

~~Death~~ reduced to life  
P.W.'s believed - life not left

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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No.D- 51 of 2018.

Conf. Case No. 07 of 2018.

Present:

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

Appellant: Abdul Sattar Bangulani through Mr. Safdar Ali Ghouri, Advocate.

Respondent: The State through Mr. Ali Anwar Kandhro, Addl: P.G.

Complainant: Muhammad Shahban through Mr. Shakeel Ahmed G. Ansari, Advocate.

Date of hearing: 12.01.2021.

Date of judgment: 19.01.2021.

JUDGMENT

Mohammad Karim Khan Agha -J:- Through this criminal jail appeal appellant Abdul Sattar Bangulani has assailed the impugned judgment dated 13.8.2018 passed by learned 3<sup>rd</sup> Additional Sessions Judge, Shikarpur in Sessions Case No.593 of 2016 re: State v. Abdul Sattar and others arising out of Crime No.37 of 2016 of P.S New Faujdari Shikarpur registered for an offence under Sections 302 and 34 PPC whereby the appellant has been convicted and sentenced to death as Tazir subject to confirmation by this court. The accused is also penalized and required to pay compensation of an amount of Rs.500,000/= ( five lacs only) as provided under Section 544-A Cr.PC.

2. The prosecution case as unfolded in the FIR as narrated by the complainant is that:

" There is persistent dispute over the issue of marriages between us and accused Abdul Sattar S/O Qurban @Tori and Abdul Haleem S/O Peerano Banglani and others. Today afternoon I, my son Fazlul Rehman, my brother Ghulam



Shabeer and cousin Shah Ali S/O Pyaro b/c Banglani R/O village Bahram Banglani Taluka Shikarpur came to Shikarpur for some work. After fulfillment of the work, we stayed for Qingqi (Chingchi Riksha) to return back to the village. At 4.00 pm we were standing near High School No.01 at station road. In the meantime, 1) accused Abdul Haleem S/O Peerano 2) **Abdul Sattar** S/O Qurban @Tori both b/c Banglani R/O Ghar Penhja near village Sodho Banglani Taluka Thul, District Jacobabad arrived on motorcycle from Rustom Mor (turn) side. They stopped their motorcycle before us; however Abdul Sattar being lame from both the legs got off the vehicle on support (walking sticks) while accused Abdul Haleem also got off. **Meanwhile, accused Abdul Haleem immediately grabbed my son Zulfiqar thereafter accused Abdul Sattar shot straight fires from his T.T pistol at my son Fazlul Rehman by putting pistol at the right side flank of his body which hit him consequently he cried and fell down.** After that accused Abdul Sattar shot second fire from his pistol which missed my son which shot resultantly hit at the wall. Thereafter we tried to apprehend both the accused but accused Abdul Haleem successfully escaped on board a motorcycle while accused **Abdul Sattar** being handicapped from the legs could not escape on the motorcycle. Hence I alongwith witnesses Shah Ali and Ghulam Shabeer apprehended accused Abdul Sattar with his T.T pistol. With the help of my brother Ghulam Shabeer I sent injured son Fazlul Rehman to Civil Hospital Shikarpur for immediate treatment. Thereafter I handed over the custody of apprehended accused Abdul Sattar Banglani along with his T.T pistol to police at the P.S. And, I complain that above mentioned accused in furtherance of common intention being annoyed on old family/marriage dispute and on the instigation of Shahban S/O Nabi Bux Banglani R/O Sodho Banglani, Taluka Thul, accused Abdul Sattar Banglani shot straight fire from his T.T pistol with the intention of murder at my son Fazlul Rehman which made my son seriously injured. I am complainant, justice be made with me."

3. On conclusion of usual investigation, accused/applicant Abdul Sattar Banglani was sent up to stand trial. Charge was framed against the accused to which he pleaded not guilty and claimed trial. Thereafter, it was brought on record that injured Fazal Rehman has succumbed to injuries and in the wake thereof the charge was amended and plea of accused/appellant was recorded where once again he plead not guilty and claimed trial.

