

Eye witnesses believed  
Death confirmed

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## HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.361 of 2020.

Conf. Case No.14 of 2020.

Present:

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Abdul Mubeen Lakho,*

Appellants

1. Waqf-ul-Nabi S/o. Ghulam Nabi Soomro  
2. Ghulam Rabbani S/o. Nawab Ali Soomro,  
through Syed Imtiaz Ali Shah, Advocate.

Respondent

The State through M/s. Rahat Ahsan, Addl. P.G.  
and Muhammad Iqbal Awan, DPG.

Date of hearing: 06.04.2021.

Date of Announcement 12.04.2021.

### J U D G M E N T

**MOHAMMAD KARIM KHAN AGHA, J:-** Accused Waqf-ul-Nabi S/o. Ghulam Nabi Soomro and Ghulam Rabbani S/o. Nawab Ali Soomro were tried by learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta in Sessions Case No. 295 of 2018 arising out of Crime No.125/2017 u/s. 302, 324, 397 and 392 read with section 34 PPC. After trial vide judgment dated 28.07.2020 the appellants Waqf-ul-Nabi S/o. Ghulam Nabi Soomro and Ghulam Rabbani S/o. Nawab Ali Soomro were convicted for the offence under section 392 read with section 397 and 34 PPC and sentenced to undergo Rigorous Imprisonment for seven years. They were also sentenced to pay an amount of Rs.1,00,000/- each as fine. In case of default in payment of such fine, they were ordered to undergo S.I. for six months. They were also ordered to pay an amount of Rs.50,000/- each to complainant Muhammad Haneef Memon and legal representatives of deceased Naveed Iqbal severally and Rs.10,000/- each to PW Mehmood under section 544-A Cr.P.C. In case of default in payment of such compensation, they were ordered to undergo S.I. for six months. Accused Waqf-ul-Nabi was also sentenced to death under section 302(b) PPC subject to confirmation by this court. Accused Ghulam Rabbani was sentenced to imprisonment for life as Tazir. They were also ordered to pay an amount of Rs.1,00,000/- each to the legal heirs of deceased Naveed Iqbal as compensation under section 544-A,

Cr.P.C. In case of default in payment of such compensation, they were ordered to undergo S.I. for six months. Both the accused were extended the benefit of section 382-B Cr.P.C.

2. Being aggrieved and dissatisfied by the judgment passed by learned Additional Sessions Judge-I/Model Criminal Trial Court, Thatta, the aforesaid appeal has been preferred by the appellants.

3. The brief facts of the prosecution case is that on 12.09.2017 at 1100 hours, at the gate of house of deceased Naveed Iqbal situated at Hashim Abad Cooperative Housing Society, Makli, accused Waqf-ul-Nabi S/o. Ghulam Nabi Soomro, Ghulam Rabbani S/o. Nawab Ali Soomro and Shamoan S/o. Inayat Burfat along with absconding accused Liaquat Ali son of Sikandar Ali Burfat in furtherance of their common intention duly armed with pistols snatched cash of Rs.1,00,000/- from complainant, cell phone Samsung J-5 from him, cash Rs.3,500/- and cell phone make Vego Tell from PW Mehmood and cash of Rs.1,00,000/- and mobile phone make Samsung J-7 from deceased Naveed Iqbal and that after committing robbery, they boarded their motorcycles and fled. The complainant with his friends PW Mehmood and deceased Naveed Iqbal in their vehicle chased them and when they reached near Dargah Muhammad Ali Shah, seeing the complainant party chasing them, both accused Waqf-ul-Nabi Soomro and Ghulam Rabbani conducted straight firing upon complainant party in order to kill them and one of the bullets shot by accused Waqf-ul-Nabi hit deceased Naveed Iqbal on his forehead and caused his death.

4. After usual investigation the accused were charge sheeted and sent up for trial. On 09.04.2019 formal charge was framed against accused Waqf-ul-Nabi, Ghulam Rabbani and Shamoan Burfat to which they pleaded not guilty and claimed to be tried.

5. The prosecution to prove the charge examined 09 PW's, who exhibited various documents and other items in support of the prosecution case, whereafter the prosecution closed its side. The statement of accused were recorded under S. 342 Cr.P.C, in which they denied the allegations levelled against them and claimed false implication in this case. Neither of the accused examined himself on oath nor led any evidence in his defence.

