504

IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,

CRIMINAL APPEAL NO.538 OF 2022.
CRIMINAL JAIL APPEAL NO.583 OF 2022.
CONFIRMATION CASE NO.10 OF 2022.

Appellant:	Juman S/o. Rano through Syed Ghazanfar Ali Shah, Advocate.
Respondent:	The State through Mr. Ali Haider Saleem, Additional Prosecutor General.
Date of Hearing:	11.04.2023
Date of Announcement:	14.04.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Juman S/o. Rano was tried before the Additional Sessions Judge-I/Model Criminal Trial Court, Thatta in Sessions Case No.144 of 2019 arising out of Crime No.30 of 2018 U/s. 302 PPC registered at Police Station Jhoke Sharif and vide judgment dated 07.09.2022 appellant Juman S/o. Rano was awarded death sentence subject to confirmation by this court. The appellant/accused was also ordered to pay an amount of Rs.1,00,000/- to the legal heirs of the deceased as compensation in terms of Section 544-A Cr.P.C. Such compensation shall be recoverable as arrears of land revenue.

2. It is asserted by the prosecution that by having the background of incident of accident allegedly caused by deceased Ali Anwar Chandio with accused Jumman Chandio in connection with a motor cycle for which a separate FIR was already registered against the deceased on account of this enmity the accused murdered the deceased. The brief facts of the prosecution case are that on 01.10.2018 at 0700 hours in front of hotel of Haji Soomro situated in Abral Town, Taluka Mirpur Bathoro,

SOS

District Sujawal in presence of complainant Ali Nawaz Chandio and PWs Muhammad Umer Chandio and Bahawal Din Chandio, accused Jumman Chandio came there having double barrel gun in his hand. He hackled the deceased Ali Anwar alias Punhoon Chandio that he will not spare him and on saying so, accused Jumman Chandio made fire a straight shot to him from his double barrel gun which hit him on left side of the chest and due to such fire shot injury he fell down and died instantaneously, hence the instant FIR was lodged.

3. After completion of investigation I.O. submitted charge sheet against the arrested appellant Juman to which he pleaded not guilty and claimed trial.

4. The prosecution in order to prove its case examined 07 witnesses and exhibited various documents and other items. The statement of the appellant/accused was recorded under Section 342 Cr.P.C in which he denied all the allegations levelled against him and claimed his false implication in the case. He however did not give evidence on oath or call any DW in support of his defence case.

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 these appeals 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 07.09.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated by the complainant; that the charge was defective as it mentioned the time of the incident as 1700 hours as opposed to 7 am in the FIR; that there was a delay in lodging the FIR which gave the complainant party the time to cook up a false case against the appellant in league with the police; that an important witness being the hotel owner outside whose hotel the deceased was shot was not examined and as such it can be assumed that

506

he would not have supported the prosecution case; that the ocular evidence was not supported by the medical evidence; that the so called recovered shot gun was foisted on the appellant and that for any or all of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Pathan v. The State** (2015 SCMR 315), **Tariq Pervez v. The State** (1995 SCMR 1345), **Muhammad Ashraf alias Acchu v. The State** (2019 SCMR 652), **Akhtar Ali and other v. The State** (2008 SCMR 6), **Riasat Ali v. The State** (2013 YLR 272), **Abdul Rashid v. The State** (1997 SCMR 373), **Hashim Qasim and another v. The State** (2017 SCMR 986), **Muhammad Asif v. The State** (2017 SCMR 486), **Muhammad Rafique v. The State** (2014 SCMR 1698), **Muhammad Javed v. The State** (2016 SCMR 2021), **Muhammad Ali v. The State** (2017 SCMR 1468), **Munawar Alam Khan and another v. The State** (2015 P Cr.LJ 459) and **Mst. Zahida v. The State** (1996 MLD 476).

8. On the other hand learned Additional Prosecutor General has contended that the prosecution has proved its case beyond a reasonable doubt and has fully supported the impugned judgment. In particular, he contended that the evidence of the eye witnesses to the murder could be safely relied upon; that the medical evidence supported the ocular evidence; that the murder weapon was recovered on the pointation of the appellant which lead to a positive FSL report when matched with the empty recovered at the scene of the murder; that the prosecution had both asserted and proved the motive behind the murder namely the criminal case which was proceeding between the appellant and the deceased over a motor cycle accident and as such the appeal be dismissed and the confirmation reference answered in the affirmative as it was a cold bloodied premeditated murder. In support of his contentions, he placed reliance on the case of **Niaz-ud-din and another v. The State and another** (2011 SCMR 725), **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Dadullah and another v. The State** (2015 SCMR 856), **Roohullah and others v. The State and others** (2022 SCMR 888), **Azhar Hussain and another v. The State and others** (2022 SCMR 1907), **Ijaz Ahmad v. The State** (2009 SCMR 99) and **Qasim Shahzad and another v. The State and others** (2023 SCMR 117).

