

*Eyewitness Reliable and Believed
Good Quality eye witness evidence*

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CERTIFICATE OF THE COURT IN RESPECT OF

Sp. AT Jail A. 123/2017

M. Sabir Vs. The State

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. J. Mohammed Karim Khan Asht

Mr. J. Zulfigar Ali Sangi

Dates of hearing:

Decided on (i) *12-05-20*

(a) Judgment approved for
reporting.

Yes
No

[Signature]

CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/over-rules/ reverses/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) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

SGP., Kar.—L (iii) 1459—5,000—6-93—T.S.S.

639
Presented on 06/10/17

For 06/10/17
Assistant Registrar (Criminal Br)

IN THE HIGH COURT OF SINDH AT KARACHI.

Anti-T.T.A
Special Cr. Appeal No. 123/ 2010 7

Muhammad Sakib &
Muhammad Saeed,

S/o Muhammad Ramzan,

Muslim, Adult, presently confined in

Jail, Karachi-----APPELLANT / ACCUSED

MA No. 10076/17

VERSUS

The State -----RESPONDENT

FIR No. 70 / 2012

U/s 353/324/302/34 PPC

R/W Section 7 ATA 1997

P.S: P.I.B Colony.

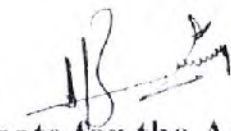
APPLICATION U/O 9, CHAPTER 3-A, VOLUME -5,
HIGH COURT RULES AND ORDER.

For the reasons disclosed in the accompanying affidavit, It is respectfully submitted on behalf of the appellant/accused abovenamed that this Hon'ble Court may be pleased to take up the above matter as an urgent motion and place the same in the Court or in the chamber on or before 11/10/2017 in view of the urgency of the matter.

The prayer is made in the larger interest of justice.

Karachi:

Dated: -10-2017


Advocate for the Appellant

THE HIGH COURT OF SINDH AT KARACHI

Spl. CrI. Anti-Terrorism Jail Appeal No.123 of 2017.

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi

Appellants: 1. Muhammad Sabir S/o. Manzoor Hussain
through Mr. Ajab Khan Khattak, Advocate.
2. Muhammad Saeed S/o. Muhammad Ramzan
through Mr. Aurangzeb Gorar, Advocate.

Respondent/State: Through Mr. Muhammad Iqbal Awan, Deputy
Prosecutor General Sindh.

Date of hearing: 04.05.2020.
Date of Judgment: 12.05.2020.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J:- Accused Muhammad Sabir S/o. Manzoor Hussain and Muhammad Saeed S/o. Muhammad Ramzan were tried by learned Judge, Anti-Terrorism Court No.X, Karachi in Special Case No. A-81/2012 arising out of Crime No.70/2012 U/s. 353/324/302/34 PPC r/w Section 7 of ATA, 1997, Special Case No.A-82/2012 arising out of Crime No.71/2012 U/s. 13-D Arms Ordinance and Special Case No.A-83/2012 arising out of Crime No.72/2012 U/s. 13-D of Arms Ordinance registered at P.S. PIB Colony, Karachi vide judgment dated 30.12.2015 the appellants were convicted and sentenced as under:-

1. Accused Muhammad Sabir S/o. Manzoor Hussain and Muhammad Saeed S/o. Muhammad Ramzan were convicted u/s. 302/34 PPC r/w section 6(2)(a)/7(a) of ATA, 1997 and sentenced to undergo R.I. for Life with fine of Rs.50,000/- each. In default in payment of such fine they were ordered to suffer further S.I. for 06 months more.
2. Accused Muhammad Sabir S/o. Manzoor Hussain and Muhammad Saeed S/o. Muhammad Ramzan were further convicted for the offence u/s 324 PPC r/w S. 6(2)(b)/7(c) of ATA, 1997 and were also sentenced to undergo R.I. for 5 years each.

3. Accused Muhammad Sabir S/o. Manzoor Hussain and Muhammad Saeed S/o. Muhammad Ramzan were further convicted for the offence u/s. 353 PPC r/w/ 6 (2)(m) and 7(1)(h) of ATA 1997 and they were sentenced to undergo R.I. for 02 years each.
4. Accused Muhammad Sabir S/o. Manzoor Hussain and Muhammad Saeed S/o. Muhammad Ramzan were further convicted for the offence u/s 13-D Arms Ordinance and were sentenced to undergo R.I. for 7 years each.

All the sentences were ordered to run concurrently. The benefit of section 382-B Cr.P.C. was also extended to the appellants.

