

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

**CrI. Appeal. No. S- 305 of 2019.**

Appellant: Wilayat Ali Shah through Mr. Muhammad Sachal R. Awan, advocate.

Complainant: None present.

The State: Through Ms. Rameshan Oad, APG.

Date of hearing: **26.09.2024.**

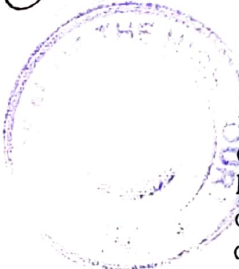
Date of judgment: **11.10.2024.**

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

**Zulfiqar Ali Sangi, J.-** The appellant is aggrieved and dissatisfied with the judgment dated 27.09.2019 passed by learned Model Criminal Trial Court-II/IVth Additional Sessions Judge, Hyderabad, in Sessions Case No.1323 of 2015 arising out of FIR No.106/2015 for the offences punishable U/S 302, 324, 337-F(i), 337-F(iii) PPC at P.S. Pabban/Husri Hyderabad whereby the appellant was convicted and sentenced as under;-

“Convict accused U/S. 265-H(ii) Cr.P.C. and sentence him for an offence punishable U/S. 302(b) PPC to suffer “LIFE IMPRISONMENT” on the basis of mitigating circumstances as there is no proof of requiring death sentence. He is also directed to pay compensation of Rs.500,000/- (Five Lacs) to legal heirs of deceased U/S. 544-A Cr.P.C. R/W Judgment of Honourable Supreme Court of Pakistan, reported as 1995 SCMR 1776 and in case of default, he shall suffer S.I. for 06 months more. Accused is also convicted U/S. 265-H(ii) Cr.P.C. and sentenced for committing an offence punishable U/S. 324 PPC to suffer Rigor Imprisonment for 07 years and to pay fine of Rs.100,000/- (One Lac) and in case of failure, he shall suffer S.I. for 03 months more. Accused is also convicted U/S. 265-H(ii) Cr.P.C. and sentenced for committing an offence punishable U/S. 337-F(i) PPC to suffer Rigor Imprisonment for 01 year and to pay fine of Rs.20,000/- (Twenty thousand) and in case of failure, he shall suffer S.I. for 15 days more. Accused is also convicted U/S. 265-H(ii) Cr.P.C. and sentenced for committing an offence punishable U/S. 337-F(iii) PPC to suffer Rigor Imprisonment for 02 years and to pay fine of Rs.30,000/- (Twenty thousand) and in case of failure, he shall suffer S.I. for 01 month more. He is produced in

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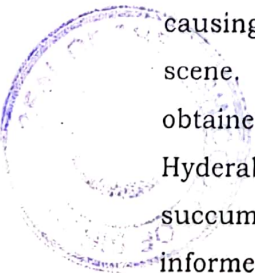
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custody, he be sent back to Jail alongwith conviction warrant, with directions to serve out the sentences awarded to him as above. All the sentences shall run concurrently. Benefit of Section 382-B Cr.P.C is given to the accused."

