

Injured Eye witness carries more weight than other eye witness

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL APPEAL NO. S-167 OF 2009
DIN MUHAMMAD @ DINO V/S THE STATE

SINDH HIGH COURT, CIRCUIT COURT HYDERABAD

COMPOSITION OF BENCH

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA

(S.B.)

Date of last hearing (heard/reserved): 06-12-2023

Decided on: 13-12-2023

(a) Judgment approved for reporting

YES

K.A.

C E R T I F I C A T E

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 THE SINDH, CIRCUIT COURT
AT HYDERABAD.

Crl. Appeal No. 167 of 2009

Din Muhammad @ Dino son of Muhammad Siddik
Halepoto by caste, village Jan Muhammad Deh 366/A
Taluka Digri, District Mirpurkhas.
Presently confined in Central
Prison, Hyderabad.

..appellant/convict

Versus

The State

.....Opponent.

Crime No.92 of 2002
registered with Police station
Jhudo for offence u/s 302/324 PPC.

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

Cr. Appeal No.S-167 of 2009

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on M.A No.4293/23.
2. For orders on M.A No.4294/23.
3. For hearing of main case.

06.12.2023.

Mrs. Razia Ali Zaman Patoli, Advocate for appellant.

Ms. Sana Memon, Asst. Prosecutor General, Sindh.

Mr. Samiullah Rind, Advocate for complainant.

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I have heard the learned counsel for the appellant, complainant and the
learned A.P.G. Reserved for judgment.

Hafiz Fahad

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*Injured Eye witness carries more weight than
other eye witnesses*

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Criminal Appeal No. S- 167 of 2009

[Din Muhammad @ Dino versus The State]

Appellant : Through Mrs. Razia Ali Zaman,
Advocate

Complainant : Through Mr. Sameeullah Rind,
Advocate

State : Through Ms. Sana Memon,
Asst. Prosecutor General, Sindh.

Date of hearing : 06.12.2023

Date of decision : 13.12.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This Criminal Appeal is directed against the judgment dated 18.08.2009, passed by the learned 1st Additional Sessions Judge, Mirpurkhas in Sessions Case No.130 of 2002 (**The State versus Din Muhammad @ Dino**), emanating from Crime No.92 of 2002 registered at Police Station Jhudo under sections 302, 324 PPC, whereby the appellant Din Muhammad @ Dino has been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life with directions to pay Rs.50,000/- [Rupees Fifty Thousand] as compensation to the legal heirs of deceased Ali Raza; and in case of non-payment of said compensation, the appellant has to suffer R.I for six (06) months more. The appellant has also been convicted and sentenced u/s 324 PPC to suffer R.I for seven (07) years with fine of Rs.10,000/-; [Rupees Ten Thousand] and in case of default in payment of fine, he has to suffer R.I for three (03) months more. All sentences were ordered to run concurrently. However, the benefit of Section 382-B Cr.P.C was extended to the appellant.

2. Complainant Mst. Ami w/o Faiz Muhammad lodged the aforesaid F.I.R on 31.08.2002 stating therein that her husband Faiz Muhammad had expired and she resides with her son Ali Raza; Muhammad Ayoub was my brother-in-law, who had expired about four months back as such his family resides with her; that a double barrel gun is in the name of Muhammad Ayoub which was kept in the house; that Niaz Ali @ Kaloo is our relative and resides in a separate village; that Din Muhammad @ Dino is relative of my mother-in-law, who also resides with and many times the said Din Muhammad @ Dino had demanded the hand of her daughter but she and her son Ali Raza refused and gave the hand of her daughter to Niaz Ali @ Karo due to which Din Muhammad @ Dino was annoyed and today (31.08.2002) in the morning hot words were exchanged between Din Muhammad @ Dino and her son Ali Raza. On 31.08.2002 in the morning Niaz Ali @ Karo came to our house as guest and Niaz Ali @ Karo and Ali Raza were sitting at Otaq, meanwhile Din Muhammad @ Dino came to their house and took licensed gun of Ayoub and went outside the house and at about 1830 hours some commotions were heard from Otaq side on which she and her nephew Liaquat rushed towards Otaq and behind them Abdul Rasheed and Rabdino also rushed there; they saw that Din Muhammad having gun in his hand and in front of them he made straight fire of gun on her son Ali Raza and Niaz Ali with intention to kill them the pellets of gun hit to her son Ali Raza and Niaz Ali, who fell down; they made hue and cry and then Din Muhammad @ Dino escaped away alongwith gun; thereafter they saw that Ali Raza had injury in his neck and expired on the spot, while Niaz Ali had injury on his chest and blood was oozing, hence aforesaid FIR was lodged.

