

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 550 of 2019

Appellant : Habibullah
through Mr. Habib-ur-Rehman Jiskani, Advocate.

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

Date of hearing : 26th September, 2022

JUDGMENT

Omar Sial, J.: Mumtaz Brohi along with his nephew Faisal Brohi were walking home at 1:00 a.m. on 03.06.2011. On the way, on the outskirts of Pathan Goth, they came across 6 men, 4 of whom were identified as Habibullah (the appellant), Sher Ali, Badshah Khan and Wali. The 6 men were angry with the Brohis and told them that in spite of a strike being announced by the political party they belonged to, the Brohis had not co-operated and had encouraged the area shopkeepers to keep their shops open. Habibullah slapped the Brohis and then took out a pistol and shot Faisal Brohi on his face. Wali and the 2 unknown persons also opened fire on Faisal, which bullets hit him on different parts of his body. Mumtaz was blindfolded and dragged and confined into a room somewhere in Pathan Goth. Mumtaz was later released after being told that he had learned his lesson. Mumtaz reached home and inquired whether Faisal had come back but as he had not appeared till then, Mumtaz went to the police station from where he learned that an unknown body had been found which was sent to the morgue. That unidentified body turned out to be that of Faisal. F.I.R. No. 157 of 2011 under section 302 and 34 P.P.C. at the Alfalah Police Station at 11:30 a.m. on 03.06.2011 had already been registered on the complaint of A.S.I. Fida Hussain when the unidentified body was discovered.

2. **PW-1 Mumtaz Brohi** was an eye witness of the case. **PW-2 S.I. Manzoor Hussain** was the police officer who witnessed the injuries on the deceased and also saw blood stained earth being recovered from the place of incident. **PW-3 Dr. Abdul Razzaq** was the one who conducted the post mortem of the deceased.

PW-4 A.S.I. Fida Hussain was the first responder when informed by the Pakistan Rangers that a dead body was lying near a house. This officer took all the preliminary steps such as inspecting the dead body, taking it to the hospital, preparing an Inquest Report, getting the post mortem conducted, seizing the clothes of the deceased, registering the F.I.R. **PW-5 S.I. Shahadat Ali** was the investigating officer of the case.

3. In his section 342 Cr.P.C. statement the appellant professed his innocence and further stated that the false case against him was made as a consequence of political rivalry. The learned 1st Additional Sessions Judge, Karachi East on 03.07.2019 announced his judgment whereby he convicted the appellant Habibullah under section 302(b) P.P.C. to a life in prison for having committed the murder of Faisal Brohi. He was also directed to pay Rs. 300,000 compensation. Habibullah was also found guilty of an offence under section 365 P.P.C. for having abducted Mumtaz Brohi and sentenced to 7 years in prison and also pay a fine of Rs. 200,000 and if he did not do so he would have to remain in prison for another 6 months. Habibullah being dissatisfied by the decision has preferred this appeal.

4. The learned counsel for the appellant argued that the prosecution case is that the crime was committed as a consequence of the Brohis opening their shop on a day when a strike call was made by a political party. According to learned counsel Mumtaz Brohi did not even have a shop hence the reason given as the motivating factor of the crime was simply baseless. Further, in order to create doubt in Mumtaz's testimony, learned counsel argued that as admittedly Mumtaz was blindfolded, how could he have even known where he was taken by the accused persons. He also submitted that no empty was found from the scene of offence, that there was no person who had seen the 2 Brohis walk together at night, that though wallets of both the Brohis were snatched by the accused, yet neither wallet was recovered, that the place where Mumtaz was confined was not identified by him. Finally, he argued that Habibullah was acquitted in the case of keeping an unlicensed weapon. The learned APG on the other hand was of the view that this was a water tight case against the appellant, that the appellant was an absconder for a period of 13 months before he was arrested, the acquittal of the appellant in the arms case would not mean that he was not guilty of the abduction and murder, that the testimony of a sole eye witness could suffice for

the purpose of conviction and that the appellant had taken a belated defence plea which should therefore be discarded.

