

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Appeal No.S-26 of 2021
(Ameer Ali @ Khan Chacha & 02 others)

Date of hearing(s): **12.02.2024, 19.02.2024 & 04.03.2024.**

Date of decision: **29.03.2024**

Mr. Ghulam Shabeer Shar, Advocate for the Appellants.
Mr. Muhammad Ali Dayo, Advocate for Complainant.
Mr. Shafi Muhammad Mahar, Deputy P.G for the State.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Appellants Ameer Ali alias Khan Chacha, Gamtal and Manzar alias Sooraj were tried in Sessions Case No.357 of 2018 (re-State-Versus Ameer Ali alias Khan Chacha and others), arising out of Crime No.10 of 2018, registered at P.S, C-section, Sukkur and vide judgment dated 30.04.2019, passed by learned Additional Sessions Judge-III/MCTC-II, Sukkur and have been convicted and sentenced as under:

- i. For committing murder of deceased Sadiq Ali u/s 302(b) r/w section 149 PPC, appellants have been sentenced to imprisonment for life and to pay compensation of Rs.500,000/- each to be paid to legal heirs of deceased Sadiq Ali, as provided in terms of section 544-A CrPC and if not paid, to suffer S.I for six months more.
- ii. For committing murder of deceased Mst. Khatoon u/s 302(b) r/w section 149 PPC, appellants have been sentenced to imprisonment for life and to pay compensation of Rs.500,000/- each to be paid to legal heirs of deceased Sadiq Ali, as provided in terms of section 544-A CrPC and if not paid, to suffer S.I for six months more.
- iii. For committing murder of deceased Mst. Sami u/s 302(b) r/w section 149 PPC, appellants have been sentenced to imprisonment for life and to pay compensation of Rs.500,000/- each to be paid to legal heirs of deceased Sadiq Ali, as provided in terms of section 544-A CrPC and if not paid, to suffer S.I for six months more.
- iv. For offence u/s 452 PPC, appellants have been sentenced to imprisonment for five years and fine of

Rs. 50,000/- each. In case of default, to suffer S.I for 15 days more.

- v. For offence u/s 337H(2) PPC, appellants have been sentenced to S.I for two months and fine of Rs. 10,000/-each. In case of default, to suffer S.I for 15 days more.
- vi. All the sentences are directed to run concurrently with benefit of section 382-B CrPC, extended to appellants.

2. Facts in brief are that on 26.02.2018 at 1600 hours, complainant Khalid Ali Gadani lodged an FIR alleging that they had an old dispute with Yousif Gadani on 'Karap'. On 24.02.2018, he, his cousin Mst. Noureen, sister-in-law Mst. Aroosa and maternal aunty Mst. Sami Khatoon wife of Asad Ali aged about 45/50 years were sleeping in a room on separate cots. While his father, namely Sadiq Ali and mother Mst. Khatoon were sleeping in adjoining room. Doors of the room were open and electric bulbs were on. At 5:00 a.m on 25.02.2018, complainant woke-up on some noise and saw his cousin Mst. Noureen and sister-in-law Mst. Aroosa coming out of their room. They then saw on the light of bulbs that accused Yousif S/o Athar, Javed S/o Yousif, Ameer Ali alias Khan Chacha S/o Gamtal, Gamtal, Sikandar, Zaheer, Mukhtiar, Manzar alias Sooraj all five sons of Ameer Ali alias Khan Chacha, Shoukat S/o Mairaj, Asghar S/o Nawab Ali, all by caste Gadani, all resident of Shandar Chowk near Gadani Phatak Sukkur, were present inside their home. All the accused were armed with Repeaters. They directed complainant party to remain silent. Then accused Manzar alias Sooraj instigated other accused to commit murder of complainant party. On his instigation, accused Yousif, Javed, Ameer Ali and Sikandar made straight fires on father of complainant hitting different parts of his body, hence he fell down. Accused Mukhtiar and Zaheer made straight repeater fires to mother of complainant Mst. Khatoon which hit her on different parts and she fell down. Accused Asghar Ali made a fire from window of room while accused Gamtal and Shoukat made fire shots from their repeaters on maternal aunty of complainant namely Mst. Sami Khatoon, which hit her on right arm and the area under arm of right side. She also fell down after raising cries. After that accused persons issued threats and made aerial firing before leaving the scene. Complainant then informed 15 Madadgar Centre. Police of P.S C-

section, Sukkur as a result arrived at place of vardat. Dead bodies were shifted to Civil Hospital Sukkur for postmortem. After burial, complainant lodged such FIR.

