

# THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 452 of 2019  
Confirmation Case No. 16 of 2019

Present: Mr. Justice Naimatullah Phulpoto  
Mr. Justice Abdul Mobeen Lakho

Date of Hearing : 19.02.2021 & 01.03.2021  
Date of judgment : 11.03.2021  
Appellant : Muhammad Yaseen @ Mama Gaddi through Mr. Iftikhar Ahmed Shah advocate  
Respondent : The State through Mr. Muhammad Iqbal Awan, Deputy Prosecutors General Sindh

## JUDGMENT

NAIMATULLAH PHULPOTO, J. Appellant Muhammad Yaseen @ Mama Gaddi was tried by learned Ist Additional Sessions Judge/MCTC, Malir, Karachi for offences under Sections 302/324 PPC. After full-fledged trial, vide its' judgment dated 04.07.2019, appellant was found guilty for causing qatl-e-amd of Abdul Basit under Section 302(b) PPC and sentenced to death at Tazir. Appellant was also directed to pay compensation of Rs. One Million to the legal heirs of deceased under Section 544-A Cr.P.C. In case of failure to pay the same, he was directed to undergo S.I for six months. Appellant was also convicted under Section 324 PPC for attempt to commit qatl-i-amd of P.W Bilawal and sentenced to 7 years R.I and to pay fine of Rs.300,000/- to be paid to the injured Bilawal. In case of default in payment of fine, he was ordered to suffer S.I for six months. Appellant was extended benefit of Section 382-B Cr.P.C.

2. The prosecution case as disclosed by injured witness Bilawal (PW-02) before trial Court is as follows:

*"The incident was taken place on 07.08.2014 when I was accompanied with my friend Abdul Basit at gate of Tahir Farm. It was 9:45 p.m. when we were sitting there. We sit there due to load shedding. One person namely Yasin @ Mama Gaddi was available there in drug condition. My deceased friend made joke with him in Sindhi language who annoyed immediately then he outed his pistol and made direct fires upon us. First of all deceased Abdul Basit got firearm injury at the hands of accused and when I came before him he fired upon me. We received fire arm injuries on our abdomens and falled down on the earth. Such statement under Section 161 Cr.P.C was given on 10.08.2014 at 1300 hours by me to I.O*

*of the case. We were shifted to Jinnah hospital from place of wardat in Datsun. Accused present in Court is same."*

3. It may be mentioned here that FIR of the incident was lodged by the mother of the deceased namely Mst. Tasleem at P.S Malir City, Karachi. It was recorded on 08.08.2014 at 0230 hours vide Crime No. 131/2014 under Section 324 PPC. After registration of the FIR, I.O visited the place of occurrence and collected 10 empties in presence of mashirs, recorded 161 Cr.P.C statement of the injured witness, Basit succumbed to injury, I.O collected death report of deceased, showing cause of death and completed formalities. Appellant after commission of the offence absconded away. On the conclusion of the investigation, challan was submitted against him under Section 512 Cr.P.C. Appellant was produced by the I.O before trial Court on 18.062016.

4. Learned trial Court framed charge against accused under Sections 302/324 PPC at Ex.02, to which he pleaded not guilty and claimed his trial.

5. At the trial, prosecution examined (i) Complainant Mst. Tasleem (PW-01), (ii) Bilawal (PW-02), (iii) Yasir Baloch (PW-03), (iv) SIP Ali Asghar Sehto (PW-04), (v) Dr. Shahid Nizam (PW-05), (vi) Javed Iqbal Rajput (PW-06) and (vii) Dr. Tanveer (PW-07).

6. Trial Court recorded statement of accused/ appellant at Ex.21, in which he claimed his false implication in the case and denied the prosecution allegations. Accused neither examined himself on oath under Section 340(2) Cr.P.C, and nor led evidence in his defence.

7. Learned trial Court after hearing learned counsel for the parties, examination of the evidence available on record and defence plea, convicted the appellant and sentenced him to death as stated above. Trial Court made reference to this Court for confirmation of the death sentence as required under Section 374 Cr.P.C. Appellant being aggrieved and dissatisfied with the judgment recorded by the trial Court, filed instant appeal. By this judgment, we intend to decide the aforesaid appeal as well as confirmation reference made by the trial Court.

