

**HIGH COURT OF SINDH, CIRCUIT COURT
AT HYDERABAD**

Criminal Appeal No.S- 24 of 2007
[Abdul Latif versus The State]

Appellant : Through Mr. M. Jameel Ahmed, Advocate.
Complainant : None present despite notice
State : Through Mr. Shahid Ahmed Shaikh
Addl. P.G Sindh
Date of hearing : 23.10.2023
Date of decision : 30.10.2023

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA J.- Through this appeal, the appellant Abdul Latif has impugned the Judgment dated 20.01.2007 passed by learned Additional Sessions Judge, Sehwan (**Trial Court**) in Sessions Case No.63 of 2005 [**The State versus Abdul Latif and others**], outcome of Crime No.85 of 2002 registered at P.S Bhan for offence punishable under Sections 302, 147, 148, 149, 114 PPC, whereby the appellant Abdul Latif alongwith co-accused Jhando was convicted and sentenced u/s 302(b) PPC r/w Section 114 PPC to suffer imprisonment for Life with benefit of Section 382-B Cr.P.C, while other two co-accused namely Abdul Hakeem and Azeem were acquitted of the charge. Whereas accused Ali was declared as proclaimed offender as case against him was kept on dormant file.

2. The brief facts of the prosecution case as per FIR lodged by complainant Muhammad Saleh are that on 01.11.2002 he alongwith his nephew Ali Akber, brother Abdul Razzak had gone to Bhan Saeedabad Town for some work and when they were returning to their village on bicycles at about 06.15 p.m and reached near the Telephone Exchange Building by the side of link road, they saw accused Jhando, Abdul Latif, Azeem, Abdul Hakeem and Ali; among them accused Jhando was armed with a gun, Abdul Latif was armed with rifle, Abdul Hakeem was armed with gun while accused Azeem and Ali were armed with pistols; that all

accused started giving Hakals to them and then accused Jhando instigated accused Abdul Latif to make fire from his rifle and to kill Rajab as he was to be revenged on account of previous incident/enmity; that accused Abdul Latif then directly fired from his rifle upon complainant's cousin Muhammad Rajab with intention to kill him, who sustained bullet injury on his head and fell down on the ground; complainant and others left the bicycles due to fear and hidden themselves in the nearby ditches; that all the accused then fired upon the complainant party and other PWs and then went away while raising Hakals; that the complainant and other witnesses then went to Muhammad Rajab and found him dead at the spot. The complainant leaving the witnesses at the dead body appeared at Police Station and lodged the above FIR.

3. After usual investigation the case was challaned and the accused were sent up to face trial. The accused plead not guilty and claimed trial. In order to prove its case the prosecution examined 8 PW's and exhibited various documents and other items. The accused in their Section 342 Cr.PC statements denied the allegations against them and claimed false implication however they did not examine themselves under oath or call any witness in support of the defence case.

4. The learned trial Court after hearing the learned counsel for the parties and considering the evidence on record convicted and sentenced the present appellant, as mentioned supra, hence this appeal. It is to be noted that the other appellant has died and his appeal has abated whilst the current appellant is on bail pending disposal of this appeal.

5. Learned counsel for the appellant contended that impugned judgment is result of misreading and non-reading of material available on record; that prosecution case is not free from doubts; that present appellant has falsely been implicated in present crime on account of admitted previous enmity; that there are material contradictions in the evidence of prosecution witnesses which makes the case highly doubtful; that the so called eye witnesses were not present at the time of the incident and are put up witnesses; that no recovery was made from the appellant; that the medical evidence does not corroborate with the ocular evidence; that the co-accused have been acquitted on the same set of evidence and as such based on any or all the factors mentioned above the appellant be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases reported as **Shah Faisal v.**

The State (2021 YLR 244), **Muhammad Ashraf Javeed and another v. Muhammad Umar and others** (2017 SCMR 1999), **Muhammad Ali v. The State** (2015 SCMR 137), **Danish and another v. The State** (2022 YLR Note 69), **Tarique Ali v. The State** (2022 P.Cr.L.J 1059) and **Muhammad Arif v. The State** (2019 SCMR 631).

6. Despite service no one put in an appearance on behalf of the Complainant and as such service on the complainant was held good and his interest was protected by learned APG. Learned Assistant P.G vehemently opposed the appeal and prayed for its dismissal by arguing that appellant is nominated in FIR with specific role of causing death of an innocent person; that prosecution witnesses have fully supported the version of FIR and there were no material contradictions in their evidence; that the ocular evidence is supported by the medical evidence; that case of present appellant is distinguishable from the case of acquitted accused. In support of his contentions learned Learned A.P.G has relied upon the cases of **Azhar Hussain and another v. The State and others** (2022 SCMR 1907) and **Abdul Wahid v. The State** (2023 SCMR 1278).

7. I have heard the learned counsel for the appellant as well as learned A.P.G and have perused the material available on record and the case law cited at the bar.