3. In investigation, appellants were arrested and crime weapon i.e. repeater was recovered from one of the appellants, namely, Gamtal. Finally they were referred through the Challan to the Court to stand a trial, whereas, accused Yousif, Javed, Sikandar, Zaheer, Mukhtiar and Shoukat Ali were shown absconders. To a formal charge, appellants pleaded 'not guilty' and claimed trial. Prosecution in order to substantiate its case examined as many as 10 witnesses. They have produced all necessary documents: FIR, sketch, memos of place of place of incident, inspection of dead bodies, collection of blood stained earth, collection of empty shells from the place of vardat, arrest of appellants, inquest reports, postmortem reports, all the relevant memos, chemical report etc.

4. In statements, recorded u/s 342 CrPC, the appellants have denied the allegations and pleaded innocence. However, they did not examine themselves on oath, but led defence evidence by examining DWs Lutuf Ali, Lohar and Syed Muhammad Alam Shah. Then, after hearing the parties, the trial Court vide impugned judgment has convicted and sentenced the appellants in the terms as stated above and kept the case against above named proclaimed offenders/ absconders on dormant file.

5. Learned counsel in defence has argued that appellants are innocent and have been falsely implicated in this case; that the evidence led by the prosecution against the appellants is not confidence inspiring as there are various contradictions and the trial Court while deciding the case has completely ignored them; that the incident occurred in the wee hours of night in the portion of a house where no source of light was available, but the complainant, who was a minor boy of 14-years at that time, was able to identify all the accused and trajectory of fires made by them to each accused, which is entirely unbelievable; that no motive has been put forward by the prosecution for implicating the appellants, one of whom is a real brother of deceased Sadiq Ali and the remaining two are his nephews; that actually motive was against absconding accused Yousif whose brother had been murdered by son of deceased Sadiq Ali; that in the

evidence of witnesses, various material contradictions and discrepancies have come and the appellants are entitled to benefit thereof; that there is no supporting evidence connecting the appellants with the commission of offence; that the charge is defective as there is mention of only two deceased. To support his arguments, learned counsel has relied upon the cases reported as Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Imran v. The State (2020 YLR 1139), and Ijaz v. The State (2020 YLR 1620).

6. On the other hand, learned counsel for complainant and learned Deputy P.G have supported the impugned judgment by stating that appellants are duly named in the FIR; that the incident had happened in a house situated in a thickly populated area of Sukkur, therefore, to think that it was without any source of light is simply absurd and un-believable; that the accused being close relatives of complainant party were well known to them, their identification by them is therefore a foregoing conclusion being only natural. Learned counsel for complainant has relied upon the cases reported as Noor Zaman v. The State (2022 SCMR 1002), Imran Mehmood v. The State (2023 SCMR 795) and Liaquat Ali v. The State (2023 MLD 426) to support his arguments.

7. I have heard the parties, perused material available on record and taken guidance from the case law cited at the bar. Complainant's evidence is available at Exh.10. He has reiterated the incident in the same manner as alleged by him in FIR that on 25.02.2018 at about 05:00 a.m, hearing the noise, he, PWs Noreen and Aroosa woke up and went close to the door (of the room) where they found and identified in the light of a bulb available in the corridor, appellants and absconding accused, total 10 in number, duly armed with fire arms, present. One of the appellants Manzar alias Sooraj instigated others to murder deceased Sadiq Ali. On his instigation, absconding accused Yousif fired upon his father Sadiq Ali, the other accused also fired upon his father. He also states that appellant Ameer Ali alias Khan Chacha, who is his real uncle, also made fires upon his father. Further, from the fires of co-accused, namely, Sikandar, Mukhtiar and Zaheer, his mother Khatoon was badly injured. He next deposes that other accused also tried to hit them with fires, but without any

success. In the final moments when aunty of complainant, namely, Mst. Sami Khatoon came out of the room, appellant Gamtal and absconding accused Shoukat Ali fired on her vital parts killing her at the spot. Thereafter, when the accused left the scene, he intimidated the police on 15 which reached the spot sooner than later and took dead bodies to a hospital for postmortem but only after preparing necessary documents on the spot: collecting blood stained earth, empty shells etc. He, however, after burial appeared at P.S on 26.02.2018 at 04:00 p.m and registered the FIR. He has produced FIR in his deposition.

