

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 580 of 2017

Appellant : Ashok Kumar
through Mr. Rameez Raja Solangi, Advocate.

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

Date of hearing : 30th October, 2023

JUDGMENT

Omar Sial, J.: Taufeeq Ahmed, on 15.11.2009, was informed that his nephew Asif had been shot and had been taken to the Civil Hospital. At the hospital, Taufeeq discovered that Asif had died. Asif's friends told him they were playing cricket when other boys came to the scene and asked them to move out as they wanted to play. The altercation that occurred resulted in Ashok pulling out a weapon and shooting at Asif. In the shoot-out, Ashok was also shot and injured. According to Asif's friends, Ashok was wounded by the firing of his companions. F.I.R. No. 342 of 2009 was registered under sections 302, 324 and 34 P.P.C. at the Jamshed Town police station on 15.11.2009. The nominated accused were Ashok, Vinod and an unidentified group of their friends. Ashok was arrested the same day soon after the incident from the hospital, where he had been brought for medical attention for his firearm injury.

2. Both the accused pleaded not guilty and claimed trial. **PW-1 Taufeeq Ahmed** was the complainant. **PW-2 Ghulam Yasin** was the scribe of the F.I.R. **PW-3 P.C. Shah Hassan** was the police officer who first responded to the information that a gunshot victim had been brought to the Civil Hospital. **PW-4 S.I. Mohammad Irshad** was the police officer who recorded Taufeeq Ahmed's section 154 Cr.P.C. statement. **PW-5 Mohammad Sheraz** was an eyewitness to the incident. **PW-6 H.C. Bashir Ahmed** was a witness

to Ashok's arrest. **PW-7 Mohammad Riaz** was the person who witnessed the recovery of the crime weapon upon Ashok's lead. **PW-8 A.S.I. Azam Hussain** was the police officer who arrested Ashok. **PW-9 Mehfooz Ahmed** was an eyewitness to the incident. **PW-10 Dr. Karar Ahmed** was the doctor who confirmed signatures on various medical reports, which had been signed by other doctors who were not available at the time of the trial. **PW-11 Tanveer Ahmed** was an eyewitness. **PW-12 S.I. Sarfraz Alyana** was the investigating officer of the case.

3. The defence taken by Ashok in his section 342 Cr.P.C. statement was that he had not shot at Asif but that Murtaza was the person who had opened fire, and it was because of his firing that Asif and he himself were injured.

4. The learned 6th Additional Sessions Judge, Karachi East, on 20.10.2017, acquitted Vinod of the charge; however, he convicted Ashok to life in prison for having committed an offence under section 302(b) P.P.C. and also directed him to pay Rs. 100,000 to the legal heirs of the deceased or stay in prison for six months. This decision has been challenged through this appeal.

5. I have heard the learned counsel for the appellant and the learned Deputy Prosecutor General. The complainant was served but replied that he had moved to Manshera 13 years ago and was not interested in pursuing this appeal. The respective arguments of the counsel are not being reproduced but are reflected in my observations below. It is pertinent to mention, though, that the learned counsel for the appellant in the alternative has argued that the sentence awarded to the appellant be reduced to the one he has already undergone as it was not a pre-meditated murder. Learned Deputy Prosecutor General stated that he would have no objection to reducing the sentence.

6. The evidence against the appellant was in the shape of the testimonies of three eyewitnesses, recovery of the murder weapon on Ashok's lead, as well as the bullet cases found from the spot being opined

to have been fired from the same weapon. The incident is not denied. The place, time and date of the incident have also not been denied. Asif died of a gunshot injury, which is also an admitted fact. Bullet casings and blood were found at the scene and collected. The eyewitness testimonies corroborate and support each other by and large. The eyewitnesses were natural witnesses as they, too, had come to play cricket. The testimonies have a ring of truth, and I have found them confidence-inspiring. There was no reason for the eyewitnesses to lie or misrepresent facts. Indeed, none was even alleged by the defence. The incident occurred at 12:30 p.m. on 15.11.2009. Taufeeq recorded his section 154 Cr.P.C. statement at 2:30 p.m. the same day. F.I.R. was registered at 3:15 p.m. Eyewitnesses recorded their section 161 Cr.P.C. statements the same day. All initial steps to set the criminal law in motion were taken promptly, and each witness consistently recorded what had transpired. There was no doubt that Ashok had shot Asif in a scuffle that had occurred over the use of a cricket pitch.

