

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.276 of 2019

Confirmation Case No.11 of 2019

Present: Mr. Justice Nazar Akbar
Justice Mrs. Kausar Sultana Hussain

Appellant : Syed Ahmad Hassn son of Muhammad Hassan
through Mr. Hashmat Khalid, Advocate
Respondent : The State through Mr. Muhammad Iqbal Awan,
Deputy Prosecutor General Sindh
Date of hearing : 30.11.2020

J U D G M E N T

NAZAR AKBAR, J.--- Appellant Syed Ahmad Hassan son of Muhammad Hassan has preferred the instant Criminal Anti-Terrorism Appeal against judgment dated **26.09.2019**, whereby learned Judge, Anti-Terrorism Court No.VI, Karachi in Special Case No.A-318 of 2014, arising out of FIR No.346/2014, registered at P.S Zaman Town, Karachi, for offence under Sections 302, 109, 34, PPC read with Section 7 of the Anti-Terrorism Act, 1997 convicted the appellant under section 302(b), PPC and awarded him death sentence, to be hanged till his death with compensation of Rs.200,000/- to be paid to the legal heirs of the victim. The appellant was also convicted under Section 7(1)(a) of the Anti-Terrorism Act, 1997 and was awarded death sentence to be hanged till his death. In terms of Section 374, Cr.PC trial court has also made reference to this Court for confirmation of death sentenced or otherwise.

2. Brief facts the prosecution case as disclosed in the FIR are that on 31.08.2014 at 0020 hours, complainant Adeel Hasnain son of Zafaryab Hussain came at Police Station Zaman Town and recorded his statement under section 154, Cr.PC, stating therein that he resides with his parents in

House No.298, Area "G", Korangi 5 ½, Karachi. DR. Naseem Aun Jafferi was his uncle. On 27.08.2014 at 2015 hours, he was present at his home; his uncle Dr. Naseem Aun Jafferi was busy in treating his patients at 'Javed Clinic', Hussaini Imam Bargah. Suddenly, three unknown persons came there on motorcycles, one of them, wearing helmet, stood outside the clinic whereas two persons with covered faces entered the clinic and fired gunshots at his uncle Dr. Naseem Aun Jafferi with firearms, who sustained firearm injuries and while shifting to the hospital he succumbed to the injuries. Complainant also stated that his said uncle was Information Secretary of PPP of District Korangi, Karachi. FIR of the incident was lodged against three unknown persons.

3. Investigation was entrusted to SIP/SIO Muhammad Arif, who received police papers, inspected place of incident on the pointation of complainant, prepared memo of inspection of the place of incident, recorded 161 Cr.PC statements of the witnesses. Prior to this, on 27.08.2014, 4 empties of 9mm and 4 sicas (leads) were secured by SIP Yousuf Naimat, which were sent by him to FSL. On 27.08.2014, SIP Yousuf Naimat also secured bloodstained earth and SIP Muhammad Arif sent parchajat to the chemical examiner for examination. Subsequently, section 7 of the Anti-Terrorism Act, 1997 was inserted and the investigation of the instant crime was handed over to PI Jaffer Baloch, who collected the information regarding murder of Dr. Naseem Aun Jafferi. During investigation IO PI Jaffer came to know that Syed Ahmed Hassan, arrested in Crime No.369/2014 of PS CID, during interrogation, has disclosed his involvement along with his accomplices in the murder of Dr. Aun Jafferi. IO interrogated the accused on 10.10.2014, who disclosed that on 27.08.2014 at about 2015 hours, he along with his accomplices Kashif, Rehan and Abbas, duly armed with 9MM pistols came

on motorcycles, at the instigation of Doctor Rehan, committed murder of Dr. Naseem Aun Jafferi at Javed Clinic near Hussaini Imam Bargah, G Area, Korangi, Karachi by opening fires at him being a Shia Sect and then escaped. IO arrested the accused in this case on 17.10.2014, who led the police and pointed out the place of incident, IO prepared such memo and recorded 161 Cr.PC statements of the witnesses. On 20.10.2014, identification parade of accused was held before the Judicial Magistrate through eyewitness Shahid Ali son of Zulfiqar Ali. After completion of investigation, IO submitted challan against the accused in the above referred sections.

4. Trial Court framed charge against the accused on **09.02.2016** at Ex.5. Accused pleaded not guilty and claimed to be tried.

