

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Mohammad Karim Khan Agha, J.

CRIMINAL APPEAL NO. 333 OF 2019

Appellant;	Abdul Rasheed s/o Muhammad Raheem through Mr. Kashif Ali, Advocate
For State;	Mr. Muhammad Iqbal Awan, Additional Prosecutor General Sindh.
Complainant;	Muhammad Yousuf through M/s. Abdul Razzak Solangi and Aftab Ahmed Shar, Advocates.
Date of Judgment;	31.01.2024
Date of Announcement;	09.02.2024

JUDGMENT

Mohammad Karim Khan Agha, J:- Appellant Abdul Rasheed s/o. Muhammad Raheem was tried in the Court of Additional Sessions Judge-I/Model Criminal Trial Court Karachi (West) in respect of Crime No.103 of 2012 under section 302/34 PPC registered at P.S. Gulshan-e-Maymar, Karachi and vide judgment dated 18.05.2019 the appellant was convicted u/s.265-I(2) Cr.PC for an offence punishable under section 302(b) PPC and sentenced to undergo life imprisonment. Appellant was also directed to pay compensation of Rs.5,00,000/- (Five Lacs) to the legal heirs of deceased as provided under section 544-A Cr.P.C. In case of default in payment the accused shall suffer six (06) months more S.I. However, the benefit of Section 382-B was also extended to the appellant.

2. The brief facts of the prosecution case are that on 02.08.2012 the complainant lodged FIR wherein it is stated that he was residing with his family at above address and he was unemployed. His nephew Usman aged about 21 years was employed as security guard in Garden City. Today, on backside of office of Garden City near Gulshan-e-Maymar during duty hours had exchange of harsh talks with Basheer son of Muhammad Raheem Brohi whereupon Basheer made a phone call to Rasheed and Muhammad Haneef to reach there in

scuffle between him and Asghar. At about 06:45 p.m. Rasheed son Muhammad Raheem and Muhammad Hanif alias Baba son of Haji Khuda Bakhsh reached at Garden City. As soon, they roached, Rasheed with intention to kill, made firing upon Asghar and injured him, to whom, Hanif and Gulsher in injured condition took the hospital where my nephew succumbed to his injuries and died. This incident is seen by Muhammad Younus and Nazar Muhammad. His claim against 1) Basheer Ahmed son of Muhammad Raheem, 2) Rasheed son of Muhammad Raheem and 3) Muhammad Hanif alias Baba son of Khuda Bakhsh for making firing upon his nephew and committing his murder. He prayed for legal action.

3. After usual investigation the case was challaned and the matter was sent up for trial. The appellant and his co-accused plead not guilty to the charge and claimed trial.

4. The prosecution in order to prove its case examined 07 witnesses and exhibited various documents and other items. The statement of the appellant and co-accused were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them and claimed trial. Neither of the accused gave evidence on oath or called any DW in support of their defence case.

5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellant and sentenced him as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction. His co-accused was also convicted u/s 201 PPC and was sentenced to three years RI and fine of RS 25,000 however he did not file any appeal against his conviction

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 18.05.2019 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 the appellant is innocent and has been falsely implicated in this case; that the eye witnesses are planted witnesses and their evidence be discarded especially as they are all related to the complainant and the deceased; that the pistol was foisted on the appellant by the police; that the recovered empties were sent after an unexplained delay of 19 days for FSL and as such the FSL report could not be relied upon and that for any or all 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 placed reliance on the cases of Ali Sher and others v. The State (2008 SCMR 707) and Muhammad Irshad v. Allah Ditta and others (2017 SCMR 142).

