

Injured Eyewitness

SSO

4247  
10/9/2013

PRESENTED

10.09.2013

10/9/13

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

Criminal Appeal No. S-112. of 2013.

1. Jummo S/O Qadir Bux, 7
2. Haroon S/O Qadir Bux,

Both by caste Siyal, Adults, Muslims,

Residents of G.O.R. Colony, Hyderabad,

Presently confined in Central Prison

Hyderabad Sindh.....Appellants/accused.

Versus

The State.....Respondent.

Crime No. 100 of 1998.

Police Station Bulri Shah Karim.

Under Section 302, 337-A(i), F(vi), 149 PPC

SS1

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

Cr. Appeal No.S-112 of 2013

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DATE ORDER WITH SIGNATURE OF JUDGE

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19.12.2023.

Mr. Inam Ali Malik, Advocate for appellants.

Ms. Rameshan Oad, Asst. Prosecutor General, Sindh.

I have heard the learned counsel for the appellants as well as learned  
A.P.G for State. Reserved for judgment.

*\*Hafiz Fathad\**

IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD

Criminal Appeal No. S - 112 of 2013

JUMMO AND ANOTHER

Versus

THE STATE

Appellant : Haroon, son of Qadir Bux.	Through Mr. Inam Ali Malik, Advocate.
Respondent : The State	Through Ms. Rameshan Oad, Assistant Prosecutor General, Sindh.
Complainant.	None present despite service being held good.
Date of hearing	19.12.2023
Date of judgment	22.12.2023

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- This Criminal Appeal is directed against the judgment dated 18.07.2013, passed by the learned Sessions Judge, Tando Muhammad Khan, in Sessions Case No. 09 of 2012 (Old Sessions Case No.444 of 1998) (re: The State versus Jumoon & others), emanating from Crime No.100 of 1998, registered at Police Station Bulri Shah Karim, under section 302, 147, 148, 149, 114, 337-H(ii) PPC, whereby the appellants Jumoon and Haroon have been convicted u/s 302(b) & 149 PPC as Ta'zir and sentenced to suffer imprisonment for life for committing the murder of deceased Rasool,



Bux. They were also directed to pay Rs.1,00,000/- (Rupees One Lac) each as compensation to the legal heirs of deceased as provided u/s 544-A Cr.P.C; and, in case of non-payment of said compensation, the appellants shall further undergo S.I for two (02) years more. The appellants Jumoon and Haroon were also convicted u/s 337-A(i), 149 and 337-F(vi) & 149 PPC and sentenced to suffer R.I for two (02) years and five (05) months, respectively, and to pay Daman of Rs.10,000/- [Rupees Ten Thousand] each, to be paid to the injured Mukhtiar @ Baboo as compensation. All the sentences were ordered to run concurrently. However, benefit of Section 382-B Cr.P.C was also extended to the appellants. While, co-accused Mooso son of Qadir Bux was acquitted of the charge by extending him benefit of doubt. It is noted that during pendency of this appeal, the appellant Jumoon has been expired and death certificate in this regard has already been furnished by the Jail Authorities vide order dated 21.11.2023, as such, appeal against him has been abated.

2. The brief facts of the prosecution case as mentioned in the FIR are as under:-

"On 03.11.1998 at about 10:30 A.M, complainant Ali Bux lodged F.I.R alleging therein that he is hari of Haider Hasar, his brother Rasool Bux has got 10 ½ acres of agricultural land towards northern side from their house. On same date 03.11.1998 at about 08:00 A.M, his brother Rasool Bux, his son Bashir and Mukhtiar alias Baboo all of them jointly went on the land of Rasool Bux (situated Local Patri adjacent to survey land Rasool Bux Deh Heeran Jangeer) for cultivating the land and after a little while he also went to look after them and Mukhtiar Ali was ploughing the agricultural land through bullocks whereas Rasool Bux and Bashir were cleaning the land he had also joined them and started the work on the land in the meanwhile they saw that (1) Qadir Bux s/o Muhammad who was armed with Rifle, (2) Mooso s/o Qadir Bux was armed with Gun, (3) Haroon s/o Qadir Bux was armed with Gun, (4) Imtiaz s/o Qadir Bux was armed with Pistol and (5) Jumoon s/o Qadir Bux was armed with hatchet and all of them came to them and after coming they were standing and after sometime Syed Zulfiqar Ali Shah of Saeedpur Taker wala came in a vehicle and told Qadir Bux and others that they do not to spare Rasool Bux and his associates and Zulfiqar Ali by saying this went away about 09:00 a.m in the morning Qadir Bux fired from his gun in the air, Jumoon caused injuries with sharp side of hatchet to Rasool Bux, Mooso fired from the Gun in the air and Jumoon gave sharp side of hatchet blows to Mukhtiar Ali alias Baboo, Haroon fired straight shot from the gun upon Rasool Bux and Rasool Bux fell down on the ground, Imtiaz fired in the air, they raised cries which attracted

*Sattar, Raja, Papu running and accused persons on seeing them went away towards Saeedpur and they saw that Rasool Bux had died, thereafter he left witnesses on the dead body of Rasool Bux went to PP and lodged such report."*

