

Cr. Appeal No. 128 of 2016

Mr. Aftab Ahmed Gorar, J

Versus

The State ----- Respondent

Complainant: Through Mr. Zulfiqar Ali Shaikh Advocate

JUDGEMENT

AFTAB AHMED GORAR-J: By this order I intend to dispose of instant Criminal Appeal filed by the appellant Asghar Ali son of Hashim Ali against the judgment dated 07.03.2016, passed by learned IInd Additional Sessions Judge, Thatta in Session Case No. 133 of 2013 arising out of FIR No. 08 of 2013 under section 302, 34 PPC registered with Police Station Dhabaji, District Thatta, whereby the appellant has been convicted under section 302(b) PPC and sentenced to suffer life imprisonment with fine of Rs.1,00,000/-, to be paid to the legal heirs of the deceased Iftikhar as compensation, in default whereof to suffer RI for six months more, however benefit of section 382-B Cr.P.C. was extended to the appellant. The appellant has prayed for setting aside of the said judgment, conviction and sentence as well as for his acquittal from the charge of the case, on the facts, grounds mentioned in the memo of appeal.

2. The case of prosecution in nutshell is that on 25.02.2013 complainant Jehanzeb son of Haji Nawab Khan lodged FIR at Police

Station Dhabeji stating therein that he is a landlord living in Shaikh Majeed Colony, Dhabeji where his nephew Asghar Ali Pathan has shifted with family about one and half months ago and also used to visit them who is permanent resident of Dera Ismail Khan. It is further stated that there was altercation between his nephew Asghar Ali Pathan and his son namely Iftikhar aged about 20 years over a cell memory card. On 24.2.2013 at about 2100 hours after finishing his work the complainant along with his another son namely Umer Farooq Pathan and cousin Ali Akbar son of Ameer Khan Pathan coming to their house when reached at street towards southern side of Eidgah, they heard cries of Iftikahr saying “save” ”save”. He rushed to that side and when reached nearer, he saw two persons from backside were going towards southern side and identified one person as his nephew Asghar Ali Pathan in the light of street bulb holding pistol in his hand who on seeing the complainant opened fire upon the son of complainant Iftikahr who fell down and Ashgar Ali fled towards dark side of the street and was followed by two other accused persons. The complainant, his son Umer Farooq Khan and cousin Ali Akbar rushed towards Iftikhar and saw that Iftikhar sustained fire shot at left side of his head which bullet was crossed to other side of his head and blood started oozing. Though the complainant shifted his son Iftikhar to hospital however he succumbed to his injury at the spot and after postmortem the complainant brought dead body at home where after burial of deceased Iftikhar, he went to Police Station Dhabeji where he lodged the instant FIR.

3. The statement of complainant was recorded under section 154 Cr.P.C.; the case was registered against the appellant and two other accused persons namely Irfan son of Jameel and Jameel Ahmed son of Syed Muhammad. On 05.3.2013 Police arrested accused Jameel Ahmed Pathan from Pump House Stop, National Highway whereas appellant Assghar Ali Pathan was arrested on 11.3.2013 from link road leading towards Yakoob near Jhulelal Boiler Rice Mill, Dhabeji. On personal

search of appellant Police also recovered a T.T. Pistol from the left side fold of his shalwar containing three live bullets loaded in magazine in presence of mashirs Qadir Khan and Shertab. The Pistol was licensed in the name of Jameel Ahmed Pathan. On completion of investigation, the appellant and co-accused Jamil Ahmed as well as absconding accused Irfan son of Jameel Ahmed were charge sheeted. The co-accused Jamil Ahmed during trial jumped the bail and he was declared absconder, however charge was framed by the court to which the appellant pleaded not guilty and claimed trial.