8. He is supported materially by PW-2 Aroosa, who has repeated the same story giving details of the manner in which the incident had unfolded before her. She is in fact daughter of absconding accused Yousif and wife of Ghulam Abbas, who was in jail for murder of son of accused Yousif. Evidence of PW-3 Tapedar Irfan Ali is in respect of preparation of sketch/site plan on 27.02.2018. PW-4 is the police official, who has confirmed that after receiving information of the incident, he had rushed to the place of incident and completed certain formalities. ASI Agha Abid (PW-5) has been examined at Exh.14. His evidence is to the effect that after receiving information about the incident, he along with team had reached the spot, inspected dead bodies having multiple firearm injuries on different parts of their bodies with blood oozing from them. He had completed all the relevant formalities including inspection of place of incident, collecting blood stained earth, collecting 20 pellets from there and preparing such documents, then taking the dead bodies to hospital for postmortem and keeping such entries in the police diary. He has also verified that on 26.02.2018 when he was present at P.S he had lodged the FIR as per verbatim of complainant. He has produced all relevant documents in his evidence.

9. Inspector Naseem Ahmed (PW-6) examined at Exh.15, is the first Investigating Officer, who had completed preliminary investigation in the case and had arrested appellant Ameer Ali alias Khan Chacha and Manzar alias Sooraj on 01.03.2018 and then on 05.03.2018, arrested appellant Gamtal and recovered an unlicensed repeater from him during investigation. Inspector Zafarullah (PW-7) is the second I.O of the case, who had visited the place of incident after

being designated as I.O and prepared such documents. He had also recorded statements of witnesses under section 161 CrPC and made a communication with the Mukhtiarkar concerned for preparation of site plan of the incident. He has produced memo of place of incident, chemical lab report about blood stained earth, blood stained clothes of deceased etc. Evidence of Medico-legal Officers (PWs 8 & 9) Dr. Farzana and Dr. Ishaque Ahmed, who had conducted postmortem of deceased, is available at Exh.17 & 18. They while conducting postmortem of deceased had spotted multiple injuries on their person which they have mentioned in detail in their evidence. Last witness examined by prosecution is PW-10, Mashir Sher Ali. He has confirmed that in his presence, dead bodies were inspected by the police and necessary evidence was collected including blood stained earth and 20 empty shells from the place of incident. The dead bodies were shifted to hospital and finally accused were arrested.

10. After the evidence of prosecution witnesses, 342 CrPC statements of appellants were recorded. They have denied the prosecution case and have stated that on account of enmity over agricultural land, have been falsely implicated, otherwise as soon as they had come to know of the incident, they rushed to the house: place of incident, being close family members. They had been available all along with dead bodies, taking them to the hospital and taking part in the burial. They have also examined in defence DWs Lutuf Ali, Lohar and Syed Muhammad Alam Shah.

11. From the gist of prosecution case, as reproduced above, it is apparent that the prosecution has examined at least two witnesses who were present at the spot and have given an eye account of the incident. One is complainant, he is a son of deceased Sadiq Ali and Mst. Khatoon and a nephew of deceased Mst. Sami Khatoon. The other is Mst. Aroosa, a family inmate and a wife of Ghulam Abbas, who is a son of Sadiq Ali and Mst. Khatoon. She is also a daughter of absconder Yousif. Their presence inside the house being family members is beyond question and has not been disputed either by the accused. The only dispute raised in defence to cast suspicion over their evidence is that at the time of incident, there was no source of light available in the Verandha/corridor, where allegedly the accused were standing and had made fires upon the deceased who were

available inside the room, therefore, their identification by them is doubtful.

12. It is not disputed that the house is situated in the thick of Sukkur City, which is the 3rd largest city of province of Sindh. Availability of bulbs etc. in the house situated in such area to provide light is a matter of course and contrary atypical. It cannot be visualized that a house in the locality situated in the heart of city would be without a source of any light and would remain draped in pitch-dark in the night, so much so, that none inside the house would be able to move or identify who is coming or going. Both the eyewitnesses, who are inmates of house, have confirmed in their evidence availability of a bulb in the corridor illuminating the spot enough enabling them to identify the accused including appellants, who are otherwise their close relatives. Their assertion in evidence that appellants and co-accused had fired upon the deceased has not been shattered in the cross-examination. What has been questioned in arguments is that it is not humanly possible to follow trajectory of bullets/pellets fired by accused and identify the exact location where it had hit the victims. This appears to be a correct analogy needing a consideration; and would be dilated upon in following discussion.