8. The facts of the case as well as evidence produced before the Trial Court find an elaborate mention in the judgment dated 04.07.2019, passed by the Trial

Court and therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned advocate for the appellant argued that P.W-02 was friend of deceased and interested witness. It is further submitted that PW-02 was injured witness, but his evidence required independent corroboration which was lacking in this case. It is further argued that incident had occurred at the spur of moment, there was no pre-planning or meditation for commission of the offence. Lastly it is submitted that there are mitigating circumstances in this case, if court is not convinced for acquittal of the appellant, his death sentence may be reduced to life imprisonment. In support of his contentions reliance is placed upon the cases of **Bukht Munir Vs. The State and another (2020 SCMR 588)**.

10. Learned DPG appearing for the State, has maintained that prosecution has proved its' case against the appellant by producing evidence of the injured witness, corroborated by the medical evidence and other pieces of evidence. The eye witness was friend of deceased, but he had no motive to falsely implicate the appellant in this case. He has further maintained that as long as conviction of the appellant is not disturbed by this Court, he has nothing much to say on the question of sentence as the same lies within the discretion of the Court. Learned DPG, however, frankly conceded that occurrence had taken place at the spur of moment due to sudden provocation without pre-planning or premeditation and there was a single shot fired at the deceased without repeating the same.

11. In order to prove unnatural death of deceased Basit and injury on the person of injured, prosecution has examined Dr. Shahid Nizam being well conversant with hand writing and signature of Dr. Jagdesh as Dr. Jagdesh has retired from service and he is not traceable. Dr. Shahid Nizam produced medical certificate of Basit, showing following injury:

1. *Fire arm wound of 0.5 cm diameter on Rt thigh posterior laterally inverted margins wound of entry. Firearm wound 1 cm x 1 cm in Rt. inguinal region near everted on Rt. thigh medially everted margins wound of exit.*

Thereafter, Basit was referred to "Emergency" of Liaquat National Hospital, where he succumbed to his injury on 09.08.2014. According to Doctor, the cause of death was Cardio Pulmonary arrest Secondary to gunshot on Right Femoral Artery. The postmortem examination of deceased was not conducted but the

defence did not challenge the factum of unnatural death of deceased. Doctor was cross-examined but nothing favorable to accused came on record.

12. Doctor had examined injured Bilawal on 07.08.2014 and found following firearm injury on his person:

1. *Fire arm wound 0.5 cm diameter on Lt. abdomen anteriorly inverted margins wound of entry. No blackening*

13. In this case, no doubt postmortem examination of the deceased was not conducted, but deceased was medically examined by Dr. Jagdesh, when he was in injured condition. Doctor stated that deceased received one fire arm injury at his right thigh. All material particulars have been mentioned in the medical certificate produced before trial Court at Ex. 11, therefore, failure to conduct postmortem of deceased in above circumstances would not demolish the prosecution case. Reliance is placed upon the case of **Abdur Rehman vs. The State (1998 SCMR 1778)**, wherein it is held as under:

“15. It may be seen that case-law relied upon by learned counsel for parties has been discussed above. We have thoroughly compared and scrutinized the ratio decidendi in afore-quoted reported judgments and relevant law. We cannot subscribe to the observations which may suggest that failure to conduct post mortem would demolish the prosecution case. Obviously there would be numerous situations when post-mortem may not even be conducted. In various parts of the country on account of long-standing customs and established traditions tribesmen do not allow post-mortem of the deceased. Thus, keeping in view all the relevant factors and law, we are persuaded to hold that in cases where prosecution through convincing evidence can establish that death was immediate, proximate and direct cause of injuries sustained without being any element of negligence or other intervention, the non-performance of postmortem would not be fatal.”

14. We, therefore, hold that deceased Basit died unnatural death due to fire arm injury and injured had also sustained fire arm injury as described by the Doctor. Finding of trial Court in this regards requires no interference by this Court.

15. Now question arise, whether appellant had caused such firearm injuries to the deceased and injured as alleged by prosecution?

In order to determine this crucial issue, we have carefully perused evidence available on record. Injured Bilawal (PW-02) has stated that the incident occurred on 07.08.2014 at 9:45 p.m., when he was sitting along with his friend