2. Being aggrieved and dissatisfied by the judgment passed by learned Judge, Anti-Terrorism Court No.X, Karachi, the aforesaid appeals have been preferred by the appellants against their convictions.

3. The brief facts of the prosecution case in a nutshell are that on 09.03.2012 at about 2345 hours, SHO/Inspector Saeed Akhtar lodged 03 FIRs bearing No 70, 71 and 72 of 2012 at PS P.I.B. Colony, Karachi stating therein that on the same day viz. 09.03.2012, at about 2045 hours he received a message through wireless by mobile officer HC Iqbal about an encounter of a police party with culprits at Main University Road near Shell petrol pump, Karachi. On receiving such information he went to the place of incident and found that an encounter was going on between the police and the culprits. PC Raja Jaleel Ahmed had become injured due to firing conducted by the culprits. He called the ambulance and shifted the injured police constable to Liaquat National Hospital where he later died from his injuries. He further mentioned in his complaint that the culprits while leaving their motorcycle tried to run away but they could not succeed and the police apprehended them on the spot. On inquiry the apprehended culprits disclosed their identities as Muhammad Sabir and Muhammad Saeed. One 30 bore pistol with five bullets, one mobile phone and cash Rs.400/- were recovered from the possession of accused Muhammad Sabir whereas one 30 bore pistol with three bullets, one mobile phone, motorcycle make Unique and one diary were recovered from the possession of accused Muhammad Saeed. Thereafter, he arrested the accused persons under memo of arrest and recovery. The accused persons and case property were then sent to PS. Thereafter, SHO/Inspector Saeed Akhtar came back at his PS and registered the present FIRs against the arrested accused persons named above.

4. In order to prove its case, the prosecution examined 10 witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statements of the accused were recorded u/s. 342 Cr.P.C. wherein they denied all the allegations leveled against them and claimed false implication by the police. They did not examine themselves on oath or call any witness in support of their defence case.

5. Learned Judge, Anti-Terrorism Court No.X, Karachi, after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 30-12-2015, convicted and sentenced the appellants as stated above, hence these appeals have been filed by the appellants against their convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 30-12-2015 passed by the concerned 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 Sabir has contended that the appellant is completely innocent, that the police have falsely implicated him in this case as he was arrested from his house, that the eye witnesses were not present at the scene of the incident and are planted witnesses, that he was not arrested from the spot, that no pistol was recovered from him, that all the documents were managed at the police station and thus for any of the above reasons he should be acquitted of the charge by extending him the benefit of the doubt. In support of his contentions he has placed reliance on **Muhammad Akram v. The State** (2009 SCMR 230), **Shah Izzat alias Shahzad v. Adnan, Constable No.5355 and another** (2017 P. Cr.LJ 25) and **Zeeshan @ Shani v. The State** (2012 SCMR 428).

8. Learned counsel for the appellant Saeed has adopted the arguments of learned counsel for appellant Sabir and has also relied on the case law cited by him.

9. On the other hand, learned Deputy Prosecutor General, has fully supported the impugned judgment. He has contended that there are 3 eye witnesses to the incident all of whom can be safely relied upon, that the accused were arrested on the spot and an unlicensed pistol was recovered from each of them, that the recovered empties which with the pistols as per positive FSL report and as such since the prosecution had proved its case beyond a reasonable doubt against the appellants their appeals should be dismissed. In support of his contentions he has placed reliance on **Muhammad Ismail v. The State** (2017 SCMR 713), **Khan alias Khani and another v. The State** (2006 SCMR 1744), **Muhammad Ehsan v. The State** (2006 SCMR 1857), **Muhammad Ashraf v. The State** (2011 SCMR 1046), **Anwar Shamim and another v. The State** (2010 SCMR 1791) and **Abdul Majeed v. The State** (2008 SCMR 1228).

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 learned counsel for the appellants, 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 based on the evidence of the PW witnesses, PW MLO, post mortem report and other medical evidence, IC's evidence and positive chemical and FSL reports, we find that the prosecution has proved beyond a reasonable doubt that on or about 09.03.2012 at about 2045 hours persons came on a motor cycle near shell petrol pump, Old Sabzi Mandi, Main university road Karachi where on being signaled to stop by the police an encounter took place between a police party and the persons on the motor cycle as a result of which those persons injured PC Raja Jaleel Ahmed (the deceased) who later died on account of his firearm injuries which he sustained from the firing of such persons.

