

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

PRESENT:

***Mr. Justice Aftab Ahmed Gorar***

***Mr. Justice Amjad Ali Sahito***

Spl. CrI. Anti-Terrorism Jail Appeal No.03 of 2012

Appellant : Muhammad Atif Nizami  
S/o Muhammad Ahtisham Nizami  
Through Syed Nadeem-ul-Haq, Advocate.

Respondent : The State  
Through Mr.Saghir Ahmed Abbasi,  
Asst. Prosecutor General, Sindh

Dates of hearing : 11.02.2019, 05.03.2019 & 13.03.2019

Date of order : \_\_.03.2019

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

**AMJAD ALI SAHITO, J.**— Being aggrieved and dissatisfied with the judgment dated 17.12.2011 passed by learned Judge, Anti-Terrorism Court No.III, Karachi in Special Case No.12/2016 arising out of the FIR No.99/2003 for the offence under Section 302 PPC read with Section 7 (e) of Anti-Terrorism Act, 1997 registered at PS Malir City, Karachi and Special Case No.87/2009 arising out of the FIR No.60/2006 registered at the same police station under Sections 4/5 of Explosive Substance Act read with Section 13(d) of Arms Ordinance, whereby the appellant convicted for the offence u/s. 7 (a) of Anti-Terrorism Act, 1997 read with Section 302(b) PPC for committing the murder of deceased Syed Ibn-e-Hassan and sentenced him to suffer R.I. for life imprisonment and to pay fine of Rs.200,000/- and in default thereof, to further undergo S.I. for three (03) years. The appellant was also convicted for the offence u/s. 13(d) of Arms Ordinance for keeping in possession unlicensed pistol, hand grenade and explosive material to the weight of 230 grams and sentenced him to suffer R.I. for five (05) years and to pay fine of Rs.10,000/- and in default thereof, to further undergo S.I. for six (6) months. The sentences on both the counts were ordered to be run

concurrently. The benefit of section 382-B, Cr.P.C. was also extended to the appellant.

2. Briefly, the facts of the prosecution case are that on 16.08.2003 at about 11:30 A.M. complainant Dr. Syed Zohair Hassan received a telephone call of Munawar Atta at his house, who informed him that two persons have caused fire shot injuries to his brother Dr. Syed Ibn-e-Hassan. On receipt of such information, the complainant arrived at the pointed place and was informed that compounder Arif has removed his brother towards Liaquat National Hospital on a taxi, as such, he also reached there and found his brother lying dead. The complainant received the dead body of his brother from Liaquat National Hospital and brought the same at Imam Bargah Razvia. The complainant on the same day at about 1630 hours on the basis of his statement u/s. 154, Cr.P.C. got registered the FIR of the incident against the unknown person.

3. After completion of the investigation of the cases, the challan was submitted by the Investigating Officer against the above-named accused before the concerned Anti-Terrorism Court.

4. The learned trial Court framed the charge against the accused/appellant at Ex.5, who pleaded not guilty and claimed to be tried to vide plea at Ex.6.

5. In order to establish the accusation against the accused person, the prosecution examined (PW-1) Munawar Atta at Ex.7, who produced memo of the place of the incident at Ex.7/A. Complainant Syed Zuhair Hassan was examined at Ex.8, who produced memo of inspection of a dead body and his 154 Cr.P.C. statement recorded at Ex.8/A and 8/B respectively. SIP Ghulam Hameed as PW-3 at Ex.9, who has produced inquest report, letter to police surgeon for conducting a postmortem of deceased at Ex.9/A & 9/B respectively. Muhammad Arif as PW-4 at Ex.10. Mr. Muhammad Ahsan Khan, Judicial Magistrate as PW-5 at Ex.11, who produced application of I.O. for conducting