6. Learned Judge, Anti-Terrorism Court, Shikarpur after hearing the learned counsel for the parties and assessment of evidence available on record, vide judgment dated 27.03.2017, convicted and sentenced the appellants, as stated above, hence these appeals against conviction have been filed by the appellants.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Learned counsel for the appellants has contended that the appellants are completely innocent and have been falsely implicated in this case; that the eye witnesses are false as no such incident involving the appellants took place; that prosecution story has been completely cooked up as evidenced by the FIR not even mentioning the fact that the complainant party reported the incident to a police mobile en route to the hospital; that the pistols were foisted on the accused and for any of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of his contentions he has placed reliance on **Ajmal Badshah V State** (193 P.Cr.LJ 738)

9. On the other hand, learned Addl. PG and DPG have fully supported the impugned judgment and contended that the accused were identified at the time of the robbery by two trust worthy and reliable eye witnesses who chased the accused and they saw accused Nabi shoot Naveed Iqbal (the deceased) during their get away; that both the accused were arrested by the police after a chase and an encounter in injured condition which was a result of the encounter; that the pistols were recovered from the accused at the time of the arrest of the accused which produced a positive FSL report, that the police evidence is trustworthy and reliable, that the medical evidence supported the prosecution case and as such the prosecution had proved its case beyond a reasonable doubt against the appellants and as such the appeals should be dismissed and their convictions and sentence maintained. In particular they stressed that due to the heinous nature of the offences the death sentence was fully attracted in the case of the appellant Nabi who had shot and killed the deceased. In support of their contentions they have placed reliance on the case of **Dadullah and another v. The State** (2015,

SCMR 856), *Rafaqat Ali and others v. The State* (2016 SCMR 1766), *Zahid Imran and others v. The State and others* (PLD 2006 Supreme Court 109) and *Muhammad Afzal and 2 others v. The State* (2003 SCMR 1678).

10. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant's counsel, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

11. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

(a) That the FIR was lodged on the same day and the slight delay in lodging it has been explained by the facts and circumstances of the case whereby the deceased was shot and needed to get to hospital in order to save his life, the complainant reported the incident to a passing police mobile en route to the hospital a few minutes after the incident (leaving no room for the complainant to cook up a false case with the police after consultation) and indeed the police gave chase to the persons on motor bike who had just recently passed them who had robbed and shot the deceased and robbed and attempted to kill the complainant and eye witness Mehmood who was sitting in the Prado when they were robbed and were present during the chase when the deceased was shot. The complainant then proceeded to the civil hospital where the deceased received first aid before being sent to Aga Khan Hospital where he expired at 11.57pm. The FIR was lodged at 2.30pm on the same day shortly after the deceased received first aid treatment at the civil hospital. There was no enmity between the complainant and the appellants and thus he had no reason to implicate them in this false case. If the complainant wanted to falsely implicate the appellants in the FIR he would have done so by naming them.

(b) In our view one of the most important aspects of the case is whether we believe the evidence of the eye witnesses and in particular whether they have correctly identified the appellants and thus we shall consider the evidence of the eye witnesses in detail especially in terms of identification as they did not know the appellants prior to this robbery and murder.

(i) Eye-witness PW 1 **Muhammed Hanif** who is the complainant in this case states in his evidence that on 12.09.2017 at about 11am he, PW Mehmood and the deceased went to MCB bank and withdrew money from their accounts in a white Prado bearing registration No. 5505 and when they came back on reaching the deceased's house 4 armed persons riding motor bikes snatched RS one lac which he had just withdrawn from the bank and his mobile Samsung J7 (identified as appellant Ghulam Nabi), another culprit snatched

RS one lac from deceased along with his mobile Samsung J7 (identified as appellant Rabbani) another culprit snatched RS3,500 and mobile Vego Tell from PW Mehmood (identified as appellant Nabi). That the accused escaped on their bikes and they then gave chase. The culprits fired at them and one shot hit deceased on his head. He then turned the vehicle and headed towards Thatta and en route they found a Police mobile from PS Makli and told them of the incident and pointed out the fleeing culprits. He then proceeded to the hospital to get the deceased treated. During the treatment he saw the police bring in two of the culprits in injured condition to the hospital who were Nabi and Rabbani who had committed the robbery and fired on them one of which shot hit the deceased on his head.

We believe his evidence about going to the bank and withdrawing RS one lac as his cheque was later exhibited in evidence and corroborated by eye witness Mehmood and much of this withdrawn money was recovered by the police on the search of the appellants and later on the pointation of the appellants.

