

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr. Appeal No.S-193 of 2006

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of main case.

27.02.2023.

Mr. Farhad Ali Abro, Advocate for appellant.

Mr. Altaf Sachal Awan, Advocate for complainant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.  
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I have heard the learned counsel for appellant, learned A.P.G and  
learned counsel for complainant. Reserved for judgment.

*\*Hafiz Fahad\**

IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD

Cr. Appeal No.S-193 of 2006

Muhammad Bux

Versus

The State

Appellant : Muhammad Bux (present on bail)	through Mr. Farhad Ali Abro Advocate
Respondent : The State	through Ms. Sana Memon, A.P.G. Sindh
Complainant : Allah Bux	through Mr. Altaf Sachal Awan Advocate
Date of hearing	27.02.2023
Date of judgment	03.03.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-This criminal appeal is directed against the judgment dated 12.09.2006, passed by the learned Additional Sessions Judge, Sanghar, in Sessions Case No.142 of 2000 (re: The State V Ghulam Nabi and another), emanating from Crime No.17 of 1997, registered at Police Station Mangli, under section 302, 324, 337-F(iii), (v) and 34 PPC, whereby the appellant Muhammad Bux S/o Sain Bux Mangwano has been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life for committing murder of deceased Muhammad Rafique. He was also directed to pay fine of Rs.100,000/-; and, in case of non-payment of the said fine, he shall further undergo R.I for 02 years. However, benefit of section 382-B Cr.P.C, was extended to him. Whereas, co-accused Ghulam Nabi was declared absconder and case against him was kept on dormant file till his arrest.



2. As per FIR, complainant Allah Bux Laghari appeared at police station Mangli and lodged his report that:-

*"He resides in Village Moulvi Abdullah Laghari, Taluka Sanghar alongwith his family members, so also their sons Muhammad Rafique, Muhammad Ali and Muhammad Hanif. He has got land and cultivates the same. Today, viz. on 23.07.1997, in the morning he and his sons Muhammad Rafique and Muhammad Ali proceeded to their land for work. After completing their work, they went to the cotton crop of zamindar Abdullah Laghari, from where they returned to their house, it was 11:00 a.m, they saw Ghulam Nabi Mangwano having gun, and Muhammad Bux Mangwano having rifle coming from southern side. Accused Ghulam Nabi asked them why they should not withdraw the case, saying so accused Ghulam Nabi fired direct shot upon Muhammad Rafique, which hit on his chest and left shoulder. Co-accused Muhammad Bux also made fire from his rifle upon Muhammad Rafique, which hit on his back, who fell down on the ground. Accused Ghulam Nabi also fired second shot from his gun on Muhammad Ali, which hit on his right upper part of arm and he also fell down on the ground. Thereafter, complainant had hidden in the cotton crop. Then both accused along with their respective weapons ran away towards jungle. Complainant saw his son Muhammad Rafique, who was dead and his other son Muhammad Ali was injured. On fire report, his brother Jamal and his son Muhammad Hanif as well as other villagers came there and he narrated them the facts of incident. While leaving his brother Jamal, his son Muhammad Hanif and other villagers on the dead body of Muhammad Rafique, complainant brought his injured son Muhammad Ali to P.S and lodged such report."*

3. After usual investigation police submitted challan before the Court concerned and after completing necessary formalities, learned trial Court framed charge against the accused/appellant Muhammad Bux as well as co-accused Ghulam Nabi, to which they pleaded not guilty and claimed trial. However, it appears from the record that co-accused Ghulam Nabi during trial proceedings had absconded away and he was declared absconder on 14.05.2005.

4. At trial, the prosecution in order to prove its case examined 07 witnesses and exhibited numerous documents and other items. The statement of the accused/appellant was recorded under section 342 Cr.P.C , whereby he denied the prosecution allegations leveled against him and claimed his false implication in this case by the complainant. However, neither he examined himself on oath nor led any evidence in defence.

5. Learned trial Court after hearing the learned counsel for the parties and evaluating the evidence available on record convicted and sentenced the



appellant Muhammad Bux, as set out in the earlier para and hence he has filed this appeal against his conviction.

