

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No. 17 of 2018

Appellant : Shahid Khan
through Mr. Iftikhar Ahmed Shah, Advocate

Respondent : The State
through Mr. Zahoor Shah, D.P.G.

Date of hearing : 16th September, 2022

JUDGMENT

Omar Sial, J.: At 6:30 p.m. on 17.10.2011 Mohammad Faisal Rizvi, a security officer at the Pakistan State Oil (PSO) received a phone call informing him that there had been a robbery attempt at one of PSO's petrol outlets in which one person has been injured. When Rizvi reached the said petrol station, Sajid Javed, the cashier at that station told him that about 5:45 p.m. sounds of turmoil were heard and he saw that 3 persons were busy robbing cash from the assistant cashiers. While the robbers were busy in the act, a police constable (later identified as Mohammad Hanif) was attracted to the commotion. Hanif pulled out his official weapon, aimed it at one of the robbers and asked him to surrender. The robber, instead of surrendering, fired at Hanif hitting him on his face. In the meantime Sajid Javed and other members of the staff managed to subdue the robber who had fired at Hanif. In the disturbance which ensued, 2 accomplices of the apprehended robber managed to flee. The apprehended robber was beaten by members of the public before the police came and arrested him. He was identified as being Shahid s/o Sher Khan (the appellant in these proceedings). Hanif died on his way to the hospital. F.I.R. No. 412 of 2011 was registered at the Defence police station at 8:45 p.m. on 17.10.2011. Subsequently, one man by the name of Aamir Shahzad was also arrested in the crime.

2. Both accused pleaded not guilty and claimed trial. The learned Sessions Judge, Karachi, South on 08.05.2017 announced his judgment in terms of which the appellant was found guilty of offences punishable under section 302(b), 392 and 353 P.P.C. and sentenced to a life in prison, 5 years in prison and 1 year in prison, respectively. He was also directed to pay a fine of Rs. 2 million (or spend

another 6 months in prison), RS. 10,000 (or spend another 3 months in prison) and Rs. 5,000 (or spend another 1 month in prison). Aamir Shahzad was acquitted. It is this judgment that has been challenged through these proceedings by the appellant Shahid.

3. In a surprisingly brief argument the only argument raised by the learned counsel was that according to the appellant in his section 342 Cr.P.C. statement he had been falsely implicated in the case. The learned DPG supported the impugned judgment whereas none appeared on behalf of the complainant. Nonetheless I have re-evaluated the entire evidence in order to ensure that no injustice is done to the appellant. My observations and findings are as follows.

PW-1 Muhammad Faisal

4. He was the complainant of the case. His testimony at trial was basically repeating what Sajid Javed told him how the incident unraveled. He candidly admitted that he had not seen the incident, nor the injured nor the accused when he had reached the police station. He however confirmed that his statement was recorded by the police there and then on the spot and that he had witnessed recovery of blood stained earth as well as seizure by the police of money robbed by Shahid before he was apprehended. His statement under section 154 Cr.P.C. was recorded at 8:10 p.m. on the same date.

PW-2 Sajid Javed

5. He was the cashier at the petrol station when the incident occurred. He was the most important witness of this case as not only was he an eye witness to the entire episode but was also mashirs of memo of arrest and recovery as well as memo of inspection of place of occurrence. Sajid told the court that the robbers had snatched Rs. 1590 from an assistant cashier named Piyaral Dayo as well as Rs.9580 from another assistant cashier by the name of Abid Rafiq. Sajid himself saw the appellant fire and hit constable Hanif, who Sajid said was deployed in the same area for security. Sajid was instrumental in apprehending the appellant along with other members of the staff as well as members of the public. The weapon that the appellant carried was also seized by him and the others. Sajid witnessed the recovery of the stolen items from the appellant and the appellant was also identified by the police in person and through the National Identity Card he carried in front of Sajid. Sajid also witnessed the seizure of the

weapon which the appellant had used to kill Hanif along with the one empty of the bullet that the appellant had fired. Sajid's statement was also recorded by the police on the spot. Sajid stood firm in his cross examination and the testimony he recorded has a ring of truth to it.

PW-3 S.I. Syed Khalid Ali

6. Khalid was the acting SHO at the Defence police station when the incident occurred. He and his team were the first responders when information of the incident was received. He handled all the formalities connected with the martyred police constable Hanif. He also told the court that the appellant too had been brought to the hospital by another police officer by the name of A.S.I. Hukum Dad as he had been beaten by the public at the place of the incident. Khalid had also inspected the injury on the slain constable and in the memo he prepared at the mortuary of the hospital recorded that the constable had been hit on the right side of the neck and the bullet had exited from the left cheek. There was also an injury on the forehead of the slain constable.

PW-4 Aqeel Ahmed Rajput

7. Rajput was the manager of the petrol station where the incident occurred. He had come out of his office after the shooting and had seen the injured constable lying on the ground whereas Sajid Javed and others had apprehended the appellant. He was not cross examined by the defence counsel.

PW-5 H.C. Faraz Muhammad

8. Faraz had gone to the hospital on hearing that constable Hanif had been shot and killed. It was in his presence that PW-3 Syed Khalid Ali had inspected the injuries on the constable's body, who at that time was still clothed in his official uniform. He was not cross examined by the defence counsel.

