

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

***Crl. Appeal No.S- 422 of 2019.***

Appellant: Ghulam Mustafa  
Through Mr. Khuda Bux @ K.B Lutuf Ali  
Laghari, Advocate.

The State: Through Ms. Sana Memon, APG.

Date of hearing: **22.08.2024.**

Date of Decision: **11.10.2024.**

**J U D G M E N T**

**ZULFIQAR ALI SANGI, J.** - The appellant/accused named above has preferred instant Criminal Appeal, whereby he has impugned the judgment dated 05.12.2019 passed by Model Criminal Trial Court-I Hyderabad, in Sessions Case No.854 of 2016 (re-The Sate v. Ghulam Mustafa and others) arising out of Crime No.63 of 2016, for offence under sections 302, 34 PPC, registered at Police Station Hali Road, District Hyderabad, whereby he was convicted and sentenced to suffer rigorous imprisonment for life and to pay compensation of Rs. 100,000/- to the legal heirs of deceased, in terms of Section 544- A Cr.PC. In case of default of payment of compensation amount, the appellant/accused shall undergo S.I for six months more with benefit of 382-B Cr.P.C, hence he preferred the instant appeal.

2. Facts of the prosecution case are that complainant Abid Ali is residing with his brothers and family and he is general councilor of UC-83. He has five brothers and his younger brother Zahid Hussain aged about 42 years and his leg was affected from polio and he was employee in post office. Ghulam Mustafa is residing in Goth Panhwar with their brothers and he was annoyed for defeat in local body election 2015. On 07.07.2016, his brother Zahid Hussain along with his friends namely Imdad Ali and Muhammad Zubair Kalhoro were sitting on the thalla of shop situated at outside of his house. At about 12:00 a.m. (night) on hearing of firing and noise he came out from his house with his brother and saw that Ghulam Mustafa armed with rifle, his brother Nadeem Panhwar armed with pistol, and his friend namely Allah Bux alias Seedo armed with pistol making firing and also beaten his disabled brother and his friends namely Imdad Ali Bhatti and Muhammad Zubair tried to rescue and they saw that they all three made firing

upon his disabled brother Zahid Hussain and he became injured and fallen on ground. Upon seeing them they all three escaped from there by making firing. His brother Niaz Ali and mohallah persons Imdad Bhatti and Muhammad Zubair Kalhoro taken the injured to the hospital for treatment and he appeared at the P.S and informed the police thereafter reached at the hospital where his brother succumbed to his injuries. On enquiry Imdad Ali and Zubair Kalhoro told that they were sitting on thalla of shop and Zahid Hussain was teasing on his mobile phone and he exchanged hot words with the caller upon which caller replied that he is Ghulam Mustafa Panhwar you were stay there, Ghulam Mustafa is coming and Ghulam Mustafa, his brother Nadeem and Allah Bux alias Sheedo came there. Ghulam Mustafa was armed with rifle and others were armed with pistols and they beaten Zahid Hussain to which they tried to rescue them and they being annoyed made fire shots upon Zahid Hussain who received bullet injuries and fell down on the ground. All of sudden area police came there and completed all formalities, handed over the dead body after postmortem to them for burial. Such FIR was lodged.

3. On the conclusion of usual investigation, challan was submitted against the appellant and another for offence U/S 302, 34 PPC.

4. After completing legal formalities, the trial Court had framed charge against accused to which he pleaded not guilty and claimed to be tried.

5. In order to prove accusation against appellant/accused, the prosecution has examined in all 09 witnesses, they have produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed.

6. The appellant/accused was examined under section 342 Cr.PC, wherein he had denied the allegations leveled against him and pleaded his innocence. After hearing the parties and assessment of the evidence against the appellans/accused, the trial Court convicted and sentenced the appellant/accused as stated above against the said conviction he preferred this appeal.

7. Learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated in the instant

case due to political rivalry; that the prosecution story so set out on wings is highly improbable and suspicious and could not be safely relied upon; that the alleged eye-witnesses are close friends of complainant and belong to a ruling party; that the case property is foisted upon the accused; that there are material contradictions and legal infirmities between all the PWs's evidence; that the preliminary inquiry / investigation was conducted by the police before the registration of FIR even the mashirnama of place of incident was prepared before the registration of FIR; that there is delay of 17½ hours and no explanation has been furnished; that there are general allegations against three accused for two injuries on person of the deceased and no any accused has been attributed specific role. In support of his arguments learned counsel has relied upon the cases of **Mst. SHAZIA PERVEEN versus The STATE (2014 SCMR 1197), MUREED HUSSAIN versus The STATE through Prosecutor-General Sindh (2014 SCMR 1689), ARSHAD KHAN Versus The STATE (2017 SCMR 564), SARDAR BIBI and another Versus MUNIR Ahmed and others (2017 SCMR 344), Mst. ARBAB KHATOON Versus IMAM BAKHSH and 3 othrs (2021 MLD 1286), AHMED DIN and another Versus THE STATE (2006 P Cr. L J 1174), MUHAMMAD ASIF Versus The STATE ( 2017 SCMR 486), Mian SOHAIL AHMED and others Versus The STATE and others (2019 SCMR 956), SHOUKAT HUSSAIN Versus The STATE through PG Punjab and another (2024 SCMR 929), and ABDUL WAHID Versus The STATE (2023 SCMR 1278).**

8. On the other hand, learned Assistant PG fully supported the impugned judgment and contended that prosecution proved the case against the appellant beyond a reasonable doubt; that the appellant is hardened criminal and is nominated with specific role; that all the prosecution witnesses have supported the prosecution case; hence the appeal of the appellant may be dismissed.

9. I have heard learned Counsel for the appellant, A.P.G for the State and have examined the record carefully with their able assistance.

10. In the case in hand **three eye-witnesses** PWs-2, 3 and 4 including the complainant have fully supported the case by specifically deposing that on the day of incident in their presence appellant and other his accomplices made straight firing from their rifle and pistols upon deceased Zahid Hussain and caused him

firearm injuries and complainant party took him for the treatment towards the hospital however he succumbed to the injuries before few minutes of reaching hospital. The police officials completed the formalities and the postmortem was conducted thereafter dead body of the deceased was handed over to complainant party. The parties were known to each other being resident of the same vicinity. As per the evidence of eye-witnesses the accused were with open faces therefore there is no chance of mistaken identity. The perusal of record reflects that the incident took place on 07.07.2016 at 0030 hours and on the same date at 01:15 a.m. complainant brought the deceased at hospital where few minutes before reaching hospital deceased died and as per the evidence of PW-01 Dr Baldev he started the postmortem from 02:20 to 03:28 am. It has also come in the evidence that the police reached and completed the legal formalities which suggest that complainant was in contact with the police to whom he narrated the offence promptly. The motive set out by the complainant was that appellant was annoyed for defeat in local body election 2015 therefore by taking such revenge he committed the murder. The motive set out by the complainant was not denied during the cross-examination nor was strong plea taken by the appellant for his false implication. The cross-examination conducted by the defence counsel to the witnesses is carefully examined found no substance favorable to the appellant.

11. The evidence of complainant and the PW- 7 also supports the evidence of PW-09 SIP Akram Jatt (Duty Officer/Investigation Officer) that injuries were inspected coupled with preparation of Lash Chakas Form and Danishtnama, recovery of deceased blood in bottle coupled with the recovery of three empties of 44 bore rifle and one empty of 9mm pistol. PW-5, PW-6 and PW-7 also confirm that the appellant was arrested on 03.10.2016 from Tarazoo Chowk with recovery of 44 bore rifle and magazine containing 05 bullets. PW-8 the well conversent with the signature of IO/late Inspector Ahmed Nawaz produced the FIR u/s 25 of Sindh Arms Act, FSL letter and confirmed the signature of said IO on the FIR, memo of recovery and FSL Letter and positive FSL report was received which was exhibited in the evidence. The blood stained cloths of the deceased and blood was also sent for FSL and a positive report was received and exhibited in the evidence. The PW-9 had fully supported the case and the recoveries as discussed above which too supported by the PW-7 mashir so also the eye-witness. The Investigation Officer and the mashir were cross-

examined at length but defence counsel failed to create a dent in their evidence.

