

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

Criminal Jail Appeal No.S-19 of 2018

Appellants: Zahid and Shahid @ Muno through Mr.Imtiaz Ali Abbasi, Advocate.

Respondent: The State through Ms. Safa Hisbani, A.P.G. Sindh.

Complainant: Mst. Wazeeran through Mr. Safdar Ali Charan advocate.

Date of hearing: 16.10.2019.

Date of Judgment: 16.10.2019.

J U D G M E N T

AMJAD ALI SAHITO, J. Being aggrieved and dissatisfied with the judgment dated 01.01.2018, passed by the learned 1st Additional Sessions Judge, Dadu in Sessions Case No.806/2015 arising out of the FIR No.72/2015 for offence under sections 302, 504, 34 PPC registered at PS Johi, whereby the appellants were convicted under section 302(b) PPC for committing the murder of deceased Mst. Fatima and sentenced them to suffer rigorous imprisonment for 25 years and shall pay fine of Rs.50,000.00 [Rupees fifty thousand only] each and in case of default to suffer S.I for six months more. If the fine amount is recovered the same shall be paid to the legal heirs deceased as compensation as provided under section 544-A Cr.P.C. However, the benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. Briefly the facts of the prosecution case are that on 21.11.2015 complainant Mst. Wazeeran Panhwar has lodged FIR at police station Johi stating therein that 06/07 years ago, she got married her daughter Mst. Fatima (deceased) with Zahid

Qambrani and her daughter used to complain her regarding maltreatment of her husband and not allow to visit her relatives. Per complainant, out of this wedlock, she has three sons. On 18.11.2015 complainant, her brother Mukhtiar Ali and brother-in-law Sagheer Ahmed went to the house of her daughter Mst. Fatima and on 19.11.2015 she asked Zahid to permit her daughter to go with them towards village which annoyed to Zahid and his brother Shahid @ Muno; Zahid also abused to her and her daughter and both went out of the house. It was 1600 hours when they were chitchatting, appellants Zahid and Shahid came in the house and called the daughter of complainant namely Mst. Fatima, who proceeded towards them, in the meantime appellant Shahid made five fires from his pistol upon Mst. Fatima which hit her while appellant Zahid made three fires from his pistol which also hit her, she died on spot. Appellants extended threats to complainant and went away. PW Sagheer Ahmed gave such information to police and the dead body was brought at police station Johi. The police after completion of necessary proceedings and post mortem handed over the dead body of deceased to the complainant. After funeral ceremony the complainant lodged the instant case.

3. After completing the investigation of the case, the challan was submitted by the Investigating Officer against the above named accused before the concerned Court.

4. The trial Court framed the charge against appellants, to which they pleaded not guilty and claimed to be tried. In order to establish accusation against the accused, the prosecution examined PW-01 complainant Mst. Wazeeran Panhwar, PW-02 Mukhtiar Ali [eye witness], PW-02 Sagheer Ahmed [eye witness], PW-04 Dr. Rehana Mastoi, PW-05 mashir Akhtiar Ahmed, PW-06 Tapedar Saleem Akhtar, PW-07 SIP Noor Muhammad Gopang, PW-08 Investigating Officer ASI Liaquat Ali. The witnesses produced certain documents in their testimonies. Then the prosecution closed its side through statement. Statements of accused were recorded u/s 342 Cr. P.C., wherein

they denied the prosecution allegation leveled against them and claimed their false implication. However, they did not examine on oath under section 340 (2) Cr.P.C. nor led defense evidence.

5. The learned trial Court, after hearing the learned counsel for the parties and appraisal of the evidence, convicted and sentenced the appellants through impugned judgment. The conviction and sentences, recorded by the learned trial Court, has been impugned by the appellants before this Court by way of filing the instant Criminal Jail Appeal.

