

# THE HIGH COURT OF SINDH, KARACHI

CRIMINAL JAIL APPEAL NO. 914 OF 2019  
CONFIRMATION CASE NO. 41 OF 2019

*Present:*

*Mr. Justice Mohammad Karim Khan Agha*  
*Mr. Justice Irshad Ali Shah*

Appellant: Danish @ Dana through Mr. Mohammad Farooq advocate

Respondent: The State through Mr. Mohammad Iqbal Awan, Additional Prosecutor General  
Complainant through Mustaque Jahanghiri Advocate.

Date of hearing: 02.09.2021

Date of announcement 07.09.2021

## JUDGMENT

**MOHAMMAD KARIM KHAN AGHA, J-** Muhammad Danish @ Punchi @ Faizan appellant has preferred the instant appeal against the impugned judgment dated 09.11.2019, passed by learned MCTC/ I-Additional Sessions Judge, Karachi East in S.C.No. 271 of 2017 (State Vs. Muhammad Danish @ Punchi@ Faizan and another) arising out of FIR No. 193/2016, for offences punishable under Sections 393/397/302/34 PPC registered at PS Brigade, Karachi, whereby, after full-dressed trial, the appellant was convicted under Section 302(b) PPC and sentenced to death, subject to the confirmation by this court. Appellant was also directed to pay compensation of Rs. 200,000/- to the legal heirs of deceased as required under Section 544-A Cr.P.C. In case of default, he was ordered to suffer S.I for six months more. However, learned trial court acquitted co-accused Syed Subhan Ali @ Lala of the charges by extending him benefit of doubt.

2. Precisely the facts of the prosecution case as narrated in the FIR are that complainant was serving as Superintendent Rangers whereas his son Hashim Younus (now deceased) aged about 30 years was serving as

Inspector SPD. On 06.08.2016, the complainant and his son, after maintenance of vehicle, were going back to their home, when at about 8.30pm they reached at M.A. Jinnah Road, opposite Taj Complex, their car stopped. They alighted from the car and started checking it. Suddenly one boy aged about 20 years riding on motorcycle appeared there and demanded cell phone from his son, who resisted, upon which, accused fired at his son which hit on his gluttonous and traverse to left side. Accused made his escape good. Complainant shifted his son to Civil Hospital by rickshaw for treatment, where on 13.08.2016, his son succumbed to his injuries, as such FIR was lodged by the complainant against unknown accused.

3. Investigation was conducted by SIP Shoukat Ali, who after receiving relevant papers, visited place of incident and recorded section 161 Cr.P.C statements of P.Ws. On 10.09.2016, the FIR was disposed of under "A" Class. However, on 08.11.2016, SIP Shoukat Ali arrested appellant and recovered from him one 30 bore pistol loaded with magazine containing three live bullets in presence of mashirs and such memo was prepared at the spot. During interrogation, appellant confessed his involvement in the present case. On 09.11.2016, I.O submitted application before the concerned Magistrate for re-opening of investigation and for conducting identification parade of the appellant through the complainant. On 10.11.2016 concerned Magistrate conducted the identification parade wherein the complainant identified the appellant as perpetrator of the crime. I.O also sent pistol to FSL for examination and produced report wherein it was opined that the empty earlier sent by ASI Riaz Jut has matched with the pistol sent by the I.O. After completing usual investigation, the I.O submitted the report u/s 173 Cr.P.C. before the competent Court of Law. On 15.03.2017, police arrested co-accused Syed Subhan Ali and produced him before the concerned trial court. Upon indictment, accused did not plead guilty and claimed their trial.

4. The prosecution in order to prove its case examined 09 witnesses and exhibited various documents and other items. The statement of the appellant was recorded twice under Section 342 Cr.P.C in which he denied all the prosecution allegations and claimed false implication at the



hands of the rangers. The appellant gave his statement under oath whereby he proclaimed his innocence and called 2 witnesses in support of his defence case.

5. After appreciating the evidence on record the trial court convicted and sentenced the appellant as set out earlier in this judgment whilst his co-accused was acquitted by being extended the benefit of the doubt whose case both legally and factually was on a completely different footing to that of the appellant. Hence, the appellant has filed this appeal against his conviction.

