

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Criminal Appeal No. S- 139 of 2018

Appellant : Saindad son of Sajjan by caste Lanja,  
through Mr. Afzal Karim, Advocate.

Respondent : The State  
through Mr. Shahzado Saleem Nahiyoon,  
Additional Prosecutor General, Sindh.

None present for complainant.

Date of hearing : 29.04.2022  
Date of judgment : 29.04.2022

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

**ZULFIQAR AHMED KHAN, J:** Appellant Saindad was tried alongwith co-accused Qasim (since acquitted) by learned Sessions Judge, Tharparkar at Mithi in Sessions Case No. 56 of 2013, emanating from Crime No.37/2013 registered at Police Station Islamkot for offence under Sections 302, 114, 504, 34 PPC. Vide judgment dated 01.06.2018, the appellant / accused was convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life as Ta'zir and to pay Rs.2,00,000/- as compensation to the legal heirs of deceased as provided u/s 544-Cr.P.C. Benefit of Section 382-B Cr.P.C. was however extended to the appellants. It may be pertinent to mention here that on same set of evidence co-accused Qasim was acquitted of the charge.

2. The relevant facts of the prosecution case as disclosed in the impugned judgment of the trial court reads as under:-

*“Briefly, facts of the prosecution case as per FIR are that on 26.06.2013 at 1130 hours, complainant Shoukat s/o Usman, by caste Lanjo appeared at P.S Islamkot and lodged the FIR stating therein that they, Qasim & Saindad Lanjo are not on good terms*

*over the matter of plots as well as brotherly issues. On 26.06.2013, he and his brother Abbas were standing on the western side of shop of Naseer Lanjo for their work and were waiting for Naseer. Meanwhile, at about 0900 hours, Qasim s/o Sajan, & Saindad s/o Sajan, armed with repeater, both by caste Lanja, R/O village Bhojasar came there. Instantly, Qasim inquired from the complainant the reason of their standing there, to which he replied that he has some work at the shop of Naseer. On hearing this reply, accused Qasim instigated accused Saindad for killing them (complainant party) by making fires as they are not on good terms and are standing there today. It is alleged that then accused Saindad made straight fire towards Abbas (brother of complainant) which hit on his head above forehead, due to which Abbas fell down on the earth by raising cry. On the cries of complainant, P.Ws Soonharo & Qalander came there by running and on seeing them; the accused persons went away by abusing. The complainant then found his injured brother Abbas was writhing/fluttering having injury on his forehead, causing loss of excessive blood and brain matter came out and after a while, injured Abbas (brother of complainant) succumbed to his injuries at the spot. In the meantime, the people of locality reached there. Thereafter the complainant by leaving P.Ws Soonharo and others at the corpse of deceased Abbas went to P.S Islamkot where he lodged the present FIR.”*

3. After usual investigation challan was submitted against accused under the above referred Sections.
4. Trial Court framed charge against accused persons at Ex.6, to which, they pleaded not guilty and claimed to be tried.
5. In order to substantiate the charge, prosecution examined complainant Shoukat at Ex.10, he produced FIR at Ex.10-A, PW-2 Qalander at Ex.11, PW-3 Mashir Jamaluddin at Ex.12, he produced the Mashirnama of place of incident & inspection of dead body at Ex.12-A, Lash Chakas Form & Danishnama at Ex.12-B & C respectively, Mashirnama of arrest of accused Saindad at Ex.12-D, Mashirnama of production of clothes of deceased at Ex.12-E, recovery of licensed repeater (crime weapon) at Ex.12-F, PW-4 Tapedar Deepji Soothar at Ex.13, he produced letter written to him by the Mukhtiarkar for visiting the site and preparation of its sketch at Ex.13-A, sketch of Wardat at Ex.13-B, PW-5 Dr. Nehchal, SMO, RHC Islamkot at Ex.14, he produced police letter for conducting the post-mortem of deceased Abbas at Ex.14-A &