6. Learned counsel for the appellant mainly contended that the appellants are innocent and have falsely been implicated in the murder case; that the impugned judgment passed by the learned trial Court is against the law and facts of the case; that all the eye witnesses of the case are closely related inter-se and no any independent witness was cited by the prosecution and the evidence of witnesses examined at trial is un-reliable and full of contradictions and would not be relied upon, as such, it was not sufficient for awarding the conviction; that there is confliction in the ocular as well as medical evidence; that during investigation of the case, one of the appellants namely Shahid @ Muno was found innocent and his name was kept in column-II; that there is no motive of the incident; that some formalities in the case were observed before lodgment of FIR and even the FIR was lodged after un-explained delay of two days; that it is settled principle of law that benefit of slight doubt may be extended to the accused. He lastly prayed for acquittal of the appellants. In support of his contentions, he has relied upon the cases reported in 2018 YLR 216 [Sindh], 2018 YLR 1442 [Peshawar] and 2018 YLR 340 [Federal Shariat Court].

7. Conversely, the learned counsel for complainant while rebutting the contentions of learned counsel for the appellants supported the impugned judgment and argued that appellants have been nominated in the FIR with specific role as they duly armed with pistols and fired direct shots upon deceased Mst.Fatima who died at the spot; that the incident is witnessed

by eye witnesses; that the pistol used in the commission of offence was recovered from the appellant Zahid. He lastly prayed for dismissal of instant appeal. Learned A.P.G. also supported the impugned judgment and she stressed that the impugned judgment is proper and well reasoned, hence, it does not require any interference by this Court, which is liable to be maintained as the appellants have committed murder of an innocent woman who was wife of one of the appellants namely Zahid.

8. I have heard the learned counsel for the parties and gone through the evidence as well as impugned judgment and case law cited at the bar with their able assistance. On careful perusal of the material brought on record, it appears that the prosecution case solely depends upon the ocular testimony adduced in shape of evidence of complainant, eye witnesses and supported by the medical as well as circumstantial evidence. The Appellants on eventful day were armed with pistols entered into their house, called the deceased and directly caused firearm shots to deceased Mst. Fatima. After receiving the injuries, she expired on spot; such incident was witnessed by complainant Mst. Wazeeran, eye witnesses namely Mukhtiar Ali and Sagheer Ahmed, who were present at place of scene. The complainant/PW-01 Mst. Wazeeran in her evidence deposed that ***"...Prior to the incident hand of my daughter Fatima handed over by me to Zahid by way of marriage, she lived with her husband and from that wedlock three issues born. My deceased daughter always made complaints to me about the maltreatment by the hands of her husband and he was restraining my daughter not to meet with her parents even restraining from talking with us. That on 18.11.2015 I accompanied with my brother Mukhtiar and brother-in-law Sagheer Ahmed visited the house of my daughter at evening time where I stayed at the house of my daughter in night. In the morning my daughter requested her husband that she wanted to go with me then Zahid and his brother Shahid after abusing went out from***

the house..... At the evening time at about 4.15 p.m. on 19.11.2015 accused Zahid and Shahid came at the house who were armed with pistols. In our presence Zahid called to my daughter and Shahid inflicted fires upon my daughter at her right elbow. When my daughter moved, the accused Zahid also fired three fires from his pistol which hit at left rib of my daughter. My daughter then fell down and died.” In cross examination, the complainant denied the suggestions made by defense counsel by deposing that *“.....It is not fact that there was illicit relation of my daughter with one Zahid Maganhaar. It is not fact that on the day of incident both the accused persons were present at their shop..... It is not fact that father of both the accused committed murder of my daughter as well as Zahid Maganhaar.”* Eye witness PW Mukhtiar Ali also implicated the accused in the commission of offence by deposing that *“...That on 19.11.2015 at about 4.15 p.m. this incident had taken place. On 18.11.2015 my sister Mst. Wazeeran called me on phone and requested me to accompany with her for Johi in order to visit the house of her daughter.....Due to night we stayed at the house of Mst. Fatima and on the following morning when we wake up Mst. Fatima made request to her husband for leaving the house with her mother and us. Zahid became annoyed and went away. On the day of incident, we were chitchatting in the Verandah, it was 3.15 p.m. when accused Zahid and Shahid came at the house who both were armed with pistols. Accused Zahid called Fatima, when she moved a head accused Shahid inflicted five fires upon her. One fire received by her on her left lumber region, second fire hit to her on left side of chest, third fire hit at the breast of right side, fourth fire hit near to the right breast while fifth fire inflicted at the right forearm. When Mst. Fatima moved, accused Zahid also did three fires upon her which hit at backside rib who fall down and died. The accused also pointed out the pistols upon us and while issuing threats they escaped away.”* Other eye witness PW-03 Sagheer Ahmed during his