8. Based on my reassessment of the evidence of the PW's, especially the PW eye witnesses, medical evidence, recovery of blood and empty at the crime scene which lead to a positive chemical report I find that the prosecution has proved beyond a reasonable doubt that Muhammed Rajib (the deceased) was murdered by firearm at about 6.15pm on 01.11.2002 on china link road near telephone exchange Bhan.

9. The only question left before me therefore is who murdered the deceased by firearm at the said time, date and location?

10. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted for the following reasons;

- (a) That the FIR was lodged within hours of the incident and any slight delay has been explained by the dead body being taken to the hospital for post mortem as such based on the particular facts and circumstances of the case I do not find such slight delay fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(b) The appellant is named in the FIR with the specific role of murdering the deceased by firearm on the directions of deceased appellant Jhando and as discussed above was lodged with promptitude. Even otherwise no specific/proven enmity has come on record **between the appellant and the complainant or eye witnesses** which would motivate him to lodge a false case against the appellant. Any enmity which their might have been was against deceased appellant Jhando as opposed to the appellant.

(c) In my view the prosecution's case rests on the eye witnesses to the murder whose evidence we shall consider in detail below;

(i) **Eye witness PW 3 Muhammed Saleh. He is the complainant and cousin of the deceased.** According to his evidence on 01.11.2002 he along with the deceased, Ali Akbar and Abdul Razzak had gone to Bhan Syedabad city for personal work and then he along with Abdul Razzak on one bicycle and the deceased and Ali Akbar on another bicycle had started for home. When they reached link road leading to Chini near telephone exchange Bhan he **saw** deceased appellant Jhando and appellant Abdul Latif all armed with other acquitted and absconding co-accused duly armed. The accused gave hakkal and abuses to them and deceased appellant Jhando directed the appellant to fire from his rifle at the deceased on account of revenge. He then **saw the appellant fire with his rifle at the deceased which shot hit the deceased on his head who then fell down.** The other accused fired at them but they hid in ditches whilst the other accused decamped. The deceased brain matter was coming out and he was dead. He went to the PS leaving Ali Akbar and Abdul Razzak over the dead body. The police arrived and the dead body was taken to the hospital for post mortem and there after he lodged the FIR.

He knew the appellant before the incident, it was a day light incident and he was not far away when the appellant shot the deceased so there is no case of mistaken identity and no need to hold an identification parade especially as he named the accused with specific role in the promptly lodged FIR. In this respect reliance is placed on the cases of **Amanullah v State** (2023 SCMR 527) and **Qasim Shazad V State** (2023 SCMR 117)

Admittedly the eye witness was related to the deceased who was his cousin however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has **not been proven** in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State** (2009 SCMR 99) **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152) and **Ashfaq Ahmed v. The State** (2007 SCMR 641),

The complainant is **not** a chance witness. He lived in the same village as his cousin/deceased and had gone to the city with him so he had every reason to be where he was at the time of the incident. Any delay in registering the FIR is fully explained as mentioned above. His evidence reflects that of his FIR and there have been no material improvements in the same so as to render his evidence unreliable. He had no

proven enmity with the appellant and had no reason to falsely implicate him in the murder of the deceased. His evidence was not dented despite lengthy cross examination which was given in a natural and straight forward manner. I find his evidence to be reliable, trust worthy and confidence inspiring and I believe the same and I can convict on his evidence alone. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in **Farooq Khan v. The State** (2008 SCMR 917), what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witness to be of good quality and believe the same and place reliance on it.

(ii) **Eye witness PW 4 Abdul Razzak.** He is the cousin of the deceased. His evidence corroborates the evidence of PW 3 Muhammed Saleh in all material respects. Again he was not a chance witness, he was named in the FIR which was lodged with promptitude, he gave his Section 161 Cr.PC statement one day after the incident which was not materially improved on during his evidence. As such the same considerations apply to his evidence as to PW 3 Muhammed Saleh and I find his evidence to be trust worthy, reliable and confidence inspiring and believe the same and place reliance on it.

(iii) **Eye witness PW 5 Ali Akbar.** The deceased was a cousin of his father. His evidence corroborates the evidence of PW 3 Muhammed Saleh and PW 4 Abdul Razzak in all material respects. Again he was not a chance witness, he was named in the FIR which was lodged with promptitude, he gave his Section 161 Cr.PC statement one day after the incident which was not materially improved on during his evidence. As such the same considerations apply to his evidence as to PW 3 Muhammed Saleh and PW 4 Abdul Razzak and I find his evidence to be trust worthy, reliable and confidence inspiring and believe the same and place reliance on it.

Having believed the eye-witness evidence we turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784), at P.786 para 4 as under:

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"

Thus, based on our believing the evidence of the 3 PW eye witnesses by way of abundant caution what other supportive/corroborative material is there against the appellant?

