

IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khudhm Hussain Tunio*

CRIMINAL JAIL APPEAL NO.23 OF 2022 CONFIRMATION CASE NO.07/2020

Appellant:	Muhammad Qasim S/o Ghulam Mohiuddin through Mr. Iftikhar Ahmed Shah, Advocate.
Respondent:	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Complainant:	Through Mr. Ghulam Rasool, Advocate
Date of Hearing:	30.03.2023
Date of Announcement.	05.04.2023

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant Muhammad Qasim son of Ghulam Mohiuddin was tried by the Court of 1st Additional Sessions Judge / Model Criminal Trial Court (Malir) Karachi in Session Case No.2000 of 2019 under Crime No.695/2019 u/s.302/34 PPC lodged at PS Shah Latif Town, Karachi and vide judgment dated 27.01.2020 he was convicted for an offence punishable u/s.302 PPC and awarded death sentence as Tazir u/s.302(b) PPC subject to confirmation by this court. He was also ordered to pay fine of Rs.15,00,000/- to the legal heirs of the deceased under section 544-A Cr.P.C. and in case of non-payment of fine appellant shall also suffer imprisonment for six months more.

2. The brief facts of the prosecution case are that vide Section 154 Cr.P.C. statement complainant Khurram Shehzad reported that he was at Abdullah Goth when he received information that today i.e., 02.11.2019 at 1850 hours accused Qasim in connivance with accused Umer had fired and injured his brother Muhammad Farooq and nephew Muhammad Haris and when he reached at hospital he found their dead bodies. He

further submitted that some time ago dispute arose between deceased and accused Qasim over theft of Wifi router for which accused Qasim implicated Ainan and even on that issue accused Qasim took out pistol and resultantly complainant along with deceased person moved application for protection at P.P. Khulkiabad. Thus FIR was lodged under Section 302/34 PPC against the accused persons.

3. After usual investigation charge was framed against the appellant to which the appellant pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 10 witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which he denied the allegations levelled against him. The appellant did not examine himself on oath nor produce any DW in his defence.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 27.01.2020 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. At the very outset learned counsel for the appellant under instructions of the appellant did not press the appeal on merits and did not contest his guilt and only sought a reduction in sentence from the death penalty to that of life imprisonment based on the fact that the prosecution had failed to assert and prove a motive for the murders which was a ground which the Supreme Court often relied on to permit such a reduction. In support of his contentions, he placed reliance on the cases of *Haq Nawaz v The State* (2018 SCMR 21), *Nadeem Ramzan v The State* (2018 SCMR 149), *Ali Bux v The State* (2018 SCMR 354) and *Ch. Muhammad Yaqoob v The State* (1992 SCMR 1983).

8. On the other hand Mr. Muhammad Iqbal Awan Additional Prosecutor General Sindh supported by learned counsel for the

complainant contended that the prosecution had both asserted and proved the motive for the murders which were brutal in nature and that the sentence of death be maintained. In support of their contentions, they placed reliance on an unreported judgment of Supreme Court of Pakistan passed in the case of Imran Mehmood v The State in Cr. Appeal No.82 of 2022 dated 13.02.2023.

9. We have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh as well as learned counsel for the complainant and have also gone through the entire evidence on record.

10. That although the appellant has not contested his guilt and has only sought a reduction in sentence we have found from the evidence on record that the two deceased both died from firearm injuries as per the medical evidence and post mortem reports which accords with the oral evidence and as such died unnatural deaths; that the FIR was lodged with promptitude which gave no time to cook up a false case against the appellant who was named in the FIR with the specific role of shooting both the deceased with a firearm; that PW 2 Anaan who was an eye witness to the incident and saw the appellant fire upon both the deceased outside his house from relatively close range in reasonable light and who knew the appellant from before and as such there is no case of mistaken identity and no need for an identification parade. He gave his Section 161 Cr.PC statement with promptitude naming the appellant and the role assigned to him and he did not make any material improvements to the same during the course of his evidence. He gave his evidence in a natural and straight forward manner and was not dented during cross examination and thus we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in terms of the correct identification of the appellant who shot the deceased dead. His evidence at least to the presence of the appellant with a firearm at the scene of the shooting of the deceased is corroborated by PW 5 Shabana Saeed and PW 6 Naheed whose presence is also corroborated by PW 4 Shabana Bibi. The medical evidence also supports/corroborates the prosecution case as does the blood and empties recovered at the crime scene. We have no reason to doubt the police evidence who had no ill will

or enmity with the appellant and had no reason to implicate the appellant in a false case and thus we place reliance on their evidence; there are no material contradictions in the prosecution evidence which is corroborative in all material respects and as such when the above evidence is taken together we find that the prosecution has proved its case against the appellant beyond a reasonable doubt and uphold his conviction.

