

CRIMINAL JAIL APPEAL NO. D-85 OF 2014
CONFIRMATION CASE NO. D-20 OF 2014

HANIF V/S THE STATE

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

Composition of Bench

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO

(D.B)

Date of last hearing (heard/reserved): 18-06-2020

Decided on: 30-06-2020

(a) Judgment approved for reporting YES



CERTIFICATE

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

- (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
- (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
- (iv) Those directions which are not to be used should be deleted.

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD.

Cr. J/Appeal No. D - 85 of 2014.

Hanif S/o Uris Khoso

now confined in central

prison Hyderabad

. . . . Appellant.

Vs.

The State

. . . Respondent.

CONTD.P.NO. 2.

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

Cr. Jail Appeal No.D-85 of 2014.

DATE	ORDER WITH SIGNATURE OF JUDGE
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18-06-2020

Ms. Nasira Shaikh advocate for the appellant.
Ms. Safa Hisbani Assistant Prosecutor General.
Complainant is present in person.

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Learned counsel for appellant has read out the entire evidence and has made her submissions. Learned Assistant Prosecutor General has also made her submission on behalf of the State as well as the complainant Pir Bux, who is present in person and has expressed his full confidence and faith in her. Reserved for judgment.



JUDGE

JUDGE

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Rasheed Ahmed SoomroCr. Jail Appeal No.D- 85 of 2014
[Confirmation Case No.20 of 2014]

Hanif

Versus

The State

Appellant : Hanif	Through Ms. Nasira Shaikh Advocate
Respondent : The State	Through Ms. Safa Hisbani, A.P.G. Sindh
Complainant : Peer Bux Khoso	Present in person
Date of hearing	18.06.2020
Date of judgment	30.06.2020

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.-This appeal is directed against the judgment dated 23.08.2014, passed by learned Ist. Additional Sessions Judge, Dadu, in Sessions Case No.12 of 2012 (Re: The State V Hanif), emanating from Crime No.66 of 2011, registered at Police Station Khuda Abad, under sections 302, 324, 504 PPC, whereby appellant Hanif has been convicted u/s 302(b) PPC and sentenced to death subject to confirmation by

this Court as well as other imprisonment(s) in the terms as mentioned in Point No.3 of the said impugned judgment, which is as under:-

" POINT NO.3.

23. -----, I found him guilty for committing offence u/s 302-b PPC and convict him u/s 265-H(ii) Cr.P.C. and punished him with death subject to confirmation by the High Court and also liable to pay fine of Rs.2,00,000/- (two lacs) which if recovered shall be paid to the legal heirs of deceased Umed Ali as compensation as provided u/s 544-A Cr.P.C., however, in failure he shall further undergo S.I for six months more. Accordingly the accused Hanif shall be hanged by Neck until to be death for committing Qatl-i-amd of deceased Umed Ali Khoso.

24. The accused Hanif Khoso is also found guilty for attempted Qatl-i-amd of Ali Akbar for committing offence u/s 324 PPC, therefore I convict him u/s 265-H(ii) Cr.P.C. and sentence him R.I for five years and he shall pay fine of Rs.5000/- and in default thereof he shall further undergo S.I for three months more. The accused is also found guilty for causing fire arm injury to injured Ali Akbar, therefore, I find him guilty for committing offence u/s 337-F(vi) PPC and convict him u/s 265-H(ii) Cr.P.C. and sentence him to R.I for five years and he shall pay Daman of Rs.30,000/- to injured Ali Akbar. All the sentences of the accused shall run concurrently except death penalty, the payment of fine and Daman. -----."

2. The brief facts of the prosecution case as stated in the F.I.R, lodged by complainant Peer Bux Khoso at P.S Khuda Abad on 17.12.2011 at about 2100 hours are that, he has some agricultural land and about one week ago an altercation took place between his nephew Umed Ali and accused Hanif Khoso on which, accused issued threats of dire consequences. It is alleged that on the fateful day the complainant alongwith his nephew Umed Ali, Akbar and relative Ismail left their houses in order to take tea at hotel and while they were on their way and reached at a common street Hyderi Mohallah at about 05:30 hours, they saw Hanif duly armed with pistol who came there and while abusing Umed Ali made straight fire which hit his chest. Thereafter, accused repeated fire, which landed on the upper part of left arm of Akbar. Then accused left the scene while abusing. Co-villagers came there and complainant found that Umed Ali succumbed to injuries.

