

**THE HIGH COURT OF SINDH
CIRCUIT COURT AT HYDERABAD**

Cr. Appeal No. S-167 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of Main Case

Appellants	:	Through Mr. Muhammad Waris
The State	:	Through Ms. Safa Hisbani A.P.G
Date of hearing	:	21 July 2023
Date of Decision	:	20 October 2023

**THE HIGH COURT OF SINDH
CIRCUIT COURT AT HYDERABAD**

Cr. Appeal No. S-179 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of Main Case

Appellants	:	Through Mr. Muhammad Waris
The State	:	Through Ms. Safa Hisbani A.P.G
Date of hearing	:	21 July 2023
Date of Decision	:	20 October 2023

JUDGEMENT

MOHAMMAD ABDUR RAHMAN J. The Appellant has maintained these two Appeals each under Section 410 of the Code of Criminal Procedure, 1898 as against:

- (i) the Judgment dated 10 July 2019 passed by the 1st Additional Sessions Judge Model Criminal Trial Court, Mirpurkhas in Session Case No. 150 of 2014 in respect of Crime No. 7 of 2014 that was registered with PS Mehmoodabad under Sections 302, 337-H (ii) and Section 34 of the Pakistan Penal Code, 1860; and

- (ii) the Judgment dated 22 February 2019 passed by the 1st Additional Sessions Judge in Session Case No. 151 of 2014 in respect of Crime No. 11 of 2014 that was registered with PS Mehmoodabad under Section 23(1) A of the Sindh Arms Control Act, 2013.

The Appellant was convicted:

- (i) in Session Case No. 150 of 2014 in respect of Crime No. 7 of 2014 under Section 265-H (2) of the Code of Criminal Procedure, 1898 for the offence under Section 302 (b) of the Pakistan Penal Code, 1860 and sentenced to Life Imprisonment as Tazir and to pay a sum of Rs. 100,000 (Rupees One Hundred Thousand) as compensation to the legal heirs of the deceased under Section 544 (a) of the Code of Criminal Procedure, 1898 and in case of default to suffer a further term of Simple Imprisonment for a period of six months; and
- (ii) under Section 265-H (2) of the Code of Criminal Procedure, 1898 in Session Case No. 151 of 2014 in respect of Crime No. 11 of 2014 for the offence under Section 23(i) (a) of the Sindh Arms Control Act, 2013 and sentenced to Rigorous Imprisonment for a period of four years and to pay a sum of Rs. 50,000 (Rupees Fifty Thousand) and in case of default to suffer a further term of Simple Imprisonment for a further period of Four months;

2. The Incident in question occurred on 23 March 2014. The Complainant one Muhammad Naeem and his brother Muhammad Nadeem were working in their Tyre Puncture Repair Shop which was located on the

FFC Godown Ring Road in Mirpurkhas. It is contended that the day before, on 22 March 2014, Muhammad Nadeem attended to two individuals by the name of Rahat Makrani and Naveed Makrani when they brought their 125 c.c. Motorcycle for having its tyre puncture repaired. There was a demand for payment made by Muhammad Nadeem and which led to a severe disagreement as between Muhammad Nadeem and Rahat Hussain aka Makrani and Naveed Makrani where purportedly they abused him and threatened him. It is averred that they the same Rahat Hussain aka Makrani armed with a repeater and Naveed Makrani armed with a pistol returned on 23 March 2014 at 9:45 am to the same Tyre Puncture Repair Shop along with an unknown person and whereafter Naveed Makrani unloaded his pistol three or four times on Muhammad Nadeem and each of which shots missed. Thereafter it is contended that the Appellant unloaded his weapon on Muhammad Nadeem which hit him on his left rib. At this time, on account of the incident, two individuals who were present at an Oil Agency within which premises the Tyre Repair Shop was located namely Naeem Ahmed and Javed Raza along with others persons ran towards the place of the incident and who allege that they personally saw the Appellant unload his repeater at the Deceased. Thereafter the three individuals made good their escape. Muhammad Nadeem was taken to Civil Hospital Mirpurkhas where he succumbed to his injuries.

3. The Police arrived at Civil Hospital Mirpurkhas and after carrying out the requisite procedures handed over the custody of the body of Muhammad Nadeem to his relatives at 1:45 pm and who thereafter attended the police station for registration of the FIR. The Appellant along with Naveed Makrani and Sher Khan were charged with offences. The Appellant was arrested but Naveed Makrani and Sher Khan absconded and were declared as "Proclaimed Offenders." The Appellant was remanded into Police Custody and on 2 April 2014 directed the police in the presence

of Mashirs at 8:10 am recovered the 12 Bore Repeater and thereafter the second FIR was lodged as against the Appellant.