3. After usual investigation, police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed the charge against the appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 11 witnesses and exhibited numerous documents and other items. The

statement of accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed his false implication by the complainant party. However, neither the appellant examined himself on Oath nor led any evidence in his defense.

5. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellant as stated earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.

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 counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of land and family disputes; that the complainant's evidence could not be relied upon as it had been dishonestly improved from her original F.I.R; that the eye witnesses Liaquat, Rabdino and even the injured eye witness Niaz Ali were not present and had falsely implicated the accused; that all the witnesses were related with the deceased and thus their evidence was also unreliable on that account; that the recovered shot gun had been foisted on the appellant by the police and that for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of her contentions, she placed reliance on the cases of **Gul Muhammad and another versus The State through P.G Balochistan** [2021 SCMR 381] and, **Muhammad Imran versus The State** [2020 SCMR 857].

8. Learned Assistant Prosecutor General Sindh as well as learned counsel for the complainant, after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, they contended that there were 4 eye witnesses in this case all of whose evidence could be safely relied upon; that the medical evidence supported the ocular evidence and that the murder weapon (shot gun) had been recovered on the pointation of the appellant and as such the prosecution had proved its

case beyond a reasonable doubt and the appeal be dismissed. In support of their contentions, they placed reliance on the cases of **Muhammad Ashraf versus The State** [2011 SCMR 1046], **Mazhar Ellahi versus The State** [2020 SCMR 586], **Abdul Wahid versus The State** [2023 SCMR 1278], **Maskeen Ullah and another versus The State and another** [2023 SCMR 1568], **Aman Ullah and another versus The State and others** [2023 SCMR 723], **Muhammad Ijaz versus The State** [2023 SCMR 1375], **Aqil versus The State** [2023 SCMR 831], **Imran Mehmood versus The State and another** [2023 SCMR 795], **Gohram Zardari versus The State** [2018 P.Cr.L.J. Note 226] and, **Mir Ahmed versus The State** [2023 P.Cr.L.J 558].

9. I have heard the learned counsel for the appellant as well as learned A.P.G and learned counsel for the complainant and have also perused the material available on record and the case law cited at the bar.

10. Based on my reassessment of the evidence of the PW's, especially the medical evidence, recovery of blood and empties at the crime scene which lead to both positive chemical and FSL reports I find that the prosecution has proved beyond a reasonable doubt that Ali Raza (the deceased) was murdered by firearm and Niaz Ali was injured by firearm whilst sitting together on 31.08.2002 at about 6.30pm in the Otaq of the deceased situated in Deh 366 A Taluka Digri.

11. The only question left before me therefore is who murdered the deceased and injured Naiz Ali both by firearm at the said time, date and location?

12. After my reassessment of the evidence on record, I 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 within a few hours of the incident and based on the particular facts and circumstances of the case I do not find such slight delay fatal to the prosecution case. This is because after the witnessing the murder and transporting the dead body and the injured to hospital the

complainant then along with PW 4 Liaquat as corroborated by PW 4 Liaquat and PW 7 Zawar Hussain Shah (the duty officer) lodged the FIR at the PS as such any slight delay in lodging the FIR has been fully explained. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

