

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 147 of 2022

Appellant : Manzoor Ali
through Mr. Aziz-ur-Rehman Akhund, Advocate

Respondent : The State
through Mr. Abrar Ali Khichi, Addl.P.G.

Complainant : In person

Date of hearing : 7th February, 2023

JUDGMENT

Omar Sial, J.: Mohammad Ismail Chohan, a primary school teacher in Thatta, in the afternoon of 04.06.2019 received a phone call informing him that his younger son, Manzoor Ali (“**the deceased**”), an under training policeman, had been shot dead by one of his colleagues in Karachi. After performing the last rites of his son and burying him, Chohan learned that his son had been posted at a mosque on security duty along with another constable, also by the name of Manzoor Ali (“**the accused**”) and that, for reasons not known to Chohan, there was a squabble between the 2 in which the accused had shot and killed the deceased. F.I.R. No. 318 of 2019 was registered under section 302 and 324 P.P.C. (as another passerby by the name of Nehan Mirza had also been injured from a stray bullet) at the Awami Colony police station at 7:45 p.m. on the same day i.e. 04.06.2019. The accused was arrested at 5:30 p.m. the following day i.e. 05.06.2019.

2. The accused pleaded not guilty and claimed trial. At trial the prosecution examined **Mohammad Ismail Chohan**, the complainant, as **PW-1**; **P.C. Nisar Ahmed**, an eye witness, as **PW-2**; **Mirza Nehan Baig**, the injured passerby, as **PW-3**; **P.C. Fayyaz Hussain Chohan**, an eye witness, as **PW-4**; **S.I. Manzoor Hussain**, the first police responder to the information of the shooting, as **PW-5**; **Dr. Shehzad Ali Awan**, the doctor performing the post

mortem, as **PW-6** and **S.I. Masroor Ahmed Yousufzai**, the investigating officer, as **PW-7**.

3. The accused in his section 342 Cr.P.C. statement gave a blanket denial of all allegations against him and without providing any details of what his stance was, stated that he was innocent. He did not examine any witness nor did he opt to examine himself on oath.

4. The learned 5th Additional Sessions Judge, Karachi East on 23.02.2022 found the accused guilty as charged and sentenced him to a life in prison as well as pay a fine of Rs. 2 million to the legal heirs of the deceased. The accused was also sentenced to a 7 year prison term, a fine of Rs. 50,000 and a compensation of Rs. 100,000 for injuring Mirza Nehan Baig. If the fine amount was not paid, the accused would have to spend another 3 months in prison.

5. The learned counsel for the appellant has argued that although the prosecution claims that there were 3 eye witnesses to the incident, the actual fact is that none of them was a witness. Learned counsel has pointed out some contradictions between the said witnesses to show that the witnesses did not agree as to whether the deceased was alive or dead after the shooting and whether the deceased was shot from the back or the front and whether the deceased was taken to the hospital in an ambulance or in some other vehicle. Learned counsel also argued that the witnesses said that the deceased was at a distance of 2 to 3 feet from the accused when he was shot at but that the medical report says that the distance between the 2 was 5 to 6 feet. Learned counsel next argued that the scene of incident is also doubtful as is the recovery of the crime weapon. He was of the view that the recovered empty which matched the crime weapon was also foisted upon the appellant. Basically the learned counsel was of the view that the appellant was not present on the scene and that all evidence against him is manipulated and false. Learned Additional Prosecutor General who was assisted by the complainant himself was of the view that the ocular, medical and ballistic reports all supported the prosecution version and that 2 eye witnesses were

themselves on duty at nearby places and had no reason to give a false testimony. He whole heartedly supported the impugned judgment.

6. I have heard the learned counsel and the learned Additional Prosecutor General. With their assistance I have also re-appraised the evidence. My observations and findings are as follows.