4. As the offence was triable in the Court of Sessions, the Record and Proceedings were transferred to that Court and whereafter compliance of Section 265 (d) of the Code of Criminal Procedure, 1898 was made and the Appellant was formally charged on 26 July 2014. The Appellant pleaded not guilty.

5. The prosecution adduced evidence through no less than 9 witnesses in Crime No. 7 of 2014 and three Witnesses in Crime No. 11 of 2014 and who were produced by the Prosecution to adduce the following evidence:

- (i) In Crime No 7 of 2014, the following witnesses were produced:
 - (a) Muhammad Naveed the Complainant who produced the FIR and the receipt;
 - (b) Naeem Ahmed who was an eye witness and who produced his statement under Section 164 of the Code of Criminal Procedure, 1898;
 - (c) Javed Raza who was an eye witness and who produced his statement under Section 164 of the Code of Criminal Procedure, 1898;
 - (d) Mashir Mohammad Arshad who produced the Mashirnama of inspection of the body of the Deceased, the Danistnama, Lash Chakas Form, the Mashirnama of having secured the clothes of the Deceased and the Mashirnama of the arrest of the Appellant;

- (e) Mashir Mohammad Rashed who produced the Mashirnam of the place of the incident and the recover and case property
 - (f) Investigation Officer namely Aijaz Ahmed who produced two reports of Ballistic Expert and a Report of the Chemical Examiner;
 - (g) the Tapedar Niaz Hussain Shah who procedure a letter and four copies of a sketch/map;
 - (h) Retired ASI Sadaqat Ali who was a witness and produced the letter for the post mortem to be conducted; and
 - (i) Medical Officer Dr. Kashif Ali Khan who produced the police letter to conduct a post mortem and the post mortem report.
- (ii) In Crime No 11 of 2014, the following witnesses were produced:
- (a) Mashir Muhammad Rasheed who produced the copy of the Mashirnama of recovery and who produced the Case Property;
 - (b) the Investigation Officer Kamal Din who aside from giving his deposition, produced the FIR, the copies of the entries of the Roznamcha and the report of the Ballistics Expert;
 - (c) Complainant Inspector Aijaz Ahmed

6. The Appellant in his independent statement recorded under Section 342 of the Code of Criminal Procedure, 1898 in both Crime No. 7 of 2014 and Crime No. 11 of 2014 denied his involvement in both of the crimes. In his statement in Crime No. 7 of 2014 he contended that he had been

implicated in this crime on account of his involvement in politics and this FIR was in fact an act of retribution as against him for a decision that he had made to stand down as a candidate in an election in favour of the candidate of the Pakistan Peoples Party. Contrastingly, in Crime No. 11 of 2014 he stated that he had been falsely implicated at the behest of the Complainant.

7. The Counsel for the Appellant has contented that:

(i) there were material contradictions in the depositions of the witnesses to the incident, in as much as:

(a) that despite there having been an allegation of more than one shot having been fired, recoveries of the empty shells by the Police at the time of their investigation did not show the recovery of any empty shells;

(b) the testimony of the various witnesses to the incident was contradictory

In this regards he relied on the decision reported as **Amjad Ali vs. The State**¹ which holds that where there are material contradictions in the statements of the witnesses a conviction cannot be sustained as a reasonable doubt would exist in the case of the Prosecution.

(ii) Keeping in mind that the only Witness to the incident was the Complainant Muhammad Naveed and the relationship as between Muhammad Naveed and the Deceased being that of brothers, there being no corroborating Witness to the incident must lead to the exoneration of the Appellant. Reliance in this regard was placed on the decision reported as **Nadeem**

¹ 2022 P.Cr. L J Note 17

Bhattir alia Sanni vs. The State² which had stated that for a conviction to be sustained without corroborating witnesses their deposition of the Witness had to be consistent.

- (iii) That there was a delay of five hours between the time of the incident and the registration of the FIR and hence there was doubt on the veracity of the FIR. In this regard he relied on the decision reported as **Karamat Ali vs. The State**³ where there was a delay of twenty-one days between the time of the incident and the registration of the FIR and the decision reported as **Tanveer Ahmad vs. The State**⁴ where there was a delay of four days in the registration of the FIR.