13. Nevertheless, the fact that all the accused were armed with weapons, were identified in the light of bulb and had fired murdering three victims at the spot, has gone unchallenged. Collection of 20 empties from the spot pointing to the fact that a heavy firing took place there, lends supports to the eye account. Place of incident and collection of blood stained earth and empties from there have not been shattered in the cross-examination of witnesses either. So the points that incident took place inside the house on 25.02.2018 at 5:00 a.m, in the incident many accused took part and killed three persons through firearm injuries are established beyond a reasonable doubt. The unnatural death of the victims by multiple firearm injuries has been corroborated by medical evidence presented by PWs 8&9, who have verified that on the day of incident, dead bodies were brought before them at about 8:00 p.m, and they had conducted their postmortem and observed several firearm injuries which they have described in detail in their evidence. Their evidence is in

complete conformity with the eye account adduced by the witnesses on this point.

14. In the investigation which followed the incident, appellants were arrested and from one of them, namely, Gamtal incriminating weapon viz. repeater was recovered. The incident took place on 25.02.2018, whereas evidence of eyewitnesses was recorded on 12.08.2020 after more than two and half years. Not remembering minor details of the incident by them was natural. Their evidence on account of minor discrepancies cannot be denied due currency and discarded. In their lengthy cross-examination, nothing has been brought on record to suggest as to why they would falsely implicate the appellants, their close relatives, in a heinous offence such as the one in hand. Complainant is a real nephew of appellant Ameer Ali alias Khan Chacha and is a real cousin of appellant Manzar alias Sooraj. The said accused are also close relatives of PW-2 Mst. Aroosa also, who is otherwise a real daughter of absconding accused Yousif. She has deposed in cohesion with the complainant implicating, amongst others, her father and brother in the offence. Nothing has been pointed out in her cross-examination to suggest the reason she would falsely implicate her own father and brother on in the murder of three persons taking place before her eyes.

15. Presence of eyewitnesses at the time of incident inside the house has not been disputed either in defence. They are the family inmates and their presence in the house is therefore natural. Raising doubt that they had not seen the incident is a far-fetched idea sans any solid foundation supporting it. In my view, the prosecution has established the case against the appellants beyond a reasonable doubt. The failure of the Investigating Officer to collect a bulb or two from the spot or noticing and mentioning the same in the memo of place of incident reflects his incompetency to act vigilantly at the most. It does not, however, imply that the prosecution case, as set up in the FIR and evidence, has been introduced falsely against the appellants or their identity is doubtful, not the least when they were recognized by the witnesses who are not only house inmates but also close relatives of the appellants.

16. The point of following trajectory of each bullet/pellet by the eyewitnesses being impossible has been considered by the trial Court

while handing down conviction and sentence to the appellants. This is a triple murder case, the appellants have been assigned specific role of firing at the deceased, they were identified at the spot by the eyewitnesses, yet they have been awarded life imprisonment instead of death penalty which being a normal punishment under section 302 PPC has to be awarded to the accused once the prosecution has established its case against him, unless mitigating circumstances justifying award of lesser punishment of imprisonment of life are available. It seems that the point disputing source of light available at the spot and the incompetency of the I.O to collect any bulb from there has also prevailed over mind of the trial Court in deciding ratio of conviction and sentence to the appellants, which I fully endorse is a correct approach in appreciation of facts and circumstances of the case. The defence evidence put up by the appellants is of no help to them as DWs Lutuf Ali, Lohar and Syed Muhammad Alam Shah have admitted in cross-examination that they had not seen the incident and their evidence is to the effect that appellants had participated in funeral ceremony of deceased, which fact however would not induce innocence of the appellants and cast a doubt over the charge. The charge against the appellant has been established from the evidence brought on record by the prosecution and I do not find any reason to interfere with the findings recorded against the appellants by the trial Court. Their conviction and sentence on all counts are maintained.

17. Accordingly, Crl. Appeal No.S-**26** of 2021 is **dismissed**.

J U D G E

Ahmad