post-mortem report at Ex.14-B, receipt of handing over bullet type foreign body removed from the head during post-mortem of deceased to PC Shoukat in a bottle at Ex.14-C, PW-6 ASI Ratanlal was examined at Ex.15, he produced letters written to SP Tharparkar one for seeking permission for sending the empty bullet/cartridge for its analysis and another for chemical examination of clothes of deceased at Ex.15-A(1) & 15-A(2), he also produced the Forensic Science Laboratory report at Ex.15-B, the Chemical Examiner's report at Ex.15-C, PW-7 PC Shoukat at Ex.16, he produced receipt of dead body of deceased Abbas from Dr. Nehchal, SMO, RHC Islamkot, after conducting post-mortem at Ex.16-A, receipt of dead body for burial purpose at Ex.16-B, CW SIP Niaz Muhammad Khoso was examined as Court witness at Ex.20, on the application moved U/S 540 Cr.P.C by the learned defence counsel. Then learned DDPP on behalf of State closed the prosecution side vide statement at Ex.21.

6. The statements of accused persons U/s 342 Cr.P.C were recorded at Ex.22 & 23, to which they denied the prosecution allegation and pleaded false implication. Accused Qasim examined himself on oath at Ex.24, he produced attendance certificate of his duty at Ex.24-A, he also led evidence in defence by examining DW-1 Muhammad Juman at Ex.25. Thereafter the learned counsel for accused closed the defence side vide his statement at Ex.26.

7. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record, through its judgment dated 01.06.2018 convicted and sentenced the present appellant as stated supra while acquitted the co-accused Qasim by extending him benefit of doubt.

8. Facts of the prosecution case as well as evidence find an elaborate mention in the judgment of the trial court as such there is no need to repeat the same to avoid unnecessary repetitions.

9. I have heard Mr. Afzal Karim, advocate for appellant, Mr. Shahzado Saleem Nahiyoan, Additional Prosecutor General for the State and perused the entire evidence minutely with their assistance.

10. Learned counsel for the appellant has mainly argued that appellant is innocent and has falsely been implicated in the case in hand due to enmity with one Sahib Khan who is related to the complainant party; that the prosecution story was un-natural and unbelievable; that all the P.Ws are closely related to the complainant, P.Ws Qalander and Soonharo are nephews of Tapedar Sahib Khan, they reached after occurrence and had not heard the alleged instigation; that the statement U/S 161 Cr.P.C of P.W Qalander Bux was recorded on 28.06.2013 after two days of the incident at the Otak of Sahib Khan, as such P.Ws Qalander Bux & Soonharo are set up witnesses; that as per Mashirnama Ex.12-A, the cartridge was recovered from the distance of 100 feet of place of incident where the dead body was lying; that crime weapon has been foisted upon the appellant; that it is alleged that present appellant had made straight fire of repeater upon the deceased but the Medicolegal report shows that bullet was found from the skull of the deceased and the said bullet also handed over by Medical Officer to PC Shoukat but the prosecution with malafide intention did not produce the same before the learned trial court; that there is no reliable evidence against the appellant; that co-accused has been acquitted by the trial court on identical evidence hence appellant was also entitled to be acquitted of the charge by extending him benefit of doubt; that the motive as set up by prosecution in FIR has not been established at the trial; that ocular evidence is not corroborated by medical evidence. Lastly he has

prayed for acquittal of the appellant. In support of his contentions, he relied upon the case law reported as Irfan Ali v. The State (2015 SCMR 840), Muhammad Asif v. The State (2017 SCMR 486), Mujahid v. The State (2019 YLR Note 108) and Soomer and others v. The State (2018 P.Cr.L.J 629).

11. On the other hand, learned Additional Prosecutor General vehemently opposed the appeal on the ground that FIR was lodged on the same day; that eye-witnesses have supported the prosecution case; that only present appellant Saindad fired which hit to the deceased; that the ocular and medical evidences are in consonance, the crime weapon was recovered on the pointation of accused whereas the empty of crime weapon was sent to the Forensic Science Laboratory, the report thereof is in positive. Lastly he has prayed for dismissal of the instant appeal.

