

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 62 of 2016

Appellant : Khalid Khan
through Mr. Ajab Khan Khattak, Advocate

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Complainant : In person

Date of hearing : 29th September, 2022

JUDGMENT

Omar Sial, J.: On 17.11.2011 S.I. Muhammad Qasim Awan of the Sharafi Goth police station was on patrol duty along with P.C. Mustaqeem when he received information that 3 corpses were lying in front of a petrol pump. Awan reached the identified location and saw 3 dead bodies with bullet injuries on their heads. He secured the crime scene until A.S.I. Umer Hayat reached the spot. Hayat recovered 3 pistols, 1 repeater and 8 empties in addition to alcohol bottles from where the dead bodies lay. The dead bodies were identified as Ghulam Haider alias Sohail, Ratan and Ganesh. Khalid Khan, who was the watchman employed by Ghulam Haider alias Sohail at the plot of land where the bodies were found, lodged F.I.R. No. 344 of 2011 against unknown persons. Subsequently, Ghulam Shabbir, a brother of one of the deceased lodged a second F.I.R. i.e. 348 of 2011 under sections 302 and 201 P.P.C. for the same incident in which Khalid Khan, the watchman was made an accused.

2. **PW-1 S.I. Muhammad Qasim Awan** was the first responder to the information that 3 dead bodies were lying on the road and further witnessed the recoveries made by A.S.I. Umer Hayat from the spot. **PW-2 Samina Haider** was the wife of the deceased, namely Ghulam Haider alias Sohail. **PW-3 Ghulam Shabbir** was the younger brother of deceased Ghulam Haider alias Sohail and was also the complainant in the case. **PW-4 S.I. Muhammad Hafeez** witnessed S.I. Muhammad Aslam Abbasi arresting Khalid Khan and then confessing to the murders and then taking the police to the place where he had murdered the 3 persons. **PW-5 Dr. Afzal Ahmed Memon** was the doctor who conducted the post

mortem of the 3 deceased persons. **PW-5 Shabbir Ahmed** was the police officer who had handed over the dead body of Ghulam Shabbir alias Sohail to his family. **PW-6 A.S.I. Umer Hayat** was the police officer who first responded to information of the murders and effected recovery of the weapons, empties and blood stained earth from the place of incident. **PW-7 Mohammad Aslam Arain** was the investigating officer of the case.

3. Mohammad Khalid recorded a section 342 Cr.P.C. statement as well as examined himself under oath pursuant to section 340(2) Cr.P.C. statement in which apart from professing innocence he also stated that when he had come to work that day in the morning he saw the dead bodies and had immediately informed the police.

4. At the end of the trial the learned 1st. Additional Sessions Judge, Malir on 16.02.2016 convicted the appellant under section 302(b) P.P.C. to a life in prison for having committed the murders of Ghulam Haider, Ganesh and Ratan and also directed him to pay Rs. 50,000 to the legal heirs of the deceased as compensation and if he did not do so he would have to remain in prison for another 6 months. The appellant was also found guilty of an offence under section 201 P.P.C. and sentenced to 7 years in prison. The appellant being dissatisfied by the decision has preferred this appeal.

5. I have heard the learned counsel for the appellant as well as the learned APG. The complainant was present in person and stated that he will not engage a counsel but that he would rely on the arguments of the learned APG. My observations and findings are as follows. The learned APG very half-heartedly supported the impugned judgment but justifiably so, could not point out to the evidence recorded at trial which would convince the court in this regard.

6. I am at a complete loss to understand as to how Khalid Khan was convicted for murder under section 302(b) based on the evidence which was led at trial. The learned trial judge without commenting on the evidence before him seems to have treated everything said by PW-2 Samina Haider as gospel truth and while stating that an extra judicial confession made by Khalid Khan was not admissible in evidence has gone on to convict on the ground that weapons were recovered from the place of incident and that the empties recovered matched

one of the weapons recovered. A very casual approach was taken by the learned judge while sentencing a person to life imprisonment.