7. One area to which I have given considerable thought is whether an offence under section 302(b) occurred or whether Ashok was guilty of having committed an offence under section 302(c) P.P.C. The argument was raised by the defence at trial and mentioned in the impugned judgment; however, the learned trial court did not give any finding. The record shows that it was not a pre-meditated murder and that it occurred on the spur of the moment. Ashok and company had not come to the ground with the intent of picking up a fight and killing anybody. The altercation began when both parties claimed they could play on the available cricket pitch as they had booked it first. The absence of premeditation is also reflected in the eyewitness statements. PW-5 Mohammad Sheeraz. His narration of events at trial reflected that Asif (the deceased) and Ashok (the appellant) wrestled with each other after an exchange of harsh words and that Ashok had a pistol in his hand, and in that scuffle, two fires were made. One hit Asif on the chest, while the other hit Ashok on his foot. What is doubtful, though, is whether Ashok got injured by his firing or whether Asif, too, was armed at the time and that it was his shot that injured Ashok. One reason

for this doubt to arise is that eyewitness PW-5 Mohammad Sheeraz admitted in his cross-examination that he had not told the police when his section 161 Cr.P.C. statement was recorded about the scuffle between Asif and Ashok and that Ashok was injured due to his own firing. His statement at trial was an improvement on the very first version of events he had recorded. The second eyewitness, PW-9 Mehfooz Ahmed, gave a similar account of how events unfolded; however, according to his version, Ashok had shot Asif in the chest first, and the scuffle between the two came after the first fire. It was in that scuffle that Ashok shot himself in the foot. It seems odd that a person who had just been shot in the chest would have the presence of mind and the strength to scuffle with his shooter. It was acknowledged at trial by the PW-9 Mehfooz Ahmed that there was no existing enmity between the two groups of boys. PW-11 Tanveer Ahmed, another eyewitness, had a slightly different narration. In his testimony, he stated that a quarrel over who would play cricket that day occurred with only Ashok and Vinod. The two accused then left the scene but came back later with a group of friends, and that is when the firing occurred. Tanveer also stated that Ashok had wanted to fire at another boy by the name of Shiraz, but instead, the bullet had hit Asif, who stood close by. Tanveer, unlike the other two eyewitnesses, said that Ashok had sustained a bullet injury from his firearm but did not mention that the shooting occurred during a scuffle. He was the only eyewitness who said that Ashok and Vinod had left the scene and returned later. This act of the accused could be relied upon to show that the murder was pre-meditated. I have, however, not relied on it as the preponderance of evidence does not support the same. However, in his cross-examination, Mehfooz admitted that in his section 161 Cr.P.C. statement, he had recorded that the two fires were made during a brawl that Asif and Ashok had. It is pertinent also to point out that two of the eyewitnesses, Mehfooz and Sheraz, also testified that there was a third boy, Murtaza, who had also fired at Asif and the others. Tinkering of the truth by the two eyewitnesses cannot conclusively be ruled out.

8. Given the above, for the safe administration of justice, it would be appropriate that the conviction given to the appellant is converted from one under section 302(b) to section 302(c) P.P.C. The jail roll shows that the appellant has completed nearly 20 years of his sentence, including remissions. His sentence is reduced from life imprisonment to the one he has already served. Compensation ordered to be paid in the impugned judgment is reduced to Rs. 25,000 or a further period of 15 days simple imprisonment if he fails to pay the said amount.

9. The appeal is dismissed subject to the modification in the sentence given in the preceding paragraph.

JUDGE