- (d) That it does not appeal to logic, commonsense or reason that close relatives would let the real murderer of their relative get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).
- (e) That the medical evidence and post mortem report fully supports the eye-witness/ prosecution evidence that the deceased received one firearm injury to his head which in effect blew the brains out of the deceased. It is true that the PW 1 Abdul Sattar MLO opines that the fire shot was made to the deceased by keeping the weapon to his

head despite him not noting any burning, chrring , tattooing or even blackening surrounding the wound to indicate the shot came from close range whilst the eye witnesses stated in their evidence that the shot was made between 20 and 30 paces from the deceased. In any event this is only opinion evidence from the MLO and it is well settled by now that ocular evidence if found to be trust worthy and reliable if in any way in conflict will the medical evidence the ocular evidence will take precedence. In this respect reliance is placed on the case of **Muhammed Riaz V Muhammed Zaman** (PLD 2005 SC 484) where it was held that even if the eye witness evidence slightly differed from the medical evidence this was no ground to disbelieve the eye witness evidence in the following terms at P.491

*"We having examined the evidence in detail find that the reasons given by the High Court for disbelieving the presence of witnesses at the spot were highly speculative, flimsy and artificial. The conclusion that the injuries on the person of deceased were the result of one shot which was probably not fired from front and medical evidence was inconsistent to the ocular account of eye-witnesses was also not based on sound reasons. The statement of doctor to the effect that the injuries were the result of single shot, being only an opinion which may or may not be correct and would not be sufficient to discard the direct evidence and suggest the non presence of eye-witnesses at the spot. **The conflict of medical evidence with ocular account in respect of number and nature of injuries may be relevant to ascertain the role of an individual accused in the occurrence but this is not a valid ground to disbelieve the eye-witnesses and exclude their evidence from consideration. We may observe that even if it would be assumed that injuries were result of single shot, still in the facts of the present case, it would be difficult to suggest that witnesses were not truthful or the respondents were not responsible for the crime.**" (bold added)*

Like wise in the case of **Muhammad Hanif v. The State** (PLD 1993 SC 895) it was held as under at P.899;

"The expert's evidence may it be, medical or that of Ballistic Expert, is entirely in the nature of confirmatory or explanatory of direct or other circumstantial evidence, but if there is direct evidence as in the instant case, which is definite, trustworthy, the confirmatory evidence is not of much significance. In any case, it cannot outweigh the direct evidence." (bold added)

Again in the case of **Amir Khan v. The State** (2000 SCMR 1885), in terms of ocular evidence outweighing corroborative /supportive evidence such as medical evidence it was held as under at P.1888;

"It has time and again been held by the superior courts that if a bald statement of a medical expert is opposed to the proved and admitted confidence inspiring and reliable account of the eye-witnesses or other material and trustworthy evidence on record, then the latter are to be preferred against the former."

An identical view was also taken by the Indian supreme court in the case of **Balvir V State of Madhya Pradesh** dated 19-02-2019 when there was a slight difference between the ocular evidence and the medical evidence at Para's 26 and 27 in the following terms;

"26. It is well settled that the oral evidence has to get primacy since medical evidence is basically opinionative. In *Ramnand Yadav v. Prabhu Nath Jha and others* (2003) 12 SCC 606, the Supreme Court held as under:-

"17. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative. It is only when the medical evidence specifically rules out the injury as is claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference".(bold added)

*The same principle was reiterated in **State of U.P. v. Krishna Gopal and another** (1988) 4 SCC 302, where the Supreme Court held "that eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility".*

27. The inconsistencies pointed out in the evidence of eye-witnesses inter se and the alleged inconsistencies between the evidence of eye-witnesses and that of the medical evidence are minor contradictions and they do not shake the prosecution case. The evidence of eye witnesses are the eyes and ears of justice. The consistent version of PWs 2, 3 and 13 cannot be decided on the touchstone of medical evidence". (bold added)

- (f) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474).
- (g) The fact that a cartridge was recovered from the crime scene is consistent with the murder weapon being a rifle (which the accused was seen firing by the eye witnesses) as opposed to a pistol which most of the other co-accused were seen with.
- (h) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the shooting of the deceased by the appellant who died on the spot to the corroborative medical evidence to the arrest of the appellant.
- (i) That the appellant can gain no benefit from the acquittal of his co-accused as their case is on a much different and lesser footing. Namely, they were only given a general role of firing whilst the FIR and eye witnesses gave the specific role of murdering the deceased to the appellant by shooting him in his head with his rifle. The other appellant who has since expired was also convicted on the same evidence namely, on the direct evidence of the eye witnesses of instigating the appellant to shoot and murder the deceased.

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- (j) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is one of false implication simplicitor based on enmity. The appellant however did not give evidence on oath or call any defence witness in support of his defence case. Thus, in the face of reliable, trust worthy and confidence inspiring eye witness evidence I disbelieve the defence case which has not at all dented the prosecution case.

11. Thus, based on the above discussion especially in the face of reliable, trustworthy and confidence inspiring eye witness evidence and other corroborative / supportive evidence mentioned above, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and sentenced and as such his appeal is **dismissed** and his bail is recalled and he shall be arrested and returned to Central Prison Hyderabad in order to serve out the remainder of his sentence. A copy of this judgment shall be sent to SHO PS Bhan and SSP Matiarri for compliance.

Sajjad Ali Jessar