12. The ocular account furnished by above **three eye-witnesses** was further supported by the medical account and to prove unnatural death of deceased Zahid Panhwar, the prosecution examined PW-01 Dr. Baldev who while deposing has confirmed that on 07.07.2016, he while posted as MLO at LUH, Hyderabad received dead body brought at hospital by SIP Akram for conducting postmortem and report. The dead body was identified by one Abid Ali the brother of the deceased. The postmortem was started on the same date at about 2:20 a.m. and completed it at about 03.28 a.m. As per the postmortem report deceased received 02 firearm injuries. As per the opinion of the doctor the cause of death of the deceased was due to damage of right femoral artery causes heavy bleeding leads hemorrhagic shock and cardio respiratory failure resulted in death caused by discharged from fire arm. The defence counsel also cross-examined the doctor but not succeeded in getting material which may favor the appellant.

13. In the present case, **three eye-witnesses** have fully supported the case as has been discussed above. However, the sole evidence of a material witness i.e an eyewitness is always sufficient to establish guilt of the accused if the same is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers quality of evidence and not its quantity to prove the charge. The accused can be convicted if the Court finds direct oral evidence of **one eye-witness** to be reliable, trustworthy and confidence-inspiring. In this respect, reliance is placed on cases of **Muhammad Ehsan v. The State (2006 SCMR 1857)** and **Niaz-Ud-Din v. The State (2011 SCMR 725)**. Further, the Supreme Court in case of **Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)** also held that "even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable." There can be no denial to the legally established principle of law that it is always the *direct* evidence which is material to decide a *fact (charge)*. The *failure* of direct evidence is always sufficient to hold a criminal charge as '*not proved*' but where *direct evidence* holds the field and stands the test of it being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory

Crl. Appeal No.S-422/2019

rule to be applied invariably in each case. Reliance can *safely* be placed on case of **Muhammad Ehsan vs. The State (2006 SCMR-1857)**, wherein the Honourable Supreme Court of Pakistan has held that;-

*“5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence”.*

14. Learned counsel for appellant mainly focused on the point that the witnesses are near relatives to deceased and are interested therefore, their evidence cannot be relied upon. The contention raised has no force as in the instant matter, the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence. Both the parties are known to each other as is evident from their evidence, therefore, there was no chance of mistaken identity of the appellant. It is observed that where the witnesses fall within the category of natural witnesses and detailed the manner of the incident in a confidence-inspiring manner then only escape available with the accused/appellant is to satisfactorily establish that witnesses are not the witnesses of truth but **“interested”** one. An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate an accused. Mere relationship of eye-witnesses with the deceased alone is not enough to discard testimony of the complainant and his witnesses. In matters of capital punishment, the accused would not stand absolved by making a mere allegation of dispute/enmity but would require to bring on record evidence that there had been such a dispute/enmity which could be believed to have motivated the **“natural witnesses”** in involving innocent at the cost of escape of **“real culprits”**. No any tangible substance has been brought on record by the appellant to justify his false implication in this case at the hands of complainant party on account of any previous enmity. In case of ***Zulfiqar Ahmed & another v. State (2011 SCMR 492)***, the Supreme Court of Pakistan has held as under:-

*...It is well settled by now that merely on the ground of inter-se relationship the statement of a witness cannot be brushed aside. The concept of ‘interested witness’ was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR-01) and it was held that ‘friendship or relationship with the deceased will not be sufficient to*

*discredit a witness particularly when there is no motive to falsely involve the accused.*

15. Learned counsel for the appellant had pointed out some minor contradictions in the evidence which in my view are not sufficient to discard evidence of the three eye-witnesses who have fully supported the case of prosecution on every aspect coupled with the recoveries and the medical evidence. It is settled principal of law that where in the evidence, the prosecution established its case beyond reasonable doubt then if there arise some minor contradictions which always are available in each and every case as no one can give evidence like a pen-picture, hence the same are to be ignored. The reliance is placed on case of **Zakir Khan V. The State (1995 SCMR 1793)**, wherein the Supreme Court of Pakistan has held as under:-

*“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”*

16. The sequel of above discussion arrived at judicious conclusion that the learned trial Court on being finding the present appellant guilty of committing murder of an innocent person, has rightly convicted and sentenced him and thus has committed no illegality or irregularity while passing the impugned judgment which even otherwise is based on substantive reasoning, therefore, it does not call for any interference by this Court. Resultantly, instant criminal jail appeal being devoid of merits is **dismissed** accordingly.

**JUDGE**