5. In order to prove its case, prosecution examined PW-1 Adeel Hasnain at Ex.6, PW-2 Muhammad Arif at Ex.7, PW-3 Yousuf Naimat at Ex.9, PW-4 Muhammad Ashraf at Ex.10, PW-5 Akhtar Mehdi at Ex.11, PW.6 Dr. Jagdesh Kumar at Ex.14, PW-7 Muhammad Khalid Lodhi at Ex.16, PW-8 Muqtadar Khan at Ex.17, PW-9 Jaffer Khan at Ex.21. Thereafter, learned APG closed the prosecution side vide statement at Ex.22.

6. Statement of accused was recorded under Section 342, Cr.PC at Ex.23. Accused denied the prosecution allegations and claimed his false implication by stating that on 22.09.2014 he was picked up by Rangers from the house of his cousin in Gulistan-e-Johar and after few days he was handed over to CTD who booked him in the present case. However, he neither examined himself on oath nor produced any witness in his defence.

7. Learned trial Court by judgment dated **26.09.2019**, after hearing the learned counsel for the parties and examination of evidence, convicted and sentenced the accused/appellant as stated above.

8. Learned counsel for the appellant mainly contended that learned trial court without appreciating and evaluating the prosecution evidence available on record passed the impugned judgment in a haphazard manner; eyewitness of the incident, namely, Shahid Ahmed Hassan, who identified the appellant in identification parade test, has not been produced before the trial court for recording his deposition and to cross-examine him by the defence; disclosure of accused about commission of offence before the police without recording his 164, Cr.PC statement before the Judicial Magistrate is inadmissible in the eyes of law; appellant was picked up by Rangers on **22.09.2014**, which fact has not been considered by the trial court while passing the impugned judgment; case of the prosecution is based on hearsay evidence, which is a weak type of evidence in the eyes of law, as such, illegality and irregularity has been committed by the trial court by recording capital punishment against the appellant, while relying on such type of evidence; there is material contradictions in the evidence of prosecution witnesses which have been ignored the trial court, who failed to examine all the relevant events preceding and leading to the occurrence so as to arrive at a just conclusion. Lastly, he argued that learned trial court has not properly evaluated and appreciated the evidence of prosecution witnesses, which is full of discrepancies and contradictions, as such, the impugned judgment passed by the learned trial court is not sustainable in law and prayed for acquittal of the appellant of the charges and the confirmation reference made by the trial court may be answered in negative. In support of his contentions, learned counsel for the appellant has relied upon the case of **LAL KHAN versus STATE (2006 SCMR 1846)**, **SHAZIA ASLAM versus The STATE (2001 MLD 1939)**.

9. Mr. Muhammad Iqbal Awan, learned Deputy Prosecutor General Sindh, argued that present appellant and the absconding accused fired upon Dr. Naseem Aun Jafferri in presence of so many people in his Clinic, who sustained firearm injuries and in result whereof he succumbed to his injures; present appellant was arrested in some other case by CID police and during interrogation he confessed his guilt regarding his involvement in the instant case and was arrested in the instant case as well; the appellant was put to identification parade test before the Judicial Magistrate and the eyewitness, namely, Shahid correctly identified him to be the culprit of the murder of deceased doctor. He also argued that it is not a case of regular assassination, arising out of an act of robbery, dacoity, land or matrimonial dispute but the victim has lost his life in a targeted killing by the appellant as well as his accomplices, which created sense of fear, insecurity and terrorism in the minds of people available at the spot, family of the deceased doctor and the general public as well. He finally argued that all the prosecution witnesses have fully implicated the appellant in the instant case and the trial court while properly appreciating and evaluating the entire evidence, recorded the conviction against the appellant. He fully supported the impugned judgment and prayed that the instant appeal may be dismissed and the confirmation reference made by the trial court may be answered in affirmative.

10. With the assistance of learned counsel for the appellant as well as learned Deputy Prosecutor General Sindh we have scanned the entire prosecution evidence.

