

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 97 of 2021

Appellant : Roshan Jan
through Khawaja Naveed Ahmed, Advocate.

Respondent : The State
through Mr. Talib Ali Memon, A.P.G.

Complainant : through Mr. Siraj Ahmed Mangi, Advocate

Date of hearing : 15th November, 2023

JUDGMENT

OMAR SIAL, J. Mohammad Uzair Khan and his father, Adam Khan, on 19.12.2019 were cleaning their rickshaw when a neighbour, Roshan Jan, came to the spot at 6:00 p.m. and told them to move their rickshaw from there. After a brief altercation between Adam Khan and Roshan Jan, Roshan pulled out a pistol and shot at Adam Khan. Adam received two bullet injuries. He was taken to a hospital in an injured condition. The same day, at 7:00 p.m., Adam Khan recorded a section 154 Cr.P.C. statement in which he named Roshan Jan as the person who had shot him. F.I.R. No. 348 of 2019 was registered under section 324 P.P.C. at the Nazimabad police station on 19.12.2019 at 7:30 p.m. On 31.12.2019, Adam Khan died; thus, section 302 P.P.C. was added to the charge.

2. Roshan Jan was arrested on 28.03.2020 at 9:05 a.m. Roshan Jan pleaded not guilty to the charge against him and claimed trial. The prosecution examined **Mohammad Uzair Khan (PW-1)**, who was an eyewitness to the murder. **Yasir Khan (PW-2)** was a relative of the deceased who was summoned to the place of the incident by Mohammad Uzair Khan (PW-1) in its immediate aftermath. **Jahanzaib Pathan (PW-3)** witnessed the police taking into possession a truck owned by Roshan Jan

and arresting his driver in a bid to find Roshan Jan. This witness was not in his village when the incident occurred and had come to Karachi upon hearing of the shooting. **A.S.I. Mohammad Arshad Abbasi (PW-4)** was the police officer who put into writing the section 154 Cr.P.C. statement recorded by Adam Khan and later incorporated it in the F.I.R. register. **Mohammad Khalid (PW-5)**, a relative of the deceased who also reached the scene in its immediate aftermath, had seen Roshan Jan cleaning up the crime scene while holding a pistol in his hand. **Dr. Sohail Ahmed Yar Khan (PW-6)** was the doctor who provided medical attention to Adam Khan immediately after the shooting. **Babar (PW-7)** was a relative of the deceased and an eyewitness to the shooting, as well as Roshan Jan cleaning up the crime scene. **S.I. Hatim Khan (PW-8)** was the first investigating officer of the case. **S.I. Salamat Ali (PW-9)** was the third investigating officer of the case. **A.S.I. Aamir Maqsood (PW-10)** was the second investigating officer of the case, though he referred to himself as the first investigating officer. The confusion arose as the first investigating officer, S.I. Hatim Khan, was the supervisory investigating officer. **Dr. Zohaib Ahmed Khan (PW-11)** was the doctor who issued the final medical certificate after Adam Khan's death.

3. At the end of the trial, the learned 7th Additional Sessions Judge, Karachi Central, on 18-01-2021 convicted Roshan Jan for an offence under section 302(b) P.P.C. to imprisonment for life.

4. I have heard the learned counsels for the appellant, the complainant, and the learned Assistant Prosecutor General. Learned counsel for the appellant has argued that the rickshaw could not fit in the street where the murder was committed, that no conclusive cause of death was issued, that no post-mortem was done, that the eyewitnesses are relatives of the complainant, that no bullet casings or blood were found from the scene. Hence, the doubt created from the lapses should favour the accused. In the alternative, he argued that the sentence already undergone should be treated as the sentence because it was a sudden incident. On the contrary, the learned Assistant Prosecutor General and the learned counsel for the

complainant vehemently and passionately supported the impugned judgment and submitted that the appellant deserves no leniency. My observations and findings are as follows.

5. Mohammad Uzair Khan (PW-1) was cross-examined extensively at trial over innocuous details not mentioned in the F.I.R. The defence counsel continued this trend of trying to find discrepancies between what was stated in the F.I.R. and recorded in section 161 Cr.P.C. statements. None of the differences attempted to be pointed out were, as a matter of fact, discrepancies or impacted the prosecution case in any manner. The desire of the defence counsel seemed to have been that the F.I.R. should have registered each small detail rather than simply information on the commission of a cognizable offence.

6. Roshan Jan's relatively healthy crime record also tilts the balance against him. He has been nominated accused in seven cases before this murder, which range from robbery, attempted murder, narcotics, possessing illegal weapons and kidnapping. These cases have been registered against him since 2011 to date. Three out of these seven cases pertain to offences under section 324 P.P.C. It seems that Roshan Jan is well-versed in pulling out his weapon and shooting at people. His act of cleaning up the crime scene and disposing of bullet casings appears to be an outcome of his experience as an accused gained in the many proceedings he has faced.

7. No blood stains or bullet casings were found at the place of the incident. It was explained by Yasir Khan (PW-2) that he had been told by the neighbourhood people that Roshan Jan, after the shooting, had waited on the scene to collect the casings and threw them in the sewerage and also cleaned the blood stains on the scene.

