deceased PC Tasawar, which hit him on his chest. Resultantly, the deceased became injured and he was shifted to hospital but deceased PC Tasawar died on the way. The ocular account furnished by the above said eyewitnesses is substantiated with the medical evidence adduced by medical officer Dr. Tariq Jaleesi (PW-5), who conducted a postmortem on the dead body of deceased Tasawar s/o Ghulam and finds one firearm injury on the front of the chest. The wound was measuring 0.5 cm and inverted margin. The wound of exit was at the back of chest right Lower Zone 1.0 cm diameter and with an irregular margin. The time between the deaths to injury was about 15 minutes and between death and postmortem ½ hour. The cause of death was cardiorespiratory due to hemorrhagic shock caused by chest injury as a result of firearm projectile. In this context, the reliance is placed upon the case of **Ali Bux and others vs. the State (2018 SCMR 354)** wherein the Hon'ble Supreme Court of Pakistan has held that:-

*“3...in the FIR lodged in respect of the incident in question the present appellants had been nominated and specific role has been attributed to them therein. The ocular account of incident has been furnished before the trial Court by three eyewitnesses namely Ali Akbar complainant(PW-01), Ghulam Shabir(PW-02) and Bilawal(PW-03) who had made consistent statements and had pointed their accusing fingers towards the present appellants as the main perpetrators of the murder in issue. The said eye-witnesses had no reason to falsely implicate the appellants in a case of this nature and the medical evidence had provided sufficient support to the ocular account furnished by them”.*

15. Another reliance is also placed upon the case of **Zahoor Ahmed Vs. The State (2017 SCMR-1662)**, wherein the Hon'ble Supreme Court of Pakistan has held that;-

*“4. The ocular account, in this case, consists of Muhammad Khan complainant (PW-06) and Shahbaz (PW-07). They gave the specific reasons for their presence at the place of occurrence as, according to them, they along with the deceased were proceeding to harvest the sugarcane crop. Although they are related to the deceased but they have no previous enmity or ill-will against the appellant and they cannot be termed as interested witnesses in the absence of any previous enmity. They remained consistent on each and every material point. The minor discrepancies pointed out by the learned counsel are not helpful to the defense because with the passage of time such discrepancies are bound to occur. The occurrence took place in broad day light and both parties knew each other so there was no mistaken identity and in absence of any previous enmity there could be no substitution by letting off the real culprit specially when the appellant alone was responsible for the murder of the deceased. The evidence of two eye witnesses was consistent, truthful and confidence inspiring. The medical evidence fully supports the ocular account so far the injuries received by the deceased, time which lapse between the injury and death and between death and postmortem. Both the Courts below have rightly convicted the appellant under section 302(b) PPC.*

16. The case law relied on the learned counsel for the appellant is distinguishable from the facts and circumstances of the present case.

17. Considering the facts and circumstances discussed above, we are of the humble view that the prosecution has successfully proved its case against the present appellant through ocular account furnished by complainant Head Constable Aslam Tanveer (PW-1) and eye-witnesses PC Yasir Ali (PW-2) and ASI Imam Shah (PW-3), which is corroborated by the evidence of medical officer Dr. Tariq Jaleesi (PW-5). Learned counsel for the appellant has failed to point out any illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which is based on an appreciation of the evidence and same does not call for any interference by this Court. Thus, the conviction and sentence awarded to the appellant by learned trial Court are hereby maintained and the instant appeal filed by the appellant merits no consideration, which is dismissed accordingly.

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