11. The question unnatural death of deceased Dr. Naseem Aun Jafferri, is undisputed and the issue before the Court is that whether the appellant has

been found guilty in accordance with proper appreciation of prosecution evidence against him. In this context we first examine the arrest of appellant in the instant crime No.346/2014 registered on **31.08.2014** at P.S Zaman Town. PW-9 PI Jaffer Khan Baloch who was second I.O in the instant case deposed that on **10.10.2014**, he received information from CTD Garden Karachi that accused, namely, **Syed Ahmed Hassan** (the appellant herein) and Naeem Akhtar were arrested in **FIR No.369/2014**, under **Section 4/5** of the Explosive Substances Act, 1908 and **FIR No.370/2014** under **Section 23(1)(a)** of the Sindh Arms Act, 2013 of CTD Garden, Karachi, who were making disclosure of their involvement in the instant case as well as in Crime No.68/2014. **He then made Entry No.38 and left the P.S. in police mobile along with SIP Muhammad Arif (First I.O), ASI Momin Ali and other police staff.** He also deposed that he interrogated the accused persons separately at CTD Garden, during interrogation, accused Syed Ahmed Hassan disclosed that on **27.08.2014** at about 2015 hours, he along with his accomplices, namely, Kashif, Rehan and Abbas at the instigation of one person commonly known as Doctor Sahab had committed murder of Dr. Naseem Aun Jafferri at Javed Clinic near Hussaini Imam Bargah, Korangi No.5 ½ by opening firing at him being a Shia Sect and escaped; on such disclosure accused Syed Ahmed Hassain was formally arrested in the instant case.

12. Perusal of evidence of both the PW-2 Muhammad Arif who was earlier Investigation Officer and PW-9 Jaffer Khan Baloch to whom investigation was transferred on **01.9.2014** reveals that both the IOs contradicted with each other. SIP Muhammad Arif PW-2 in his examination-in-chief, recorded on **13.06.2016**, had deposed nothing about arrest of accused Ahmed Hassan, except that, *“On 17.10.2014, Inspector Jaffer Baloch*

took the accused Ahmed Hassan to the place of incident on his lead and on pointation of accused Ahmed Hassan, the place of incident was inspected by IO in my presence and in presence of ASI Haroon Rasheed and he prepared such memo of pointation of place of incident in our presence.” Whereas his further examination-in-chief, recorded on 15.01.2018, appears to be improved one, in which he deposed that, *“On 10.10.2014 PI Jaffer Baloch informed me on phone at 1800 hours that some accused in the instant case were in custody of PS CID Garden, asking me to interrogate him as I was the first IO. Immediately, I went there and PI Jaffer Baloch also arrived with his personnel. The accused, namely, Syed Ahmed Hassan was brought in the interrogation room in handcuffs. He was subjected to interrogation during which he disclosed that he along with his accomplices murdered Dr. Aun Jafferi. On such disclosure, PI Jaffer Baloch formally arrested him and prepared such mashirnama.”* Nonetheless the deposition of both the IOs, clearly shows that the present appellant has been falsely implicated on the pretext of his alleged extrajudicial confession before police officers on 10.10.2014 during investigation of some other case. The Investigating Officer claimed that the appellant has admitted his guilt, however, he made no efforts at all to record his Confessional Statement under **Section 164 Cr.P.C** when arrested him in this case. The I.O, however, preferred to arrange Identification Parade of the appellant through witness Shahid Ali S/o Zulfiqar, but he failed to produce the said witness of identification before the Trial Court to confirm that how and on what basis he had identified the appellant. The Police has even failed to recover 9MM pistol said to have been used in the crime from the appellant.

13. The exercise of identification parade was inconsequential for several reasons, the perusal of contents of FIR reveals that there were three persons

who came on motorcycles, one wearing helmet stood outside and two boys with muffled faces came inside the clinic and opened fire at Dr. Naseem Aun Jafferi, who later on succumbed to his injuries, whereas, it is the case of the prosecution that appellant was identified by witness Shahid Ali, who claimed to be the eyewitness of the incident. It is unbelievable that one can identify a person who was wearing a helmet or with muffled face, that too while committing a heinous offence of murder. The Magistrate has also admitted that no specific role was assigned by witness Shahid Ali to the appellant during identification parade test. It is also an admitted fact that the prosecution has failed to produce said eyewitness of identification parade before the trial court to face cross-examine by the defence. We have also observed that there is a delay of **10** days in holding the identification parade before the Judicial Magistrate as the appellant was arrested in the instant case on **10.10.2014** whereas identification parade was held on **20.10.2014**. No explanation has been placed on record by the prosecution with regard to holding the identification parade with a delay of 10 days. It is also pertinent to mention here that the proceedings of the identification parade brought on the record of this case clearly show that the eyewitness in that parade has not described the role played by appellant during the occurrence in incident. It has repeatedly been held by the apex Court that identification of an accused person without reference to the role allegedly played by him during the occurrence is shorn of any evidentiary value and a reference in this respect may be made to the cases of *AZHAR MEHMOOD and others v. The STATE* (2017 SCMR 135), *MUHAMMAD FAYYAZ v. The STATE* (2012 SCMR 522), *SHAFQAT MEHMOOD and others v. The STATE* (2011 SCMR 537) and *SABIR ALI alias Fauji v. The STATE* (2011 SCMR 563).