- (b) The appellant is named in the promptly lodged FIR with the specific role of murdering the deceased by shotgun fire and injuring Niaz Ali by shot gun fire. Thus there was no time for the complainant to cook up a false case against the appellant. Even otherwise no specific/proven enmity has come on record between the appellant and the complainant or any PW which would motivate her/them to lodge a false case against the appellant.
- (c) In my view the prosecution's case primarily rests on the eye witnesses to the murder whose evidence I shall consider in detail below;
 - (i) **Eye witness PW 1. Mst Amin. She is the complainant and mother of the deceased and is also related to the accused who had been residing with them since childhood.** According to her evidence the accused asked her son (the deceased) if he could marry his sister Khatija however he refused and instead Khatija's hand was promised to injured eye witness Niaz Ali who is also related to her and the deceased and due to this reason the accused was annoyed with the deceased. On 31.08.2002 at about 6.30pm she and PW Liaquat were sitting in the house when they heard a noise lead to them going to the Otaq. PW Rasheed and Rabdino also arrived. She saw the accused with the licenses gun of Ayoub fire on the deceased and then Niaz. The accused then ran away with the gun. The deceased died on the spot whereas Niaz was injured and fell unconscious. The deceased and the injured Niaz were then taken to hospital. She accompanied with Liaquat Lodged the FIR at the PS.

This eye witness knew the appellant before the incident, and saw the appellant from a few feet away murdering the deceased and injuring Niaz by shot gun so there is no case of mistaken identity and no need to hold an identification parade especially as at 6.30pm in August the light would have been reasonable especially from a close distance. The accused is also named with specific a role in the promptly lodged FIR. In this respect reliance is placed on the cases of **Amanullah v State** (2023 SCMR 527), **Qasim Shazad V State** (2023 SCMR 117).

Admittedly the eye witness was related to the deceased who was her son 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 has not been proven in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State** (2009 SCMR 99) **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152) , **Ashfaq Ahmed v. The State** (2007 SCMR 641) and **Abdul Wahid** (Supra),

This eye witness is not a chance witness as she was residing in the house with the deceased which house was only about 60 to 100 feet from the Otaq as such she would have been able to hear the noise in the Otaq and reach there very quickly and witness the murder of her son and the injuries to Niaz Ali. Admittedly there are some contradictions, discrepancies and improvements in her evidence however I consider these as being of only a minor nature and not of much materiality. She gave her evidence in a natural manner and generally acquitted herself well during a lengthy cross examination and thus I believe her evidence although I give it slightly lesser weight than is usual for the reasons mentioned above.

- (ii) **Eye witness PW 2 Niaz Ali. He is related to the complainant and deceased and knew the accused since child hood.** According to his evidence prior to the fateful day the accused had become annoyed with the deceased as the deceased refused to give him the hand of his sister Khatija and had given Khatija's hand to him instead. On 31.08.2002 at about 6.30pm he and the deceased were sitting in the Otaq of the deceased when the accused arrived with a shot gun and told them he would not spare them today. They asked the accused why he wanted to kill them. After about two or three minutes of this heated exchange the accused fired on the deceased and himself. He became unconscious and four days later regained his consciousness in hospital where he came to know of the death of the deceased.

He was not a chance witness as he was related to the deceased and was engaged to marry his sister. He lived close by and as such had every reason to be talking to the deceased in his Otaq.

He knew the appellant from before and as such there is no case of mistaken identity. The fact that hot

words were exchanged between the appellant, the deceased and himself for about two to three minutes gave the complainant and Liaquat ample time to witness the incident as they were staying in the house about only 60 paces from the Otaq. His evidence corroborates that of the complainant and PW Liaquat. He was shot on the spot and his injuries are proven by medical certificate and as such his presence at the wardat is established. He is named in the promptly lodged FIR. He gave his S.161 Cr.PC statement within one day of regaining consciousness at the hospital which was not materially improved on during his evidence. He gave his evidence in a natural manner and was not dented, during a lengthy cross examination. He had no enmity with the appellant and had no reason to implicate him in a false case. It is well settled by now that the evidence of an injured eye witness carries more value/weight than other eye witness evidence. In this respect reliance is placed on the case of **Aqil** (Supra). I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on it.

- (iii) **Eye witness PW 3 Rabdino. He is related to the complainant and the deceased and knows the accused and injured eye witness.** According to his evidence on 31.08.2002 at 6.30pm he was standing at Lakki water course when he heard a commotion from the Otaq and rushed there where he also saw the complainant, PW Liaquat and Rasheed. He saw the accused cause fire arm injury to the deceased and PW Niaz. He challenged the accused who ran away with the gun. The deceased died on the spot whilst Niaz was unconscious due to his firearm injury. He arranged the dead body and injured to be transported to hospital and the complainant and PW Liaquat went to lodge the FIR.