8. Ms. Safa Hisbani, the A.P.G, who appeared on behalf of the State has contended that there is no illegality or infirmity in either of the Judgements and which must be sustained. She has contended that evidence, has come from the Complainant and two independent witnesses as to the incident in question each of whom has deposed as to the facts consistently. She further contended that the evidence of those Witnesses parallels with the testimony of the Medical Legal Officers, the Ballistics Experts and the Police and on the basis of which the Judgement in Crime No. 7 of 2014 has to be sustained. In respect of Crime No. 11 of 2014 she has contended that the recovery of the repeater was made in accordance with procedure and to which no exception can be taken and again on the basis of which the Judgement in Crime No. 11 of 2014 has also to be sustained.

9. I have heard Mr. Muhammad Waris and Ms. Safa Hisbani, the Learned A.P.G. and have perused the record.

² 2016 P. Cr. L J 558

³ 2016 P. Cr. L J Note 16

⁴ 2016 MLD 1219

10. In Crime No. 7 of 2014, on perusal of the evidence:

- (i) of the Medical Officer Dr. Kashif Ali, there is no doubt whatsoever that the Deceased succumbed to wounds caused by a fire arm caused to the 'left lateral chest wall" and which had as per the post mortem led to "left side of the heart" being "ruptured with empty chambers due to fire arm injuries."

There can therefore be no exception to the fact that the deceased died on account of unnatural circumstances caused by a fire arm to the left side of the deceased chest and which ruptured his heart causing his demise;

- (ii) of the officers of the police namely Mashir Mohammad Arshad, Mashir Mohammad Rashed, Tapedar Niaz Hussain Shah, Retired ASI Sadaqat Ali and Investigation Officer Aijaz Ahmed there has been a recovery of all the evidence that would be required to corroborate that the deceased was in fact killed at the site in question and that his death was caused by an injury to the left side of his chest by a fire arm. The deposition of each of the witnesses in this regard remained consistent and there is no cause for any doubt in this regard to be attributed to such depositions;

- (iii) of the witnesses to the incident itself namely Muhammad Naveed, Naeem Ahmed and Javed Raza each of them have consistently stated that:

- (i) the initial shots were fired by the absconders Naveed and Sher Khan and each of which missed;

- (ii) each of them personally saw the subsequent shots that were fired by the Appellant using a repeater and which bullets hit the deceased on his left chest;

It is noted that the incident took place in the early part of the morning, at a public place and where not only the two eye witnesses but other persons were also present and not at a clandestine location. The incident also took place on a public holiday and which would explain why such persons were not at their place of work on that date. The evidence to my mind reads consistently with the incident and the facts as narrated in the FIR and which read with the testimony of the Medical Officer would beyond any reasonable doubt lead to the conclusion that the Appellant had caused the demise of the Deceased.

11. In Crime No. 11 of 2014, on perusal of the evidence:

- (i) of the Mashir Muhamma Rasheed, the Investigation Officer Kamal Din, the Inspector Aijaz Ahmed have faithfully deposed to the fact that the Appellant himself had volunteered to recover the repeater and that in fact the fire arm was found at the exact location that had been identified by the Appellant and which he himself recovered. The deposition of each of the witnesses remained consistent in the cross examination of them and no exception to my mind can be taken thereon.

12. I have considered the Arguments of Mr. Muhammad Waris regarding the delay in registration of the FIR and must admit I am not convinced. The delay in the FIR was clearly attributed to an attempt to take the deceased to the hospital and was registered within 45 minutes of the release of his

body into the custody of the Complainant and which therefore cannot be considered to be inordinate delay. Regarding Mr. Muhammad Waris contentions that the depositions of the witnesses were inconsistent, I find after going over the evidence that there was in fact no inconsistency and **each of the Witnesses clearly depose that the Appellant fired a repeater to the left side of the chest of the Deceased** and which evidence has not been undermined in the cross examination. Both the Appeals must therefore fail.

13. For the foregoing reasons I am of the opinion that there is no illegality in either the Judgment dated 10 July 2019 passed by the 1st Additional Sessions Judge Model Criminal Trial Court, Mirpurkhas in Session Case No. 150 of 2014 in respect of Crime No. 7 of 2014 that was registered with PS Mehmoodabad under Sections 302, 337-H (ii) and Section 34 of the Pakistan Penal Code, 1860 or the Judgment dated 22 February 2019 passed by the 1st Additional Sessions Judge in Session Case No. 151 of 2014 in respect of Crime No. 11 of 2014 that was registered with PS Mehmoodabad under Section 23(1) A of the Sindh Arms Control Act, 2013 or as to the sentences awarded. Both the Appeals are therefore dismissed.

JUDGE

Hyderabad Dated 20 October 2023

JUDGE

Hyderabad dated 20 July 2023.