

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA**

Before:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Khadim Hussain Tunio

Criminal Jail Appeal No. D-47 of 2014

Appellant : Sadoro Mirbahar through Mr. Ahsan Ahmed Qureshi, Advocate.

Complainant : Through Mr. Muhammad Afzal Jagirani, Advocate.

The State : Through Mr. Ali Anwar Kandhro, Additional Prosecutor General Sindh.

Criminal Jail Appeal No. D-07 of 2016

Appellant : Sadoro Mirbahar through Mr. Irfan Babar Abbasi, Advocate.

The State : Through Mr. Ali Anwar Kandhro, Additional Prosecutor General Sindh.

Date of hearing : 30.08.2022, 14.09.2022 and 27.09.2022

Date of decision : 12.10.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J.- By this common judgment, we intend to dispose of the captioned appeals filed by appellant Sadoro Mirbahar son of Shah Murad who has impugned the judgment dated 30.09.2014 through Criminal Jail Appeal No. 47 of 2014 passed by the learned Judge Anti-Terrorism Court Larkana in Special Case No.01/2013 (*Re: The State v. Sadoro and others*), emanating from Crime No. 136/2012 of P.S Civil Line Larkana registered under Sections 302, 324, 337-F(iii), 337-H(ii) and 34 P.P.C r/w S. 7(a), (c) and (h) of the Anti-Terrorism Act 1997, whereby the appellant was convicted u/s 302(b) PPC and sentenced to suffer life imprisonment and was ordered to pay compensation of Rs.100,000/- to



the heirs of deceased Mashooque Ali as compensation, convicted u/s 324, PPC r/w Section 34, PPC and sentenced to suffer rigorous imprisonment for ten years, u/s 337-F(iii) r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for three years, u/s 337-H(ii) r/w S. 34 PPC and sentenced to suffer rigorous imprisonment for three months, u/s 7(a) of the ATA 1997 and sentenced to suffer imprisonment for life and to pay fine of Rs. 100,000/- and in case of default of payment of fine to suffer rigorous imprisonment for one year more, u/s 7(c) of the ATA 1997 and sentenced to suffer rigorous imprisonment for ten years with fine of Rs. 20,000/- and in case of default of payment of fine to suffer rigorous imprisonment for six months more and u/s 7(h) of the ATA 1997 and sentenced to suffer rigorous imprisonment for five years more. All the sentences were ordered to run concurrently and benefit of S. 382-B Cr.PC was extended to him.

2. The appellant has also impugned the judgment dated 03.02.2016 through Criminal Jail Appeal No. 07 of 2016, passed by the learned Judge Anti-Terrorism Court Larkana in Special Case No.02/2013 (*Re: The State v. Sadoro and others*), emanating from Crime No. 92/2012 of P.S Hyderi Larkana registered under Sections 302, 324, 353, 337-F(iii), 337-F(v), 337-H(ii) P.P.C r/w S. 7(a), (c) and (h) of the Anti-Terrorism Act 1997, whereby he was convicted under section 302(b) P.P.C and sentenced to life imprisonment and to pay compensation of Rs.100,000/- each to heirs of deceased P.C Abdul Rasool Shah and in default thereof shall suffer R.I for one year, under Section 324, read with Section 34 P.P.C to suffer R.I for ten years, under Section 353 read with Section 34 P.P.C to suffer R.I for two years, under Section 337-F (iii) read with Section 34 P.P.C to suffer R.I for three years and to pay "daman" amounting to Rs.10,000/- to injured Mst. Rasheeda and PW H.C Muhammad Aalam and in default thereof to be dealt in accordance with Section 337-Y P.P.C, under Section 337-F (v) read with Section 34 P.P.C to suffer R.I for five years and to pay "Daman" amounting to Rs.10,000/- to injured Mst. Rasheeda and PW H.C Muhammad Aalam and in default thereof to be



dealt in accordance with Section 337-Y P.P.C, under Section 337- H (2) read with Section 34 P.P.C to suffer R.I for three months, under Section 7 (a) of Anti-Terrorism Act, 1997, to suffer imprisonment for life and to pay fine of Rs.100,000/- and in case of default of payment of fine to suffer R.I for one year more, under Section 7 (c) of Anti-Terrorism Act, 1997, to suffer R.I for ten years and to pay fine of Rs.20,000/- and in case of default of payment of fine to suffer R.I for six months more, under Section 7 (h) of Anti-Terrorism Act, 1997, to suffer R.I for five years and to pay fine of Rs.10,000/- and in case of default of payment of fine to suffer R.I for three months more. All the sentences were ordered to run concurrently and benefit of S. 382-B Cr.PC was extended to him.