6. Learned counsel for the appellant has contended that the appellant is completely innocent and has been falsely implicated in this case at the behest of the Pakistan Rangers; that the identification of the appellant at the identification parade cannot be safely relied upon as the complainant gave no hulia of the appellant in his FIR; that the appellant was not arrested on the spot; that the pistol recovered from the appellant was foisted upon him by the police and that no post mortem report was carried out on the dead body of the deceased and that for any of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions he has placed reliance on the cases of *Mian Sohail Ahmed V The State* (2019 SCMR 956), *Imran Ashraf V The State* (2001 SCMR 424), *Javed Khan alias Bacha V The State* (2017 SCMR 524), *Abdul Wahab Afghani alias Khalid alias Jameel V The State* (2007 P Cr.LJ 860), *Sajid Mumtaz V Basharat* (2006 SCMR 231) and *Kanwar Anwar Ali* (PLD 2019 SC 488).

7. On the other hand learned Additional Prosecutor General appearing on behalf of the State and learned counsel for the complainant have fully supported the impugned judgment. He has contended that the complainant eye witness' evidence was trustworthy reliable and confidence inspiring and that he has correctly identified the appellant as the person who attempted to rob his son and on his son's resistance shot his son following an identification parade which was carried out timely and in accordance with the law; that the medical evidence supports the prosecution's case as do the recovery of the pistol on the appellant's arrest which matched with the empty recovered at the scene through a positive



FSL report and as such the prosecution had proved its case beyond a reasonable doubt and the appeal should be dismissed and the confirmation reference answered in the affirmative. In support of their contentions, they placed reliance on the cases of *Niaz-ud-Din V The State* (2011 SCMR 725), *Muhammad Ehsan V The State* (2006 SCMR 1857), *Sikandar V The State* (2006 SCMR 1786), *Aijaz Nawaz alias Baba V The State* (2019 P Cr. LJ 1775), *Asim and another V The State* (PLD 2004 Quetta 123), *Ijaz Ahmad V The State* (2009 SCMR 99), *Amal Sherin V The State* (PLD 2004 SC 371) and *Abdul Majeed V The State* (2008 SCMR 1228).

8. We have heard the arguments of the learned counsel for the appellant as well as learned Additional Prosecutor General and learned counsel for the complainant, gone through the entire evidence which has been read out by learned counsel for the appellant along with the impugned judgment who have ably assisted us and have considered the relevant law including the case law cited at the bar.

9. Based on our reassessment of the evidence of the PW's, especially PW 1 eye witness Younis Nazar, the other PW witnesses, PW 7 Dr. Abdul Ghaffar and PW 6 Dr. Mubarak (who stated in their evidence and produced reports respectively that the injured (later deceased) Hasham Younas arrived at civil hospital with a gun shot wound and on account of this gunshot wound he later expired) recovery of empty at the scene we find that the prosecution has proved beyond a reasonable doubt that Hasham Younas (the deceased) during a botched robbery was shot by firearm at about 20.30pm on 06.08.2016 at M.A. Jinnah Road opposite side of Taj Complex Lines area Karachi whereby he was seriously injured and later died on account of the serious firearm injury which he sustained during the course of the botched robbery on 13.08.2016 at civil hospital Karachi. The fact that no blood was recovered from the scene we find as inconsequential and in this respect reliance is placed on the case of *Abdul Majeed (Supra)*.

10. The only question left before us therefore is who attempted to rob the deceased and who seriously injured the deceased by firearm which



lead to his death (murder) a few days later at the said time, date and location?

11. 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 for the following reasons;

(a) That the FIR was lodged with promptitude being just over 3 hours after the attempted robbery and shooting of the deceased which lead to his death. If this can be seen as any delay this has been explained by the complainant in his evidence in that immediately after the incident he took his son from the scene of the incident to hospital, who was in a serious condition, for treatment, and thereafter he recorded his FIR. This gave the complainant no time to cook up a false case against the appellant with the police especially as the complainant had no enmity with the appellant and had no reason to implicate him in a false case. Even in his evidence under oath the appellant admits that he had no enmity with the complainant. If the complainant had any enmity with the appellant he would have named him in the FIR in order to fix him in this false case however since he did not know the appellant the FIR was against an unknown person.

