

**IN THE HIGH COURT OF SINDH AT KARACHI****CR. APPEAL NO.20 of 2019**

APPELLANT : **Shahzad**  
Through Mr. Muhammad Shafqat  
Advocate

RESPONDENT : **The State**  
Through Mr. Zahoor Shah,  
Additional Prosecutor General Sindh

Date of hearing : 02.11.2023

.....

**J U D G M E N T**

**Omar Sial, J.:** Irfan Ali worked as a cable repairman at a shop owned by Mohammad Hayat. On 22.02.2014, Irfan told Hayat that a cable wire installed in Jamali Goth needed repair. Irfan, Hayat, Abdul Latif, and Sikander Ali left to attend to the complaint. Once on the spot, Irfan climbed a ladder to reach the affected cable while the other three men stood underneath the ladder. While Irfan was repairing the cable, around 10:15 a.m., three men on a motorcycle arrived. They were identified as Wali Mohammad, Mohsin and Shahzad. Shahzad got off the motorcycle, took out a pistol, and fired at Irfan. Wali Mohammad and Mohsin resorted to aerial firing. The assailants then left the scene with Irfan having died of the bullet injury he sustained. F.I.R. No. 43 of 2014 was registered at 2:30 p.m. on the same day, based on information provided by Mohammad Hayat under sections 302 and 34 P.P.C. at the Malir police station. The police visited the scene of the crime and collected three bullet casings of 0.30 bore and some cable wire from there.

2. Shahzad and Mohsin were arrested on 24.02.2014. On 05.03.2014, Shahzad led the police to a house in Hingora Village, where the crime weapon was recovered.

3 Shahzad and Mohsin pleaded not guilty to the charge and claimed trial. At trial, the prosecution examined **PW-1 Mohammad Hayat**, the complainant and an eyewitness to the killing. **PW-2 Abdul Latif** was an eyewitness. **PW-3 Sikander Ali** was an eyewitness. **PW-4 Dr. Tariq Jameel** did the postmortem of the deceased. **PW-5 Mohammad Moosa** was a relative of the dead who reached the scene of the crime in its immediate aftermath. **PW-6 S.I. Mansha Khan** was the police officer who responded first to the information that Irfan Ali had been shot dead. **PW-7 S.I. Gul Baig** was the investigating officer of the case.

4. Three bullet casings were recovered from the scene of the crime on 24.02.2014 and sent for forensic analysis the same day. The pistol recovered on Shahzad's lead was sent for ballistic analysis on 06.03.2014. No report was obtained to show a match.

5. Shahzad, in his section 342 Cr.P.C. statement, took the plea that the police had asked him for a bribe, and when he did not accede to the request, he was nominated as an accused in the present case. He said that he would examine himself on oath and that Humayum Khan and Amanullah would testify in his defence. Mohsin took the plea that he was at the fruit market at the time of the incident and that Shaukat Ali and Faheem would testify in support of his defence. Both accused also said that they would be a witness for themselves and record a section 340(2) Cr.P.C. statement.

6. Shaukat Ali appeared as the first defence witness and said that Mohsin was working with him on 22.04.2014 at the fruit market and that the police called him at 4:00 p.m. The incident occurred on the morning of 22.04.2014. In his testimony, Shaukat admitted that he

worked at the fruit market at night. The second defence witness was Faheem, whose testimony was similar to that of Shaukat Ali.

7. Hameedullah appeared as the third defence witness. He was Shahzad's brother and testified that Shahzad was at home along with one guest, Humayun, from 22.02.2014 till noon, after which he was summoned to the police station. I find it odd that even though Hameedullah was Shahzad's brother and claimed that Shahzad's house was adjacent to his, he did not know what time Shahzad would leave for his work as a driver. Humayun appeared as the fourth defence witness. He said more or less the same thing as Hameedullah, though according to Humayun (a twenty-year-old friend of Shahzad), both Hameedullah and Shahzad lived in the same house. Surprisingly, Humayun was able to tell the court at what time Shahzad would leave for work and when he would come back.