12. In our view therefore the only issue before us is whether the appellants were the persons who murdered the deceased PC Raja Jaleel Ahmed near the aforesaid petrol pump on 09.03.2012 at about 20.40 hours by firearm.

13. After our reassessment of the evidence we find that the prosecution has proved its case against both the appellants Sabir and Saeed beyond a reasonable doubt and hereby uphold both their convictions in the impugned judgment for

the following reasons;

(a) In our view there has been no lengthy unexplained delay in lodging the FIR. The incident took place at 20.40 hours and the FIR was registered by the police with promptitude within a few hours of the incident leaving no room for the police to concoct a false case against the appellants. The two appellants are named in the FIR with a specific role which was confirmed by the eye witnesses during their evidence. **Importantly**, the mashurs of the memo of arrest and recovery were Zia-ur-Roman and Qadir Khan both of whom were independent persons who had no enmity with the appellants and had no reason to implicate them in a false case. Zia-ur-Rehman is named in the FIR and Qadir Khan gave evidence as an eye witness whose evidence is discussed below.

(b) The **key** witnesses in this case in our view are **eye witnesses** PW 1 Saeed Akhtar, PW 5 Muhammed Yaqoob and PW 9 Abdul Qadir hence we will consider the evidence of these eye witnesses in turn.

(i) **Eye witness PW 1 Saeed Akhtar** was also the complainant. At the time of the incident he was SHO PIB Colony. According to his evidence on receiving information over the wireless about an encounter on the main university road near the shell petrol pump he proceeded to that place where the encounter was still taking place. PC Raja Jaleel Ahmed was injured and he called an ambulance for him. He was present during the encounter and according to his evidence the accused were apprehended on the spot by the police after they tried to run away. He arrested the accused whom pistols were recovered from and empties were also recovered from the scene. No enmity was suggested against him by any of the accused and he had no reason to falsely implicate the accused in this case. His evidence was not shattered despite lengthy cross examination and as such we have no reason to disbelieve his evidence which we find to be reliable, trust worthy and confidence inspiring and thus we believe his evidence. It is well settled by now that the evidence of a police officer is as good as any other witness provided that no ill will or enmity is suggested against him which none was in this case.

(ii) **Eye witness PW 5 Muhammed Yaqoob** at the time of the incident was a HC posted at PS PIB Colony. According to his evidence he was on patrol with deceased PC Raja Jameel when they asked two persons on a motor cycle to stop who refused and opened fire on them. He was an eye witness to the encounter between the accused and the police in which the deceased was killed by the accused. He produced Entry No.22 to prove that he was on patrol with the deceased at the time of the incident. According to his evidence the deceased received two bullet injuries which corroborates the evidence of PW 8 MLO Pardeep Kumar and post mortem report. The SHO was called who arrived during the encounter and the accused were apprehended by the police whilst they were trying to escape and were arrested on the spot and a pistol recovered from each of them. No enmity was suggested.

against him by any of the accused and he had no reason to falsely implicate the accused in this case. His evidence was not shattered despite lengthy cross examination and as such we have no reason to disbelieve his evidence which we find to be reliable, trust worthy and confidence inspiring and thus we believe his evidence. It is well settled by now that the evidence of a police officer is as good as any other witness provided that no ill will or enmity is suggested against him which none was in this case.

(iii) Eye witness PW 9 Abdul Qadir is an important eye witness as he was an independent witness who had no enmity with the accused and no reason to implicate them in a false case and who recorded his S.161 statement a day after the incident and later his S.164 statement which he did not deviate from during his evidence. His hotel/restaurant is located about 250/300 square yards from the place of incident and he was caught in traffic whilst going home and as such he is not a chance witness. According to his evidence he saw police checking people near the petrol pump who had signaled one motor cycle with two persons on it to stop whereupon the 2 persons on the motorcycle opened fire at the police and the police returned fire. He saw one police man lying on the road and that the police had caught hold of the culprits. The accused were searched and a pistol was recovered from each of them and he acted as mashir of recovery. His evidence corroborates the two other police eye witnesses and we have no reason to disbelieve his evidence especially as he was also a mashir of arrest and recovery whose name also appears in the FIR as a mashir and his evidence was not dented despite lengthy cross examination.

(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). The supreme court in the case of **Niaz-Ud-Din V The State** (2011 SCMR 725) has also 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;

"11. The statement of Israel (PW9) 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 c. 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-ul-Din was fully justified and has rightly been maintained by the High Court." (bold added)

In this case we find 3 eye witnesses to be fully corroborative and reliable, trust worthy and confidence inspiring. 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) Both the appellants were arrested on the spot and pistols were recovered from them and thus there was no need for any identification parade as they were **caught red handed**. In this respect the Supreme Court has made the following findings in respect to persons caught red handed with a fire arm and/or another kind of murder weapon on the spot.