3. Precisely, facts pertaining to Appeal No. 47/2014 arising out of FIR No. 136/2012 of PS Civil Line Larkana are that the complainant Papan along with his father run a hotel near Railway Track in Rasoolabad Muhalla and one week prior to the incident, they had been approached by the appellant and co-accused with a demand of monthly extortion (*Bhatta*) from them, to which the father of the complainant had refused. On 24.12.2012, the complainant along with his father Mashooque Ali and cousin Ameer and Saeed were present at their hotel when at about 5 p.m. four persons including the present appellant approached them, armed with pistols that they took out of their folds and aimed them at Mashooque Ali while demanding *Bhatta*. The father of the complainant out bluntly refused to which appellant Sadoro opened fire at deceased Mashooque and he fell on the ground. Co-accused Sulleman also opened fire which instead hit a passerby namely Sarfaraz Ali who also fell down after getting hit. Then, while escaping all the assailants fired in the air. In the meantime, police mobile of P.S Hyderi arrived at the place of incident and an encounter between the police and the assailants took place in which the present appellant was injured and apprehended at spot. He was shifted to Chandka Hospital for treatment where after F.I.R was lodged by



complainant Papan, it was recorded on the same date at 1745 hours, for offence under section 302, 324, 337-F(iii), 337-H(ii), 34 P.P.C read with section 7(a), (c), and (h) ATA, 1997.

4. Simultaneously, facts pertaining to Appeal No. 07/2016 arising out of FIR No. 92/2012 of PS Hyderi Larkana are that the complainant SIP Muslim Shaikh who was on patrol in the area along with his subordinate staff, armed with official weapons, heard reports of shots being fired at Chandia Chowk and they proceeded to the said place and had also received similar reports from 15 police helpline. On reaching at the place, they saw the four accused boarded on two motorcycles out of whom they identified the present appellant Sadoro and his brother co-accused Suleman and another co-accused Nadeem Gopang while the fourth person was not known to the police. On seeing the police party, all the assailants who were firing earlier, opened fire at the police on which police party retaliated while taking cover behind their vehicle. During the firing, PC Abdul Rasool who was a member of the police party received injuries and was later on found dead on spot. In the exchange of fire, HC Muhammad Aalam Chandio and one Mst. Rasheeda who was a passerby also received injuries. The present appellant was also injured in the firing while the rest of the three assailants while firing, boarded on their motorcycles and escaped. The appellant was taken into custody on the spot and from his possession a .30 bore pistol was recovered which was found to be unlicensed after disclosure from the appellant. The injured were shifted to the hospital for treatment and the deceased was shifted to the hospital for post-mortem whereafter the FIR was lodged.

5. On completion of usual investigation in the two separate cases, final reports were submitted. Trial Court held separate trials, two charges were framed against the appellant, to which he pleaded not guilty and claimed to be tried.



6. In order to prove the charge arising out of FIR No. 136/2012, prosecution examined in all eight witnesses namely Tapedar Hussain Bux, HC Muhammad Ilyas, complainant Papan, Saeed Ahmed, Dr. Muneer Ahmed, ASI Zulfiqar Ali, PC Deedar Ali and SIP Gulzar Ali Memon, all of whom produced various documents and other items in their evidence.

7. In order to prove the charge arising out of FIR No. 92/2012, prosecution examined in all nine witnesses namely Tapedar Hussain Bux, ASI Muhammad Azam, SIP Muslim Shaikh, PC Mushtaq Ahmed, Dr. Muneer Ahmed, Mst. Rasheeda, injured ASI Habibullah, HC Muhammad Aalam injured and SIP Aslam Parvez who all produced various documents and other items in evidence.