3. After usual investigation the police submitted the challan before the concerned court and after completing necessary formalities, learned trial

court framed the charge against the accused / appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case has examined 05 PWs and exhibited numerous documents and other items. The statement of the accused was recorded under section 342 Cr.P.C whereby he claimed false implication. He did not examine himself on oath nor call any witness in support of his defence case.

5. Learned trial court after hearing the learned counsel for the parties and assessing the evidence available on record convicted and sentenced the appellant as stated above.

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 advocate for appellant has contended that the appellant is innocent and has been falsely implicated in this case; that the FIR was lodged after a 4 hour delay which lead to the complainant and the police cooking up a false case against the appellant, that the evidence against the appellant is shaky and full of contradictions and the learned trial court has not appreciated the same; that eye witness Ismail was given up by the prosecution, that the pistol was recovered after 11 days and that no motive has been proved and thus for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of her contentions she placed reliance on the cases of **Muhammad Asif V The State** (2017 SCMR 486), **Qazi alias Dost Muhammad and another V The State** (2014 PCr.LJ 611), **Muhammad Abbas V The State and another** (2018 PCr.LJ 537), **Muhammad Ishtiaq and another V The State and another** (2018 PCr.LJ 237), **Muhammad Jameel V The State** (2004 YLR 312), **Mehmood Ahmed and 3 others V The State and another** (1995 SCMR 127), **Muhammad Maskin V Satbar Khan alias Lagbar Khan and another** (2001 PCr.LJ 1932), **Muhammad Rafiq V The State** (2003 PCr.LJ 981), **Muhammad Khalid V The State** (2016 MLD 1042), **Shahid Hussain and another V The State** (2011 PCr.LJ 652), **Muhammad Zaman V The State and others** (2014 SCMR 749), **Muhammadullah and another V The State through Additional**

Advocate-General and another (2018 PCr.LJ 1633), **M. Hassan V Ghulam Rasool** (2009 PCr.LJ 940), **Arshad Khan V The State** (2017 SCMR 564), **Muhammad Aslam V The State** (2008 YLR 1608), **Riaz Ahmed V The State** (2010 SCMR 846), **Mutalli Khan V The State** (2005 YLR 2229), **Muhammad Rafique V The State** (2014 SCMR 1698) and **Muhammad Wasif Khan and others V The State and others** (2011 PCr.LJ 470).

8. Learned Assistant Prosecutor General Sindh on behalf of the State as well as the complainant Peer Bux Khoso, who is present in person and has expressed his full confidence and faith in learned A.P.G to argue instant case on his behalf has fully supported the impugned judgment and in particular contended that any delay in lodging the FIR stood explained, that the eye witnesses were reliable, trust worthy and confidence inspiring and that they had correctly identified the appellant as committing the murder, that the medical evidence supported the eye witness evidence, that the recoveries supported the prosecution case and as such the appeal against conviction should be dismissed and that the impugned judgment should be upheld and the confirmation reference in respect of appellant Hanif be answered in the affirmative. In support of these contentions learned A.P.G placed reliance on the case of **Zahoor Ahmed V State** (2007 SCMR 1519)

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

10. In our view after our reassessment of the evidence based on the evidence of the PW eye witnesses, PW MLO and post mortem report and other medical evidence, PW police witnesses and IO, recovery of empties from the spot and positive chemical report of earth recovered from the spot we are satisfied that the prosecution has proved beyond a reasonable doubt that on 13.12.2011 at about 5.30pm at village Changulani, Haiderani Muhalla near Iman Bargh Umaid Ali (the deceased) was murdered by firearm injuries and Akbar Ali was injured by firearm.

11. The only issue therefore, in our view, left before us is whether it was

the appellant or some other third party who murdered the deceased by firearm and injured Akbar Ali by firearm.

12. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellant Hanif for murdering the deceased by firearm and injuring Akbar Ali by firearm beyond a reasonable doubt and hereby uphold the convictions and sentences in the impugned judgment against the appellant for the following reasons;

(a) In our view there has been no lengthy unexplained delay in lodging the FIR. The incident took place at 5.30 pm according to the evidence of the eye witness PW's whose evidence is considered later in this judgment. According to the evidence of PW 1 Peer Bux immediately after the incident called the police on his cell phone and informed them of the incident who then reached the hospital. This is corroborated by PW 5 IO Khuda Bux and the FIR was recorded by the police at the hospital within a few hours thereafter. Since the complainant was attending to the dead body of the deceased at the scene and arranging to take it to hospital and took the dead body to the hospital where he was also in attendance based on the particular facts and circumstances of this case we find that there no unexplained delay in lodging the FIR by the complainant which would have given him time to cook up a false case against the appellant in collusion with the police. Even otherwise no enmity existed between either the complainant or the police against the appellant and thus the complainant and the police had no reason to implicate the appellant in a false case. Furthermore, the appellant is specifically nominated in the FIR with a specific role which was confirmed by the eye witnesses during their evidence.

(b) The key witnesses in this case in our view are eye witnesses PW 1 Peer Bux who is also the complainant and PW 2 Ali Akbar who was injured at the spot. We shall consider the evidence of these eye witnesses in turn below;

(i) **Eye witness PW 1 Peer Bux** is also the complainant in this case. According to his evidence on 17.12.2011 at 5.30pm he along with eye witness PW 2 Ali Akbar and the deceased were all going for tea in a local hotel and when they reached at Hyderi Gali near Iman Bargh he saw the appellant with a pistol who abused the deceased due to a matrimonial dispute and then made direct fire on him with the pistol which hit him twice and caused him to fall down. According to his evidence PW 2 Ali Akbar on after making hakals was also shot in the arm by the appellant in his presence before he ran away from the scene. He was a natural witness and not a chance witness as he and the other PW and deceased were local people who lived close to each other and worked their agricultural land. He knew the appellant as he was related to him and lived in the same area, it was a day light incident at 5.30pm and he saw the

appellant at a relatively close distance who did not have a muffled face and as such based on the particular facts and circumstances of the case there was no requirement of an identification parade as PW 1 eye witness Peer Bux was easily able to correctly identify the appellant and as such the identify of the appellant is not in issue in this case. It has not been suggested by the defense that he was not present at the scene and he has given the motive for the murder. His evidence accords with his FIR and the medical evidence. He had no enmity with the appellant and had no reason to falsely implicate him in this case. Despite lengthy cross examination his evidence was not shattered and he recorded the FIR within hours of the incident nominating the appellant and giving him a specific role. He also corroborates the evidence of eye witness PW 2 Ali Akbar in all material respects who was shot at the scene of the incident by the appellant where the deceased was also killed. We find no reason to disbelieve his evidence which we find reliable, trust worthy and confidence inspiring and find that he has correctly identified the appellant Hanif as the person who murdered the deceased by firearm and attempted to murder PW 2 Ali Akbar by firearm. He also identified the appellant in court.

(ii) Eye witness PW 2 Ali Akbar is the most important eye witness as he was injured on the spot by firearm at the same time as the deceased was shot and as such his presence at the scene cannot be doubted especially as do not find his wound to be self inflicted. PW 2 Ali Akbar corroborates the evidence of PW 1 Peer Bux in all material respects. He is not related to the deceased or the appellant and is an independent and disinterested eye witness. In his evidence he states that he saw the appellant shoot the deceased twice with his pistol and that when he gave hakal to the appellant after he shot the deceased the appellant became annoyed and shot him in the left arm. The same considerations apply to him as for PW 1 Peer Bux as mentioned above. He also identified the appellant in court.