According to the tapedar's evidence and sketch and other evidence on record Lakki water course is very close to the Otaq being about 80 feet away and can be reached within one minute and as such since the exchange of hot words was going on between the accused and the deceased and injured for about two to three minutes before the accused shot them this eye witness could easily have reached the wardat in time to witness the shooting of the deceased and Niaz by the accused. He corroborates the presence of the complainant, PW Liaquat and injured eye witness Niaz at the crime scene at the time of the shooting of the deceased and Niaz by the accused. He knew the accused from before and in the reasonable light which

words were exchanged between the appellant, the deceased and himself for about two to three minutes gave the complainant and Liaquat ample time to witness the incident as they were staying in the house about only 60 paces from the Otaq. His evidence corroborates that of the complainant and PW Liaquat. He was shot on the spot and his injuries are proven by medical certificate and as such his presence at the wardat is established. He is named in the promptly lodged FIR. He gave his S.161 Cr.PC statement within one day of regaining consciousness at the hospital which was not materially improved on during his evidence. He gave his evidence in a natural manner and was not dented, during a lengthy cross examination. He had no enmity with the appellant and had no reason to implicate him in a false case. It is well settled by now that the evidence of an injured eye witness carries more value/weight than other eye witness evidence. In this respect reliance is placed on the case of **Aqil (Supra)**. I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on it.

- (iii) **Eye witness PW 3 Rabdino. He is related to the complainant and the deceased and knows the accused and injured eye witness.** According to his evidence on 31.08.2002 at 6.30pm he was standing at Lakki water course when he heard a commotion from the Otaq and rushed there where he also saw the complainant, PW Liaquat and Rasheed. He saw the accused cause fire arm injury to the deceased and PW Niaz. He challenged the accused who ran away with the gun. The deceased died on the spot whilst Niaz was unconscious due to his firearm injury. He arranged the dead body and injured to be transported to hospital and the complainant and PW Liaquat went to lodge the FIR.

According to the tapedar's evidence and sketch and other evidence on record Lakki water course is very close to the Otaq being about 80 feet away and can be reached within one minute and as such since the exchange of hot words was going on between the accused and the deceased and injured for about two to three minutes before the accused shot them this eye witness could easily have reached the wardat in time to witness the shooting of the deceased and Niaz by the accused. He corroborates the presence of the complainant, PW Liaquat and injured eye witness Niaz at the crime scene at the time of the shooting of the deceased and Niaz by the accused. He knew the accused from before and in the reasonable light which

was existing at the time he would have been able to easily identify the accused. He is named in the promptly lodged FIR. He gave his S.161 Cr.PC statement after 3 days of the incident which slightly reduces the reliability of his evidence although does not entirely damage it as his name appears as an eye witness in the promptly lodged FIR and there were no material improvements in his evidence from his S.161 Cr.PC statement. He gave his evidence in a natural manner and was not dented during a lengthy cross examination. He had no enmity with the accused and had no reason to implicate him in this false case and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on the same.

- (iv) **Eye witness PW 4 Liaquat.** He is related to the deceased. According to his evidence on 30.08.2002 he was sitting with the complainant in her house when at about 6.30pm they heard a commotion in the adjoining Otaq and they rushed there. PW Rabdino and Rasheed also arrived. He saw the accused armed with a double barrel gun who shot the deceased and then shot PW Niaz. They raised hakals and the accused ran away with the gun. The deceased had died whilst Niaz was unconscious on account of the firearm injury. He helped transport the deceased and the injured to hospital. Where after he and the complainant went to the PS and lodged the FIR.

This eye witness corroborates the evidence of the three other eye witnesses in all material respects. He knew the accused from before and as such was easily able to recognize him from a relatively short distance in the reasonable light which existed at the time of the shooting. He gave his Section 161 Cr.PC statement within a day which was not materially improved upon during the course of his evidence. He gave his evidence in a natural manner and was not dented despite a lengthy cross examination. He had no enmity with the accused and had no reason to false implicate him in this case. Thus, I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same and place reliance on the same.