8. Statement of accused under Section 342 Cr.P.C were recorded in both cases, wherein he denied all the allegations levelled against him and claimed to be innocent. However, he neither chose to examine himself on oath nor examined any evidence or witnesses in his defence. Trial Court convicted and sentenced the appellant as mentioned in the impugned judgement and appellant filed above appeals. As facts and circumstances of both the cases are inter-connected, we intend to decide by this single judgment.

9. Mr. Ahsan Ahmed Qureshi, learned counsel for the appellant in Criminal Jail Appeal No. 47/2014 has argued that there are major and material contradictions in evidence of complainant and P.Ws; that PWs SIP Aslam Parvez and Ameer Ali were not examined by the prosecution during trial and in view of Article 129 (g) of the Qanun-e-Shahadat, 1984, the presumption would be that, since said witnesses were unfavourable to prosecution and were not going to support their case, they were not examined by the prosecution; that the prosecution has miserably failed to prove its case against the accused beyond shadow of reasonable doubt.



10. Mr. Irfan Babar Abbasi, learned counsel for the appellant in Criminal Jail Appeal No. 07/2016 has argued that the impugned judgment was passed against facts and law is liable to be set aside; that the learned trial court has not properly analysed the prosecution evidence and has passed the erring judgment in hot and haste; that there are major and material contradictions in evidence of complainant and P.Ws; that there is also inconsistency between ocular and medical evidence brought on record. He further contended that the prosecution has miserably failed to prove its case against the accused beyond shadow of reasonable doubt. Learned counsel lastly added that the appellant was empty handed at the time of commission of offence and the crime weapon has been foisted upon him.

11. Learned Additional Prosecutor General for the State has vehemently opposed the appeals on the ground that the appellant was nominated in F.I.Rs with specific role of making fire upon deceased Mashooque Ali and then PC Abdul Rasool and such version of the prosecution is fully supported by medical evidence; that the appellant took lives of two innocent persons and deterred police officials from discharging their lawful duties; that two passersby and one other police official was also injured in the back to back incidents. However, learned counsel for the complainant has argued the case in the same line as argued by the learned A.P.G for the State.

12. We have heard the counsel for the respective parties and have re-examined the record carefully.

13. It is the prosecution's case that an encounter took place on 24.12.2012 between the police and 4 assailants on two motorcycles after the 4 assailants were escaping after committing the murder of one Mashooque Ali at his hotel in Rasoolabad Mohalla due to refusal of payment of extortion money. During the encounter, appellant Sadoro received a firearm injury on the back side of his head whereas PC Abdul Rasool lost his life, HC Muhammad Aalam and a passer-by namely Mst.



Rasheeda received injuries. In the main incident, Mashooque Ali lost his life while one Sarfaraz Ali was also injured after co-accused Sulleman, brother of the present appellant, fired at him. Per medical records of the injury of appellant Sadoro, it was caused by a firearm which had entered at the right occipital region of his skull and exited at the upper part of his neck. During the encounter, police managed to apprehend him red handed and recovered a .30 bore pistol from his possession. The first incriminating piece of evidence available against the appellant Sadoro is this recovery of the weapons itself along with an empty magazine and 12 empties from the place of incident. When the FIR is put in juxtaposition with the FSL report available as Ex. 25/G in Special Case No. 02/2013, it is noted that the relevant weapon recovered from the appellant had a rubbed number. This fact finds mention in the FIR, the memo of recovery and in the FSL report, which suggests that the weapon originally recovered from the appellant was the same later on received by the Forensics Lab. In the description of the articles received, the pistol found mention at Serial No. 1 "1. One 30 bore pistol. No. rubbed now butt/body signed recovered from accused Sadoro Mirbahar". The recovered case property was sealed on the spot and this fact too was reaffirmed by the FSL Examiner who notes under General remarks in his report that the parcels received were in sealed condition. Safe custody of pistol and empties and safe transmission to expert are not disputed by defence counsel. In this respect, reliance is placed on the case of *Zahid and another v. The State (2020 SCMR 590)*. The FSL examiner noted with regard to the recovered empties and pistol as follows:-

i. Five 30 bore crime empties marked as 'C2, C6, C7, C8 and C12' were fired from the above mentioned 30 bore pistol No. rubbed in view of the following major points i.e. striker pin marks, breech face marks, ejector marks and chamber marks etc are Similar.

ii. Seven 30 bore crime empties marked as 'C1, C3, C4, C5, C9 and C10' were not fired from the above mentioned 30 bore pistol No. rubbed in view of the following major points i.e. striker pin marks, breech face marks, ejector marks and chamber marks etc are NOT Similar."