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 2 eye witnesses in this case both of whose evidence could be safely relied upon; that the medical evidence supported the ocular evidence and that the murder weapon (pistol) had been recovered on the pointation of the appellant which matched with the empty recovered at the scene of the crime as evidenced by a positive FSL report 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 Ilyas v The State (2011 SCMR 460), Muhammad Ashraf v the State (2011 SCMR 1046), Ijaz Ahmad v The State (2009 SCMR 99), Qasim Shahzad v The State (2023 SCMR 117), Nasir Ahmed v The State (2023 SCMR 478), Aman Ullah v The State (2023 SCMR 723), Sikandar v The State (2006 SCMR 1786), Abdul Majeed v The State (2008 SCMR 1228), Abdul Wahid v The State (2023 SCMR 1278) and Nasir Iqbal @ Nasra v The State (2016 SCMR 2152).

9. I have heard the arguments of the learned counsel for the appellant, learned Additional Prosecutor General Sindh and learned counsel for the complainant and have gone through the entire evidence which has been read out by the learned counsel for the appellant and the impugned judgment with their able assistance and have considered the relevant law including 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 empty at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Asghar Ali (the deceased) was murdered by firearm on 02.08.2012 at about 18.45 hours at Garden office city near Gulshan-e-Maymar Karachi.

11. The only question left before me therefore is who murdered the deceased 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 in less than two hours of the incident and as such there is no delay in lodging the FIR. The appellant is named in the FIR with the specific role of shooting the deceased and as such the complainant had no time to cook up a case in order to falsely implicate the appellant especially as it has not been proven through any evidence that the complainant party had any ill will or enmity with the appellant who are all related.
- (b) 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 12 Nazar Muhammed. He is related to the deceased, complainant and the accused. According to his evidence on 02.08.2012 he was at the security office Garden with Muhammed Hanif and Bashir. He saw the accused fire on the deceased which fire shot hit the deceased on the face and pierced his head where after the deceased fell to the ground. Gul Sher and Muhammed Hanif took the injured to hospital. Later on he heard that the deceased died at the hospital. On 07.08.2012 he was with the police when the accused was arrested on the pointation of the appellant and became the mashir of arrest.

Admittedly the eye witness was related to the complainant and 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 has not been proven in this case by any reliable evidence. There is a suggestion that there is civil litigation between the complainant and the accused but nothing was brought on record to prove this and such suggestion was denied by learned APG who contended that any such litigation which there might have been was filed after this incident. Even otherwise according to the complainant in his evidence prior to the incident he was on visiting terms with the accused which completely belies any enmity between the parties. 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 versus The State (2023 SCMR 1278)

The accused, the deceased, this eye witness and eye witness PW 3 Muhammed Hanif all worked at the same security company as guards and all came from the same locality and were all related to each other and hence this eye witness knew the accused in this day light incident which he witnessed from close range and hence there was no need for an identification parade of the appellant as the identity of the appellant stands,

proven and as such there was no need for an identification parade. The appellant is named in the promptly lodged FIR as an eye witness and he gave his S.161 Cr.PC statement on the same day which was not materially improved during his evidence. PW 3 eye witness Hanif corroborates his presence at the scene of the incident. This eye witness is not a chance witness as he was working as a security guard at the same place as the deceased and the appellant and was on duty during the incident and thus had every reason to be present during the incident. He is also from the same locality as the accused. He was not dented during a lengthy cross examination and he gave his evidence in a natural manner and thus I believe his evidence to be trust worthy, reliable and confidence inspiring and I believe the same. In this respect reliance is placed on the cases of Amanullah v State (2023 SCMR 527) and Qasim Shazad V State (2023 SCMR 117).

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. 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) Muhammad Ismail vs. The State (2017 SCMR 713) and Qasim Shazad V State (2023 SCMR 117). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witnesses to be of good quality and believe the same.

However there is yet another eye witness.

(ii) Eye witness PW 3 Muhammed Hanif. He is also related to the complainant and the deceased. According to his evidence on 02.08.2012 he was a security guard at Garden city. There was a scuffle between Bashir and Gul Sher who were separated. Bashir called the accused and he called his uncle Younis (complainant) who as per the FIR and his evidence arrived at the crime scene after the incident. After some time the appellant and his convicted co-accused arrived. The deceased and PW 1 Nazar Muhammed were also in the office. He saw the appellant take out his pistol and make firing and a bullet hit the deceased on his face who fell down. He and Gul Sher took the deceased to hospital where he succumbed to his injuries.