It is well settled by now that I can convict the accused on the evidence of a sole eye witness provided that I find his evidence to be trust worthy reliable and confidence inspiring and in this case I have found at least 3 eye witnesses evidence to be of this character along with one other eye witness whose evidence I have believed but have placed lesser weight on for

the reasons mentioned above. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of these eye witnesses to be of good quality and believe the same.

Having believed the eye-witnesses evidence I turn to consider the corroborative/supportive evidence whilst keeping in view that it was it was held in the case of **Muhammad Waris v. The State** (2008 SCMR 784), at P.786 para 4 as under;

"Corroboration is only a rule of caution and is not a rule of law and if the eye witness account is found to be reliable and trust worthy there is hardly any need to look for any corroboration"

Thus, based on my believing the evidence of the 4 PW eye witnesses as mentioned above what other supportive/corroborative material is there against the appellant?

- (d) That it does not appeal to logic, commonsense or reason that a mother would let the real murderer of her only son get away scot free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758).
- (e) That the medical evidence and post mortem report fully support the eye-witness/ prosecution evidence that the deceased died from receiving a firearm injury on the part of his body as mentioned by the eyewitnesses and the injured eye witness Niaz also received his injuries from a single firearm wound on the place mentioned by the eye witnesses in their evidence. In any event it is well settled by now that if the medical evidence is in conflict with the ocular evidence (which it is not in this case) the ocular evidence will take precedence over the medical evidence. In this respect reliance is placed on the case of **Imran Mehmood** (Supra)
- (f) That on his arrest a day after the incident the accused immediately lead the police to the murder weapon (Shot gun) on his own pointation which was hidden in a place which only he could have known about.
- (g) That the empties recovered at the crime scene when matched with the recovered shot gun lead to a positive FSL

report. That the empties were cartridges coming from a shot gun and the medical evidence points to two pellets being found in the body of the deceased during his post mortem which also indicates that the murder weapon was a shot gun as identified I the evidence of the eye witnesses. Any delay in sending the empties and shot gun to FSL would not undermine the prosecution case. In this regard reliance is placed on the case of **Muhammed Ashraf** (Supra)

- (h) That there was no ill will or enmity between the police and the appellant and as such they had no reason to falsely implicate the appellant in this case, for instance, by foisting the shot gun on him. Under these circumstances it is settled by now that the evidence of police witnesses is as good as any other witness. In this respect reliance is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474). Thus, I believe the evidence of the IO who was not dented during a lengthy cross examination whose evidence of arrest and recovery is supported by the mashir's evidence.
- (i) That the blood stained earth recovered at the wardat and clothes recovered from the deceased were sent for chemical examination which report found the blood recovered at the scene and on the clothes to be human blood.
- (j) The motive for the murder has come on record. Namely, that the deceased had refused the hand of his sister Khatija to the accused and had instead given it to the injured Niaz which angered the appellant and lead to him murdering the deceased and injuring Niaz by firearm. In this respect reliance is placed on the case of **Gohram Zardari** (Supra).
- (k) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I 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 the cases of **Zakir Khan V State** (1995 SCMR 1793) **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669) and **Maskeen Ullah** (Supra). The evidence of the PW's provides a believable corroborated unbroken chain of events from the accused coming to the Otaq to take his revenge from the deceased and Niaz to the eye witnesses seeing the accused shoot the deceased which lead to his death and shoot Niaz which lead to his injury by firearm to the accused running away with the firearm to the arrest of the accused to the accused leading the police to the shot gun on his pointation to the empties recovered at the scene producing a positive FSL report.
- (l) That from the evidence it does not appear that the accused has denied his presence at the crime scene at the time of the murder of the deceased and firearm injury to Niaz.

(m) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case as set out by the appellant is that he was falsely implicated in this case due to marital and land disputes. However the accused did not give evidence under oath and did not call any DW to support this defence case. Even in his S.342 Cr.PC statement he offers simple denials however a week later when he files a further statement under S.342 Cr.PC he belatedly comes out with his so called defence. Thus, in the face of eye reliable, trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence discussed above I disbelieve the defence case which has not at all dented the prosecution case.

13. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offences for which he has been convicted and sentenced in the impugned judgment and as such his appeal is **dismissed**.

Hafiz Fahad