With regard to identification it was a day light incident and the appellants faces were unmuffled. The robbery from three people would have taken at least 2 to 5 minutes and as such the eye witness would have got a good look at the appellants. The eye witness again saw the appellants in hospital about 2 hours later for a long while at close range at the hospital and thus he was easily able to identify them as the persons who had robbed them and fired on the deceased. In this respect no identification parade was required even otherwise both the appellants were injured and needed medical treatment and as such it was not possible to hold an identification parade immediately after their arrest. In this respect reliance is placed on **Rafaqat Ali (Supra)** where it was held as under;

*"This ocular evidence could not be discarded on the ground that only Rafaqat Ali, the Appellant No.1 was picked by the P.Ws in the identification parade. It is not in dispute that the two injured witnesses P.W-10 Mst. Asmat Bibi and Muhammad Pervaiz P.W-12 were receiving medical treatment at the time of identification parade, therefore, they could not be expected to participate in the identification parade. However, all the Appellants were identified by these injured witnesses in Court with details of their specific role. The medical evidence corroborates the ocular evidence".(bold added)*

This eye witness was not a chance witness as it was this witness who was actually robbed by the appellants and gave chase when the deceased was shot by the appellants. He had no enmity with the appellants and no reason to falsely implicate them in this case. His evidence was not dented despite a lengthy cross examination and largely reflects that of his FIR and there have been no significant improvements in the same so as to render his evidence unreliable. We find his evidence to

be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the correct identification of the appellants as the persons who robbed him and the others and shot at them which lead to the death of the deceased. We can convict on this evidence alone however by way of abundant caution in a capital case it is preferable that this evidence is supported or corroborated by some other independent evidence. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Muhammad Pervez V State** (2007 SCMR 670) and **Mst Sughra Begum v Qaiser Pervez** (2015 SCMR 1142). 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 we find the evidence of this eye witness to be of good quality.

(ii) **Eye-witness PW 2 Mehmood**. He corroborates eye-witness **PW 1 Muhammed Hanif** in all material respects. He is named in the FIR as an eye witness shortly after the incident and gave his S.161 Cr.PC eye witness statement promptly which left no room for concoction and there has not been any significant improvements in his evidence so as to render it doubtful and the same considerations apply to him as to **PW 1 Muhammed Hanif** except that he specifically identified appellant **Nabi** as the appellant who fired on them and whose shot hit the deceased in the head and lead to his death.

Thus, based on our believing the evidence of the 2 PWs eye-witnesses mentioned above what other supportive/corroborative material is there against the appellants?

(c) **PW 3 Amjad Hussain** was one of the policemen on patrol in a police mobile who corroborates **PW 1 Muhammed Hanif's** evidence and states in his evidence that **PW 1 Muhammed Hanif** stopped in a white Prado and told **ASI Sher Afzal** at about 11.15am that the bike riders who had just passed them (police) had just robbed them and by firing on them had caused injury to one of their colleagues. He also saw the injured on the front seat of the Prado and **PW Mehmood** on the backseat. He states that they chased the bike riders one of which bikes escaped. The other bike riders dismounted and tried to escaped on foot however after a brief encounter the appellants surrendered in injured condition and threw their pistols in water which were recovered and sealed. On their personal search a large number of currency notes was recovered from each of the accused. Since the appellants had both been shot in the leg they took them to civil

hospital for treatment where the deceased was receiving treatment and where PW 1 Muhammed Hanif and PW 2 Mehmood were present who identified the appellants as the persons who robbed them and fired on them which lead to the deceased's head injury and as such the police arrested them. PW 4 Sher Afzal was also a policemen who was on patrol with PW 3 Amjad Hussain and corroborates his evidence in all material respects. Neither of these witnesses were chance witnesses and their evidence was not dented despite lengthy cross examination. The police PW's had no enmity or ill will towards the appellants and had no reason to falsely implicate them in this case by for example by making up their arrest or foisting the pistols on them. In such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mustaq Ahmed V The State** (2020 SCMR 474).

- (d) The medical evidence of PW 5 Dr. Gian Chand who was SMO at the civil hospital corroborates the deceased being brought to her with firearm injury to the head who was given first aid before being sent to another hospital for better treatment. She later received the death certificate from the Aga Khan hospital of the deceased stating that the deceased died due to gunshot injury. She also examined appellants Nabi and Rabbani who she found had gun shot wounds to the leg with her report showing their time of arrival at 1.45pm which indicates that PW 1 Muhammed Hanif and PW 2 Mehmood would have been in the hospital at that time with the injured deceased and corroborates their evidence of having seen them in the hospital in injured condition having been brought to the hospital by the police. Since there was no post mortem carried out the magistrate authorized the exhumation of the body of the deceased at the request of PW 9 IO Azeem Khan. The head of the medical Board PW 8 Dr. Abdul Waheed after exhuming the dead body and carrying out the post mortem stated in his evidence that the unanimous opinion of the board was that the deceased died on account of a gunshot wound to the head which supported the initial medical opinion prior to



the death of the deceased by PW 5 Dr. Gian Chand and as such the medical evidence is supportive of the ocular evidence.

