IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No. D-64 of 2022
(Pervaiz Ahmed @ Paroo Rajper versus The State)

Conf. Case No. D- 04 of 2022
(The State versus Pervaiz Ahmed @ Paroo Rajper)

Present:
Mr. Muhammad Iqbal Kalhoro, J.
Mr. Arbab Ali Hakro, J.

Date of hearing: 05.12.2023

Date of decision: 13.02.2024

Mr. Ghulam Shabbeer Shar, Advocate for Appellant.
Mr. Habib-ur-Rahman Shaikh, Advocate for Complainant.
Syed Sardar Ali Shah Rizvi, Additional Prosecutor General.

J U D G M E N T

Arbab Ali Hakro, J: Appellant Pervaiz Ahmed @ Paro, son of Allah Warayo Rajpar, has preferred the instant criminal jail appeal against the judgment dated 26.04.2022 passed by Additional Sessions Judge-1 /MCTC-I, Sukkur in Sessions Case No.390 of 2021, arising out of Crime No.22 of 2012 under Sections 302, 337-H(2), 34 P.P.C. registered at Police Station Setharja, whereby he was convicted for offence punishable under section 302(b) P.P.C. and sentenced to death and also to pay Rs.100,000/- to the legal heirs of deceased as compensation under section 544-A Cr. P.C., in case of non-payment thereof, to undergo six months simple imprisonment, whereas Confirmation Case No.04/2022 has been sent by the trial court as required by section 374 Cr.P.C. Both the matters are being decided through this single judgment.

2 The unfortunate background to the present appeal is the brutal murder of a young girl, 21 years of age, over her refusal to marry the appellant, which was reported as F.I.R. No.22/2012, lodged by her mother, Mst. Allah Wassai at Police Station Setharja on

27.02.2012 at 08:00 p.m. The narration of the facts by her reveals that her daughter, Mst.Zareena was studying at Sachal College Ranipur and her B.Sc exams were going on. Some time back, appellant Pervaiz Ahmed s/o Allah Warayo Rajper had demanded a hand of Mst. Zareena but the complainant refused after consulting with her daughter, which riled him up. On 26.02.2012 at 08:30 p.m., the complainant, her daughter Zareena, Cousin Gada Hussain and maternal cousin Atta Hussain were present at home. Mst. Zareena went to take water from the hand pump available in the courtyard and as she was coming back after getting water, all of a, sudden, three persons emerged from the outdoor. In the light of bulb; one out of whom was identified as Pervaiz Ahmed (the appellant). All were armed with Kalashnikovs. Initially, they overpowered them and then appellant Pervaiz Ahmed opened fire upon Mst. Zareena, who fell down. The complainant raised cries, which attracted neighbours; hence, the culprits fled away but after making aerial firing. The injured was shifted to the Hospital at Thari Mirwah and then to Civil Hospital Khairpur, where she succumbed to her injuries and passed away. After post-mortem examination, the dead body of Mst. Zareena was handed over to the complainant party. After getting free from her burial, the complainant lodged report at Police Station Setharja against appellant Parvaiz Ahmed and his two unnamed companions.

3. The record shows that after registration of F.I.R., A.S.I. Muhammad Khan took up investigation during which he visited place of the incident, secured blood-stained earth and empties from there and prepared such mashirnama. He also recorded statements of P.Ws under Section 161 Cr. P.C. and dispatched the case property to the laboratory for analysis. Thereafter, further investigation of the case was transferred to S.I.P Fida Hussain, who recorded statements of eye-witnesses Gada Hussain and Atta Hussain under Section 164 Cr.P.C. wherein they disclosed names of unidentified culprits as Asad Ali and Altaf Hussain. On 15.03.2012 Asad Ali and Altaf Hussain were

arrested and Kalashnikovs were recovered from their possession. On completion of the usual investigation, a final report under section 173 Cr. P.C was filed before the court of law where co-accused Asad Ali and Altaf Hussain were formally charge sheeted, and they pleaded not guilty and claimed trial.