12. Having heard the submissions of learned counsel for the parties in the light of material available on file and the case law cited at bar, I find that the prosecution has not been able to prove its case satisfactorily against the appellant / accused for the reasons that there is a major contradiction in the evidence of ocular account and medical evidence. For the sake of convenience the evidence of Medical Officer namely Dr. Nechal is reproduced hereunder:-

“On 26.06.2013 I was posted Senior Medical Officer at Rural Health Centre Islamkot where at about 1-45 p.m, received dead body of deceased Abbas s/o Usman by caste Lanjo through police letter No. C/R 37/2013 for his post-mortem. I produce police letter at Ex.14/A. I started post-mortem of deceased Abbas at 2-00 p.m. On external examination following injuries were found:-

**“A oval shaped large lacerated wound on mid of forehead measuring 8 cm length, 8 cm width and 10 cm depth. Skull bone was broken. Entry wound of size. Bleeding from wound. Brain matter was damaged obviously seen clearly.**

***Injuries were anti-mortal.”***

On internal examination of the deceased Abbas, the doctor found following injuries on the body of deceased:-

***“Brain matter was damaged as injury was so much deep. Brain matter was destroyed. Head organs were crushed. (Bullet type foreign body removed from head).***

***Neck was healthy cervical vertebra intact.***

***Lungs and heart were congested healthy.***

***Stomach was empty and healthy. Liver congested. Intestine. Kidneys were healthy.”***

From the external as well internal examination of the dead body, it was opined by the Medical Officer that cause of death occurred due to firearm weapon on head injury severe haemorrhage. Time between death and injuries was immediately and the time between death and post-mortem was 05 hours. Trial court after examination of the medical evidence came to the conclusion that the deceased died his un-natural death in the result of firearm injuries as described by the Medical Officer.

Now coming to the cross examination of Medical Officer, in which he has admitted that **“except bullet no any other foreign body was found in the brain matter of deceased Abbas. Bullet was preserved in a bottle and sealed by me so also signed thereon. It is correct to suggest that said bottle has not been produced today before this court.”** The medical report clears the picture that a bullet type foreign body was removed from the head of deceased which suggests that deceased did not receive injury from repeater.

Now coming to the ocular account which consists upon the evidence of complainant Shoukat and another eye witness namely Qalandar. The complainant in his examination in chief has stated that **accused Qasim son of Sajjan and Saindad son of Sajjan armed with repeaters were standing there** while it is the case of prosecution that only present appellant was having repeater at the time of incident. He further admitted in his cross examination that “Sahib Khan retired

Tapedar is Nekomard of our village. It is correct to suggest that Sub-Inspector Abdul Sattar is brother of Sahib Khan. It is correct to suggest that PWs Qalandar, Soonharo and Maqbool are nephews of Sahib Khan. He admitted that Nawab and his brothers are not on good relations. It is correct to suggest that Nawab son of Habib had sold out his land admeasuring 3-01 acres to Siddique son of Naseer, upon which his brothers namely Nagodar and Soomer were at with annoyance with him. It is correct to suggest that possession of land was not received by Siddique from Nawab. He also admitted that on the relevant date Siddique & others were going to take possession from Nawab, where scuffle took place between them. He also admitted that **regarding the scuffle Nagodar also lodged FIR in crime No.38/2013**. He further admitted that **present accused are cousins of Nagodar and others**. He however, denied the suggestion that during scuffle between Nagodar and Siddique my brother (deceased) sustained injuries.” From the evidence of complainant it reveals that there was a dispute and an FIR was also lodged by the cousin of accused namely Nagodar. The relationship of complainant party with said Sahib Khan is also established on record with whom the accused have claimed enmity and his false implication at the hand of said Sahib Khan as evident from the statement of accused recorded u/s 342 Cr.P.C.

Qalandar (PW-2) was also the eye witness of incident. He in his examination in chief **did not disclose the seat of injury that on which part of the body deceased Abbas received injury**. In his cross examination, he has admitted that the houses of Ranjho, Anwar, Peeroo, Umed Ali and Changlo are situated in between my house and house of Soonharo. He replied that complainant and Qalandar Bux are related to each other. **Nekomard Sahib Khan is my maternal uncle so also**

maternal uncle of PW Soonharo. I do not know through which transport complainant Shoukat went to police station Islamkot.

Jamaluddin (PW-3) in his examination in chief **does not show that any blood or empty cartridge was secured in his presence from the place of incident.** In cross he admitted that **“I do not know that place of recovery viz. Otaq of Qasim Lanjo is mentioned in mashirnama of recovery.** He further stated in cross examination that police remained at the place of incident till in between 2-30/3-00 p.m whereas post-mortem report shows that dead body was received by the doctor at 1-45 p.m. He further admitted that **case property has not been de-sealed before this court.** The case property has been shown to me in sealed condition.