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 appellants, to which they pleaded not guilty and claimed trial.
4. At trial, the prosecution in order to prove its case examined 14 witnesses and exhibited numerous documents and other items. The statements of accused were recorded under section 342 Cr.P.C whereby they denied the allegations leveled against them and claimed their false implication by the complainant. However, neither the appellants examined themselves on Oath nor led any evidence in their defense.
5. Learned trial court after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellants as stated earlier in this judgment. Hence, the appellants have filed this appeal against his conviction. As noted above the appeal of Jumoon has abated and only this appeal of Haroon remains to be decided.
6. It is noted that service upon the complainant has been held good vide order dated 14.11.2023.
7. 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.
8. Learned counsel for the appellant has contended that the appellant is innocent and has been falsely implicated in this case on account of enmity; that the evidence of the eye witnesses cannot be safely relied upon as they are all related to each other and the deceased; that there are material contradictions in the evidence of the PW's which renders their evidence unreliable; that one co-accused has been acquitted on the same set of evidence and he is entitled to similar

treatment and for any or all of the above reasons the appellant should be acquitted by extending him the benefit of the doubt. In support of his contentions, he placed reliance on the reported cases of **Abdul Sattar versus The State** [2002 P.Cr.L.J 51], **Muhammad Saleem versus The State** [2010 MLD 1612] and, **Badshah Rehman alias Badshah versus The State and another** [2011 P.Cr.L.J 113].

9. Learned Assistant Prosecutor General Sindh, after going through the entire evidence of the prosecution witnesses as well as other record of the case supported the impugned judgment. In particular, she contended that there were two eye witnesses one of whom was injured during the incident and their evidence could be safely relied upon; that the medical evidence supported the ocular evidence; that the motive had been proven and since the prosecution had proved its case beyond a reasonable doubt the appeal be dismissed. In support of her contentions, she placed reliance on the cases of **Taj versus The State** [2012 SCMR 43], **Farman Ali and another versus The State and another** [2020 SCMR 597], **Muhammad Fazal versus The State** [2021 SCMR 289] and, **Muhammad Bashir and another versus The State and others** [2023 SCMR 190].

10. I have heard the learned counsel for the appellant as well as learned APG and have also perused the material available on record and the case law cited at the bar.

11. Based on my reassessment of the evidence of the PW's, especially the medical evidence, recovery of blood at the crime scene which lead to a positive chemical report I find that the prosecution has proved beyond a reasonable doubt that Rasool Bux (the deceased) was murdered by firearm and PW Mukhtiar was injured by hatchet on 03.11.1998 at about 9am at common path of survey land of Rasool Bux Deh Heran Jageer Taluka Tando Muhammed Khan Hyderabad.

12. The only question left before me therefore is who murdered the deceased and injured Mukhtiar by firearm and hatchet and hatchet only at the said time, date and location?



13. After my reassessment of the evidence on record, I find that the prosecution has proved beyond a reasonable doubt the charge in respect of S.302 (b) only against the appellant for which he was convicted for the following reasons;

- (a) That the FIR was lodged within 90 minutes 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 the complainant went to the PS and brought the police to the wardat to examine the dead body before it was sent to hospital for post mortem and thereafter the complainant immediately lodged the FIR 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 372).
- (b) The appellant is named in the promptly lodged FIR with the specific role of firing at the deceased. 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 complainant and the appellant or any PW which would motivate them to lodge a false case against the appellant.
- (c) In my view the prosecution's case rests on the eye witnesses to the murder of the deceased whose evidence I shall consider in detail below;
  - (i) **Eye witness PW 1. Ali Bux. He is the complainant and brother of the deceased.** According to his evidence on 03.11.1998 his son PW Mukthiar went to the land and he followed him and found the deceased and Bashir working the land whilst PW Mukthiar was ploughing the land when Qadir Bux, Mooso, the appellant, Jummo and Iratezar who were all armed came there. Mean while Zulfiqar Shah came in his Pajero who called out that Rasool Bux and his associates should not be spared and then left. Immediately thereafter Qadir Bux made fire, Jummo caused injury to Rasool Bux with hatchet and then caused injury to PW Mukthiar with Hatchet. Thereafter the appellant made straight fire on Rasool Bux while the remaining accused made aerial firing. Thereafter Rasool Bux fell down as he had received firearm and hatchet injury. He then went to PS and informed the SHO about the incident. The deceased and injured Mukthiar were taken to hospital and then he lodged the FIR at 1.30pm on the same day.

This eye witness knew the appellant before the incident, and saw the appellant from a few feet a

way murdering the deceased by firearm so there is no case of mistaken identity and no need to hold an identification parade especially as it was broad day light at 9am. 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 his brother 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) and **Ashfaq Ahmed v. The State** (2007 SCMR 641).

This eye witness is not a chance witness as he was residing in the same locality as the deceased who was his brother and was also working the land along with the deceased and his son injured PW Mukhtiar. His evidence was not materially improved on from his promptly lodged FIR. He gave his evidence in a natural manner and was not damaged during a lengthy cross examination. I find his evidence to be trust worthy, reliable and confidence inspiring and I believe 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. 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.