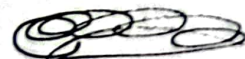
This fact proves that the appellant Sadoro had in fact shot his .30 bore pistol at the place of incident.

14. The prosecution case rests upon ocular account and medical evidence available on the record. In this case, ocular account has been furnished by the complainant SIP Muslim Shaikh, injured PW Muhammad Aalam and injured PW Mst. Rasheeda. Mst. Rasheeda deposed that *"The incident of this case took place on 24-12-2012, when I was present in my house situated in Hussain Muhalla, Larkana. Four accused came on motorcycles having pistols and they were firing shots upon one Syeed who fell down inside the outer door of my house."* Injured PW Muhammad Aalam deposed that *"On 24.12.2012 I was posted as Head Constable at Police Head Quarter performing my duty at main gate Sessions Court, Larkana. After finishing my duty, I was returning back to my home and when I reached at Khatiyan Hotel where the police mobile of P.S Hyderi was available in which ASI Azam Memon, SIP Muslim Shaikh, PC Ghulam Shabir Mugheri, PC Abdul Rasool Shah, PC Mushtaque Ahmed and driver/PC Mukhtiar Ali were available, hence I met with them. We all were available there where we heard the noise of firing hence SIP Muslim Shaikh accompanied me towards the place of firing in the said mobile. We reached there at about 5-10 p.m., we saw four persons boarded on two motorcycles were coming from Railway Track towards us by making firing. On one motorcycle, Sadoro and Sulleman were boarded while on second motorcycle accused Nadeem and his friend were boarded. The accused persons were firing upon the police party, in the said firing PC Abdul Rasool had sustained firearm injuries. I also received the fire arm injuries on my left side of palm. Police party also made fires upon the accused persons in defence. Injured Mst. Rasheeda was standing outside the house of her door and she also sustained firearm injury on her right foot. In the police firing, the accused Sadoro had also sustained firearm injury on the back side of his neck. The police then arrested the accused Sadoro at the place of vardat and recovered one .30 bore pistol along with empty magazine from the accused Sadoro."* A perusal of the depositions of these two eye witnesses when put in juxtaposition with the FIR and the version of the complainant SIP Muslim Shaikh suggest that both these eye



witnesses have fully implicated the present appellant while assigning him the role of causing a firearm injuries to the deceased and them along with the other assailants. Even complainant Papan and Saeed Ahmed, the two eye-witnesses of the main incident of murder and demand of extortion have fully implicated the appellant while assigning him the specific role of firing at the deceased Mashooque Ali. Dr. Muneer Ahmed also conducted the post-mortem of deceased Mashooque Ali and found similar injury on him being a lacerated punctured wound on left upper chest over the heart and the exist wound at the back. All of prosecution witnesses unequivocally stated that they were present at the place of incident and then were shot at by the assailants. Having gone through their depositions minutely, all these witnesses have fully supported the prosecution case to the effect of involvement of the present appellant. An exhaustive perusal of the record establishes multiple aspects regarding the case, firstly that the witnesses and the complainant were put through drawn-out cross-examinations, yet the defence was unable to point out any major discrepancies that may be fatal to the prosecution case. All the assailants were armed. The nature and locale of the injury is also supported by PW-5 Dr. Muneer Ahmed who conducted the post-mortem of both the deceased, finding 12 injuries with a wound of entry and exit on the person of the deceased PC Abdul Rasool and 2 on deceased Mashooque Ali and these were caused by the firearm of the present appellant. The motive behind the murder of Mashooque Ali was demand of Bhatta. This aspect of the case has not been denied either, nor has such assertion been placed before the prosecution witnesses at the time of cross-examination.