Deepji Tapedar (PW-4) has prepared the sketch of place of wardat. Tapedar in his cross examination disclosed that “houses of PWs Soonharo and Qalandar Bux are situated at the distance of about 400/500 feet away from shop of Naseer. He further stated that houses of PWs Soonharo and Qalandar Bux cannot be visible from the shop of Naseer.

ASI Ratanlal (PW-06) had investigated the case. The chief of I.O does not show **collection of blood stained mud from the place of incident.** The Investigation Officer admitted in his cross examination that **complainant alongwith Sahib Khan disclosed the facts as contained in the FIR.** He admitted that no other independent person from village Bhojaser was examined or recorded statement u/s 161 Cr.P.C to ascertain about the incident. He further admitted that **PWs Soonharo and Qalandar Bux are nephews of Sahib Khan.** He also admitted that recovered empty cartridge of white colour Shaheen Company was lying at the distance of 100 feet away from the dead body of deceased Abbas.



It is correct to suggest that 12 bore cartridges are being used in repeater gun of 12 bore. He further admitted that cartridges contain pallets. He also admitted that after fire of cartridge its pallets used to spread in 7/8 feet area. He also admitted that the letter Ex.15/A (1) sent to Senior Superintendent of Police does not contain description or quality of 12 bore live cartridges for test purpose. He also admitted by saying that **I have not produced copy of any sort of departure or arrival entry with regard to investigation carried out by me.**

PC Shoukat (PW-7) had brought the dead body of deceased from the place of incident to Rural Health Centre Islamkot for post-mortem. He also received the clothes of deceased from RHC and handed over the same to I.O. PC Shoukat however, in his cross examination deposed that **clothes of deceased were not sealed in my presence.** He further admitted that **clothes of deceased were received by me from I.O on 29.6.2013.**

PW-8 / SIP Niaz Muhammad deposed that on 06.07.2013 ASI Ratanlal after completing investigation handed over the police papers to him and after getting opinion he submitted challan before the competent court of law on 09.07.2013. In cross he replied to a suggestion that it is correct to suggest that **I was supervising the investigation of ASI Ratanlal.** It is correct to suggest that **my name was appearing as witness in the charge sheet. I have not produced my diary dated 06.07.2013, today before this court.**

14. From a meticulous examination of the above evidence recorded before the trial court, a number of major contradictions have been noted in their evidence. There is no any independent person of the locality to have been shown as witness and only the complainant and PWs Qalandar and Soonharo who are related inter se have been shown as

witnesses and their evidence is also contradictory to each other on material aspects of the case. Their relation with Sahib Khan with whom the appellant has claimed inimical terms has also been brought on record. No blood was found over the clothes of complainant and witnesses while shifting the dead body. The cross examination of SHO Niaz Hussain shows that he being supervising of I.O, maintained diary dated 6.7.2013 showing co-accused Qasim innocent, but that diary was missing in police papers.

Apart from above there are also other so many contradictions, lacunas and flaws in the evidence of prosecution witnesses. In the FIR it is alleged that there was a dispute over plot but the complainant in his examination in chief did not disclose such fact and it is unbelievable that the complainant even did not sustain any injury or scratch nor he tried to rescue his brother from the clutches of accused persons. The post-mortem report further reveals that dead body was brought at Hospital at about 1-45 p.m after the delay of about five hours of the incident. As discussed above, there is conflict in ocular and medical account with regard to injury as according to FIR the appellant was alleged to have been armed with repeater but the MLO's report shows that dead body had an oval shaped large lacerated wound on mid of forehead measuring 8 cm length, 8 cm width and 10 cm depth, which under no probability could have been caused by a pallet or by number of pallets having been fired from a repeater. As per the contention of learned defence counsel that if the deceased received pallet injury fired from repeater then many pallets must be secured from the head of deceased but there was only entry wound and no exit wound was found. Furthermore, the statements u/s 161 Cr.P.C of PWs Qalandar and Soonharo were recorded after two days of the incident. Though the names of two eye witnesses namely Qalandar and Soonharo are