2. The brief facts of the prosecution case, as described in the FIR lodged by the complainant Hassan Bux Shah, son of Ameer Ali Shah, resident of Village Dargah Bhawan Shah, Taluka and District Hyderabad, are that he resides at the given address along with his six brothers, namely Subhan Ali Shah, Zulfiqar Ali Shah, Rashid Ali Shah, Nazeer Shah, and Saddam Hussain Shah, who all live together. One Wilayat Ali Shah, son of Gulzar Ali Shah alias Gullan, resides adjacent to the complainant's house and is his paternal uncle. In front of the house, there are three acres of land on which a Babool tree (Acacia Arabica/nilotica) stands. Although Wilayat Ali Shah does not own any land, he sold the Babool tree for Rs. 2,000. On the morning of 13.06.2015, laborers arrived to cut down the tree. At the time, the complainant's brothers, Saddam Hussain and Rashid Ali, were present at home, while Zulfiqar Ali was out. Rashid Ali asked their paternal uncle, Wilayat Ali, to stop the laborers from cutting the tree. However, Wilayat Ali warned Rashid not to be defiant, threatening that he would not spare him otherwise. The complainant then offered to pay his uncle Rs. 2,000 to prevent the tree from being cut down, but Wilayat Ali became enraged. He went inside his home, retrieved a DBL gun, and at around 8:30 A.M., fired directly at Rashid Ali Shah, who was standing in front of the house's door, with the intent to kill him. Rashid Ali was hit on his right leg, left thigh, back, and other parts of his body, causing him to fall to the ground. Hearing the commotion, the complainant raised an alarm, after which Wilayat Ali also fired at him with the intent to kill. The complainant ducked, and the bullet hit the ring finger of his right hand. The complainant's brothers, Zulfiqar and Saddam, came running after hearing the gunshots, and their uncle fired at them as well, injuring Zulfiqar Ali on his left knee, causing him to fall. After firing multiple shots, the accused fled the scene. The complainant's party then went to the police station, obtained a letter for medical treatment, and proceeded to Civil Hospital Hyderabad. Sadly, the complainant's brother, Rashid Ali Shah, succumbed to his injuries at 12:30 P.M. on 13.06.2015. The hospital informed the Pabban Police, who arrived, completed the postmortem, and, after fulfilling the necessary formalities, handed over the body to

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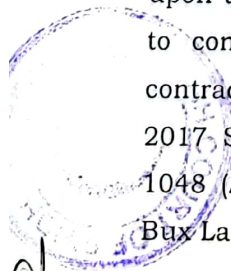
the complainant's party. They buried Rashid Ali on the same day. Due to the late hours, the complainant went to the police station on 14.06.2015 and lodged the present FIR.

3. After completing the usual investigation, the charge against the appellant was framed on 27.08.2019, to which he pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 09 Prosecution Witnesses and exhibited various documents and other items. The statement of the accused was recorded under Section 342 Cr.P.C in which he denied all allegations leveled against him. After appreciating the evidence on record, the learned trial Court convicted the appellant as mentioned above; hence, the appellant has preferred this appeal against his conviction.

5. Learned counsel for the appellant has mainly contended that the impugned Judgment dated 27.09.2019 passed by the Learned 4th Additional District & Sessions Judge, Hyderabad is contrary to law, facts of the case, principles of criminal justice and material available on record and is, therefore, not sustainable and liable to be set aside; that the impugned judgment which is based on surmises and conjectures is the result of misreading and non-reading of the evidence available on record and is against law and the facts; that learned trial court has made a subjective approach to the case and has not assessed prosecution evidence in accordance with well established principles set up by the superior courts on the subject and has also failed to appreciate statement of accused/appellant on oath in its true perspective, as such, arrived at a wrong conclusion while convicting appellant, which has resulted a grave miscarriage of justice; that, learned trial court has not considered material aspect of the case in the shape of evidence available on record because as per case file there is no eye witness of the incident but all the prosecution story hinges upon the circumstantial evidence; that, learned lower court has failed to consider material aspect of the case that there are material contradictions in the evidence of all the witnesses. He has relied upon 2017 SCMR 2026 (Fayyaz Ahmed versus The State), PLD 2002 SC 1048 (Ayub Masih versus The State) and 2024 PCrLJ 1087 (Ghous Bux Lashari versus The State).

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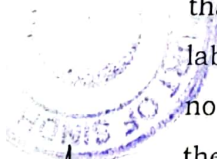
6. On the other hand, learned Assistant Prosecutor General Sindh contended that all the witnesses have fully supported the case of prosecution; that no major contradictions in their evidence has been pointed out by learned defence counsel; that medical evidence is supportive to the ocular/direct evidence. She relied upon 2022 SCMR 1280 (Ghaffar Mahesar verus The State).

7. Several notices were issued to complainant but he chosen to remain absent. This appeal is an old one, therefore, with the assistance of defence counsel and APG it is decided in absence of the complainant.

