

**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

Cr. Appeal No.D-155 of 2019

[Confirmation Case No.38 of 2019]

[Dilbar vs. The State]

Cr. Appeal No.S-264 of 2019

[Ali Sher & another vs. The State]

DATE

ORDER WITH SIGNATURE OF JUDGE

BEFORE:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA

JUSTICE MRS. KAUSAR SULTANA HUSSAIN

Appellants : Through Agha Kausar Hussain advocate

The State : Through Mr. Shahzado Saleem Nahiyoona A P G

Date of hearing: 14.02.2023

Date of judgment: 02.03.2023

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: This single judgment will decide the fate of captioned appeals, as both have been directed against same judgment passed in same Crime. Appellants were charged and tried by the Court of Additional Sessions Judge/MCTC Jamshoro @ Kotri in Crime No.14 of 2018 registered at P.S Khanoth for offences punishable under Sections 302, 452 & 34 PPC and finally vide impugned Judgment dated 30.08.2019, passed in Sessions Case No.129 of 2018, appellants Ali Sher and Ali Gul were convicted and sentenced to suffer Imprisonment for Life whereas accused Dilbar was awarded death sentence. All accused were also convicted sentenced to suffer Rigorous Imprisonment for seven years and three months for offences under Section 452 and 34 PPC respectively with fine of Rs.10,000/- for each offence and in case of non-payment of fine they were directed to further suffer Simple Imprisonment for one month more. The accused persons were also directed to pay compensation of Rs.5,00,000/- to the legal heirs of deceased. The sentences awarded to the appellants were ordered to run concurrently and they were awarded benefit of Section 382-B Cr.P.C.

2. The allegation against the appellants/accused is that on 27.04.2018 they trespassed into the house of Complainant with deadly weapons and committed Qatl-i-Amd of three persons by causing them firearm injuries by way of common intention. After registration of aforesaid FIR Investigation Officer conducted

investigation and then submitted challan before the learned Magistrate concerned, who took the cognizance and sent the matter to learned District Judge for trial. The copies of the case were supplied to accused persons at Ex.01 and Charge was framed at Ex.05, to which they pleaded not guilty and claimed trial, vide their pleas at Ex.05/A to 05/C. In order to prove its case, prosecution examined 10 witnesses, which include Complainant, WMLO/MLO, Investigation Officer and mashirs at Ex.07 to 16, who exhibited and recognized certain documents at Ex.07/A to 16/O, then prosecution closed its side at Ex.17. The statements under Section 342 Cr.P.C of appellants/accused were recorded at Ex.18 to 20, wherein they denied the allegations, however, neither they examined themselves on Oath nor any witness in their defense. Finally the learned trial Court after hearing the arguments of the parties awarded the sentences to appellants, as mentioned supra, and also sent reference to this Court under Section 374 Cr.P.C for confirmation of death sentence awarded to accused Dilbar. We therefore, decide the fate of captioned appeals as well as reference by this single judgment.

3. Learned counsel for the appellant, inter-alia, contended that impugned judgment is entirely against the norms of law; that Complainant is not the eyewitness of the alleged incident; that learned trial Court while convicting the appellants has erred seriously in law; that private witnesses are close relatives of Complainant party and they have falsely implicated the appellants; that alleged eyewitnesses did not disclose the motive of the appellants; that the alleged recovery from Ali Sher and Ali Gul is doubtful; that no specific role has been assigned to accused Ali Gul and Ali Sher; that FIR was registered after fifteen hours after due deliberation and consultation, hence false implication cannot be ruled out and that there are material contradictions in the evidence of prosecution witnesses, but same have been ignored by the learned trial Court. He lastly prayed for acquittal of the accused persons.

4. Despite service, none has effected appearance on behalf of the Complainant.

5. Learned Additional P.G vehemently opposed the appeal and argued that motive is fully established; that prosecution case is fully supported by the eyewitnesses; that ocular evidence is fully supported by the medical evidence; that there are no contradictions in the depositions of prosecution witnesses and they remained consistent despite lengthy cross-examination; that appellants had committed murder of three innocent persons, as such they are not liable for any leniency and that empties recovered from the place of incident were matched with the recovered weapons. He prayed for dismissal of appeals. He relied upon the

reported cases of (i) MUHAMMAD MANSHA versus The STATE [2016 SCMR 958] & (ii) ZAHID IQBAL versus The STATE [2017 SCMR 1543].

6. We have heard the learned counsel for the appellant as well as learned Additional P.G and have also perused the material available on record.

7. First of all we have to see whether deceased persons died by natural death or otherwise. In this regard we have perused the evidence of WMLO and MLOs, who had examined the dead bodies. All the three Doctors opined that death of deceased persons occurred due to hemorrhage and shock as a result of injuries individually/collectively caused by firearm weapons. Therefore, it is established that all three deceased persons did not die their natural death, however, their death had occurred due to hemorrhage and shock on account of firearm injuries.