5. The record reflects that the entire case hinges on the testimony of PW-1 Mumtaz Brohi. It is therefore I have focused primarily on his testimony recorded at trial. It has come on record that Mumtaz was an old time resident of the area having lived there for the last 25 years. He knew the accused well. It could not be a case of mistaken identity for the foregoing reason as well as the fact that the accused interacted for some time with the Brohis in the light of street lamps. As far as him not disclosing the place where he was kept in confinement by the accused is concerned, he had a perfectly legitimate reason to not do so as he was immediately blindfolded after the altercation and was taken to a place, though nearby, which he could not see. It appears to be a natural reaction from him that after he was released from confinement he first hurried home to find out what had become of Faisal who he had seen been shot by the accused. As soon as he was told that the family was unaware of his whereabouts, Mumtaz had gone immediately to the police station to report the earlier occurrence. He recorded his statement under section 161 Cr.P.C. on the same day i.e. 03.06.2011. He was consistent in what had happened and what he told the police throughout had a ring of truth to it. The learned counsel's argument that Mumtaz did not have a shop in the area thus it was not possible for him to have upset the accused on this account, is a rather weak argument. A person who would catalyse resistance to a strike call would perhaps suffer the same consequences as a person who was a shop owner. He identified the place correctly where the incident had initially taken place. This was evidenced by the investigating officer who found blood at the spot. The post mortem report shows that the bullet wound sustained by the deceased on his cheek had blackening on the wound of entry. This reconciles with Mumtaz's version of Faisal being shot at a very close range. I do notice one discrepancy between the memo of inspection of the dead body and the post mortem report. While the doctor noticed three bullet injuries on the person of Faisal, the memo of inspection noted four injuries. This was perhaps an inadvertent error by A.S.I. Fida Hussain as after recording that there were four injuries he went on to describe three. It also appears that the error possibly occurred due to the excessive bleeding which had occurred after the firing making it difficult to actually determine exactly how many injuries the deceased

had sustained. It is true that empties were not found on the place of incident however the place of incident was a busy street and thus a reasonable inference can be drawn that the empties by the time the police had inspected the place of incident had dispersed. In conclusion I find the testimony of the sole eye witness Mumtaz Brohi to be confidence inspiring and trustworthy.

6. Habibullah recorded a section 342 Cr.P.C. statement in which apart from professing his innocence he stated that he was arrested from his house at 4:00 a.m. on the day of his arrest. He did not identify the date of his arrest. He went on to further state that he would call his mother Bakht Jan, one Taj Bibi and one Muhammad Abdullah as witnesses to support his stance. He also said that the reason he was implicated was due to the rivalry between 2 political parties. Bakht Jan (DW-1) testified that her son was arrested at 3:30 a.m. in the morning from the house, however like her son, she also could not give a date when it happened. Muhammad Abdullah (DW-2) was the appellant's brother. He too only testified to the extent that Habibullah was arrested at 3:30 a.m. in the morning. He too did not give a date of the arrest. Exactly, the same testimony was recorded by Taj Bibi (DW-3). I notice a lapse on the part of the prosecution as far as Habibullah's arrest is concerned. When, by whom and from where he was arrested was not revealed at trial. However, as the arrest is not denied, this lapse on the part of the prosecution would not be fatal. Habibullah's witnesses could not point out as to why Mumtaz Brohi would falsely implicate him. There was admittedly no enmity or ill-will between them. I find the reason given by Habibullah that Mumtaz was forced to falsely implicate him by members of another political party, who he was even not a member of, to be far-fetched and certainly not proved at trial.

7. I am satisfied that Mumtaz Brohi was truthful in his testimony to show that he was abducted for a short period of time after Faisal Brohi had been shot and who subsequently died. The prosecution successfully proved its case against the appellant. The learned trial court's judgment is a well-reasoned one and requires no interference. The appeal is therefore dismissed.

JUDGE