15. The element of terrorism is also present in the case as it is evident that the appellant Sadoro along with his compliances was aerially firing and causing harassment in the area which, as per witness testimonies, had also caused many people to run away from the area and not only that, he had committed the murder of a police constable, justifying the charges also under the Anti-Terrorism Act. Furthermore,



the contention of the learned counsel for the appellant regarding the prosecution Papan and Saeed Ahmed being related to the deceased in the case of extortion and murder is of little, if any, assistance to the appellant. Despite the close relationship of the complainant with deceased and with the other eye-witnesses, the evidence of eye-witnesses after careful re-consideration is found trustworthy. It is a settled principle of law that mere relationship with the deceased is no ground to discard otherwise trustworthy evidence provided that there is no ill will or enmity between the witnesses and the accused which was not present in this case. Reliance in this respect is placed on the case of *Nasir Iqbal @ Nasra and another v. The State* (2016 SCMR 2152). This view was again reiterated by the Hon'ble Apex Court in the case titled *Gul Zarin and others v. Kamal-uddin and others*(2022 SCMR 1085). Moreover, the deceased was murdered in the presence of his own son. It may well be added that mere relationship is not sufficient to bring one (witness) within meaning of category of 'interested witness' but it shall always be the 'motive' of such an event that one agrees to involve an innocent person at cost of escape of real culprit. Reference may be made to the case of *Farooq Khan v. The State*(2008 SCMR 917) wherein it is observed that:

"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."

16. It would be extremely unlikely for the complainant to set free the real culprit and nominate innocent persons instead and that too without any justifiable rhyme or reason. Reference may well be made to the case of *Zahoor Ahmed v. The State*(2007 SCMR 1519) wherein such view was affirmed by the Hon'ble Apex Court while observing that:-



"6. ... The petitioner is a maternal-cousin of the deceased, as also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High Court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case. Further, it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial."

17. It appears extremely unreasonable to even consider such a fact. Reference is made to the case of *Islam Sharif v. The State*(2020 SCMR 690), wherein it has been held by the Hon'ble Apex Court that:-

"There appears no earthly reason for the witnesses to swap the assassin of their elderly father with an innocent."

18. Evidence of all the P.Ws is consistent on all material particulars of the case, although there are minor contradictions in the evidence of the PWs, but the same are not material and certainly not of such materiality so as to affect the prosecution case. These variations may well be due to lapse of memory or confusion caused in his mind by a relentless cross-examiner or due to lapse of time. It needs no special emphasis to state that every contradiction cannot take place of a material contradiction and, therefore, minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to reject the prosecution evidence. Reliance, in this respect, is placed upon *Zakir Khan and others v. The State* (1995 SCMR 1793) and *Khadim Hussain v. The State* (PLD 2010 SC 669). The defence Counsel could not point out any material discrepancy in the evidence of the eye-witnesses besides the few minor ones. The Hon'ble Apex Court in the case reported as *Gul Zarin and others v. Kamal-ud-Din and others* (2022 SCMR 1085) has been pleased to observe that:-

"As far as minor contradictions in the statements of the PWs are concerned, the same are natural as admittedly the petitioner remained absconder for a period of 12 long years and the trial begun after his arrest on 24.09.2015. After such a lapse of time, some minor



discrepancies may occur but the same are neither dishonest nor are sufficient to discard the testimonies of the PWs of the ocular account."

19. The instant cases are very straight forward in the light of the evidence from the record. Prosecution has successfully proved that the appellant firstly approached the complainant Papan and his father deceased Mashooque Ali at their hotel, demanded extortion money (*Bhatta*) and on refusal, opened fire at the complainant's father, ruthlessly committing his murder. Then, while escaping they fired in the air which attracted the police party headed by SIP Muslim Shaikh who intercepted the assailants and with heavy fire which resulted in the death of PC Abdul Rasool, caused injury to another constable, a passer-by and then the appellant Sadoro was apprehended red-handed with a pistol in his possession, the same pistol that he had used to commit the earlier murder as well. From reappraisal of evidence, we are of the considered view that the prosecution has successfully proved its case through confidence inspiring ocular account furnished by the prosecution witnesses, which is strongly supported by medical evidence, which has led us to an irresistible conclusion that the learned trial Court has rightly convicted the appellant through the impugned judgments and that the prosecution has proven its case against the appellant and the finding recorded by the learned trial Court in both cases is just and appropriate, not calling for any interference. Resulting the instant Criminal Jail Appeals are dismissed.



JUDGE

12.10.2023

JUDGE