4. To support its case, prosecution examined following nine witnesses:

- (i) PW-1 Jehanzeb , the complainant, at Exh.8, who produced receipt of dead body at Ex.8/A and FIR at Exh.8/B.
- (ii) Pw-2 Umer Farooq at Exh.9 who produced letter of postmortem at Ex.9/A, Lash chakas form as Ex.9/B, danisnama at Ex.9/C and memo of cloths at Ex.9/D.
- (iii) PW-3, Rustam Khan at Exh.10.
- (iv) PW-4, Dr. Giyanchand at Exh.11, who produced letter of postmortem at Ex.11/A, who produced letter for postmortem at Ex.11/A, Inquest report at Ex.11/B, danisnama at Ex.11/C and postmortem report at 11/D.
- (v) PW-5, Qadir Khan at Exh.12, who produced memo arrest of appellant and co-accused Jameel Ahmed at Ex.12/A and 12/B and memo of recovery of Pistol at Ex.12/C.
- (vi) PW-6 Ghulam Nabi at Exh.14 who produced letter for sketch of place of incident at Exh.14/A, FIR of Crime no.12/2013 of PS Dhabeji at Ex.14/B, FIR of Crime no.13/2013 of PS Dhabji, Chemical Examiner report at Ex.14/D and FSL report at Ex.14/E.
- (vii) PW-7 ASI Mohammad Nawaz at Ex-19, who produced Entry No.28 at Ex.19/A, sketch at Ex.19/B, photographs at Ex.19/C to Ex.19/E and entry No.32 at Ex.19/F.
- (viii) PW-8 Nabi Bux (Tapedar) at Ex-20, who produced sketch at Ex.20/A.

- (ix) PS-9 SHO Mir Hassan at Ex.21, who produced entry No.21 at Ex.21/A, further statement of complainant dated 03.03.2013 at Ex.21/B and letter dated 04.03.2013 at Ex.21/C.

5. On conclusion of prosecution evidence, statement of the appellant was recorded under section 342 Cr.P.C. and it appears that neither he examined himself on oath under section 34(2) Cr.P.C. nor lead any evidence in his defense.

6. Learned Counsel for the appellant argued that the appellant has falsely been implicated in this case; that the impugned judgment has been passed against the very spirit of law and basic requirement of the natural justice and is the result of misreading and mis-appreciation of the evidence. He contended that all the prosecution witnesses have made conflicting evidence. Learned counsel next submitted that the prosecution case is resting entirely on circumstantial evidence then each piece of evidence collected must provide all links making out one straight chain. To support his above contentions learned counsel relied upon the case of *IMRAN @ DULLY & ANOTHER V/S THE STATE & OTHERS* (2015 SCMR 155), *NAWAB ALI V/S THE STATE* (2014 P.Cr.L.J. 885), *MUHAMMAD FAROOQ & ANOTHER V/S THE STATE* (2006 SCMR 1707) and *MUHAMMAD ASHFAQ V/S THE STATE* (2014 P.Cr.L.J.1531).

7. Learned Deputy Prosecutor General, Sindh contended that the evidence of eye-witnesses coupled with the recovery of crime weapon from the appellant is sufficient to bring his guilt home and that the trial Court in view of this evidence has rightly recorded the conviction of the appellant which does not call for any interference.

8. Learned Counsel for the complainant while adopting the arguments advanced by the learned Deputy Prosecutor General has further added that though the appellant took defence plea that he has been falsely implicated on account of property dispute with complainant but he has failed to establish his version during trial. Furthermore, there

is no reason for the complainant to substitute the actual murderer of his son with another person that too with his nephew, hence the learned trial Court passed the impugned judgment on considering actual facts, evidences and law. He submitted that the impugned judgment is speaking one and does not require any interference, therefore, the appeal is liable to be dismissed.

9. I have minutely perused the record and have given careful consideration to the arguments of learned counsel for appellant, learned Deputy Prosecutor General, Sindh as well as learned Counsel for the complainant and have gone through the evidences produced by the prosecution.