PW-6 Abid Rafiq

9. He was the assistant cashier at the petrol station on the day of the incident. He corroborated exactly what Sajid Javed had testified. The appellant had snatched money and some other items from him. He also witnessed the appellant snatch money and items from the other assistant cashier i.e. Piyaral Dayo. He was an eye witness to not only the money being snatched but also to constable Hanif confronting the appellant by aiming his official SMG and asking

the appellant to surrender. The appellant though, chose not to surrender and had fired upon Hanif instead, which fire hit Hanif in his face. This witness also himself saw the appellant being apprehended by Sajid Javed and others after he had shot Hanif. Abid was a witness to the arrest and recovery from the appellant as well as recovery of the blood stained earth. This witness too remained steadfast during his cross examination and absolutely nothing could be derived from him which would create even an element of doubt.

PW-7 A.S.I. Muhammad Azam

10. This witness recorded PW-1 Muhammad Faisal's statement under section 154 Cr.P.C. immediately after the incident i.e. at 8:10 p.m. He explained that the little delay in registering the F.I.R. was caused as when he reached the place of incident, the staff members at the petrol station told him that the F.I.R. will be lodged by their security supervisor Muhammad Faisal, who had been informed about the incident and who was on his way.

PW-8 Dr. Abdul Razzaq

11. This witness was the doctor who had conducted the post mortem of the slain constable. The doctor testified that he had conducted the post mortem at 8:10 p.m. on 17.10.2011. He also confirmed that the deceased had been shot on the right side of his neck and that the bullet had exited from his left cheek. The doctor also confirmed that the body had a lacerated wound on the forehead. His testimony on medical grounds was exactly in line with the ocular version given by the eye witnesses.

PW-9 A.S.I. Hukum Dad

12. He was the police officer who had conducted the preliminary investigating. The only place where a lapse was seen in the prosecution case was that according to this witness the robbers had also snatched a weapon from one of the security guards deployed by PSO at the petrol station. This particular fact was not supported or corroborated by any other witness. However, it is not something that is material and does not take away anything from the material evidence as well as the intrinsic value of the testimonies recorded at trial. Apart from this one lapse, the entire evidence recorded by the investigating officer was perfectly in line with that recorded by the other witnesses.

PW-10 Hatim Aziz Solangi

13. He was the learned magistrate who recorded the section 164 Cr.P.C. statements of Abid Rafiq (Assistant cashier) and Sajid Javed (cashier) at the petrol station on the day of the incident.

PW- 11 S.I. Sami Jan

14. He was the first investigating officer of the case. Nothing of any substance was derived from him in his cross examination which would adversely impact the prosecution case. He tied up in a chain all the evidence that had been collected in this case. In a seemingly meaningless cross examination, it appears that the counsel's focus was to prove that because the investigating officer had not recorded the statement of any witness from the public nor the statement of the 2 other persons who had accompanied the slain constable to the hospital, doubt had been created in the prosecution case. This was not the case. Both issues hardly had any adverse impact on the case as all material points had been corroborated by the investigating officer. This witness introduced into the evidence a healthy crime record of the appellant ranging from the year 2006 till when the present incident occurred.

PW-12 S.I. Nazir Ahmed

15. He was the second investigating officer. He confirmed that the slain constable was on official duty when he was killed. He also identified 2 major robberies in the past in which the appellant had been involved. He also clarified that though the deceased had been hit by one bullet, as mentioned in the inquest report, the injury on the forehead was due to him falling down and hence the witnesses had missed out seeing it when they recorded their statements. A perfectly reasonable and believable clarification. This witness also produced the report of the Forensic Division dated 01.11.2011 which had opined that the empty found from the scene of occurrence was from a bullet fired through the pistol seized from the appellant on the spot.

Section 342 Cr.P.C. Statement recorded by the appellant

16. The appellant professed innocence and stated that the prosecution witnesses had falsely implicated him.

Arrest of Aamir Shahzad

17. This person was subsequently arrested as being one of the companions of the appellant. The charge was amended on 08.12.2015. I have not discussed the evidence subsequent to the amended charge as that evidence pertained exclusively to Aamir Shahzad. The appellant was not caused any prejudice and as far as he was concerned no new evidence against him was introduced when the witnesses (which did not include some of the witnesses examined earlier) were examined subsequently. Aamir Shahzad was acquitted subsequently and no acquittal appeal was filed.

Sentence

18. The learned trial judge gave no reasons as to why the penalty of death was not inflicted upon the appellant in this particular case. He has however mentioned that because of mitigating factors a life imprisonment is being given but he did not highlight what the mitigating factors were. While I find no such mitigating factors in the present case, yet, as no revision has been filed I have not commented on this aspect any further.

Opinion of the Court

19. A very high standard of evidence was led by the prosecution in this case. The date, time and place of the incident is not in dispute. All steps in the investigation were taken with reasonable promptitude leaving no place for manipulation. The eye witnesses were natural witnesses at the petrol station and their testimony is confidence inspiring and trustworthy. The witnesses have corroborated each other completely. The appellant was caught red-handed after having shot at and killed a policeman in uniform on duty. Members of the public, though not examined at trial, assisted the petrol station staff to subdue the appellant. Not even an iota of credence can be given to the defence taken by the appellant. No malafide or ill-will on the part of the complainant, the witnesses or the police was even remotely shown in this case. The crime weapon was recovered from the appellant on the spot. The empty that was recovered on the spot was opined to have been fired from the pistol recovered. The appellant had been actively involved in major robberies in the past. The medical evidence was completely in line with the ocular evidence.

20. The prosecution was, in my opinion, successful in proving its case beyond reasonable doubt. The appeal is therefore dismissed.

JUDGE