- (ii) Eye witness PW 2 Mukhtiar. He is the son of the complainant and related to the deceased. His evidence corroborates the complainant's evidence in all material respects. He saw the appellant make straight fire at the deceased which hit him and he died. He was also hit by the deceased appellant Jummo with a hatchet which lead to him being



injured as proven by the medical evidence. He knew the appellant and the incident took place in broad day right under his nose with him even being injured with a hatchet. It is settled by now that the evidence of an injured eye witness is deemed more reliable than usual eye witnesses. In this respect reliance is placed on the cases of **Aquil V State** (2023 SCMR 831) and **Taj** (supra). He is named in the promptly lodged FIR and gave his Section 161 Cr.PC statement on the same day which was not materially improved upon during his evidence at trial. He had no enmity with the appellant and had no reason to implicate him in a false case. He gave his evidence in a natural manner and was not dented during a lengthy cross examination and the same considerations apply to his evidence as to the complainant's evidence. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.

- (iii) **Eye witness PW 3 Abdul Aleem. He is the brother of the complainant.** He gave evidence that on the fateful day he was at home when he heard fire shots and a commotion at about 9am. He then ran to the place of the incident where he saw the appellant and other accused running away. At the place of the incident was the deceased and the injured PW Mukhtiar. Thereafter his evidence is hearsay.

He knew the appellant and the co-accused from before. It was a day light incident and as such he would have been able to easily recognize them. Although he was not an eye witness to the murder his importance is that he saw the appellant and the co-accused fleeing the scene of the incident which corroborates the evidence of the other two eye witnesses whose evidence was discussed above and corroborates the presence of the appellant and his co-accused at the time of the incident. He had no enmity with the appellant and had no reason to implicate him in a false case. He gave his evidence in a natural manner and was not dented during a lengthy cross examination and the same considerations apply to his evidence as to the complainant's evidence. He is an honest witness as he could have pretended to have witnessed the shooting incident but in this respect he told the truth that in this regard his evidence was only hearsay. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.

- (iv) **Eye Witness PW 4 Abdul Sattar.** His evidence is on the same lines as PW 3 Abdul Aleem in that he came from his house after hearing the shooting and saw the

appellant and the co-accused armed who were leaving the crime scene who threatened them not to come near or else they would be killed like the deceased. He however gives no evidence, hearsay or otherwise, about the shooting incident.

Although he was not an eye witness to the murder his importance is that he saw the appellant and the co-accused fleeing the scene of the incident which corroborates the evidence of the other two eye witnesses and PW 3 Abdul Aleem whose evidence was discussed above and corroborates the presence of the appellant and his co-accused at the time of the incident. He had no enmity with the appellant and had no reason to implicate him in a false case. He gave his evidence in a natural manner and was not dented during a lengthy cross examination and the same considerations apply to his evidence as to the complainant's evidence. He is an honest witness as he could have pretended to have witnessed the shooting incident but in this respect he told the truth. I find his evidence to be trust worthy reliable and confidence inspiring and I believe the same.

Having believed the evidence of 2 actual eye-witnesses and the 2 eye witnesses as to the presence of the appellant at the crime scene 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"*

- (d) That it does not appeal to logic, commonsense or reason that close relatives of the deceased would let the real murderer of their 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).
- (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 and also received an incised wound (i.e hatchet injury) as mentioned by the eyewitnesses and the injured eye witness Mukthiar (who also gave evidence) and also received his injuries from a sharp incised instrument i.e a hatchet as mentioned by the eye witnesses in their evidence.

- (f) That the appellant's fired on the instigation of Zulfiqar Shah whose case was separated from this case and was the motive for them firing on the deceased and the others as the appellant and co-accused were working for him and apparently he had a land dispute with the complainant's side.
- (g) 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 manufacturing his arrest. 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 is supported by the mashir's evidence and memo of arrest.
- (h) 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 complainant party going to their lands to Zulfiqar Shah instructing the appellant and the co-accused to kill the complainant and his party to the appellant shooting the deceased and the other co-accused attacking the complainant's party to the accused escaping from the scene to the death of the deceased to the arrest of the accused.
- (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 fact that no recovery was made from the appellant is not relevant as he had plenty of time to get rid of the gun prior to his arrest which was the murder weapon which any sensible person would have done.
- (k) That the appellant cannot receive any benefit from the fact that accused Moosa was acquitted as his case was on a different footing to that of the appellant as the only allegation against him was that he made aerial firing and did not kill or injure any specific person.

- (1) 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. However the accused did not give evidence under oath and did not call any DW to support his defence case. Even in his S.342 Cr.PC statement he offers simple denials. 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.

14. Thus, based on the above discussion, I find that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence of murder under S.302 (b) PPC and convict him for this offence only and maintain his conviction and sentences for this offence including any fines and compensation but acquit him in respect of all other offences for which he was charged. As such the appeal is dismissed except as modified above.

*\*Hafiz Fahad\**