14. In addition to the above fatal lacuna in prosecution story, the delay in lodging of FIR has also adversely effected prosecution case. **Section 154** of the Code of Criminal Procedure, 1898, provides that *“Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf.”* PW-3 SIP Yousuf Naimat deposed that he received information from SIO regarding murder of Dr. Naseem Aun Jafferi at Javed Clinic, situated at Hussaini Imam Bargah, he left the police station vide roznamcha Entry No.9/A, inspected the place of incident and secured 4 empties of 9MM, 4 sicas, and bloodstained earth in presence of mashirs SIP Khalid Lodhi and ASI Aqeel Ahmed, prepared such memo, sealed the case property at spot, returned to police station and on **28.08.2014**, he sent the case property for FSL and obtained such report at Ex.9/E. In his cross-examination he stated that name of SIO was SIP Arif; investigation was not with SIP Arif; at the time of seizure of empties and bloodstained earth, no FIR was registered. Perusal of evidence of PW-3 SIP Yousuf Naimat as well as roznamcha entry **Ex.9/A** reveals that PW-2 SIO Muhammad Arif of Police Station Zaman Town was fully aware of the commission of offence which, as per contents of the FIR, occurred on **27.08.2014** at 2015 hours and he immediately directed **PW-3** SIP Yousuf Naimat to visit the place of incident, who in his cross-examination stated that he left the police station on **27.08.2014 at 2025 hours**, exactly after 10 minutes of the occurrence. Perusal of *Roznamcha* Entry Ex.9/A reflects that, *“he received directions from the SIO of the above PS to immediately reach at Hussaini Imam Bargah, G*

Area, Korangi 5 ½ Karachi at Dr. Naseem Aun Jafferi's Clinic as he has been murdered by unidentified suspects and carry out due proceedings. Having received the order, he left for Hussaini Imam Bargah, G Area, Korangi 5 ½, Karachi."

15. PW-4 SIP Muhammad Ashraf also deposed that on **27.08.2014** at about 2020 hours, he received information regarding incident of firing at Javed Clinic, G Area near Hussaini Imam Bargah vide Roznamcha Entry No.25, Dr. Naseem Jafferi sustained firearm injuries and was shifted to Jinnah Hospital, he also reached JPMC. He met with MLO, conducted proceedings under **Section 174, Cr.PC**, then he went to mortuary, inspected the dead body of deceased, prepared inquest report, received parchajat from doctor after postmortem and handed over dead body to Ziaghham Hussain Jafferi, obtained cause of death, then he returned to police station vide Roznamcha Entry No.36. On **30.08.2014**, he recorded statement of complainant Adeel Hansain at Ex.6/A, then registered FIR No.346/2014. In his cross-examination, he stated that, he has not mentioned the name and mobile number of the person who conveyed information about the incident; he left the police station **at 2020 hours**; he reached at the place of incident within 10 minutes; he informed the SHO regarding the incident, who directed him to reach Jinnah Hospital; he reached JPMC within 15 minutes and remained at JPMC for about six hours; on 31.08.2014 his statement under section 161, Cr.PC was recorded.