7. Evidence, if it can be called that, was PW-Samina Haider saying that Khalid Khan was jealous of the success of Ghulam Haider alias Sohail and that he had taken money from her husband and had threatened him in the past. Absolutely no evidence to corroborate her allegations was produced at trial. Samina herself admitted that "she had come to know" that Khalid Khan had killed Ghulam Shabbir and had then killed Ganesh and Ratan as they were eye witnesses to the murder. She herself admitted that in her section 161 Cr.P.C. statement she had not mentioned that Khalid owed Sohail money. Her failure to even remember where and when the investigating officer recorded her statement casts further doubt on whether her statement was even recorded by the investigating officer or whether he at a later stage simply made it out himself in order to give legs, feeble ones though, to his case. The other witness i.e. PW-3 Ghulam Shabbir simply alleged that Khalid Khan had killed Ghulam Haider. He acknowledged that he was not present. He did not disclose as to how he came to the conclusion that Khalid Khan was the culprit. The investigating officer also confirmed this fact i.e. that Ghulam Shabbir had not revealed what his source of information was. He went and told the police, without any evidence backing up his allegation, that Khalid Khan had killed Ghulam Shabbir and the police, without an iota of investigation, arrested him and the learned trial court convicted him.

8. 4 firearms and a number of bullets together with alcohol bottles were found from the place of occurrence. The investigating officer of the case did not bother to investigate the origins of the arms, and as a matter of fact, seems to have not taken seriously at all the recovery of such arms. If Khalid Khan was confessing with his own free will that he had murdered all 3 people, then what was stopping him from telling the investigating officer as to where he acquired such weapons from. Surely, his financial position was not one where he could have purchased the arms and ammunition found from the scene of the crime. When asked specifically about the fate of the arms recovered, no explanation was put forward by the learned APG. Where was the alcohol acquired from, was there any person who saw as to who made the acquisition were also aspects not investigated. If Khalid Khan had used one pistol to kill all 3 men then why would he have 3 other weapons with him. It was not claimed by the prosecution that

the other weapons belonged to the 3 deceased. As a matter of fact, from what the investigating officer of the case told the court, it appears that the employer of Sohail categorically denied that any weapon was issued to Sohail by the employer. The investigating officer admitted that he had not taken any fingerprints from the weapons to determine as to whether Khalid Khan's prints were on any one of them. The Forensic report exhibited at trial shows that 3 empties were of bullets fired from one pistol whereas 2 were of bullets fired from a second pistol. The Forensic report also reports that fires were made from the other weapons seized as well. This opinion does not reconcile at all with the prosecution case that Khalid Khan had killed all 3 persons with one pistol, which he had left behind on the scene of the crime. Had Khalid Khan been so clever that he eliminated the eye witnesses so his murdering Sohail would not be detected, there was nothing stopping him from taking the pistol he used and its empties along with him as well.

9. The investigating officer admitted that he had no evidence to show, as claimed by the prosecution and denied by the defence, that Khalid was a 24 hour watchman at the place where the incident occurred. No queries were made from the residents of the locality or from anybody else who visited the place of incident as to whether Khalid Khan used to be present there at all times. When put in juxtaposition with the prosecution case, it is the defence version that sound more convincing.

10. As regards the extra judicial confession supposedly made by Khalid Khan, suffice to say that the same is not admissible in evidence. The police claim that after his confession he led the police to the place of incident is absolutely meaningless as Khalid Khan himself had lodged the first F.I.R. in the matter and the place from where the bodies were found was no secret from day 1. The pistol, ostensibly used by Khalid Khan, was also recovered from the scene of offence on day 1. The benefit of Article 40 of the Qanun-e-Shahadat Order, 1984 was thus not available to the prosecution to make the extra judicial confession admissible.

11. Keeping in view the evidence recorded at trial, there is no doubt in my mind that the prosecution had completely failed to prove its case. If PW-7 Mohammad Aslam Arain is still in active duty, the Inspector General of Police,

Sindh is directed to appoint a senior officer to review his service record and determine whether he is fit enough to investigate cases of a similar nature.

12. The appeal is allowed and the appellant acquitted of the charge. He shall be released forthwith if not required in any other custody case.

JUDGE