(b) In our view the prosecution's case rests on the evidence of the sole eye witness to the robbery and murder whose evidence we shall consider in detail below;

(i) Eye witness PW 1 Younus Nazeer. He was also the complainant in the case and the father of the deceased. According to his evidence on 06.08.2016 he was with the deceased in his car when at about 2015 hours his car broke down. He and the deceased alighted from the car to see what was wrong with it. He then saw a person wearing a pant shirt on a motor bike without a helmet demand the deceased's mobile phone on gun point. His son resisted and he saw the person shoot his son and then flee. He took his injured son by rickshaw to civil hospital where his son remained under emergency treatment. When the police reached the hospital he recorded his S.154 Cr.PC along with his S.161 Cr.PC eye witness statement on the same day. His son died in the ICU on 13.08.2016. On 10.11.16 he attended an identification parade which was held two days after the arrest of the appellant whereby he picked out the appellant as the person who attempted to rob and shot his son with a specific role. His evidence regarding the correct identification of the appellant at the identification parade is corroborated by PW 4 Zohalb Ahmed who was the judicial magistrate who carried out the identification parade which we find to have been carried out in accordance with law.

Although the complainant did not know the appellant it was



only 8.30pm at night and it has come in evidence that there were lights on the busy M.A.Jinnah Road. The incident regarding the attempt to grab the mobile phone from the deceased and the deceased's resistance and the appellant shooting the deceased would have given the appellant sufficient time within the then prevailing light to correctly identify the appellant especially as the complainant was close to the deceased as they were working on his broken down car and the appellant would have been relatively close to him with an unmuffled face as he wore no motor bike helmet. He gave a brief hulia of the unknown accused at that time in his FIR which was lodged with promptitude based on the particular facts and circumstances of the case. We find no irregularities in the identification parade which was carried out 2 days after the arrest of the appellant and 3 months after the incident and thus we find that the eye witness complainant has correctly identified the appellant as the person who attempted to rob the deceased and then fatally shot him.

He is not a chance witness as he was going home in his car with the deceased who was his son after they had both been to the repair shop and thus had every reason to be with his son. His presence at the scene was not challenged during cross examination and his version of taking his son to hospital after he was shot has been corroborated by PW 7 Dr. Abdul Ghaffar who was MLO at civil hospital who specifically states that the complainant brought the injured later deceased to the civil hospital with one firearm injury which ties in with the evidence of the complainant.

Furthermore, although the eye witness is closely related to the deceased it is well settled that his evidence cannot be simply discarded on this basis alone unless some enmity, ill will or reason to falsely implicate the appellant has come on record and nothing of the kind has come on record in this case. In fact during his evidence under oath the appellant stated that he had no enmity with the complainant. In this respect reliance is placed on **Ijaz Ahmed V The State** (2009 SCMR 99) and **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152)

In fact in some cases the superior courts have held that based on the particular facts and circumstance of the case related witnesses may be more reliable as they want to see justice done for their relatives by ensuring that the correct person is held to account.

He lodged his FIR and recorded his S.161 Cr.PC eye witness statement on the same day which left no room for concoction. His evidence reflects that of his FIR and S.161 Cr.PC statement and there have been no significant improvements in the same during his evidence so as to



render his evidence unreliable. His evidence was not dented despite lengthy cross examination. He gave his evidence in a natural and straightforward manner. He was an officer in the Pakistan rangers and as such kept his composure during the incident and acted according to the situation based on his military training which adds further weight to the fact that he would not misidentify the appellant. You are unlikely to forget the face of the person who murdered your son before your eyes. In this respect reliance is placed on the case of Mian Sohail Ahmed (Supra). He could not intervene in the attack otherwise he would also have been shot. As his car was broken he took his injured son to hospital by rickshaw which was his priority as he wanted to save his son's life and was the fastest way under the circumstances especially given the busy traffic on M.A Jinnah Road at this time of night and the fact that his own car had broken down. He did not waste his time calling for an ambulance as his son was seriously injured and time was of the essence. We find his evidence to be reliable, trust worthy and confidence inspiring and we believe the same especially in terms of his correct identification of the appellant and can convict on this evidence provided that there is some corroborative/supportive evidence. In this respect reliance is placed on Muhammad Ehsan v. The State (2006 SCMR 1857). As also found in Farooq Khan v. The State (2008 SCMR 917) and Niazuddin's case (Supra), 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.

Thus, based on our believing the evidence of the PW eye witness what other supportive/corroborative material is their against the appellant?