4. The prosecution then led its evidence and examined three witnesses, i.e. PW-1 complainant Mst. Allah Wassai, PW-2 Gada Hussain and PW-3 Atta Hussain. In the meantime, appellant Pervaiz Ahmed was also arrested on 10.01.2015 and thus, an amended charge was framed against him and co-accused Asad Ali and Altaf Hussain, to which they pleaded 'Not Guilty'.

5. The prosecution then examined the remaining witnesses, and after the closure of the prosecution evidence, statements of the accused were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations and professed their innocence.

6. At the Conclusion of the trial, the trial Court convicted the appellant Pervaiz Ahmed under Section 302(b) P.P.C. and sentenced him to death while co-accused Asad Ali and Altaf Hussain were sentenced to life imprisonment and to pay compensation under section 544-A, Cr. P.C. vide judgment dated 25.10.2019. The convicts challenged the said judgment before this court in an appeal, and vide order dated 11.11.2020; the judgment of the trial Court was set aside, and the case was remanded to the trial Court to recall and re-examine three P.W.s Mst. Allah Wassai, Gada Hussain and Atta Hussain who were examined in absence of appellant, Pervaiz Ahmed.

7. The trial Court examined the witnesses; however, P.W. Gada Hussain did not appear for cross-examination, and the complainant submitted an application for giving up him on the ground that he had mixed up with the other party. Thereafter, statements of the accused were recorded under section 342 Cr. P.C. afresh, wherein they denied the prosecution allegations and professed their

innocence. They, however, declined to be examined on oath under section 340 (2) Cr. P.C. or to produce evidence in defence. At the conclusion of the trial, the trial Court, on evaluation of the material and hearing counsel for the parties, convicted and sentenced the appellant vide impugned judgment, as discussed above, while acquitted co-accused Asad Ali and Altaf Hussain giving them a benefit of doubt, hence, the present appeal by the appellant.

8. At the very outset, learned counsel for the appellant contended that there was delay of one day in lodging of F.I.R. the incident took place on 26.02.2012 at 08:30 p.m. whereas F.I.R. was lodged on 27.02.2012 at 08:00 p.m; that as per contents of F.I,R., the culprits were identified on bulb light, but no such bulb was produced as case property during the trial; that one of the eyewitnesşes namely Gada Hussain was not produced before the court for cross-examination, thus, inference can be drawn that had he appeared, he would not have supported the prosecution case; the prosecution witnesses are closely related inter-se, and no independent witness has been examined by the prosecution at trial; they have made contradictions, improvements and omissions in their evidence on every material point, as such their presence at the spot is doubtful, therefore, their evidence is un-reliable and un-trustworthy. Lastly, he contended that the case of the prosecution is full of doubts, and it is a well-settled principle of law that the benefit of even the slightest doubt must go in favour of the accused. To support his arguments, learned counsel relied upon cases reported as 2023 SCMR 670, 2023 SCMR 566, 2019 PLD(SC) 64, 2019 SCMR 129, 2018 SCMR 787, 2017 SCMR 1710 and 2023 YLR 1625.

9. Learned Additional Prosecutor General controverted the arguments of learned appellant's counsel and submitted that the prosecution case has rightly been believed by the learned trial Court and the appellant has rightly been convicted. He next contended that the complainant or police had no enmity to falsely implicate the

accused in this case. Per learned counsel, the relationship of witnesses with the complainant or deceased cannot render their evidence unreliable unless it is established that they have any motive to implicate the accused falsely in the case.

10. We have heard the learned counsel for the parties and have perused the material on record and taken guidance from the case law cited at bar. Before proceeding ahead, it would be relevant to mention here that the offence from the very face of it seems to be very serious in which, on account of refusal of a girl to marry with the appellant, she was done to death in gruesome manner by him. There are two eyewitnesses of the prosecution who saw the appellant committing murder of deceased; their evidence is supported by medical evidence and the recovery of crime weapon from the appellant and empties from the crime scene, the recovery of blood-stained earth from the place of incident and the post-mortem port.