11. With regard to sentencing the appellant seeks a reduction in sentence from that of the death penalty to that of life imprisonment because the prosecution has failed to assert and prove any motive for the murder against the accused and thus we shall consider this aspect in some detail.

Did the prosecution prove the motive for the murder?

(a) Our starting point is the FIR which as mentioned earlier was lodged with promptitude. The final few lines after naming the accused in the double murder reads as under.....*"I hereby report that about 2/3 months ago we had submitted a complaint against Qasim (the appellant) at police post Khuldabad, Quaidabad that Qasim (the appellant) being biased towards us murdered my brother and nephew by opening fire at them in connivance with Umer"*.

(b) Thus, it is asserted in the FIR that the appellant murdered the deceased because they made a complaint against him to the police. The question arises as to what was this complaint. The complaint was exhibited as No.12 during the evidence of PW 1 Khurram Shahzade who stated as under in his evidence in material part in respect of this aspect of the case;

".....About 04 months ago accused Qasim and Umer took my younger nephew Anaan in Malir Naddi and maltreated him on the ground that he had stolen their WIFI Router. My deceased brother told them that if my son had stolen router then he will give 02 routers as fine, even on such occasion Qasim scuffled with my brother. Even accused Qasim went his home and brought pistol, but Mohalla persons intervened and resolved the issue. Then, I Haris and Farooq went to P.P. Khuldabad and gave application over there, which I produce at Ex.12." (bold added)

(c) Exhibit 12 is the complaint which states as under;

The In-charge
Police Post Khuldabad
PS Shah Latif Town
Malir, Karachi

R/Sir,

"It is submitted that the applicants Khurram Shekzad, Muhammad Farooq and Muhammad Harris through this application submit that today we were present at our house when son Muhammad Hannan having arrived at home informed that Muhammad Qasim son of Ghulam Mohiuddin, who resides in our neighborhood, has slapped me and said you have stolen my wifi router whom I told that I have not stolen anything but he insists that I am the thief at which my brother Muhammad Farooq and nephew Harris came out of the house so Qasim was standing outside whom brother Muhammad asked why he slapped my son Hannan. He told my brother that he has stolen my wifi router at which my brother said if my son turned out to be the thief of your router, I will bring you two routers. At this a verbal spat ensued so I, my brother and nephew also slapped Muhammad Qasim at which, the area residents intervened then Qasim went home and brought the pistol and threatened that I will kill you but the area residents got the matter settled regarding which we submitted the application to the police post for our protection. Legal action may be taken".(Bold added)

Sd/
Applicant
Khurram Shekzad
son of Muhammad Siddiq
0345-4545929

- (d) Learned counsel for the appellant has contended that this complaint is a fake as it bears no police stamp or any other proof that it was lodged at any PS and has been managed by the complainant party in order to create a false motive for the murder. This contention might have had some weight however it is completely shattered by the evidence of PW 7 Saeed Ahmed who was the police officer who received the application (complaint) who had no enmity or ill will or any reason whatsoever to create a false motive in his evidence whereby he states as under;

"On 10.07.2019 I was posted as PC at P.P. Khuldabad of P.S Shah Latif Town. On such date, Khurram Shahzad, Muhammad Farooq and Haris came there and gave one application that they had one quarrel with one Qasim in their Mohalla. They gave such application at about 2330 hours. Only duty officer was available in

P.P while Incharge was in area patrolling. I simply received the application for presentation before Incharge, however in the morning at 1000 hours Khurram Shahzad again came and disclosed that application may be returned since Mohalla persons had resolved the issue. I see Ex. 12 is same application.

Cross to Mr. Irfan Ahmed Narejo, Advocate for accused Qasim.