16. The evidence of PW-3 and PW-4 clearly shows that despite having knowledge about the commission of offence, inspection of place of incident, sending the dead body to JPMC for postmortem examination, recovery of empties from the place of incident, obtaining postmortem report and cause

of death, handing over the dead body to the relatives of the deceased by duty officer **PW-4** Muhammad Ashraf, the Incharge of police station did not lodge the FIR on behalf of the state and kept waiting for some relative of the deceased to come to lodge the FIR. The Incharge of the police station was bound by law to lodge FIR on behalf of the State as soon as he received the information about commission of cognizable offence but in the instant case he failed to act in accordance with law and no explanation has been furnished by the prosecution that as to why the FIR was not lodged by the police immediately after receiving information regarding commission of offence. In this background, the complainant was required to explain the delay in lodging FIR by 4 days. The incident took place on **27.08.2014** at 2015 hours whereas statement of complainant under **Section 154, Cr.PC** was recorded on **31.08.2014** after a delay of more than four (4) days, despite the fact that his real uncle was shot dead by unknown persons in presence of so many people of the locality at his clinic and the police station is situated at a distance of about three kilometers from the place of incident as well as his residence. No plausible explanation for such delay in lodging of FIR has been placed on record. It is well settled law that in absence of any plausible explanation, delay in lodging of FIR is fatal and it casted a suspicion on the prosecution story. The trial court failed to appreciate that if there was any delay in lodging of FIR and commencement of investigation, it gave rise to a doubt, which, could not be extended to anyone else except to the accused. Reliance is placed on *Zeeshan @ Shani v. The State* (**2012 SCMR 428**); *Noor Muhammad v. The State* (**2010 SCMR 97**) and *Muhammad Faiz Khan v. Ajmer Khan* (**2010 SCMR 105**).

17. In view of the above, by following short order dated **30.11.2020**, we have allowed the instant appeal:-

“Heard learned counsel for the appellant as well as Prosecutor General and have gone through the record. It clearly transpires that the present appellant has been falsely implicated on the pretext of a confession before a police officer on 10.10.2014 during investigation of some other case. The Investigating Officer claimed that the appellant has admitted guilt, however, he made no efforts at all to record his Confessional Statement under **Section 164 Cr.P.C** and arrested him in this case. He then arranged Identification Parade of appellant through witness Mr. Shahid Ali S/o Zulfiqar, who was even mentioned in the list of eye witnesses but the prosecution failed to produce the said witness of identification before the Trial Court. The Police has even failed to recover 9MM pistol from the appellant said to have been used in the crime which the accused/appellant has admitted. These few facts prima-facie indicate that there has been a defective investigation and the Investigating Officer has falsely implicated the accused. Reliance is placed on the case reported as **2006 SCMR 231 (Sajid Mumtaz & others Vs. The State)**. Being relevant, Para-22 of the said judgment is reproduced below:-

“22. As observed by the Federal Court, we would reiterate especially referring to this part of the country, that extra-judicial confessions have almost become a norm when the prosecution cannot otherwise succeed. P Rather, it may be observed with concern as well as with regret that when the Investigating Officer fails to properly investigate the case, he resorts to padding and concoctions like extra-judicial confessions. Such confessions by now, have become the signs of incompetent investigation. A judicial mind, before relying upon such weak type of evidence, capable of being effortlessly procured must ask a few questions like why the accused should at all confess, what is the time lag between the occurrence and the confession, whether the accused had been fully trapped during investigation before making the confession, what is the nature and gravity of the offence involved, what is the relationship or friendship of the witnesses with the maker of confession and what, above all is the position or authority held by the witness.”

18. In view of above and for detailed reasons to be recorded later on, we hereby allow this Appeal and intend to issue notice to the Investigating

Officer for summary proceedings against him and others, if any, under Section 27-A of Anti-Terrorism Act, 1997 in the detailed judgment to follow.”

19. We have given our detailed reasons in para-1 to 16 in support of short order. The appeal has already been allowed. The confirmation reference is also answered in “Negative”. However, we refrain ourselves from taking any action under **Section 27-A** of the Anti-Terrorism Act, 1997 against the Investigating Officer with directions to the SSP District Korangi, Karachi for taking disciplinary action on account of inefficient inquiry and investigation in this case, particularly with reference to the delay in lodging of FIR by the relevant SHO of P.S Zaman Town after knowledge of a heinous crime committed in the jurisdiction of his Police Station. The proceedings of disciplinary action against the delinquent SHO should be initiated immediately on receiving the copy of this order and completed within one month. The proceedings of disciplinary action against the delinquent SHO should be brought to the knowledge of this Court through MIT-II within 30 days.

J U D G E

J U D G E

Karachi, dated
January 06, 2021

Gulsher/PS