11. PW-1/complainant Mst.Allah Wassai has deposed that about six months back, accused Pervaiz had demanded the hand of her daughter Mst.Zareena(the deceased) who was student of B.Sc at Sachal College Ranipur. She replied to him that she would first get the consent of the girl, and if she agreed, they would be allowed to marry; otherwise, not. She has further deposed that on her asking, Mst.Zareena refused to marry and requested to rather continue her education, whereupon the accused became annoyed and issued threats. She has further deposed that on 26.02.2012, it was 08:30 p.m., she, along with her nephews Atta Hussain and Gada Hussain and the son of her brother-in-law namely Anwar, were sitting under the tree of "tali" and getting warm by the fire, while Mst. Zareena was moving to the hand pump in the courtyard of their home to take water. Meanwhile, accused Pervaiz (the appellant herein), Asad Ali and Altaf (since acquitted) entered the house and accused Pervaiz opened straight fire of Kalashnikov upon Mst. Zareena who received three fires on her waist, one on her left thigh and one on her right

knee. Thereafter, the appellant and others ran away from the place of occurrence. She has further deposed that her daughter was shifted to Taluka Hospital Thari Mirwah, from where she was referred to Civil Hospital Khairpur, but she succumbed to her injuries. They informed the Police of P.S Setharja, who then came to the hospital and completed legal formalities. The doctor conducted post-mortem of the deceased. Thereafter, they received the dead body and brought the same to their village and buried it.

12. To support version of the complainant, the prosecution has examined PW-3 eyewitness Atta Hussain. This individual has also given à similar narration of the occurrence in his examination-in-chief and has corroborated the complainant's account of the incident in question. His testimony is pivotal to the case in that it has echoed complainant's version, thereby strengthening the story. Both of them were subjected to a thorough and intense cross-examination, but no material contradiction has come to the surface to cast a doubt on the prosecution's version. The appellant is nominated in the F.l.R and is attributed active and specific role of firing at the deceased after due preparation and premeditation as is apparent from his trespassing on the house of deceased duly armed with a K.K with his accomplices. This unnatural death of deceased has been substantiated by the medical evidence given by Dr. Badar-un-Nisa, who had performed the post- mortem of deceased. She has deposed that on 26.02.2012, she was posted as a Senior Medical Officer in Civil Hospital Khairpur. On the same date, she received the dead body of deceased Mst. Zareena d/o Allah Wadhayo Rajper through a police letter. She started the post-mortem of the dead body at 11:55 p.m. and finished at 1:00 a.m. (27.02.2012). The doctor further deposed that during the external post-mortem of the deceased, the following injuries;

Injury No.1 Lacerated type punctured wound three in numbers each size 0.5 cm in diameter present over back lumber region of abdomen (wound of entry).

Injury No.2 Lacerated type punctured wound size 0.7 cm by diameter

present over oriental organ (wound of exit).

Injury No.3 Lacerated type punctured wound size 1.5 CMX1CM present over posterior aspect of right thigh(exit wound).

Injury No.4 Lacerated type punctured wound size 2.0 CMXI.5CM present over medial aspect of right knee joint area (wound of entry).

13. The doctor further deposed that from external as well as internal examination of deceased, she came to know that death had occurred due to shock and haemorrhage caused by discharge from firearm injuries to the abdomen and organs and viscera, i.e. right kidney, uterus, and intestine, leading to cardio-respiratory failure. The injuries are lethal to life and were antemortem in nature.

14. The appellant is closely related to witnesses who saw him committing murder of the deceased in her house. Therefore, there is no question of any mistaken identity, especially when the incident happened inside the house, where availability of light through bulbs etc. is a foregone conclusion, and to identify a relative in there in early hours of night i.e. 8.00 p.m is not an impossibility. Non-recovery of any bulb from the house essentially, a dereliction of I.O. is neither of any consequence to prosecution's version of events nor it would imply non-availability of the bulb(s) in the house at all, or that there was no source of light therein. Thus, based on the above reasons, the oral/direct evidence, available against the appellant is found reliable, trustworthy and confidence-inspiring.