507

9. We have heard the arguments of the learned counsel for the appellant and learned Additional Prosecutor General Sindh and gone through the entire evidence which has been read out by the learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

10. It is to be noted that learned counsel for the complainant was called absent without intimation despite his name appearing in the cause list but he preferred to remain absent and as such we have proceeded to decide this appeal in his absence as his interest can be looked after by the learned APG.

11. Based on our reassessment of the evidence of the PW's, especially the medical evidence, the blood stained earth and empty recovered at the scene of the crime we find that the prosecution has proved beyond a reasonable doubt that on 01.10.2018 at about 7am in front of hotel Haji Soomro situate at Abral city, Taluka Mirpur Bathoro, District Sujawal Ali Anwar @ Panhoon (the deceased) was murdered by firearm and died on the spot on account of his injuries.

12. The only question left before us therefore is whether it was the appellant who murdered the deceased by firearm at the said time, date and location?

13. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellant for which he was convicted and sentenced 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 within a day of the incident. This slight delay in lodging the FIR we find based on the particular facts and circumstances of this case has been fully explained. This is because the complainant first had to take his deceased brother to the PS where legal formalities were carried out before a post mortem was performed at the hospital on the dead body which was then taken home and prepared for burial and then the burial took place and thereafter the complainant immediately returned to the PS and lodged the FIR. It has also come in evidence that the police came to the hospital and were aware of the incident much before the FIR was lodged as the complainant had taken the dead body of the deceased to the PS so that a medical letter could be arranged.

Legal formalities were also carried out by the police at the PS and the dead body of the deceased was taken by the complainant to the hospital accompanied by a police officer and as such based on the particular facts and circumstances of this case we do not find that the delay in lodging the FIR is 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) We find it inconsequential that the charge states the incident took place at 1700 hours as opposed to 7am.This is because the charge otherwise made it absolutely clear the offence for which the appellant had to defend himself including date and location which he did at trial through lengthy cross examination of the witnesses. The time of 1700 hrs as opposed to 7 am is simply a typo which the appellant did not complain about at trial as he knew the details of the offence which he had to defend himself against and as such the appellant has not been prejudiced by this minor defect in the charge.

(c) We find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether we believe their evidence especially in connection with the correct identification of the appellant whose evidence we shall consider in detail below;

> (i) **Eye witness PW 1 Ali Nawaz. He is the complainant and was the brother of the deceased.** According to his evidence on 01.10.2018 at about 7am he was available in the vegetable shop of his cousin PW Muhammed Umer who was also present. He saw the accused having a double barrel gun come there and tell his brother who was standing in front of hotel of Haji Soomro that he would not escape death. He then saw the appellant fire a straight shot at his brother from his shot gun who fell down. The accused then escaped. He went to his brother and found that he had died. He arranged a pick up and got the dead body taken to PS Jhoke Sharif and informed the police about the incident who examined the dead body in front of the mashirs which was then taken to the hospital for post mortem.
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> From the evidence it transpires that this witness is related to the deceased however no enmity or dispute has been proven between the eye witness and the appellant although there were differences between the deceased and the appellant and thus his mere relationship 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), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).
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> This eye witness **knew the appellant before** the incident which occurred at about 7am in the morning in broad day light close to where the eye witness was standing. The incident went on for a few minutes and the eye witness was close to the incident and would have got a good look at the

S09

appellant who he already knew. 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. His presence at the scene of the incident is corroborated by PW Muhammed Umer whose shop he was at and who were also present at the time of the incident.

This eye witness was not a chance witness as he is related to the owner of the shop and the deceased and living in the same area and had every reason to be with PW Muhammed Umar at his shop. As noted earlier based on the particular facts and circumstances of the case, he lodged his FIR with relative promptitude where named the appellant as the person who he saw shoot the deceased and his FIR was not materially improved on during his evidence. He gave his evidence in a natural manner and was not dented at all during a lengthy cross examination and as such we 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 murdered the deceased. As in the FIR he also gives the motive for the murder namely the enmity between the appellant and the deceased over the motorcycle accident which was now the subject of criminal proceedings.