evidence has also implicated the appellants in the commission of offence by deposing that ***“...On the day of incident, we were chitchatting in the Veranda, it was 4.15 p.m. when accused Zahid and Shahid came at the house who both were armed with pistols. Accused Zahid called Fatima, when she moved a head accused Shahid inflicted five fires upon her. One fire received by her on her left lumber region, second fire hit to her on left side of chest, third fire hit at the breast of right forearm. When Mst. Fatima moved, accused Zahid also did three fires upon her which hit at backside rib who fall down and died. The accused also pointed out the pistols upon us and while issuing threats they escaped away.”*** PW-05 Akhtiar Ahmed was also examined. He was acted as mashir of inspection of dead body and sustaining injuries on her person, securing blood stained drops, empties from the spot etc. and has also affirmed the memos prepared in his presence. While PW -07 SIP Noor Muhammad also confirmed the preparation of such memos. He inspected the dead body of Mst. Fatima and injures, after post mortem handed over the dead body. He also inspected place of incident wherefrom secured blood stained drops and eight empties of 30 bore which were seized. He also sent the case property for examination to the expert. PW-08 ASI Liaquat Ali was examined. He arrested the appellant Zahid and recovered the crime weapon, which was sent to the Expert’s opinion. PW Saleem Akhtar Tapedar was examined by prosecution who produced the sketch of incident showing the positions of deceased, appellants and eye witnesses.

9. In the instant matter, the eye witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of occurrence in a clear cut manner. The parties are related inter-se and this incident took place in the house of appellants in presence of eye witnesses so there was no chance of mistaken identity of appellants. I 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 scope available to the appellants is that to satisfactorily establish that witnesses, in fact, are not the witnesses of truth but “**interested**” one. I would add that where natural witnesses are blood-relation then normally the possibility of substitution becomes rare. In the instant matter the complainant is mother of the deceased while the eye witnesses are relatives of complainant, hence, it does not appear to believe that they agreed in substitution of real culprits with innocent persons (appellants). An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate the accused and in the instant matter the motive has categorically defined by the complainant that when the deceased intended to visit the house of her parents/complainant, the appellants were annoyed and due to annoyance on this sole reason they have committed murder of deceased Mst. Fatima. No substance has been brought on record by the appellants to justify their false implication at the hands of the complainant party on any account or previous enmity. In this context, the reliance can safely be placed on the case of **Lal Khan v. State [2006 SCMR 1846]** wherein at Rel. P-1854 it is held as:

... The mere fact that a witness is closely related to the accused or deceased or he is not related to either party, is not a sole criteria to judge his independence or to accept or reject his testimony rather the true test is whether the evidence of a witness is probable and consistent with the circumstances of the case or not.

In another case of **Farooq Khan v. The State [2008 SCMR 917]** it is observed as:

11. PW.08 complainant is real brother of the deceased who is a natural witness but not an interested witness. An interested witness is one, who has motive, falsely implicates an accused or has previous enmity with the person involved. There is a rule that the statement of an interested witness can be taken into consideration for corroboration and mere relationship with the deceased is not “sufficient” to discredit the witness particularly when there is no motive to falsely involve the accused. The principles for accepting the testimony of interested witnesses are set out in Nazir v. The State PLD 1962 SC 269 and Sheruddin v. Allahaj Rakhio 1989 SCMR 1461.