It is correct that there is no receiving stamp on the application. Second party was even not called in response to such application. The compromise reached after making of application".(bold added)

- (e) His evidence is reinforced by the evidence of PW 10 Shazado Khan who was the IO of the case who in his evidence states as under in material part in respect of this aspect of the case;

"During investigation, complainant disclosed that there was dispute on the WiFi Router with accused Qasim and due to such dispute accused Muhammad Qasim had brought the pistol. Thereafter due to interference of Mohalla persons matter was settled but prior to this the complainant had moved an application at P.P. Khuldabad of P.S. Shah Latif Town against the accused Muhammad Qasim. After settlement the same application was returned back by the complainant. I had confirmed the application and went to P.P. Khuldabad where I recorded the statement of concerned PC Saeed Ahmed and also got copy of such application." (bold added)

- (f) Further evidence of the motive for the appellant murdering the deceased because of the dispute over the router which complaint was lodged with the police is found in the evidence of PW 2 Aanan who states in his evidence in respect of this aspect of the case in material part as under;

"Accused had committed murder because earlier they leveled allegations of theft of WiFi Router on me. Even accused Qasim threatened me at Malir Naddi and when I informed my father accused Qasim also maltreated him and when Haris also maltreated Qasim, accused brought pistol from his house. Even application was given at P.P. but the matter was resolved by the intervention of Mohalla persons. After compromise we withdraw our application." (bold added)

- (g) PW 4 Shahbana Bibi also supports the motive for the murder being the dispute over the router which is set out as under in her evidence in material part....

"About 03/0-4 months ago both accused leveled false allegations of router theft on my son Ainan and threatened him. When my husband enquired from Qasim, he not only maltreated him but he also pointed pistol on him. Haris was also there. After FIR police also recorded my statement. Accused present in court are same Qasim and Umer Farooq."(bold added)

(h) Even the appellant had this to say about the router and the dispute in his Section 342 Cr.PC statement which dispute is not denied by him and is set out in relevant part below;

Q.3 That in the month of July, 2019 you accused made allegations against son of deceased namely Muhammad Ainan regarding theft of Wifi Router on which you also maltreated Ainan, what you have to say?

Ans. It is correct. There was theft of router and they maltreated me.

Q. 4: That on this issue when deceased Siddique enquired from you, then you became angry and scuffled took place which was resolved by Muhalla person and thereafter you went your house and brought pistol and issued threats of murder to deceased and complainant, what you have to say?

Ans. It was a minor exchange of harsh words and it concluded on spot.

Q. 5: That such complaint as well as application for protection was also given by complainant at P.P. Khuldabad on 10.07.2019 at 2300 hours, what you have to say?

Ans. Neither I know about this nor I had been called by the police.

Q. 6: That such complaint was later on withdrawn by the complainant on the very next day in morning on account of compromise between you and complainant side, what you have to say?

Ans. I cannot say about return of application but it is fact that our issue was resolved.

Q. 7: That due to this dispute even your previous landlord got recovered his premises and thereafter you shifted in the premises of Umer Farooq as tenant in the month of July, 2019, what you have to say?

Ans. It is correct. I was already ultimatum by the previous landlord and when issue of router took place I had partially shifted my articles in the property of Umer Farooq. (bold added)

12. As such based on our analysis of the evidence mentioned above when we take a holistic view of the same which was made by many witnesses both official and private we find that the prosecution both asserted and proved the motive behind the appellant murdering the deceased Muhammed Farooq and Muhammed Harris which was the dispute over the router.

13. Even other wise it is not always necessary to prove a motive for the death penalty to be upheld as each case must be judged on its own particular facts and circumstances including for instance, aggravating factors. For example, a professional target killer may have no personal motive for murdering a person but is simply acting on the orders of his organization/group/party yet he has carried out a pre meditated cold bloodied murder. Why under such circumstances should he be spared the death penalty if no mitigating factors are present and only aggravating ones simply because he lacks a personal motive to murder and because he is acting on the orders of others as sometimes occurs in Karachi.

14. In this case two innocent persons were murdered over a petty dispute through a cold bloodied pre mediated murder in front of the deceased house in virtual broad day light where his relatives including their wife and mother were close by where one of the deceased even received three separate fire shot injuries which lead to his death and as such we do not consider, based on the particular facts and circumstances of this case, that the appellant deserves any leniency in sentencing especially as there are no mitigating circumstances and only aggravating factors and that a deterrent sentence is the more appropriate one to deter such brutal crimes and as such the appeal is dismissed and the confirmation reference is answered in the affirmative.

15. The appeal and confirmation reference are disposed of in the above terms.