In the case reported as **Mohammad Din Vs. The State** (1985 SCMR 1046) it was held by the Supreme Court as under:

"9. on going through the evidence, we find that the case against the petitioner is established to the hilt. He had been caught red-handed with a razor produced before the police. He also sustained injuries on his hand which could be the result of deadly blows to the deceased. We find no reason for the witnesses, who had actually allowed the petitioner to reside in their house for about two years, to depose falsely against him...."

In another case reported as **Majhi Vs. The State** (1970 SCMR 331) the Supreme Court refused leave to appeal sought by the accused against his conviction, holding that accused while committing murder was **caught red-handed** and handed over to police. No enmity was found existing between accused/appellant and prosecution witnesses nor the witnesses had any motive to falsely implicate the accused in a capital charge.

In the case of **Tareen alias Bado and another Vs. The State** (2019 P. Cr. L.J. 832 [Balochistan]), while maintaining the conviction of the accused, it was held that the accused was **caught red-handed** soon after the occurrence and the police snatched crime weapon (pistol) from the accused, two empties were also recovered from the place of occurrence which matched with the recovered crime weapon as per report of FSL. It was further held in the said cited case that solitary statement of injured witness being confidence inspiring was sufficient to convict the culprit and that the evidence of related witnesses who were not found inimical and were confidence inspiring would not need any corroboration.

Yet in another case reported as **Salam alias Toor Jan Vs. The State** (2013 P. Cr. L.J. 1461), the Federal Shariat Court maintained the conviction, holding that accused was **caught red-handed** at the spot and ocular account produced by the complainant against accused got further strength from the testimony of two prosecution witnesses who corroborated the version of the complainant on material details. Although in the cited case, postmortem was not held and the the empties allegedly recovered from the spot were also not sent to the FSL for its matching with the crime weapon allegedly recovered from the accused, it was held that though the same was irregularity, but it was not of such a nature as to damage prosecution case.

This Court in the case of **Mohammad Amin Vs. State** (YLK 2006 3128 [Karachi]) took a similar view and maintained conviction of

the accused, holding that evidence of prosecution witnesses made it clear that accused was **caught red-handed** at the place of incident at the time of commission of murder of his wife. **Although in the said case all the three witnesses were police officials but as no enmity was proved, therefore it was held that there was no reason for such police officials to falsely implicate the accused in the commission of such heinous offence.**

(e) The medical evidence through PW 8 MLO Pardeep Kumar and his post mortem report is corroborative/supportive of the oral eye witness evidence as he opines that the deceased was shot twice by firearm which was the cause of his death and that there was no blackening around the wound which fits in with the prosecution case that the encounter did not take place from close range

(f) An unlicensed pistol was recovered from each of the accused at the time of their arrest on the spot after the encounter.

(g) Recoveries of empties at the scene of both 9mm and SMG which when matched with the recovered weapons from the accused and SMG used by the police produced a positive FSL report.

(h) A positive chemical report showing that the blood gathered from the police officer's uniform was human blood.

(i) The recovery of the motor cycle which the accused were riding at the time of the incident at the scene of the incident

(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 effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on **Zakir Khan V State (1995 SCMR 1793)**. Their evidence provides a believable corroborated unbroken chain of events from accused being signaled to stop whilst on their motor cycle by the police to them firing at the police and the police returning fire to the injury and death of the deceased to the arrest of the accused on the spot and the recovery of a pistol from each of them along with the recovery of empties at the scene of the incident.

(k) Although it is for the prosecution to prove its case against the appellants beyond a reasonable doubt and in our view it has done so for the reasons discussed above we have also considered the defense case. In essence the defense case as discerned from their cross examinations of the PW's is that they were arrested from their homes and were falsely implicated in this case by the police. However they did not mention their arrest from their homes in their S.342 Cr.PC statements, they did not give evidence under oath or call a single witness in support of their defence case. No enmity has been suggested against the police witnesses or even the independent witness as a reason to falsely implicate them in this case and as such in the face of over whelming reliable and confidence inspiring eye witness evidence and other corroborative/supportive evidence we disbelieve the defence case.

14. 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 and as such uphold the impugned judgment and dismiss the appeals of both the appellants.

15. The appeals stand disposed of in the above terms.

Amf