15. Learned counsel for the appellant has taken a stance that since one of the eyewitnesses, namely Gada Hussain, was not produced before the court for cross-examination after the case was remanded for his re-examination, an inference could be drawn that had he appeared, he would not have supported the prosecution case. The said contention has no force as the complainant through an application had reported that P.W. Gada Hussain had been meanwhile won over by the appellant. In his evidence, earlier recorded, he had taken name of the appellant as the main culprit but after his arrest

the circumstances had changed and he got influenced by the appellant party to side with them which is not unusual in the local culture, given the fact, this witness was equally related to the appellant, as he was to the complainant. Complainant, acting wisely and judiciously had come forward, and revealed such facts before the court in black and white. Non-examination of this witness therefore will not impair authenticity of the prosecution case which otherwise is built on reliable evidence as noted above.

16. Further, the Supreme Court has time and again emphasized that the quantity of prosecution witnesses is not a determining factor in the case. Instead, the quality of evidence presented holds paramount importance. This principle underscores the essence of justice, where the truth is sought through the strength of evidence rather than the number of witnesses. Furthermore, the court recognizes the prosecution's prerogative to select and present witnesses of its choice. This discretion allows the prosecution to build a robust case based on the most compelling and reliable testimony. In the instant case, all the eyewitnesses have fully established the occurrence and indictment; as such, in the peculiar circumstances of the instant case, contention of non-production of the said witness being immaterial is discarded. Reliance in this regard is placed on the case of Qasim Shahzad v. The State (2023 SCMR 117), wherein it was observed that;

> *"As a rule of criminal jurisprudence, prosecution evidence is not tested on the basis of quantity but quality of evidence. It is not that who is giving evidence and making a statement. What is relevant is what statement has been given and it is not the person but the statement of that person which is to be seen and adjudged. In Niaz-ud-Din v. The State (2011 SCMR 725), it was held that conviction in a murder case can be based on the testimony of a single witness if the court is satisfied that he is reliable. It is the quality of evidence and not the quantity which matters. The same was the view of this Court in Asim v. The State (2005 CMR 417), Lal Khan v. The State (2006 SCMR 1846) and Muhammad Sadig v. The State (2022 SCMR 690)."*

17. Moving on to motive part of the story inducing appellant to commit the offence. According to record, complainant, Mst. Allah Wassai (PW-1), in her F.I.R., as well as in evidence before the trial Court, has stated that six months prior to the occurrence, appellant Pervaiz had proposed marriage to deceased, which she had declined as she wished to continue her studies. Whereupon, the appellant had threatened them with dire consequences and ultimately, true to his word, he committed the offence. The record further shows that on the day of incident, deceased was taking water from a hand pump in the house when the appellant, with a plan, trespassed on her house and opened fire with a Kalashnikov on her. The facts and circumstances of the case manifestly show that it was a deliberate, intentional and pre-concerted move on the part of the appellant to take revenge from deceased for refusing to marry him. Consequently, the prosecution's stance regarding the motive has been fully proved. Further, the act of appellant i.e causing firearm injuries on refusal of the victim to marry him, by all means, labels him a desperate, hardened and dangerous criminal.

18. As regards the contention of learned counsel for the appellant that the witnesses are close relatives of the deceased and are interested; therefore, their evidence cannot be relied upon. It has no force in law. Mere closeness of a witness with complainant or victim does not make him interested witness. The interested witness is the one who has a motive to falsely implicate the accused. No material is available to show that either complainant or her witness had any animosity to settle with the appellant to falsely implicate him therefore. Further, the eyewitnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear-cut manner. We would not hesitate to say that where the witnesses fall within the category of natural witnesses and detail the manner of the incident in confidence-inspiring manner, then the only escape available to the accused/appellant is to

satisfactorily establish that witnesses are not the witnesses of truth, but "interested" one. No substance has been brought on record by the appellant to establish his false implication at the hands of the complainant party on account of any previous enmity etc. In this context, the reliance can safely be placed on the case of Lal Khan v. State (2006 SCMR 1846), wherein the Supreme Court has held as under:-