Abdul Basit at gate of Tahir Farm due to load shedding. Appellant Yasin @ Mama Gaddi appeared there, in intoxicated condition. Basit (now deceased) cracked joke with him in Sindhi language, which caused much annoyance to appellant and suddenly, he took out his pistol and directly fired upon them. Both sustained fire arm injuries and fell down on the ground. Thereafter, they were shifted to the hospital for treatment. Injured witness was cross-examined at length but nothing favourable to the appellant came on record. Mother of the deceased was also examined, she stated that as soon as she came to know about the incident, she reported matter to the police and FIR was lodged against appellant. I.O has carried out investigation and finally submitted challan against appellant under Section 512 Cr.P.C. Ocular evidence of injured is fully corroborated by the medical evidence. Learned advocate for the appellant criticized ocular evidence on the ground that it was interested because injured was friend of deceased. No doubt, ocular evidence of interested witness cannot be accepted without corroboration, but in this case evidence of injured witness has been corroborated by the medical evidence. Evidence of solitary injured eye witness is quite reliable and confidence inspiring as he had no motive/enmity to falsely implicate the appellant in this case and his presence is established as Bilawal (PW-02) had received firearm injury. We have no hesitation to rely upon his evidence. In this respect, reliance is placed on **Muhammad Ehsan vs. The State (2006 SCMR 1857)**, wherein it is held that even testimony of single witness if found to be reliable, confidence inspiring and unimpeachable, same would be sufficient to base conviction. It is not necessary that in each and every case there should be more than one witnesses for the purpose of basing conviction, considering this fact also that is not the quantity of evidence but the quality of evidence on the basis of which conviction is to be based. Appellant's disappearance from the scene for about two years is a circumstance that cannot be viewed with favour, moreover, long standing absconsion has not been explained by him in his statement under Section 342 Cr.P.C, which suggests appellant's culpability as held in the case of **Islam Sharif vs. The State (2020 SCMR 690)**. No legal flaw or infirmity in the evidence of the prosecution witnesses has been brought on record by the defence counsel.

16. As regards to the mode and manner of incident is concerned, evidence of injured eye witness is material for deciding the quantum of sentence. Injured witness has deposed as under:

*"One person namely Yasin @ Mama Gaddi was available there in drug condition. My deceased friend made joke with him in Sindhi language who annoyed immediately then he outed his pistol and made direct fires upon us."*

17. I.O failed to interrogate/collect some independent material during investigation regarding mode and manner of incident. Trial Court had also failed to record any finding as to how this incident had occurred. Under these circumstances, we have no hesitation to hold that prosecution has proved its' case against the appellant beyond reasonable doubt but failed to prove that it was a case of pre-planning and pre-meditation. On the other hand, it has come on record that it was sudden incident which happened at the spur of moment when joke was cracked by deceased. Thus, murder of deceased was neither pre-planned nor pre-mediated. The mode and manner of the occurrence would further reveal that deceased received only a single fire shot and fire was not repeated. A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. In the similar circumstances where at the spur of moment, due to sudden provocation, without pre-meditation, the accused caused murder of deceased, the Honourable Supreme Court converted the death sentence into imprisonment for life. Rightly reliance is placed on the case of Bakht Munir vs. The State and another (2020 SCMR 588), wherein it is held as under:

"3. After hearing the learned counsel for the appellant and learned Additional Advocate General, KPK, it has been observed by us that notwithstanding the fact that prosecution has proved its case against the appellant beyond reasonable doubt and the findings of guilt rendered by the learned courts below against the appellant are not open to exception, there are circumstances in this case which go in favour of prayer made by the appellant qua reduction in the quantum of his sentence from death to imprisonment for life. In the FIR itself, it is the case of the complainant that the occurrence in issue had taken place on account of a trivial verbal altercation between the parties. In his examination in chief as well, the complainant Ali Rehman (PW5) reiterated the same. In his cross-examination he explained the cause of occurrence as under:-

"...The verbal altercation took place between me and the accused facing trial at the time of incident. The altercation took place over a small bridge..."

4. It is crystal clear that there was no previous enmity between the parties. The circumstances of the case unequivocally suggest that the occurrence had taken place at the spur of the moment without any premeditation on the part of the appellant.

5. For the foregoing, the instant criminal appeal is partly allowed. The conviction of the appellant under section 302(b), P.P.C. is upheld and the sentence of death of appellant on two counts is converted into imprisonment for life on two counts. The convictions and sentences of appellant on other penal heads are maintained. The amounts of compensation and sentences in default thereof are also not disturbed. Benefit of section 382-B, Code of Criminal Procedure is extended to the appellant. All his sentences of imprisonment shall run concurrently."

18. For the above stated reasons, this appeal is dismissed to the extent of appellant's conviction for the offence under section 302(b), P.P.C. recorded by the trial Court but the same is partly allowed to the extent of appellant's sentence of death which is reduced to imprisonment for life. Confirmation reference is answered in the **NEGATIVE**. Apart from the above variation in sentence, other conviction and sentence, compensation/fine imposed against the appellant in the impugned judgment shall remain intact. All the sentences are ordered to run concurrently. Appellant shall be entitled to benefit of section 382-B Cr.P.C.

19. In the view of above, this Appeal is disposed of in the above terms.

JUDGE

JUDGE