7. The record reflects that a group of 16 police constables, all from Thatta were sent by their department to the Razzaqabad Training Centre in the year 2019 for elite training. PW-2 P.C. Nisar Ahmed was one such policeman. Nisar in his testimony told the court that while on training the boys were assigned security duties at mosques where *taraveeh* prayers were being held as it was the month of Ramzan. At the end of their duty time all the boys from Thatta would usually gather at one place and have tea at a stipulated roadside restaurant. On 04.06.2019 Nisar was posted for security duty along with PW-4 Fayyaz Hussain Chauhan whereas the deceased and the appellant were assigned duty together. Both, PW-2 Nisar Ahmed and PW-4 Fayyaz Hussain Chohan, witnessed the incident as they were crossing the road to meet up with the deceased and the accused. They saw the accused open fire on the deceased with his duty SMG. The accused had then run away from the spot after throwing his SMG on the ground. The police which had arrived on the scene collected 3 or 4 empties from the spot. PW-2 Nisar Ahmed in his cross examination revealed that he had seen the accused shoot twice at the deceased (one hit him on the lower back side while the other also hit on the back) and then made one aerial fire before running away. PW-4 Fayyaz Hussain Chauhan mirrored the testimony of PW-2 Nisar Ahmed in all material aspects. The 2 witnesses have explained very well how they were present at the scene. It was not a case of misidentification as all the boys were from the same district and had all come together for the purpose of training. No malafide was attributed to the 2 eye witnesses. No reason existed for them to falsely implicate the accused. The accused in his section 342 Cr.P.C. statement also did not offer any explanation as to why his own colleagues would falsely implicate him. I find the testimonies of the 2 eye witnesses to be trustworthy and confidence inspiring and find no reason to disbelieve either one of them.

8. The police was informed of the incident immediately after its occurrence and the information PW-5 S.I. Manzoor received was that one police constable had been shot at by another police constable. When he reached the spot he learned that the accused had fired upon the deceased. The shooting took place close to midnight and the entry of the police diary made at 0010 hours records the receipt of information by PW-5 S.I. Manzoor. The entry reflects that the accused had shot and injured the deceased. The information was immediate and so was the response leaving little doubt as to the identity of the shooter.

9. There is no substance in the learned counsel's argument that the weapon recovered from the scene was actually that of the deceased and not that of the accused. This was clarified by PW-5 S.I. Manzoor who explained at trial that when he reached the scene he had taken into possession the weapon left behind by the accused and that the weapon of the deceased was later collected by some other person. The seized weapon was sent for analysis on 11.06.2019 and it was opined by the forensics division that the 3 empties collected from the scene had been fired from the same weapon. The investigating officer of the case PW-7 S.I. Masroor Ahmed also confirmed that the seized weapon had been assigned to the accused by the department.

10. The medical evidence recorded primarily by PW-6 Dr. Shehzad Ali reflects that the deceased had 2 firearm injuries. One shot had hit him on the lower back while the second had hit him on his right wrist. PW-2 Nisar Ahmed had testified that the deceased was shot at the back twice, it is this contradiction which the learned counsel for the appellant had relied upon to argue that the eye witnesses were not present at the scene. With much respect I do not agree with the contention of the learned counsel. When a shooting of such a nature occurs in a crowded place, it would not be unusual that a discrepancy of such a nature occurred. It is quite possible that the fire on the deceased was made from the rear but had hit his right wrist. Similarly learned counsel's argument that witnesses said the deceased and the accused were 2 to 3 feet apart whereas the medical opinion was that there was a 5 to 6 feet distance between the 2 also carries little weight. Once again, witnesses

cannot be expected to be so precise in their estimation of the distance between the parties. In my view the fires were made from a relatively short distance which would eliminate any chances of an accidental firing.

11. There was water tight evidence against the accused. He did not help himself any by stating what he recorded in his section 342 Cr.P.C. His pleading ignorance to some questions, even ones which he knew were true e.g. an F.I.R. was lodged against you, is indication of the accused lying. He also had no explanation to offer as to what transpired.

12. After a re-appraisal of the evidence, I find no reason to interfere with the judgment of the learned trial court. The appeal stands dismissed.

JUDGE