His evidence corroborates the evidence of the PW 2 Nazar Muhammed in nearly all material respects. He is named as an eye witness in the promptly lodged FIR and his Section 161 Cr.PC eye witness statement was recorded promptly. He also knew the accused from before in this day light incident being fellow security guards from the same locality. He was also not dented during cross examination and as such the same considerations apply to his evidence to that of PW 2 Nazar Muhammed as discussed above. Namely, I find it to be trust

worthy, reliable and confidence inspiring and as such I believe the same and rely upon it.

Having believed the evidence of the two eye witnesses which is discussed above I turn to consider the corroborative/supportive evidence whilst keeping in view that it was held in the case of *Muhammad Waris v. The State* (2008 SCMR 784) 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 2 eye witnesses as mentioned above what other supportive/corroborative material is there against the appellant?

- (c) That it does not appeal to logic, commonsense or reason that close relatives would let the real murderer of their other close relative 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).
- (d) That the medical evidence fully supports the eye-witness/prosecution evidence that the deceased died from receiving a firearm injury on the part of his body as stated by the eyewitnesses in their evidence. The fact that no post mortem was carried out I find to be inconsequential in the face of the eye witness evidence, medical evidence and MLC which mentions the cause of death being by fire arm. In this respect reliance is placed on the case of *Sikander* (supra). In any event it is well settled by now that if the medical evidence is in conflict with the ocular evidence the ocular evidence will take precedence over the medical evidence which in this case it is not in conflict. In this respect reliance is placed on the case of *Imran Mehmood versus The State* and another [2023 SCMR 795].
- (e) That on the appellant and his convicted co-accused were arrested 5 days after the incident and one day after his arrest the appellant took the police to the place where he had secretly hidden the murder weapon (pistol) which was recovered on his pointation at a place that he was only aware of as evidenced by the memo of recovery.
- (f) That the empty recovered at the crime scene matched with the recovered pistol through a positive FSL report which proved the pistol to be the murder weapon. The delay of sending the empties is not particularly relevant. In this respect reliance is placed on the case of *Muhammed Ashraf v State* (2011 SCMR 1046).
- (g) That there was no ill will or enmity between the police and the appellant and as such the police had no reason to falsely implicate the appellant in this case, for instance, by foisting the pistol on the appellant. 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*,

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(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 of the murder weapon on pointation of the appellant is supported by the mashir's evidence.

- (h) The fact that blood was not collected at the crime scene is not of much significance based on the particularly facts and circumstances of this case. In this respect reliance is placed on the case of Abdul Majeed (Supra)
- (i) 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 and another versus The State and another (2023 SCMR 1568). The evidence of the PW's provides a believable corroborated unbroken chain of events from the appellant firing at the deceased to the deceased's death on account of firearm injury as evidenced by two eye witnesses to the arrest of the appellant to the recovery of the murder weapon on his pointation at a hidden place which produced a positive FSL report when matched with the empty recovered at the crime scene.
- (j) 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 enmity however no proven enmity has come on record. He also claims that the deceased committed suicide for which he produced no evidence and is negated by the medical evidence as no blackening was found around the wound and that he was away in hub at the time of the incident for which he has not produced a shred of evidence. He did not give evidence on oath, call any DW in support of his defence case or exhibit any document in support of his defence case. It is well settled that if the defence puts forward a specific plea then he must prove it. In this case he has miserably failed to do so. Thus, in the face of 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.

14. The appellant is on bail. SHO PS Gulshan-e-Maymar, District Malir, Karachi is directed to arrest the appellant immediately and return him to central prison Karachi to serve out the remainder of his sentence. A copy of this Judgment shall be sent to SSP Malir for compliance.

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