- (e) As per evidence of PW 7 Ishtiaque Ahmed who was a mashir and PW 9 IO Azeem Khan that the white Prado was recovered and blood was found on the front seat as well as glass from a broken window which supports the prosecution case that the shot which killed the deceased was fired from outside the vehicle as the glass came inward and that the deceased was injured while sitting in the car.
- (f) The cell phones belonging to the appellants and cash were recovered from a hidden place by the police which only the appellants would have known about on the pointation of the appellants.
- (g) That 4 empties were recovered from the area where the Prado was chasing the motor bikes and from where the culprits fired at the complainants party which lead to the gunshot wound to the head of the deceased who later died on account of that injury for which there was a positive FSL report.
- (h) Numerous empties were also recovered from the area of the encounter (pistol, SMG and MP5 (used by the police) which resulted in a positive FSL report with the recovered weapons.
- (i) 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 effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State (1995 SCMR 1793)** and **Khadim Hussain v. The State (PLD 2010 Supreme Court 669)**.
- (j) The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the complainant and his party went to the bank to withdraw money to them parking outside the deceased's house to them being robbed at gun point by the appellants to them chasing the appellants to the appellants firing at them to one



of the fire shots of the appellants hitting the deceased in the head to the complainant party informing a police mobile on patrol shortly after the incident en route to the hospital to the police chasing the fleeing appellants to the police and the appellants having an encounter which lead to the arrest of the appellants and the recovery of their weapons to the appellants being taken to civil hospital by the police after the encounter for treatment where they were identified by the complainant and PW Mehmood who had clearly seen them in day light an hour or so before to the arrest of the appellants to the death of the deceased by a gun shot wound to the head to the recovery of the complainant party's mobile phones and stolen cash on the pointation of the appellant.

(k) That the motive of the appellants firing at and killing the deceased was to prevent the complainants party in the Prado who they had just robbed from catching them and handing them over to the police.

(l) If the police had deliberately inflicted the wounds on the appellants whilst they were in custody (which allegation has not been made by the appellants) they would not have given them simple flesh wounds to the legs but would have shot their knee caps out. The wounds on the appellants did not show any blackening and as such any close range wounds deliberately inflicted by the police whilst the accused were in their custody can be ruled out. Rather they were shot in the leg during a genuine encounter.

(m) The evidence against the appellants is much stronger than against their acquitted co-accused and their cases are not comparable as the acquitted co-accused was not named and identified by the witnesses. Rather his name was disclosed by one of the accused which was the only evidence against him.

(n) 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 one of false implication simpliciter with regard to Nabi whilst Rabbani states that the police fixed him as he had enmity with Ashique Soomro who was an influential of the

area. Neither of the appellants gave evidence on oath or called any DW in support of their defence case. Thus, for the reasons mentioned above we disbelieve the defence case as an afterthought. Thus, in the face of two reliable, trust worthy and confidence inspiring eye witnesses the defence case (which we disbelieve) has not at all dented the prosecution case.

12. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and hereby maintain their convictions.

13. With regard to sentencing in Dadullah's case (Supra) it was held as under at P. 863;

*"However, in such like cases, where the appellants have committed a pre-planned dacoity and killed two persons, no leniency should be shown to the culprits. Sentence of death would create a deterrence in the society due to which no other person would dare to commit the offence of murder. If in any proved case lenient view is taken, then peace, tranquility and harmony of society would be jeopardized and vandalism would prevail in the society. The Courts should not hesitate in awarding the maximum punishment in such like cases where it has been proved beyond any shadow of doubt that the accused was involved in the offence. Deterrence is a factor to be taken into consideration while awarding sentence, specially the sentence of death. Very wide discretion in the matter of sentence has been given to the courts, which must be exercised judiciously. Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose of object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page,, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bring the*

*administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved". (bold added)*

14. We find that based on the above dicta and the particular facts and circumstances of this case where there are no mitigating factors and only aggravating factors and at this point in time where robberies and murders resulting from the same are on the rise a deterrent sentence is the appropriate one and as such the sentences of the appellants are also maintained and appellant Nabi's death sentence is upheld and as such the confirmation reference is answered in the affirmative and the appeals are dismissed.

15. The appeals and confirmation reference stand disposed of in the above terms.

  
JUDGE

  
JUDGE 12/04/21

Arif