(c) That the medical evidence and reports as discussed above fully support the eye-witness/ prosecution evidence. It confirms that the deceased was brought to the hospital suffering from one gunshot wound as stated in the evidence of the eye witness where he died a few days later on account of the gunshot wound as evidenced by his death certificate. In the face of the medical evidence and medical reports already referred to above and the eye witness evidence which we believe we find that although no post mortem was carried out based on the particular facts and circumstances of the case and the medical evidence referred to and the eye witness evidence its absent cannot caste any doubt on the cause of death and weapon used to murder the deceased and as such its absence is inconsequential. In this respect reliance is placed on the cases of Aijaz Nawaz (Supra) and Sikandar (Supra).

(d) Although the appellant was not arrested on the spot he was arrested a few months later and at the time of his arrest a pistol was recovered from him by the police.



(e) That the empty recovered at the wardat which was sent earlier for FSL matched with the later recovered pistol from the appellant and lead to a positive FSL report.

(f) 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). The evidence of the PW's provides a believable corroborated unbroken chain of events from the attempt to rob and shooting of the deceased by the appellant to the deceased being taken to hospital by his father to recovery of the empty at the scene to the death of the deceased on account of the gunshot wound to the medical evidence and medical reports to the arrest of the appellant from whom a pistol was recovered which lead to a positive FSL report in respect of the recovered empty to the correct identification of the appellant by the complainant at the identification parade.

(g) That the police PW's had no enmity or ill will towards the appellant as admitted by the appellant himself in his evidence under oath and had no reason to falsely implicate him in this case by for example making up his arrest or foisting the pistol on him and 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).

(h) That it does not appeal to reason, logic or commonsense that a father who was an eye witness to the murder of his son would let the real murderer of his son go scot free by substituting him with an innocent person (the appellant). In this respect reliance is placed on *Allah Ditta V State* (PLD 2002 SC 52).

(i) In a kidnapping for ransom case in order to deter such crimes, as is the need to deter robberies which turn into murders (like in this case), the supreme Court held that courts need to take a dynamic approach in assessing the evidence. In the case of *Advocate General Sindh, Karachi v. Farman Hussain and others* (PLD 1995 SC 1), in a kidnapping for ransom case it was observed as under:-

"It is a matter of public knowledge that in Sindh, on account of kidnapping for ransom, commission of dacoities and other offences, the people are feeling unsecured. The learned trial court has dilated upon these aspects in detail. I am inclined to subscribe to the view found favour with it. The approach of the Court in matters like the case in hand should be dynamic and if the Court is satisfied that the offence has been committed in the manner in which it has been alleged by the prosecution the technicalities should



be overlooked without causing any miscarriage of justice".  
(bold added).

(j) 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 at the behest of the rangers who had allegedly kept him in illegal detention before hand however the appellant did not state this during his evidence under oath where he admitted that he had no enmity with either the police or the complainant. He also admitted that he had also been booked in another criminal case. His defence witnesses were both neighbors who gave evidence that he was taken away by the rangers from his house. They are close friends of the appellant and did not report this incident to the police at the time, come forward to give a S.161 Cr.PC statement in this case and did not make any written complaint to any person or institution about the accused alleged abduction by the rangers and as such we place no reliance on their evidence. Thus, for the reasons mentioned above we disbelieve the defense case as an afterthought in the face of a 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.

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 appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction.

13. With regard to sentencing the motive for the murder has been proved which was the attempted robbery of the deceased of his mobile phone and when the deceased refused to hand over the phone the appellant had no hesitation in shooting him in cold blood which gunshot wound lead to his death a few days later. As we have noted before street crimes such as robbery and murdering those who resist are on the rise in Karachi and such crimes need to be dealt with by an iron hand and as such we are of the view that a deterrent sentence is an appropriate one. In this respect reliance is placed on the case of *Dadullah and another v. The State* (2015 SCMR 856) which held as under;



"10. This Court in *Noor Muhammad v. State* (1999 SCMR 2722) has also adverted to this aspect of the matter and has observed as under:-

*"However, we may observe that the people are losing faith in the dispensation of criminal justice by the ordinary criminal Courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It is high time that the Courts should realize that they owe duty to the legal heirs/relations of the victims and also to the society. Sentences awarded should be such which should act as a deterrent to the commission of offences".*

14. As such the appeal is dismissed, the conviction and sentences are maintained and the confirmation reference is answered in the affirmative.

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