mentioned in the FIR but PW Soonharo has not been examined before the trial court without any cogent reason which creates doubt in the case of prosecution. It also appears that the body of deceased was brought to the hospital by Jamaluddin and Maqbool Ahmed who are not the eye witnesses of incident though it is alleged that the complainant and other two PWs Qalandar and Soonharo were present at the time of incident then their names must be in the post-mortem report showing that the body was identified by them which also creates a doubt that the complainant and other witnesses were not present at the time of incident. Complainant in his examination in chief did not state a single word regarding the motive of incident. The conduct of complainant and PWs at the place of incident seems to be un-natural and unreliable as the record does not transpire that the complainant or his witnesses made any single attempt to save the life of deceased. The complainant and both the eye witnesses have also failed to produce their blood stained clothes to prove their presence at the spot if they shifted the dead body their clothes must be stained with blood of stained. It has also come on record that the body was taken to hospital after five hours of the incident which creates doubt with regard to presence of the complainant and his witnesses at the time of incident. In this regard rightly reliance has been placed upon the case of Irfan Ali (Supra), the relevant paragraphs of which are reproduced hereunder:-

***“14. Whenever witnesses are found to have falsely deposed with regard to the involvement of one co-accused then, ordinarily, they cannot be relied upon qua the other co-accused unless their testimony is sufficiently corroborated through strong corroboratory evidence, coming from unimpeachable source, is a deeply entrenched and cardinal principle of justice. We do not find a single iota of corroboratory evidence to substantiate the tainted evidence of the same set of witnesses with regard to the involvement of the appellant in the crime, hence recording conviction of the appellant on the same evidence was absolutely unjustified.*”**

***The ocular testimony, discussed above, provided by the so-called eye-witnesses remained uncorroborated qua the appellant rather the one relied upon by the prosecution and the learned Judges in the High Court is contradicting them with regard to the nature of injuries and cause of death, the same therefore, adversely reflects on the truthfulness of the said witnesses besides, their presence on the crime spot at the fateful time has become absolutely doubtful.”***

It has also come on record that the alleged repeater was in the name of appellant than why a separate case u/s 23 (1) (a) Sindh Arms Act was not registered by police against the present appellant which shows malafide on the part of prosecution. I have also perused and considered the evidence of witnesses on record but did not find to be trustworthy and confidence inspiring which too contradictory with each other on material particulars of the case. Incident took place on 26.06.2013 whereas repeater and empty cartridge were received in laboratory on 01.07.2013 after the delay of five days without any plausible explanation. Furthermore neither any entry of Malkhana was produced nor the incharge of Malkhana was examined by prosecution to substantiate the recovery. The sketch prepared by Tapedar shows that the cartridge was lying 28 feet away from deceased. I.O has also admitted that on the same day he registered FIR No.38/2013 on complain of Nagodar against the nephews of Sahib Khan with whom the accused has claimed to have enmity on landed property. Complainant denied the suggestion that he alongwith Sahib Khan went to P.S and lodged FIR whereas I.O has admitted that suggestion. There is nothing available on record with regard to the case property and its safe transit that with whom it remained from the time of recovery till despatching nor any entry of keeping the property in Malkhana is produced before the trial court.

All discussed above leads me to an irresistible conclusion that the prosecution remained fail to prove the case against appellant beyond

any shadow of reasonable doubt while there is no cavil to the proposition that responsibility to prove its case is squarely rest upon the shoulders of the prosecution that has not been discharged successfully in this case and it is settled law that benefit of each and every doubt is to be extended to the accused and that only a single reasonable doubt qua the guilty of the accused is sufficient to acquit him of the charge. In this regard, reliance can be placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Honourable Supreme Court of Pakistan that:

***"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a 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 matter of right".***

In view of the above, by my short order dated 29.04.2022, I accepted / allowed this Criminal Appeal No.139 of 2018 by setting aside the conviction and sentence recorded by the learned trial Court through impugned judgment dated 01.06.2018 and acquitted the appellant Saindad son of Sajjan from the above charge. Appellant was in custody, therefore, jail authorities were directed to release him forthwith, if he was not required in any other case.

These are the detailed reasons thereof.

JUDGE

Dated.27.05.2022.

Tufail