identification parade along with his order and memo of identification parade at Ex.11/A & 11/B respectively. SIP Ghulam Raza as PW-6 at Ex.12, who produced FIR at Ex.12/A. Inspector Khuda Bux as PW-7 at Ex.13, who produced memo of the arrest of accused and recovery of unlicensed weapon at Ex.13/A & 13/B respectively. SIP Mehboob Ellahi as PW-8 at Ex.14, who produced FIR registered against the accused u/s. 13(d) Arms Ordinance at Ex.14/A. Syed Jamal Asghar as PW-9 at Ex.15. Syed Khursheed Abbas as PW-10 at Ex.16, who produced notice served upon him for identification parade at Ex.16/A. Inspector Jahanzeb Khan as PW-11 at Ex.18. Inspector Muhammad Babar as PW-12 at Ex.19, who produced order in respect of investigation handed over to him, application made by him to Incharge Bomb Disposal Unit, photocopy of inspection report made by Incharge BDU, application for permission from Home Department for trial of the accused, order of Home Department regarding permission for trial, memo of arrest of the accused, report of Incharge Criminalistics Division Karachi at Ex.19/A to Ex.19/G respectively. Inspector Bashir Ahmed as PW-13 at Ex.21, who produced memo of the place of incident and memo of recovery of the car at Ex.21/A & 21/B respectively. Since MLO Abdul Shakoor Bhatti who conducted the postmortem of the deceased gone abroad, therefore, SPP for the State moved an application u/s. 540 Cr.P.C. for calling the well conversant with the handwriting and signature of the said MLO Abdul Shakoor Bhatti to produce the postmortem report, which was allowed and Dr. Dileep Khatri has been examined as PW-14 at Ex.22, who produced a memorandum of postmortem examination at Ex.22/A. SI Malir Abdul Salam as PW-15 at Ex.24, who produced a letter for sending the bloodstained clothes of deceased for chemical examination, report of Chemical Examiner, letter sent to AIGP Criminalistics Karachi for inspection of car, which was driven by deceased at the time of instant crime, report of AIGP in respect of car, letter sent to AIGP for inspection of two empties recovered

from the place of incident, the report of AIGP Criminalistics Division in respect of bullets, map of place of incident prepared by Tapedar at Ex.24/A to Ex.24/G respectively. The application moved by the advocate for accused for recalling PW-1 Munawar Atta, was dismissed and lastly the prosecution examined Investigating Officer of the cases Inspector Ch. Manzoor Ahmed as PW-16 at Ex.27, who produced order under which investigation was entrusted to him, copy of roznamcha report 33, entry No.39 of AVCC about the murder of deceased, notice served upon the accused Atif regarding identification parade, copy of letter sent to the AIGP Criminalistics Division Sindh Karachi regarding report of pistol recovered from the possession of accused and two empties recovered from the place of incident at Ex.27/A to Ex.27/E respectively. Thereafter, the prosecution closed its side vide statement at Ex.28.

6. Statement of the accused was recorded under Section 342 Cr.P.C. at Ex.30, wherein he denied the prosecution allegation leveled against him and stated that he has been falsely implicated in these cases with malafide intention, he claimed to be innocent and prayed for justice. However, appellant has not been examined himself on oath under section 340(2), Cr.P.C., nor led any evidence in his defence.

7. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellant to vide judgment dated 17.12.2011. The conviction and sentence recorded by the learned trial Court have been impugned by the appellant before this Court by way of filing the instant Spl.Crl.Anti-Terrorism Jail Appeal.

8. Learned counsel for the appellant argued that the impugned judgment is against the law and facts of the case; that the appellant is innocent and has falsely been implicated in this case due to enmity; that all the cited witnesses being closely related friends and are chance witnesses; that the medical evidence is in conflict with the ocular evidence; that the appellant has been

acquitted in all criminal cases; that there are major contradictions between the evidence of prosecution witnesses. He lastly argued that the prosecution has miserably failed to prove its case against the appellant and thus, according to him, under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal. In support of his contentions, learned counsel for the appellant has relied upon the cases of [1] ASGHAR ALIAS alias SABAH AND OTHERS VS. THE STATE (1992 SCMR 2088), [2] JAVED KHAN alias BACHA AND ANOTHER VS. THE STATE (2017 SCMR 524) AND [3] EJAZ AHMED alias FOOJI, etc. VS THE STATE (2011 P.CR.R. 1157).

9. While rebutting the above contentions, learned Assistant Prosecutor General, Sindh argued that the complainant lodged FIR against unknown persons, if the complainant has any enmity with accused he would have nominated him in the FIR, but through identification parade the appellant was identified by the eyewitnesses of the incident; that no proof of enmity was brought by the learned counsel for the appellant which may justify his false implication in this case at the hands of complainant party being interested witness; that the ocular account consists of medical evidence as well as circumstantial evidence. He further argued that no material contradictions and discrepancies were pointed out by the learned counsel for the appellant to show his false implication in this case; that the appellant is involved in a number of criminal cases, learned trial Court has rightly recorded the conviction and sentence against the appellant in accordance with law and thus, he lastly prayed for dismissal of the instant appeal.

