

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 367 of 2019  
Criminal Appeal No. 476 of 2019

Appellants : Abdul Zameer and Imdad Karim  
through M/s. Abdul Latif A. Golo and Abdul Haleem  
Jamali, Advocates

Respondent : The State  
through Mr. Muntazir Mehdi, DPG

Complainant : through Mr. Liaquat Ali Khan, Advocate

Date of short order : 21<sup>st</sup> October, 2022

### JUDGMENT

**Omar Sial, J.**: The prosecution story is that on 19.08.2017 at about 10:00 p.m., 3 men, namely, Muhammad Yaqoob, Abdul Waheed and Ali Gul were on their way home on a motorcycle when they were intercepted by 3 men, who were also on a motorcycle. The 2 men sitting behind the driver of the motorcycle, took out pistols and snatched the valuables of the complainant party, however, upon being resisted by Abdul Waheed, one of the robbers fired and killed Waheed. The robbers then drove away on their motorbike. On the complaint of Muhammad Yaqoob, F.I.R. No. 193 of 2017 was registered under sections 396 and 34 at 1:30 p.m. on 20.08.2017 at the Gulshan-e-Maymar police station.

2. On 01.10.2017, the complainant saw one of the accused who had shot at Waheed, apparently sitting in a hotel. The police was informed, who then came and arrested the accused, whose name was Imdad Karim. On 06.10.2017, once again the complainant saw the second accused sitting at a hotel, who was also arrested. He was Abdul Zameer.

3. Both, Imdad and Zameer, pleaded not guilty to the charge against them and claimed trial. The prosecution examined 10 witnesses to prove its case **PW-1 Mohammad Yaqoob** was the complainant as well as an eye witness. **PW-2 Ali Gul**, who had accompanied the complainant on a motorcycle, the fateful night, was also an eye witness. **PW-3 Khadim Hussain**, was a labourer, who claimed

that he had reached the place of incident in its immediate aftermath. **PW-4 Muhammad Idrees** was a labourer who claimed that accused Imdad had pointed out the place of incident to the police and that Imdad had also confessed to his involvement in the incident. **PW-5 Ghulam Shabbir**, another labourer, also claimed to have reached the place of incident in its immediate aftermath. **PW-6 Ali Sher**, also a labourer, claimed that he was a witness to accused Zameer pointing out the place of incident to the police. **PW-7 Liaquat Ali** was a person who had witnessed the post mortem and had also taken the body of the deceased from the hospital for burial. **PW-8 S.I. Muhammad Nawaz** was the investigating officer of the case. **PW-9 Azizullah** was the person who witnessed the dead body being inspected and an Inquest Report being made. **PW-10 Dr. Muhammad Saleem** was the doctor who conducted the post mortem. In their respective section 342 Cr.P.C. statements, both accused gave a long explanation as to why they were falsely implicated in the case. The statement is a part of the record and is thus not being reproduced for the sake of brevity.

4. The learned 10<sup>th</sup> Additional Sessions Judge, Karachi West on 03.06.2019 announced his judgment in terms of which the 2 accused, Imdad and Zameer were both convicted under section 396 P.P.C. and sentenced to spend a life in prison as well as pay Rs. 500,000 each as compensation, and if they failed to do so, they would have to spend another 6 months in prison. This appeal arises from the aforementioned judgment of the learned trial court.

5. I have heard the counsels for the appellants as well as the learned APG who was assisted by the learned counsel for the complainant. With their able assistance, I have also re-appraised the evidence which was produced at trial. The learned APG as well as both the counsels for the parties agree that apart from the identification of the 2 eye witnesses i.e. PW-1 Mohammad Yaqoob and PW-2 Ali Gul, there is no other evidence against the 2 accused. I am not satisfied that the manner in which the identification was carried out was sufficient to convict the 2 accused. My reasons for reaching such a conclusion are as follows.

6. The crime ostensibly occurs on 19.08.2017 at around 10:00 p.m. (though PW-1 Mohammad Yaqoob, PW-2 Ali Gul, and as a matter of fact all other witnesses testified that it took place on 18.08.2017). The F.I.R. was lodged at 1:30 p.m. on 20.08.2017. The F.I.R. was against unknown persons. In a city as large and populated as Karachi, miraculously, not once, but twice, Muhammad

Yaqoob, randomly saw, first Imdad apparently sitting at a hotel on a road on 01.10.2017, and then again saw Zameer also apparently sitting at a hotel on 06.10.2017. The co-incidence seems rather unbelievable. Most surprisingly, not only did he identify them, but each time, he first went to the police station to tell the police that he had seen the accused, and then, each time took the police to the place where he had seen the accused, and each time, the accused was still sitting where he had been seen earlier. The police however still did not record the arrests on the spot, instead the paperwork was all done at the police station. No witness from either of the 2 hotels appeared as a witness nor was the statement of any person from the respective hotels recorded. Even the name of one of the hotels was not revealed in the memo of arrest.