8. The prosecution also spent considerable time questioning witnesses on the width of the street outside the home of Adam Khan. The line of questioning adopted was to show that a rickshaw could not fit into the street outside the home. However, Yasir Khan (PW-2) explained that the

rickshaw was parked ten to twelve feet away from Adam Khan's house next to a sewerage line, the same sewerage line in which Roshan Jan had thrown the bullet casings and the blood-stained mud.

9. Adam Khan had recorded his section 154 Cr.P.C. statement one hour after he was shot. He did not have the time or the mindset to falsely accuse Roshan Jan of being the shooter. No malafide or reason was attributed to, or argued, for the then-injured Adam Khan to falsely implicate Roshan Jan.

10. The defence tried to discredit witness Mohammad Khalid (PW-5) by attempting to show that he did not live in the same area and that even though his statement under section 161 Cr.P.C. was recorded at his home (as admitted by him), the statement itself showed that it was recorded at the police station. This discrepancy did exist, but I believe it was not of a nature that would suffice to create doubt in the prosecution's case. Regarding where this witness lived, it came on record that the incident happened on one side of the sewerage drain, whereas Mohammad Khalid lived on the other. This witness further admitted that in section 161 Cr.P.C., he had not mentioned that Roshan Jan was holding a pistol when cleaning up the scene. Once again, this is not sufficient to upset a conviction.

11. The deceased (injured at that stage) was examined by Dr. Sohail Ahmed Yar Khan (PW-6) at 6:40 p.m. He had noted that Adam Khan had been shot in his arm and his leg. The learned counsel for the appellant has emphasised the fact that Adam Khan did not die the day he was shot but that his death occurred 11 days later. During this period, he was admitted to the Jinnah Hospital, and as no post-mortem was done, the cause of death could not be ascertained; hence, it could not be said with certainty that even if Roshan Jan had shot Adam Khan, it was the bullet injuries which had caused his death. Learned counsel is correct that death occurred 11 days later and that no post-mortem was conducted. In this regard, the testimony of Dr. Zohaib Ahmed Khan (PW-11) is essential. The doctor explained at trial that Adam Khan was not able to maintain saturations on room air and had likely suffered from pulmonary or fat embolism. Although

the doctor had opined that it was a firearm injury which was the cause of death, his testimony left a lot to be desired. A little bit of research shows that a bullet injury can cause pulmonary embolism. Bullet embolism occurs when a small-calibre, usually low-velocity bullet penetrates a single vessel wall and remains in circulation. It is a rare phenomenon but not one that is unknown. Although the doctor's testimony should have explored all aspects of bullet embolism, regrettably, it was not done. The doctor, however, did not list any other cause of death. I have still treated the medical evidence, which does not contradict the prosecution story but could have been better quality at a rung lower than the evidence recorded by the eyewitnesses.

12. I have not considered the testimony of Babar Khushal (PW-7) as a read of his testimony at trial reveals several improvements he made at trial. Whether the details he forgot to mention when his section 161 Cr.P.C. statement was recorded was a genuine lapse of memory is debatable; however, I have given Roshan Jan the benefit of the doubt as far as the testimony of Babar Khushal is concerned. I, however, believe that given the other evidence recorded at trial, his testimony being discarded would not impact the prosecution case.

13. Roshan Jan's defence in his section 342 Cr.P.C. statement was that the police had framed him because he did not pay them a Rs. 5 million bribe. Be that as it may, even if the police had a gripe against the appellant, why the other prosecution witnesses would come and testify against him was a question that remained unanswered. Speaking hypothetically, even if Roshan Jan was not present and was being framed for declining to pay a bribe, it seems incredibly odd that he could not even produce one witness to testify on his behalf at trial. Indeed, others in his transport business would have known that he was being asked for a substantial bribe, and similarly, there should have been some person who had seen him at some other spot. Keeping the prosecution evidence in juxtaposition with the defence evidence, the prosecution evidence is sound and believable.

14. In essence, after a reappraisal of evidence, it appears to me that the incident of firing did occur; there were at least two eyewitnesses, out of whom one was the injured himself; the eyewitness testimonies sound trustworthy, inspiring in confidence and true; the injured himself recorded a section 154 Cr.P.C. statement shortly after the shooting event; there was no ambiguity in the information as to who the shooter was; no malafide has been pointed or argued for the injured and his son to falsely accused Roshan Jan if somebody else had shot the deceased; the clean up of the crime scene after the incident was sharp thinking on the part of Roshan Jan catalyzed due to his experience with crime; his disappearance soon after the murder; medical evidence proves the gunshot injuries, and although the post mortem was not done, all circumstantial evidence, as well as witness testimonies pointed towards the wounds inflicted by Roshan Jan's firing as the cause of death; an implausible defence taken by the appellant; make me conclude that the prosecution had successfully proved its case at trial.

15. Regarding the reduction in sentence, as prayed by the learned counsel. I am not convinced this is not a case that falls within the ambit of section 302(b) P.P.C. The law gives no flexibility in the sentence when an offence punishable under section 302(b) has been established. The two shots that Roshan Jan took, coupled with his abscondence and past crime record, I am unable to conclude that the murder falls within section 302(c) P.P.C., which would have allowed some flexibility in sentencing. The learned trial court has shown sufficient leniency by not awarding the appellant a death sentence.

16. Appeal is dismissed.

JUDGE