10. The prosecution case hinges upon the statements of two eye-witnesses namely Jehanzeb who is also complainant and PW-2 Umer Farooq, who were examined by the prosecution and their evidence has been corroborated to each other without any contradiction. The presence of above two eye-witnesses has not been challenged during the course of cross-examination. In their evidence they have deposed that while they were returning back from their work and reached in the street at Eidgah at southern side lane, they heard cries of deceased Iftikhar hence rushed towards that side when they saw appellant who was holding a Pistol in his hand had fired at the left side of the head of deceased Iftikahr who fell down and succumbed to his injuries at the spot. The report of forensic laboratory confirmed the bullet fired on the deceased was from the pistol recovered from possession of the accused. The learned counsel for the appellant failed to produce a single evidence to prove that the appellant has been implicated in this case due to any malafide reason. Admittedly appellant is nephew of complainant and they were in visiting terms before incident hence there is no question of false implication when there are cordial relations between the parties throughout before the incident and it is only the incident that changed the cordial relationship to hatred. The appellant

in his statement under section 342 Cr.P.C. took plea that he has been falsely implicated in this case as there is dispute of property between them. The accused however did not produce documentary or any other evidence to support his version of property dispute. Furthermore, the appellant is resident of Dera Ismail Khan and shifted to Dhabeji only one and half month prior to the incident that too in the mohala where complainant was already residing. Had there been any hatred or annoyance as claimed, the appellant must not have chosen to live close to the house of complainant hence this version does not appeal to a prudent mind regarding claim of enmity or annoyance and it seems that such version is taken by the appellant in order to save his skin. Perusal of the record reveals that even no question was suggested to establish that the instant case is outcome of dispute over property between the parties and there is nothing on record to establish as to why the prosecution witnesses have falsely implicated the appellant.

11. I have perused the evidence of prosecution witnesses and found that same is in consonance with ocular testimony which is also corroborated with recovery of crime weapon and FSL report. Suffice is to say that prosecution story is trustworthy and the depositions of PW's are in line and there are no material contradictions in the prosecution evidence.

12. From perusal of the impugned judgment, it appears that learned trial court recorded the conviction of appellant based on evidence of eye-witnesses and recovery of crime weapon coupled with postmortem report and FSL Report. The trial court has noted that no enmity or inherent defect has been pointed out and the evidence of eye-witnesses is true on the material particulars of the case. No doubt there are some discrepancies in the statements of prosecution witnesses, but they do not render the ocular version as fake or conflicting as these are minor discrepancies. The evidence of eye-witnesses is firm, positive and

conclusive upon material particulars of the case and their ocular version is convincing truthful and confidence inspiring, therefore the case against the appellant is proved.

13. FIR was lodged promptly after funeral ceremony of deceased. Recovery of crime weapon and empties also corroborated the version of prosecution regarding place of occurrence, presence of eye-witnesses on spot had been proved without any shadow of doubt. There is nothing on record that complainant due to some enmity or ulterior motive had implicated the appellant for personal gain. It is not fatal if the motive is not proved however if there is other evidence available, which is straightforward, consistent, convincing, corroborated by medical evidence as well as FSL report. Reference in this regard may conveniently be made to the case reported in *NLR 2011 Criminal 436*. PWs had attributed specific role of firing to appellant, who was armed with fire-arm at time of occurrence. Inspite of lengthy cross-examination of eyewitnesses/PWs, nothing beneficial could be elicited rendering any help to appellant. Recovery of weapon of offence and report of ballistic expert being positive also fortified prosecution version. Reference in this regard is made to the case of *ALAM JAVED V/S THE STATE* (2008 SCMR 1477). The prosecution had established guilt of appellant beyond shadow of any doubt by producing worthy of credence and confidence inspiring evidence. Recovery of crime weapon had been duly proved; Medical evidence regarding the injuries sustained by the deceased which resulted his death at the spot had remained unshaken; discrepancies pointed out in evidence were not material in any sense so as to dislodge the prosecution case, complainant being father of the deceased could not be imagined to have substituted someone else in place of actual murderer of his son. Ocular evidence furnished by both the eye-witnesses qua the incident had remained unshaken therefore, the prosecution case against the accused stood proved beyond any shadow of

reasonable doubt. Reference in this regard may be made to the case of *AYAZ KHAN V/S THE STATE* (2008 SCMR 184).

14. In view of above discussion, I am of the firmed view that the trial court has rightly convicted and sentenced the appellant by impugned judgment which being well reasoned and speaking one, does not warrant any interference by this court.

15. This Criminal Appeal was dismissed by a short order dated 04.05.2020 and above are the reasons for the same.

J U D G E

ABDUL WAHAB GABOL/PA