7. The F.I.R. as mentioned above, was registered against unknown persons. No description of the accused, even of a vague nature was given by the complainant. Neither was the same given in the section 161 Cr.P.C. statements recorded. The malafide and ill-will of PW-1 Muhammad Yaqoob in the identification of the accused was exposed at trial when he categorically stated *"The accused were seen to [sic] us prior to present incident as they are notorious criminals of the area."* The question that arises is obvious – if the accused had previously been seen by the complainant and further if he had known them as "notorious criminals of the area" what prevented him from telling the police that it was they who had committed the crime, when he went to register the F.I.R. or even when he recorded his section 161 Cr.P.C. statement. PW-2 Ali Gul was the ostensible second eye witness to the occurrence. He too lived in the same village as PW-1 Mohammad Yaqoob, but it seems that he was not aware of the accused being *"notorious criminals of the area"*. He too had not given any descriptions of the 3 men on the motorcycle earlier in his section 161 Cr.P.C. statement. The record reflects that he simply went along with what PW-1 Mohammad Yaqoob had alleged. Obviously, no identification parade was held as both the accused were arrested in the presence of PW-2 Ali Gul upon being identified by PW-1 Mohammad Yaqoob. PW-1 Mohammad Yaqoob knew the 2 accused from before, they were notorious in the area according to him, yet he did not tell the police that it was the 2 "notorious" people of the area who had committed the offence. No crime record of the 2 appellants was brought on record to show their alleged

notoriety. The story is unbelievable and the story by itself is sufficient to create massive doubt in the prosecution case.

8. PW-3 Khadim Hussain's testimony at trial reveals that although he too was a resident of the same village as the 2 eye witnesses, neither of the 2 eye witnesses had revealed to him the identity of the 2 accused when Khadim reached the place of incident. PW-8 S.I. Muhammad Nawaz Rind said at trial that he had summoned the complainant on 26.08.2017 for the purpose of making a sketch of the unidentified accused, however, the complainant cited some personal commitment in order to excuse himself. Perhaps PW-1 Mohammad Yaqoob was indeed busy that day, however, that does not preclude him from coming a subsequent day to help the police with identifying the culprits. In fact the complainant did not assist the police for approximately 40 days before he himself told the police who the 2 accused were.

#### Date of the incident

9. The date of the incident according to the F.I.R. was 10:00 p.m. on 19.08.2017 however, all the witnesses at trial said that it was 18.08.2017. In the ostensible extra judicial confessions too, the accused said that they had robbed and killed on 18.08.2017. Absolutely no effort was made by the prosecution to correct this, even if they claimed that there was either a typographical error in the F.I.R. or that all the witnesses had made a mistake in telling the court when the incident occurred. It is true that the arrest is not denied, however, the foregoing fact has been highlighted to show the possible malafide of the police.

#### Place of incident and recovery

10. The place where the incident took place is not clear. The two empties said to have been recovered from the place of incident were not recovered by the police but were handed over to him by the complainant. I also find it unusual that no blood was found on the place of occurrence. The 2 eye witnesses justified this by stating at trial that the deceased had fallen in their lap and hence while their clothes got blood stains, no blood fell on the earth. For one, it seems highly unlikely that no blood would fall on the road. Two, the blood stained clothes of the 2 eye witnesses were also not seized by the police. Three, the 2 eye witnesses justifying why blood was not found on the spot would mean that their mental senses were indeed very sharp even when after a traumatic experience with an

injured companion in their laps. With their respective mental faculties intact to such a high level, it seems even more odd that no description of the assailants could be given by either witness. There was no independent witness who testified where the place where the incident occurred was situated.

#### Arrest of the accused

11. As mentioned above, the arrest took place at random hotels, and the same was witnessed by no other person but the 2 eye witnesses. One of the two witnesses i.e. Ali Gul stated at trial that on 01.10.2017, the date when Imdad is said to have been arrested, the 2 eye witnesses had seen him sitting at a hotel and that PW-1 Mohammad Yaqoob phoned the police telling them that he had seen the accused Imdad. The police had then arrived in 15 to 20 minutes. This version was completely negated by the arresting officer PW-8 S.I. Muhammad Nawaz Rind, who testified at trial that on 01.10.2007, both PW-1 Mohammad Yaqoob and PW-2 Ali Gul, had come to the police station to inform him that one of the accused had been spotted sitting at a police because "*mobile service was blocked due to 10<sup>th</sup> of Muharram.*"

#### Conclusion

12. When put in juxtaposition it is the defence version that sounds more convincing and true. In any case, due to the observations made above, I am of the view that the prosecution failed to prove its case against the 2 appellants. The appeals are therefore allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other custody case.

13. Above are the reasons for the short order dated 21-10-2022.

JUDGE