8. I have heard learned counsel for the appellant as well as learned Asst. P.G. Sindh and perused the material available on record with their able assistance.

9. In the case in hand eye-witnesses PWs-1, 2 & 3, who are also the injured, have fully supported the case by specifically deposing that on the day of incident in their presence appellant made straight firing from his DBL gun upon deceased Rashid Ali Shah who received firearm injuries and complainant party took him for the treatment at hospital however he succumbed to the injuries. In the incident PWs also sustained injuries. The police officials completed the formalities and the postmortem was conducted thereafter dead body of the deceased was handed over to complainant party. It was daytime incident and the parties were known to each other being relative and being resident of the same vicinity. As per the evidence of eye-witnesses the accused was with open face therefore there is no chance of mistaken identity. The perusal of record reflects that the incident took place on 13-06-2015 at 08.30 a.m. and on the same date at 1300 hours complainant brought the deceased at hospital where deceased died and as per the postmortem report the post-mortem started from 01-30 to 3 pm. 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 particular of offence promptly. The motive set out by the complainant was that deceased Rashid Ali asked appellant, Wilayat Ali, to stop the laborers from cutting the tree. 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

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substance favorable to the appellant.

10. The evidence of complainant and the PW-5 also supports the evidence of PW- 09 ASI Nizamuddin (Duty Officer/Investigation Officer) that injuries were inspected coupled with preparation of mashirnama, recovery of blood stained earth coupled with the recovery of two empties of DBL gun from the place of incident. PW-7 also confirm that the appellant was arrested on 17-01-2019 from near Mira School Hyderabad. The investigation officer deposed that the recovered two empty cartridges from the place of incident were sent for FSL report and positive FSL report was received which was exhibited in the evidence. The blood stained cloths of the deceased and blood stained earth was also sent for FSL and a positive report was received and exhibited in the evidence. The PW-9 (Investigation Officer) had fully supported the case and the recoveries as discussed above which too supported by the mashirs 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.

11. The ocular account furnished by above **three eye-witnesses** was further supported by the medical account and to prove un-natural death of deceased, the prosecution examined PW-06 Dr. Waseem Khan who while deposing has confirmed that he had worked with Dr. Shahjehan, who was posted as a Medicolegal Officer at LUH Hyderabad on the day of the incident and had passed away in 2018. As such, he is familiar with Dr. Shahjehan's signatures. The witness produced the Final Medicolegal Certificates of the injured, Zulfiqar Ali and Hussain Bux, as Exhibits 14/B and 14/C, respectively, both bearing the signatures of the late Dr. Shahjehan. Additionally, he produced a letter for conducting the postmortem of the deceased, Rashid Ali Shah, as Exhibit 14/D, and the postmortem report issued by the late Dr. Shahjehan as Exhibit 14/E, which also bore his signature. According to the postmortem report, the cause of death was due to damage to the major blood vessels in the right thigh, namely the femoral artery and femoral vein, leading to severe blood loss, resulting in hypovolemic shock, which caused cardiopulmonary arrest and ultimately led to death. The defence counsel also cross-examined the doctor but not succeeded in getting material which may favor the appellant.

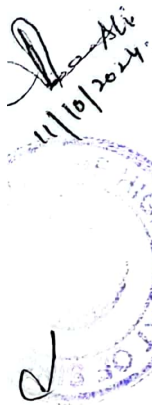
12. In the present case, three eye-witnesses have fully supported the

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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 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".

13. 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 and are relative as is evident from their evidence and the incident is a daytime incident, 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-

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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.

14. 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."*



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15. 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 and injuring PWs, 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 appeal being devoid of merits is **dismissed** accordingly.

Compared by ~~NADEEM.~~

Sd/-ZULFIQAR ALI SANGI.  
JUDGE. 11. 10. 2024.

Prepared by ~~ASIF.~~

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30/10/2024  
(KIMRUB KH BROHI)  
JC Assistant Registrar  
High Court of Sindh,  
Circuit Court, Hyderabad.