8. Now it is to be seen that who had caused their death. In this regard we have perused the evidence of eyewitnesses, which includes Complainant. Complainant Muhammad Ishaque deposed that on 27.04.2018 he alongwith Nazeer, Zaheer, Chanessar (**deceased**), Mst. Nooran (**deceased**) and Mst. Sitara (**deceased**) was present at his home when at about 08:30 am accused persons Dilbar having K.K, Ali Sher having gun and Ali Gul armed with pistol entered into their house and made hakals to deceased Chanessar that today they will not leave him alive and then accused Dilbar made straight fire on Chanessar, which hit him on chest and he fell down. On their hue and cry deceased Mst. Nooran and Mst. Sitara came out of room and then accused Dilbar also made straight fires upon them and both the ladies fell down, thereafter accused Ali Sher and Ali Gul also made firing on them and then all accused persons went away. The Complainant further deposed that after such incident they informed the police, who came at the place of incident and after legal formalities viz: postmortem, the dead bodies of all three deceased persons were handed over to them for burial. The Complainant was thoroughly cross-examined by the defense counsel, however, he remained consistent.

9. Both the eyewitnesses Nazeer and Zaheer Ahmed were examined by the prosecution and both these witnesses deposed on parallel lines as that of Complainant. They were also put to test of lengthy cross-examination, but their evidence remained unshaken. Therefore, all three eyewitnesses, which includes Complainant, have fully implicated the accused persons by way of their trustworthy evidence. All the eyewitnesses knew all of the appellants whom they saw from close range in this daytime incident and as such there is no case of mistaken identity and no requirement of an identification parade.

10. We have also perused the evidence of IO/SIP Abdul Malik, who deposed that on 28.04.2018 he was posted as SHO at P.S Khanoth when he received the aforesaid FIR for investigation, then he recorded the statements of witnesses and also conducted search of house of accused in presence of witnesses, but the accused were not present over there. He further deposed that on 01.05.2018 he left the P.S for patrolling in the area under entry No.06 and arrested the accused Ali Sher and Ali Gul near Theba Phatak in presence of mashirs Abdul Rasheed and Khawand. He also deposed that on 02.05.2018 he came to know that accused Dilbar is already in lock-up of P.S Jamshoro in a crime registered under Section 23-A Sindh Arms Act, he then made entry No.04 and arrested the accused Dilbar in present crime. IO also deposed that on 04.06.2018 accused Ali Sher and Ali Gul disclosed during interrogation that they have concealed the crime weapons behind bushes and hills respectively near their village and on such disclosure he alongwith accused persons and mashirs went at the pointed place and on the pointation of accused he got recovered the crime weapons and prepared such memo of recovery in presence of mashirs. Investigation Officer further deposed that accused Dilbar also got recovered crime weapon from the room of his house in presence of mashirs. He then sent the recovered empties and weapons for FSL.

11. The empties from the place of incident were recovered by ASI Altaf Hussain in presence of private mashirs Abdul Rasheed and Khawand. PW Khawand was given up, however, Abdul Rasheed, who acted as mashir of arrest of accused persons as well as recovery of crime weapons and empties, was examined. He deposed that accused persons were arrested and they got recovered crime weapons in his presence. He also deposed that empties from the place of incident were secured and sealed by ASI Altaf Hussain in his presence. He exhibited all such memos during his evidence. He was also cross-examined at length, but remained consistent.

12. Perusal of FSL report, shows that recovered weapons were/are in working condition and the empties, recovered from the place of incident, were fired from said weapons. Thus the prosecution has fully established its case against the accused persons. Though learned counsel for the appellants, during course of arguments submitted that no specific role has been assigned to accused Ali Sher and Ali Gul, however, he has failed to deny their presence at the place of incident alongwith deadly weapons, which were duly recovered on their pointation. Further eyewitnesses and Complainant specifically deposed in their evidence that both these appellants have also made firing. The said piece of evidence of eyewitnesses has duly been supported by the medical evidence as well as FSL report. The medical evidence clearly reflects that all three deceased persons

received two firearm injuries each and they died as a result of injuries individually/collectively caused by firearm weapons and the FSL report shows that empties matched with the weapons recovered from all three appellants. Learned counsel for the appellants has also failed to establish as to why appellants have been implicated in this crime by the Complainant party by leaving the real culprits.

13. Record reflects that ocular evidence is fully supported by medical evidence. The prosecution case is free from doubts and proved by chain of events, therefore, the learned trial Court has rightly passed the impugned judgment.

14. For what has been discussed above, we are of the view that appellants have failed to point out any illegality or irregularity in the impugned judgment so that the same requires interference by this Court. Consequently, the conviction and sentence awarded to the appellants by the learned trial Court through judgment dated 30.08.2019 passed in Sessions Case No.129 of 2018 [**Re: The State versus Dilbar and Others**], is maintained and the captioned appeals are dismissed. The confirmation reference is accordingly answered in **Affirmative**.

JUDGE

JUDGE