6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is innocent as there is no enmity between the appellant and the complainant party; that the eye witnesses could not be safely relied upon as they were all related; that the injured eye witness appeared in hospital at 1.15pm for treatment whilst the dead body arrived at the hospital at 5pm which does not make any sense as both the injured and the dead body ought to have arrived at the same time; that the medical evidence contradicts the oral evidence; that there are material contradictions in the prosecution evidence; that the rifle was foisted upon the appellant by the police and that for any or all of the above reasons the appellant should be acquitted from the charge by extending him the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Muhammad Zaman V The State** and others (2014 SCMR 749), **Kamran & others V The State** (SBLR 2014 SC 177), **Muhammad Shah V The State** (2010 SCMR 1009), **Amin Ali and another V The State** (2011 SCMR 323), **Abdul Majeed V The State** (2001 YLR 2128), **Muhammad Tufail V The State** (1997 MLD 997 [Karachi]), **Muhammad Hanif V The State** (2013 YLR 2026 [Federal Shariat Court]), **Ghulam Waris V The State** (2003 YLR 2273), **Lalio and 6 others V Ist Additional Sessions Judge, District Badin and another** (2014 MLD 936), **Liaquat Ali V The State** (1990 PCr.LJ 403), **Faridullah Shah V The State** (1990 PCr.LJ 1945), **Qazi alias Dost Muhammad and another V The State** (2014 PCr.LJ 611) and **Tanveer alias Rabail and another V The State** (2012 YLR 2026).

8. Learned Assistant Prosecutor General Sindh on behalf of the State and the learned counsel for the complainant after going through the entire evidence of the prosecution witnesses as well as other record of the case have fully supported the impugned judgment. In particular, they have contended that the eye witnesses are confidence inspiring and reliable and that their evidence cannot be discarded simply because they are inter related; that the

medical evidence corroborates the ocular evidence; that the rifle used in the murder was recovered on the pointation of the appellant after his arrest which when matched with the empties recovered at the crime scene lead to a positive FSL report and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions, they placed reliance on the cases of **Shamsher Ahmad and another V The State and others** (2022 SCMR 1931), **Sajid Mehmood V The State** (2022 SCMR 1882), **Zulfiqar Ahmad and another V The State** (2011 SCMR 492), **Zahoor Ahmad V The State** (2017 SCMR 1662) and **Farooq Khan V The State** (2008 SCMR 917).

9. I have considered the submissions of the parties and have perused the material available on record as well as the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's especially the medical evidence, the empties and blood recovered at the scene of the incident I find that the prosecution has proved beyond a reasonable doubt that Muhammed Rafique (the deceased) was shot and murdered by fire arm and PW Muhammed Ali was injured by firearm on 23.07.1997 at about 11am in the lands of Abdullah Leghari district Sanghar.

11. The only question left before me therefore is whether it was the appellant who murdered the deceased by firearm and injured PW Muhammed Ali by firearm at the said time, date and location?

12. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for murder of the deceased under Section 302 (b) PPC keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) That the FIR was lodged with promptitude within 45 minutes of the incident which gave no time for the complainant party to cook up a false case against the appellant. The appellant is also named in the FIR with a specific role. In this respect reliance is placed on the case of **Zahoor Ahmad** (Supra)

(b) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and the injuries to



PW Muhammed Ali and whether I believe their evidence whose evidence I shall consider in detail below;

(i) Eye witness PW 1 Allah Bakhsh. He is the complainant and father of the deceased. He stated in his evidence in chief as under;

"I have got four sons namely Mohammad Rafique, Mohammad Sharif, Mohammad Hanif and Mohammad Ali. I have got my own land admeasuring 12-0 acres in deh Khadwari. On 23-07-1997 this incident had taken place. It was about 07-00 / 07-30 AM; when I proceeded to our land, my sons Mohammad Rafique and Mohammad Ali were with me. After completing our work, we returned back to our house. **It was about 11-00 AM when we reached in the cotton crop of Abdullah Leghari, where I saw present accused,** who were also coming from southern side, and accused Ghulam Nabi who was armed with gun asked us that why we should not withdraw the case, on saying so, accused Ghulam Nabi fired direct shot upon Mohammad Rafique, which was hit on his chest and left shoulder. **Co-accused Mohammad Bux also made fire from his Rifle upon the Mohammad Rafique, which was hit on his back, who fell down on the ground.** Accused Ghulam Nabi also fired second shot from his gun on Mohammad Ali, which was hit on his left upper part of arm, who also fell down on the ground. Thereafter I was hidden in the cotton crop. On the fire reports my brother Jamal and my son Mohammad Hanif came there. After that I, my brother Jamal and my son Mohammad Hanif went to wardat and saw that Mohammad Rafique had expired, while Mohammad Ali was lying in injured condition. After completing the offence accused alongwith their weapons went running away. After that my brother Jamal and my son Mohammad Hanif remained over the dead body of Mohammad Rafique and I brought the injured namely Mohammad Ali on Tractor-trolley to PS and lodged the report. PW Shahmir was also accompanied with us to PS. The injured Mohammad Ali was then referred to Civil Hospital at Sanghar for examination, treatment and certificate. After that I had shown the place of wardat to police. PW Shahmir was also with me. I produce the FIR as Ex:05-A, it is same, correct and bears my LTI. The dead body of deceased Mohammad Rafique was referred to Civil Hospital Sanghar for examination and conduct the post mortem examination upon the dead body and report. After conducting the post mortem over the dead body of Mohammad Rafique, the said dead body was handed over to me on receipt, which I produce as Ex:05-B, it is same, correct & bears my LTI. Accused present in the Court are same."(bold added)