> *"…. The mere fact that a witness is closely related to the accused or deceased or he is not related to either party, is not a sole criteria to judge his independence or to accept or reject his testimony rather the true test is whether the evidence of a witness is probable and consistent with the circumstances of the case or not."*

19. In another case of Farooq Khan v. The State(2008 SCMR 917), the Supreme Court has held as under:-

> *"11. PW.8 complainant is real brother of the deceased who is a natural witness but not an interested witness. An interested witness is one, who has motive, falsely implicates an accused or has previous enmity with the person involved. There is a rule that the statement of an interested witness can be taken into consideration for corroboration and mere relationship with the deceased is not "sufficient" to discredit the witness particularly when there is no motive to falsely involve the accused. The principles for accepting the testimony of interested witness are set out in Nazir v. The State PLD 1962 SC 269 and Sheruddin v. Allhaj Rakhio 1989 SCMR 1461.",*

20. Thus, the mere relationship of these eyewitnesses with the deceased alone is not enough to discard testimony of the complainant and her witnesses.

21. Learned counsel for the appellant also pointed out to some minor contradictions in the evidence of witnesses, which, in our view, are not sufficient to hold the entire case of the prosecution as doubtful. It is now an established principle of law that when the prosecution has established its case beyond a reasonable doubt, then if there are some minor contradictions in the evidence which are always available in every case as no one can give photoshot version of the events, such may be ignored. Reliance is placed on the case of

Zakir Khan v. The State (1995 SCMR 1793).

22. So far as awarding of capital punishment is concerned, in the event of proof of charge of "Qatl-e-Amd" normal penalty under the law is death and exceptional circumstances must be shown for taking a lenient view for award of lesser penalty. The appellant, duly armed with a Kalashnikov, fired off a volley of shots into the body of deceased girl, just for refusing to marry him. This charge has been established by the prosecution beyond a reasonable doubt through reliable evidence. Motive, as discussed above, has also been proved. Nothing conducive to the desperate action of appellant is available on the record to mitigate his action. The F.I.R. contains a recital of action of the appellant, names of the eye-witnesses and the motive part. The venue of the occurrence is neither disputed in statement under section 342, Cr.P.C, nor the statements of eye-witnesses, in this regard, were challenged. The motive part of the prosecution story describing displeasure of the appellant to the refusal of the marriage by deceased girl is also proved on record. The appellant is guilty of premeditated and unjustified murder. Inflicting of lesser punishment, purely as a grace, is not justifiable in the absence of any extenuating circumstances. The appellant, thus, under the circumstances of the case whereby he committed gruesome and brutal murder cannot escape the capital punishment. In the Case of Imran Mehmood v. The State and another (2023 SCMR 795), it was held by the Apex Court that:

> *"However, it is by now a well-established principle of law that mere relationship of thę prosecution witnesses with the deceased cannot be d ground tó discard the testimony of such witnesses out-rightly. If the presence of the related witnesses at the time of occurrence is natural and their evidence İs straight forward and confidence inspiring then the same can be safely relied upon to award capital punishment".*

23. The upshot of the above discussion is that the prosecution has successfully established its case against appellant

Pervaiz Ahmed through an ocular account furnished by the eyewitnesses, which is corroborated by the medical evidence coupled with circumstantial evidence. Learned counsel for the appellant has failed to point out to any material illegality or serious infirmity committed by the trial Court while passing the impugned judgment, which in our humble view, is based on a correct appreciation of the evidence and the same does not call for any interference by this court. Thus, the conviction awarded to the appellant by the trial Court is hereby maintained, and the instant appeal meriting no consideration, is hereby dismissed. The death penalty handed down to the appellant, Pervaiz Ahmed, is confirmed. Confirmation Reference sent by the trial court is, therefore, answered in the "Affirmative".

The appeal and confirmation reference both are accordingly disposed of.

JUDGE

JUDGE

Sulemen Khan/PA