(c) It is settled law that we can convict if we find the direct oral evidence of one eye witness to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan V The State** (2006 SCMR 1857). Furthermore, the supreme court in the case of **Niaz-Ud-Din V The State** (2011 SCMR 725) held as under in respect of the ability of the court to uphold a conviction for murder even based on the evidence of **one eye witness** provided that it was reliable and confidence inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which matters at P.734 Para 11 as under;

"11. The statement of Israel (P.W.9) the eye-witness of the occurrence is confidence inspiring, which stands substantiated from the circumstances and other evidence. There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that "even in a murder case conviction can be based on the testimony of a single

witness, if the Court is satisfied that he is reliable." The reason being that it is the quality of evidence and not the quantity which matter. Therefore, we are left with no doubt whatsoever that conviction of Niaz-ud-Din was fully justified and has rightly been maintained by the High Court."

In this case we find the evidence of the 2 eye witnesses mentioned above to be fully corroborative and reliable, trust worthy and confidence inspiring especially in terms of correctly identifying the appellant as the person who committed the murder of the deceased by shooting him with his pistol and attempting to murder PW 2 Ali Akbar by shooting him with his pistol. Never the less by way of abundant caution we will consider below whether any corroborative /supportive evidence is available in respect of the direct oral eye witness evidence.

(d) The medical evidence fully supports the eye witness version of events. Namely, that the deceased died on account of receiving two firearm injuries in the places mentioned by the eye witnesses and the injured eye witness PW 2 Ali Akbar received a firearm injury to his arm which seriously injured him. The murder weapon and the weapon which caused the injury to PW 2 Ali Akbar due to the nature of his injuries was a pistol which ties in with their eye witness evidence.

(e) The pistol being the murder weapon was recovered after being hidden in earth near a shrine **on the pointation of the appellant** after his arrest from a place which only he could have known about. Thus, the recovered pistol was not foisted on the appellant by the police.

(f) That 3 empties were recovered from the scene of the incident which was the number of shots which were fired according to the eye witnesses and these empties when compared with the pistol which was recovered from the appellant matched as per a positive FSL report.

(g) Positive chemical reports showed that the blood gathered at the scene and on the clothes of the deceased was human blood.

(h) 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 appellants. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793). The evidence of the PW's provides a believable corroborated unbroken chain of events from the murder of the deceased by pistol and the shooting of PW 2 Ali Akbar to the arrest of the appellant and the recovery of the pistol on his pointation.

(i) It is well settled by now that police witnesses are as reliable as any other witness unless any ill will or enmity has been attributed to them which has not been done in this case. In this respect reliance is placed

on **Zafar V State** (2008 SCMR 1254), **Riaz Ahmed V State** (2004 SCMR 988) and **Muhammed Hanif V State** (SCMR 2003 1237). Like wise it is well settled that simply because a witness is related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99).

(j) The appellant was convicted in the connected case under S.13 (d) of the Sindh Arms Act for keeping the unlicensed pistol which was recovered on his pointaion.

(k) The motive for the appellant to murder the deceased has been set out from the word go in the FIR and has also been proved by PW 1 eye witness Peer Bux and as such we find that the prosecution has both alleged a motive for the murder of the deceased by the appellant and proved that motive through evidence.

(l) Of course it is for the prosecution to prove its case beyond a reasonable doubt against the appellant which we find that it has done in this case however we have considered the defense case before reaching this conclusion. The appellant has taken the defense plea of false implication. He has given no reason why he has been falsely implicated. He did not give evidence under oath or call any witness in support of his defense case. During his cross examination of the PW's he did not suggest that they were not at the scene when the crime was committed and has not suggested any enmity, ill will or reason as to why the complainant or any of the PW's would implicate him in a false case and as such we disbelieve the defense case of false implication especially in light of the motive which the appellant had for committing the murder and the overwhelming prosecution evidence against the appellant.

13. 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 appellant beyond a reasonable doubt.

14. With regard to sentencing we note that the appellant had a motive for the cold bloodied murder of the deceased who was brutally murdered whilst being unarmed and unable to defend himself at the time on account of marital dispute and also shot and injured PW 2 Ali Akbar when he raised hakels and as such no leniency is justified in terms of sentencing for the appellant Hanif.

15.. Thus, for the reasons discussed above the appeal against conviction is dismissed the impugned judgment and its sentences imposed therein are upheld and the confirmation reference is answered in the affirmative.

16. The appeals and confirmation reference are disposed of in the above terms.