8. The learned 1<sup>st</sup> Additional Sessions Judge, Malir, on 20.12.2018 acquitted Mohsin of the charge but convicted Shahzad for committing an offence under section 302(b) P.P.C. and sentenced him to life in prison as well as pay a compensation of Rs. 100,000 to the legal heirs of the deceased. If he did not pay the compensation, he would have to stay in prison for a further three months.

9. Learned counsel for Shahzad has argued that eyewitnesses could not be believed as it could not be determined at trial whether the deceased was up a ladder when shot or standing on the ground. (Hayat and Sikandersaid up on a ladder, Abdul Latif said standing on the ground). Similarly, counsel argued that eyewitnesses were at odds about whether the land where the incident occurred was "*katcha*" or "*pakka*" (Abdul Latif said *katcha* while the investigating officer said it was *pakka*). Learned counsel further argued that the prosecution story was that Irfan had climbed up a ladder but no ladder was recovered. If Mohsin and Shahzad were not in the cable operator business (as testified by PW-7 Gul Baig), then why would they kill Irfan? Learned Additional Prosecutor General argued that

the first responder, S.I. Mansha Khan, testified that a ladder was available on the scene but was not mentioned in the memo of inspection of the crime scene. As regards the motive, the learned prosecutor argued that the investigating officer explained at trial that when he testified that the houses of the accused were in the same lane where Irfan was repairing the cable and that the wires would also go on top of rooftops of the homes in that area and that Shahzad and Mohsin had previously warned him not to.

10. I have heard the learned counsel for the appellants and the learned Additional Prosecutor General. None appeared on behalf of the complainant despite notice. My observations and findings are as follows.

11. I do not see any reason why the eyewitnesses in this case would lie. The eyewitness accounts are simple and confidence-inspiring. Speaking hypothetically, even if the police had a gripe against the appellant, no reason was assigned or, as a matter of fact, even argued at trial, which would show any malice that the eyewitnesses have against the appellant to accuse them of the murder falsely. All preliminary steps, that is, report to the police, the police arriving on the spot, registration of F.I.R., recording section 161 Cr.P.C. statements of the eyewitnesses and recovery of the bullet casings were done promptly. On the contrary, the testimony of the two defence witnesses produced by Shahzad does not sound trustworthy; as mentioned above, his brother and an old friend of his giving different accounts of where Shahzad lived raises some doubt about the accuracy of what they said.

12. Learned counsel argued extensively on the trajectory of the bullet and whether the deceased Irfan was up on the ladder, halfway up or completely down. There are minor discrepancies in this regard between the witness statements; however, the discrepancies do not go to the root of the crime; in a situation which had developed on the spot, to expect each witness to notice where Irfan was placed on

the ladder or what precisely the condition of the ground where the incident occurred is immaterial.

13. Another aspect learned counsel argued was that as the accused were not in the cable business, they had no reason to kill Irfan. The learned Additional Prosecutor General has very well argued this aspect. The point of friction between the deceased and the accused was not the cable business but Irfan's access to areas that contributed to the parties' bad blood.

14. The learned counsel for the appellant was of the view that the prosecution case was a false one, as PW-6 S.I. Mansha Khan categorically stated that he had not collected any bullet casings from the scene of the crime. The learned counsel is correct. S.I. Mansha did not collect any bullet casings from the location. That is because PW-7 S.I. Gul Baig had already collected the casings.

15. Soon after the incident, the deceased was brought for a post-mortem to the Abbassi Shaheed Hospital. The doctor (PW-Dr. Tariq Jaleesi) found that the dead body had three bullet entry wounds on the upper and middle areas of the front of his body. The medical evidence and the ocular evidence did reconcile.

16. When put in juxtaposition, the prosecution case is more convincing. The prosecution succeeded in proving its case beyond reasonable doubt. The contradictions between witness statements at trial were not of such a nature that could upset a conviction. The learned trial court has already given concession for the lapses when it did not award a capital sentence to the accused. Three shots having been fired at Irfan Ali reflects the mindset of the appellant he had come to kill.

17. The appeal is dismissed.

JUDGE