10. We have heard the learned counsel for the parties and have perused the record available with their able assistance. On careful perusal of the material brought on record, it appears that the prosecution case solely depends upon the evidence of eyewitnesses PW-9 Syed Jamal Asghar and PW-10 Syed Khursheed Abbas. Both the witnesses have identified the accused

before the learned Magistrate during the course of an identification parade. The statements of the witnesses were corroborated by the medical evidence produced by the medical officer coupled with other prosecution witnesses as well as circumstantial evidence. There can be no denial to legally established principle of law that it is always the direct evidence which is the 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 and 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. The reliance can safely be placed upon 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.”***

11. A perusal of evidence of the eyewitnesses Syed Jamal Asghar (PW-9) deposed that on 16.08.2003, he had gone to see Dr. Ibn-e-Hassan at his clinic at about 11-12 noon. Dr. Ibn-e-Hassan had not reached his clinic and he was waiting outside his clinic, meanwhile, Dr. Ibn-e-Hassan/deceased appeared within his sight and saw that two persons on a motorcycle appeared and both the accused persons have straightaway fired upon Dr. Ibn-e-Hassan, who was in his car. One accused was in Shalwar Qameez and the other was in pant shirt. The staff working in the clinic of the doctor took him for medical assistance and meanwhile he

went to his house. On 19.08.2003, he went to PS Malir City where I.O. Malik Salam met him and recorded his statement under Section 161 Cr.P.C. He further informed to I.O. if the accused is apprehended, he can identify the accused involved in the commission of murder. On 10.05.2006, he received a notice through Inspector Ch. Manzoor for identification parade as some culprits were apprehended in the murder of Dr. Ibn-e-Hassan. On 11.05.2006 he appeared in the Court of Judicial Magistrate No.6, Malir Karachi where he identified the accused/appellant during identification parade and while recording evidence before the learned trial Court, he has again identified him. In cross-examination, he has denied that he did not know any person working in the clinic of Dr. Ibn-e-Hassan prior to the incident. In support of his contention, the prosecution examined PW-10/eye witness Syed Khursheed Abbas, who in his evidence deposed that on an eventful day he was standing at Malir 15 bus stop. All of sudden, he heard fire shots and saw two persons on a motorcycle, who were firing at a car and after firing they made their escape good from the place of incident. The person, who was driving a car received bullet injury on his body. He was only 10 steps away from where the person got a bullet and through taxi, he was taken to Liaquat National Hospital and he also reached at Liaquat National Hospital where doctors saw the injured person and after a short time, doctors declared the person as dead. The person who was injured and died was Dr. Syed Ibne-e-Hassan. On 10.05.2006 he received a notice for holding an identification parade and on very next day, he appeared before the Magistrate and identified the accused with a specific role that he had fired upon the deceased Dr. Syed Ibn-e- Hassan. After completing all the formalities, he left the Court's premises. In cross-examination, he admitted that before this case, he was acting as a witness in a case in which his brother was caused injuries by the present accused. At this juncture, we have inquired from the learned counsel for the appellant to provide the FIR in which the present

appellant was nominated for which he replied that in that case, FIR was registered against an unknown person. Learned counsel for the appellant further clarified that it was earlier FIR registered against unknown person than the present case. PW-1 Munawar Atta, who is a witness of the recoveries of empties and signed the masirnama of the place of incident and recovery. The prosecution also examined Syed Zohair Hussain, who is not an eye witness of the incident but he has lodged the FIR, being a brother of the deceased Dr. Ibn-e-Hassan. In support of contentions of the witnesses namely Syed Jamal Asghar and Syed Khursheed Abbas, the prosecution examined PW-5 Muhammad Ahsan Khan Durrani, who in his evidence deposed that on 11.05.2006, he was posted as Judicial Magistrate. The I.O. of the case through an application requested him for holding an identification parade in FIR No.99/2003 under Section 302/34 PPC of PS Malir City. On such an application, he has passed an order for holding the identification parade. On the same day, ten (10) dummies were arranged, handcuff of the accused was removed and he was directed to stand in the line of dummies of his own choice. He stood at Serial No.4. PW-9 Jamal Asghar was called and he has identified the accused in the presence of learned Magistrate along with the role that at the time of the incident, he was armed with pistol or TT and had fired upon deceased Dr. Ibn-e-Hassan and thereafter the accused was asked to change the row and he was called for identification. He again identified the accused with the role that he had fired upon the deceased. In cross-examination, the learned Magistrate admitted that the entire process of identification parade took for about 45 minutes. Then the prosecution examined the writer of the FIR PW-6 Ghulam Raza. Thereafter, the prosecution examined Inspector Khuda Bux PW-7, who in his evidence deposed that on 05.05.2006, he was posted as Inspector in AVCC. On that day, he received information that some terrorist of Lashkar-e-Jhangvi assembled for some terrorist activities in Fatah-e-Bagh Area, Malir City. On such information