10. The direct evidence also finds corroboration from the medical evidence with regard to the cause of death and time of incident and weapon used in the commission of offence. It is established from the evidence of PW-04 Dr. Rehana who received the dead body of deceased Mst. Fatima on 19.11.2015 for post mortem examination. The post mortem was started at about 05.30 p.m. and finished the same at 07.00 p.m. on the same day. From external examination over the body of deceased Mst. Fatima, she found following injuries:-

1. Firearm wound of entry with blackening measuring 1.0 cm in diameter into tissue deep, present at the left iliac region of abdomen with exit on the back measuring 1.5 cm x 2.0 cm into tissue deep.
2. Firearm wound of entry with blackening measuring 1.0 cm x diameter, tissue deep, present at front of left upper and lateral side of chest with exit at the back of chest, measuring 1.5 cm x 2.0 cm tissue deep.
3. Firearm wounds of entry three in number each measuring 1.0 cm in diameter x tissue deep, blackening present at the left scapular regions of chest with exit in front of chest, measuring 2.0 cm in diameter x tissue deep, three in number.
4. Firearm wound of entry with blackening measuring 1.0 cm in diameter into tissue deep present at the right hypochondria with exit at the back, measuring 2.0 cm in diameter x tissue deep.
5. Firearm wound of entry with blackening measuring 1.0 cm in diameter x tissue deep present at the lateral side of right breast with exit at the back measuring 2.0 cm in diameter x tissue deep.
6. Firearm wound of entry with blackening measuring 3.5 cm x 1.5 cm present at the ulnar side of upper 1/3rd of right forearm with exit at flexor aspect of upper 1/3rd of right forearm, measuring 4.0 cm x 3.0 cm into tissue deep.

From the internal examination, the medical officer found in the Chest the thoracic cavity filled with blood; lungs, heart and major thoracic vessels damaged; abdominal cavity filled with dark brownish fluid, liver, intestines and major abdominal vessels were damaged.

The Medical Officer from external as well as internal examination opined that the death of deceased occurred due to cardio-pulmonary damage, hemorrhage and shock as a result of

injuries No.1 to 5 collectively while injury No.6 is non-lethal. According to her all injuries were caused by firearm weapon, ante-mortem and were sufficient to cause death of a person in ordinary course of life. The doctor produced post mortem report of deceased at Ex:12/B, which shows the date and hours of receiving dead body on 19.11.2015 and on the same date, he started post mortem of deceased at about 05.30 p.m. and finished at 07.00 p.m. She also confirmed the version of the complainant that deceased received the firearm injuries. The reliance is placed upon the case of '**ZAHOOR AHMED v. 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 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 daylight 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 especially when the appellant alone was responsible for the murder of the deceased. The evidence of two eyewitnesses 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.

(Underlined by me)

11. Furthermore, at the time of inspection of place of incident, the police secured blood of deceased and empties. The police sent the blood to the Chemical Examiner, who certified the same to be of human through his report produced at Ex:15/D. The recovered bullet empties were also sent to the Ballistic Expert along with recovered pistol, the Forensic Expert has also issued his report which was produced at Ex:16/C.

12. The minor discrepancies in statements of all the witnesses are not enough to demolish the case of prosecution because

these discrepancies always occurred on account of lapse of time which can be ignored. It is also settled principle that statements of witnesses have to be read as a whole and the Court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party, the contradictions must be material and substantial so as to adversely affect the case of prosecution.

13. The case law relied by learned counsel for the appellants is distinguishable from the facts and circumstances of the present case.

14. The upshot of the above discussion is that the prosecution has successfully established its case against the appellants through ocular account furnished by eye witnesses, which is corroborated by the medical evidence coupled with circumstantial evidence. The learned counsel for the appellants has failed to point out any material illegality or serious infirmity committed by the trial Court while passing the impugned judgment, which in my humble view is based on appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction and sentences awarded to the appellants by the learned trial Court are hereby maintained and the instant appeal filed by the appellants merits no consideration, which is **dismissed** accordingly. Above are the reasons for my short order dated 16.10.2019.

JUDGE