4. To prove its case the prosecution examined 5 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused was recorded u/s 342 Cr.PC wherein he denied all the allegations. He did not examine himself on oath or call any DW in support of his defence case of false implication.



5. Learned 3<sup>rd</sup> Additional Sessions Judge, Shikarpur after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 13.08.2018, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 13.08.2018 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that none of the PW eye witnesses was present at the scene of the incident and that they are all related witnesses upon whom no reliance can be placed; that the appellant was not present at the time of the incident; that there are contradictions in the evidence of the PW's; that two eye witnesses named in the FIR were not called to give evidence and as such the best evidence was not presented by the prosecution; that the medical evidence does not support the ocular evidence; that the pistol was foisted on the accused and 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 his contentions he has placed reliance on **Mehrban v. Abdul Hamid alias Majid and 8 others** (PLJ 1983 28), **Barkat Ali v. Muhammad Asif and others** (2007 SCMR 1812), **Zarshad v. Bahadur Khan and others** (1972 SCMR 644), **Muhammad Asif v. The State** (2017 SCMR 486), **Mst. Rukhsana Begum and others v. Sajjad and others** (2017 SCMR 596), **Haleem and others v. The State** (2017 SCMR 709), **Muhammad Ayub alias Nikka v. The State** (PLD 1983 Supreme Court 27), **Muhammad Akram v. The State** (2009 SCMR 230) and **Sikander Ali Lashari v. The State** (2020 YLR 2543).

8. On the other hand learned Addl. Prosecutor General and the complainant have fully supported the impugned judgment and contended that the eye witnesses are all reliable, trustworthy and confidence inspiring and fully implicate the appellant in the murder, that the medical evidence supports the ocular evidence; that the murder weapon was recovered from the appellant and the chemical report was positive and as such the prosecution has proved its case beyond a reasonable doubt against the



appellant and the appeal should be dismissed and the conviction and sentences maintained. In support of their contentions they have placed reliance on **Farooq Khan v. The State** (2008 SCMR 917), **Shamshad Ali v. The State** (2011 SCMR 1394), **Muhammad Mumtaz and another v. The State and another** (2012 SCMR 267) and **Haq Nawaz v. The State** (2018 SCMR 21).

9. 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, the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

10. Based on our reassessment of the evidence of the PW's, especially the eye witnesses, MLO's and medical and post mortem reports, recovery of pistol and empties at the scene and blood stained earth at the scene which lead to a positive chemical test we find that the prosecution has proved beyond a reasonable doubt that Fazal Rehman (the deceased) was shot by firearm at about 1600 on 21.03.2016 at Standing Road Near High School No.1 Shikarpur who later died on account of the firearm injury which he sustained.

11. The only question left before us therefore is who shot the deceased which lead to his death by firearm injury.

12. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charges against the appellant for which he was convicted for the following reasons;

(a) The FIR in respect of the incident was filed within 45 minutes of the incident and such prompt filing of the FIR rules out the possibility of the complainant concocting a false case against the appellant with the police or any other third party. Even otherwise the complainant had no enmity with the appellant and had no reason to falsely implicate him in a case.

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

(i) **Eye witness PW 1 Muhammed Shahban.** He is the complainant in the case and the father of the deceased.

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According to him the incident took place on 21.03.2016 at 4pm when he, his son (the deceased), Shah Ali, Shabir and Baboo were waiting to catch transport back from Shikarpur after going to buy their commodities. In his evidence he states that **he saw the accused take out a pistol and fire it at his son's abdomen from close range.** His group grabbed hold of the accused as he was disabled and was not able to escape from the scene along with the pistol which was used to shoot his son. According to his evidence two fire shots were made by the accused. He then took the accused along with the pistol to the PS where he registered an FIR. His son was taken to the hospital but died after a few months from his injuries. It was a day light incident and **PW 1 Muhammed Shahban** knew the appellant as prior to this incident a matrimonial dispute had arisen between their families as mentioned in the FIR and by eye witness PW 2 Shah Ali whose evidence we shall examine next. The appellant is also named in the FIR with the specific role of shooting his son in the abdomen with a pistol which was registered less than one hour after the incident so there was no time for the complainant to cook up any false story or not correctly identify the appellant and thus no identification parade was required especially as he personally got hold of the accused and took him along with the pistol to the police station and as such no case of mistaken identify arises as **the accused was caught red handed on the spot with the firearm. The accused also had a motive to kill the deceased because of an old family matrimonial dispute.**