We 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 we 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 Umer. He is also related to the deceased.** His evidence corroborates that of **PW 1 Ali Nawaz** in all material respects. He knew the appellant from before the incident which was in day light and he saw the appellant fire on the deceased from a short distance so would have been easily able to recognize him. He is named as an eye witness in the FIR. He has no relationship or enmity with the appellant and had no reason to implicate the appellant in a false case. He gave his Section 161 Cr.PC statement one day after the incident which was not materially improved upon during the course of his evidence. He was also not a chance witness as it was his vegetable shop outside which the incident took place and as such it was only natural that he was present at his shop in the morning preparing for work. His evidence was not dented despite a lengthy cross examination and in his evidence he also corroborates PW 1 Ali Nawaz in respect of the motive

Muhammad Arif

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for the murder. We believe his evidence in respect of the incident and in particular the correct identification of the appellant as the person who shot the deceased. The same considerations apply to his evidence as the evidence of PW 1 Ali Nawaz.

At this point we would like to mention that with two reliable eye witnesses we do not find it relevant that the owner of the hotel was not called to give evidence on behalf of the prosecution .This is because there is no evidence to suggest that the hotel owner was even an eye witness as his hotel was closed at the time of the incident.

Thus, based on our believing the evidence of the 2 eyewitnesses what other evidence/material supportive/corroborative or other wise 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)

(d) That apart from the actual murder the evidence of the eye witnesses is fully corroborated by the mashir of all the relevant documents PW 5 Khan Muhammed which included inspection of the wardat, recovery of blood and empty at wardat, memo of arrest and memo of recovery of the shot gun on the pointation of the accused.

(e) That it does not appeal to logic, commonsense or reason that a real relative would let the real murderer of his real relative get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammad Ashraf V State** (2021 SCMR 758)

(f) That the medical evidence and medical reports fully support the eye-witness/ prosecution evidence in that the deceased received pellet injuries from a firearm which was the cause of his death. As noted by MLO PW 4 Dr.Abdul Qadir a good number of these pellets hit the chest of the deceased as was also observed by the eye witness in their evidence. Pellet injuries are also caused on account of shot gun fire. There was also no blackening around the pellet wounds which indicates that the distance of the fire was as mentioned in the evidence of the eye witnesses i.e beyond 3 feet.

(g) That the murder weapon namely the Shot gun was recovered by the appellant on his pointation which was hidden in bushes at a place which only he would have known about and as such could not have been foisted on him.

(h) That the empty which were recovered from the crime scene when matched with the shotgun recovered by the appellant lead to a positive FSL report in that the recovered empty was fired from the recovered Shot gun which was also found to be in working order.

(i) That it has not been proven through evidence that any particular police witness had any enmity or ill will towards the

S11

appellant and had any reason to falsely implicate him in this case for instance by foisting the Shotgun on him and in such circumstances it has been held that the evidence of the police witnesses 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). Two of the police officers (SIP Allah Dino and ASI Karim Ali) who were involved in the case and prepared mashirnama's died during the course of the trial as is evidenced from the record however their signatures on the relevant documents were all recognized by a person who was well aware of their hand writing and signatures. Namely, the last IO PW 6 Bahadur Ali

(j) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect 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 deceased arrived outside the hotel to the appellant also arriving there and shooting him with a shot gun which lead to his death on the spot to the appellant making his escape good to the arrest of the appellant to the appellant leading the police to the murder weapon which lead to a positive FSL report when matched with the empty recovered at the crime scene.

(k) That the motive for the murder has been asserted in the FIR and has been proven throughout in the evidence which is the dispute which the appellant and the deceased had over a motorcycle accident which lead to criminal proceedings involving them which has even been admitted to by the appellant in his S.342 Cr.PC statement.

(l) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we 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 simply false implication on the basis of enmity. The appellant, however, did not examine himself on oath and did not call any DW or even produce a shred of evidence in support of his defence case. Thus, for the reasons mentioned above we disbelieve the defence case of false implication as an after thought 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.

14. Thus, based on the above discussion we 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.

S 12

15. With regard to sentencing we note that the motive for the murder of the deceased has been proven as being on account of the appellant/deceased dispute over a motor cycle accident which had landed up in court, that the crime was premeditated and a particularly brutal one carried out in broad day light whereby the appellant fired on the deceased in front of his relatives and murdered him in cold blood, that there are absolutely no mitigating factors rather only aggravating ones and thus based on the reasons mentioned above and the particular facts and circumstances of this case we find this a fit case to hand down the death sentence by way of deterrence and as such uphold the death sentence handed down to the appellant in the impugned judgment.

16. As such the appeal is dismissed and the confirmation reference is answered in the affirmative however the appellant shall have the benefit of S.382 (B) Cr.PC.

Mohammad Asif