under the supervision of DSP Khurram Waris, a police party was constituted and subsequently arrested the accused namely Atif Nizami, Muhammad Arshad, Noorul Ameen, Syed Asif Ali, Kamran, and Muhammad Asif @ Bada and recovered arms and ammunition. Such a memo was prepared in the presence of mashirs. The property was sent to the ballistic expert for analysis. Thereafter, the investigation was given to PW-8 Mehboob Illahi, who has investigated the matter and submitted challan before the competent Court of law. Thereafter the property was sent to AIG of Police Criminalistics Division Sindh Karachi and received a report in positive that the 30 bore empties marked as C1 recovered in Crime No.99/2003 under Section 302 PPC were same which recovered in Crime No.59/2006 under Section 353/324/34 of PS Malir. The direct evidence also finds corroboration from the medical evidence with regard to the cause of death and time of the incident. It is established from the evidence of Dr. Dileep Khatri, who has produced the postmortem examination report conducted by Dr. Shakoor Bhatti. From the perusal of the postmortem report, death was caused due to firearm injuries, which suffice to say that the cause of death of deceased was unnatural and thus, this also corroborate the ocular testimony furnished by the complainant and eyewitnesses. The reliance is 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 of their presence at the place of occurrence as, according to them, they alongwith 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 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 inspring. The medical evidence fully supportsw 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.”***

12. Reverting to the case in hand, the place of incident was premises of Dr. Ibn-e-Hasan's clinic and the occurrence had taken place in broad daylight, whereas the FIR was lodged promptly by the complainant and postmortem examination of the dead body of the deceased was also conducted with no lapse of time. The ocular account of the incident in question was furnished before the learned trial court by two eye witness( PW-9) Syed Jamal Asghar and (PW-10) Syed Khursheed Abbas, who resides within same vicinity, wherein the incident taken place and thus nothing but natural witnesses, in such situation, the mistaken identity does not arise in the present case. The consistent ocular account furnished by the above mentioned eye witnesses was confirmed by the medical evidence coupled with circumstantial evidence, leading to an un natural death of deceased. The investigating officer during the course of investigation secured crime empties and after the arrest of the appellant, recovered crime weapon viz. TT pistol were sent to the office of FSL and received a positive report. The bloodstained sent to the chemical laboratory was opined to be stained with human blood, Hence, the above piece of evidence substantiates the ocular testimony of complainant and his eyewitnesses. The appellant has not pleaded for false implication in this case and during an identification parade, the eyewitnesses (PW-9) Syed Jamal Asghar and (PW-10) Syed Khursheed Abbas have identified him with a specific role that he had fired upon the deceased. The reliance in

this context is placed upon case of **Qurban Hussain Vs. The State (2017 SCMR 880)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

***“3. ...The said eye-witness had made straight forward statement before the trial Court which had inspired confidence not only of the trial Court but also of the High Court. The ocular account furnished by the said eye witness had found full support from the medical evidence. After assessing and evaluating the evidence in some detail both the courts below had concurred in their conclusion that the prosecution had succeeded in establishing the appellant's guilt to the hilt and upon our own independent reappraisal of the evidence, we have not been able to take a view of the matter different from that concurrently taken by the courts below.”***

13. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant through ocular account furnished by eyewitnesses (PW-9) Syed Jamal Asghar and (PW-10) Syed Khursheed Abbas, which is corroborated by the medical evidence coupled with recovery of empties matched with a recovered pistol and other circumstantial evidence. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in our humble view, is based on an appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction and sentence awarded to the appellant by learned trial Court is hereby maintained and the instant appeal filed by the appellant merits no consideration, which is dismissed accordingly.

**J U D G E**

**J U D G E**