Admittedly the eye witness was related to the deceased however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which there was not in this case. In fact the reverse was the position in this case. This eye witness was a natural witness and not a chance witness. He lodged his FIR with promptitude and named the other eye witnesses in the FIR along with the accused with specific roles. He had no enmity with the appellant and had no reason to falsely implicate him. His evidence was not dented despite lengthy cross examination. At no time was it suggested during cross examination that the accused was not arrested from the spot with the firearm and in his S.342 statement there is only a bare denial and as such we believe the evidence of this eye witness especially in terms of his correct identification of the appellant and the appellant's role in the crime. We find his evidence to be reliable, trust worthy and confidence inspiring and we can convict on this evidence alone. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

(ii) Eye witness PW 2 Shah Ali corroborates PW 1 Muhammed Shahban in all material respects. He is named in the FIR shortly after the incident and gave his S.161 Cr.PC eye witness statement on the same day as the incident and the same considerations apply to him as to PW 1 Muhammed Shahban except that he specifically gives evidence that there was a family dispute with the family of the accused.



Thus, based on our believing the evidence of the 2 eye witnesses what other supportive/corroborative material is their against the appellant?

(c) In our view the medical evidence of PW's 3 and 4 Dr.Noor Ahmed and Dr.Khadim Hussain both support the prosecution evidence as they respectively confirm that the deceased was initially brought to the hospital with a firearm injury to the abdomen which injury later lead to his death.

(d) That on his arrest at the spot a 30 bore pistol was recovered from the accused. Two empties were recovered from the scene of the murder which corroborates the fact that only 2 shots were fired one of which hit the deceased and the other hit the wall. That the learned counsel for the appellant has admitted before the court that the accused was convicted at the trial court for having an unlicensed firearm arising from this incident which conviction was upheld on appeal although the sentence was reduced.

(e) That there was a positive chemical report in respect of human blood found at the scene.

(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). Their evidence provides a believable corroborated unbroken chain of events from the shooting of the deceased, to the arrest of the appellant on the spot and to the death of the deceased on account of firearm injuries.

(g) That it does not appeal to reason, logic or commonsense that a father would let the murderer of his son go scot free by substituting him with an innocent person.

(h) 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 caste doubt on or dent the prosecution case. The defence case is one of bare denial. No evidence was given under oath by the appellant, he called no DW in his defence and simply claimed his innocence in his S.342 Cr.PC statement. As noted earlier he did not cross examine on the point that he was arrested on the spot and that the recovery was made from him on the spot. He had no ill will or enmity with the eyewitnesses which would lead to them falsely implicating him in this case. In fact the opposite is true. Thus, in the face of two reliable, trust worthy and confidence inspiring eye witnesses we do not believe the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion especially in the face of reliable,

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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 offenses for which he has been convicted and hereby maintain his conviction.

14. With regard to sentencing we note that the murder was not carried out in a brutal or heinous manner as only one shot was made on the accused which subsequently lead to his death and thus are of the view that the appropriate sentence in this case is one of life imprisonment as opposed to the death penalty. Thus, the appellant is sentenced to life imprisonment and directed to pay compensation of an amount of Rs.500,000/= ( five lacs only) as provided under Section 544-A Cr.PC.

15. As such the appeal against conviction is dismissed subject to the modification in sentence as mentioned above and the impugned judgment is upheld but with the confirmation reference being answered in the negative.

16. The appeal is disposed of in the above terms.

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