This eye witness is related to the deceased as the deceased was his son. According to learned counsel for the appellant the appellant had no enmity or dispute with the deceased or the complainant party although it appears that the absconding co-accused might have done on account of an FIR which he wanted



the complainant and his son to withdraw. However this enmity has not been proved as no FIR has been placed on record or any other evidence in that regard and as such mere relationship of the complainant to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371) and **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness knew the appellant before the incident which occurred at 11am in broad day light when there would have been sufficient light to easily identify the appellant. The incident occurred quite close to him and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. In this respect reliance is placed on the case of **Zahoor Ahmad** (Supra). He saw the appellant along with the absconding co-accused shoot the deceased from the back. His presence at the scene of the incident is corroborated by PW 2 Muhammed Ali who was an injured eye witness.

This eye witness was not a chance witness as he lived in the area and had gone to tend his agricultural land with his sons including the deceased and eye witness PW 2 Muhammed Ali. He gave his S.154 Cr.PC statement within 45 minutes of the incident which was not significantly improved on during his evidence. He named the accused in his FIR along with a specific role. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellant who along with his absconding co-accused fired at the deceased with a rifle which lead to the murder of the deceased on the spot. The fact that the injured PW reached the hospital before the body I find to be of no relevance based on the particular facts and circumstances of the case since the injured needed immediate medical treatment whilst the deceased died on the spot and as such there was no immediate hurry to take the body to hospital whilst PW Jamal waited over the dead body for the police to come as the complainant had gone to lodge the FIR at the local PS along with the injured eye witness in order to obtain a medical letter.

I can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That 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. In this case however there is more than one eye witness.

(ii) Eye witness PW 2 Muhammed Ali. He is the brother of the deceased. He had no enmity with the appellant and no reason to implicate him in a false case. His evidence corroborates PW 1 Allah Bakhsh's evidence in all material respects with the incident taking place in day light at 11am where he knew the appellant. He is named in the promptly lodged FIR as being an eye witness. He received a firearm injury on the spot from the absconding co-accused which injury was confirmed by the medical evidence. He is not a chance witness as he was working the land with his father and brother. He gave his S.161 Cr.PC statement on the same day and later his S.164 Cr.PC statement which were not materially improved from his evidence and thus I believe his evidence and place reliance on it especially in terms of the correct identification of the appellant. The same considerations apply to his evidence as the evidence of PW 1 Allah Bakhsh.

Thus, based on my believing the evidence of the 2 eyewitnesses whose evidence I have discussed above what other supportive/corroborative material is there against the appellant? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of Muhammad Waris v The State (2008 SCMR 784)

(c) That it does not appeal to logic, commonsense or reason that a real father and brother would let the real murderer of their son/brother get away scott 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)

(d) That the medical evidence and medical reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased died from firearm injuries and **significantly** one of the fatal shots came from the back which was the shot made on the deceased by the appellant according to the evidence of the eye witnesses.

(e) That the rifle which was used in the murder of the deceased was recovered by the police hidden on the pointation of the appellant in a place only he would have know about. There can be no doubt that this was his weapon as he had a license for it.

(f) That one of the empties recovered at the crime scene when matched with the appellant's rifle which was recovered on his pointation produced a positive FSL report.

(g) That it has not been proven through evidence that any particular police PW's had any enmity or ill will towards the



appellant and had any reason to falsely implicate him in this case, for instance, by foisting the rifle on him, and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(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 time the complainant and his sons left to work their land to them being intercepted on the way home by the absconding co-accused and the appellant both of whom were duly armed to the absconding co-accused threatening the complainants party to withdraw the FIR or he would kill them to the absconding co-accused and the appellant **both firing** at the deceased who died on the spot to the recovery of empties and blood at the spot to the arrest of the appellant to the appellant leading the police to his hidden rifle to the empty recovered at the scene leading to a positive FSL report.

(i) That the motive for the attack on the deceased and PW 2 Muhammed Ali as gauged from the FIR and the eye witness evidence appears to be the absconding co-accused demand for the withdrawal of an FIR lodged in respect of some of his family members.

(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 caste doubt on or dent the prosecution case. The defence case is simply one of false implication simplicitor. The appellant did not give evidence on oath and did not call any DW or take any particular defence during the trial through cross examination. Thus, for the reasons mentioned above I disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellant which has not at all dented the prosecution case.

13. Thus, based on the above discussion I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction and sentence **and dismiss the appeal**. The bail of the appellant is recalled with immediate effect and he shall be arrested through non

bailable warrants and returned to serve out the remainder of his sentence at Hyderabad central jail. A copy of this Judgment shall be sent to SHO PS Mangli and SSP Sanghar for compliance.

14. The appeal is disposed of in the above terms.