

(61)

ORDER-SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Appeal No. S- 101 of 2017.

Date of hearing	Order with signature of Judge
25.01.2019.	

1. For orders on M.A. No. 3894/2017.
2. For hearing of case.

Mr. Athar Abbas Solangi, Advocate for appellant.
Mr. Sharafuddin Kanhar, A.P.G.

Heard learned counsel for the parties.

For reasons to follow, instant appeal stands allowed. The conviction and sentence awarded to appellant Jan Muhammad son of Muhammad Siddique Pahore, vide impugned judgment dated 20.10.2017, passed by learned Additional Sessions Judge-II, Jacobabad, in Sessions Case No.325/2012, Re; State v. Jan Muhammad Pahore, arisen out F.I.R No.78/2012 of P.S Thull (A-Section Thull), is set-aside to extent of appellant and he is acquitted of the charge by extending benefit of doubt. The appellant is reportedly in jail; he shall be released forthwith, if his custody is not required in any other case.


JUDGE

Agent/ *

(63) 1

**IN THE HIGH COURT OF SINDH AT CIRCUIT COURT
LARKANO**

Criminal Appeal No. S-101 OF 2017

**JAN MUHAMMAD PAHORE – APPELLANT
VS.
THE STATE**

Dates of hearing: : 25.01.2019
Date of Judgment : 25.01.2019
Appellant, : Jan Muhammad Pahore, through Mr. Athar
Abbas Solangi, advocate.
State through : Mr. Sharafuddin Kanhar, A.P.G.

JUDGMENT

Muhammad Saleem Jessar, J:-Through instant criminal appeal, Appellant, Jan Muhammad Pahore, has assailed judgment dated 20.10.2017, passed by II-Additional Sessions Judge, Jacobabad in Sessions Case No.325 of 2012, emanating from Crime No. 78/2012 of PS S-Section Thul, whereby he was convicted and sentence to undergo R.I. for life and was also saddled with fine of Rs.200,000/- which, if recovered, was payable to legal heirs of the deceased Manzoor Ahmed and in default thereof he was to further suffer S.I. for six months more.

2. The brief facts of the prosecution case, as per FIR lodged on 25.05.2012 at 1815 hours by the complainant Mst. Fahmeedah Suhundro, are that on 25.05.2012, she along with her husband Manzoor Ahmed and her relatives, namely, Ali Nawaz and Ghulam Yasin, were waiting at Bolaki curve for conveyance when at about 05.00p.m. four (04) accused persons on

(65)

two motorcycles came there, who were identified by complainant party as Sikander, Muhammad Nawaz, Ghulam Nabi, and Jan Muhammad. They took out their pistols from the folds of their shalwars and aimed their pistols at complainant party directing them to remain silent. It is alleged that, accused party said that they (complainant party) had murdered their (accused party's) persons, and in revenge they will also commit murder. It is alleged that, accused Sikander made straight fire at Manzoor Ahmed with intention to commit his murder, which hit him at right side of his chest, who raised cries and fell down. It is further alleged that accused Muhammad Nawaz, Ghulam Nabi and Jan Muhammad made aerial firing for harassing the complainant party, and then all the accused persons went on their motorcycles. Thereafter, complainant party found that Manzoor Ahmed had died at the spot. The complainant, who was widow of the deceased, went to the police station to file the above FIR.

3. After completion of investigation, police submitted the charge sheet against the accused persons, in the competent Court. The police papers were supplied to the present accused under section 265 (C), Cr.P.C. Formal Charge was framed against the accused Muhammad Nawaz, Ghulam Nabi and Jan Muhammad at Ex. 16 and their pleas of innocence were recorded. The case of absconding accused Sikandar was bifurcated. While accused Muhammad Nawaz expired during pendency of the case and, therefore, the proceedings against him were declared to be abated vide order dated 14.3.2017 (wrongly mentioned as 14.3.2018 in the diary sheet at page 27 of the paper book). Death certificate of accused Muhammad Nawaz, issued by Secretary, UC 2, Toj, Taluka Thul, District Jacobabad and duly attested by SHO, PS B-Section, Thul is available at page 131 of the paper book. In this

regard, examination in chief of ASI Shahmeer is also available as Exh. 23 at page 127.

4. Prosecution in order to prove the charge against present accused examined the following witnesses:-

- i) PW-1 complainant Mst. Fahmeedah was examined at Ex. 17. She has produced the copy of FIR.
- ii) PW-02 Ali Nawaz was examined at Ex. 18. He produced the copies of Memos of inspection of dead body, inquest report, place of vardaat, and blood stained earth.
- iii) PW-3 HC Zakir Hussain, who is corpse bearer, was examined at Ex. 21. He produced the receipt of handing over the dead body to the legal heirs of deceased.
- iv) Process server PC Liaquat Ali recorded his statement at Ex. 22 that ASI/ IO Hidayatullah Wagan had died due to his natural death and order was passed on that statement that letter be issued to SHO concerned to depute any police official who is well conversant with the signature and writing of deceased IO/ASI Hidayatullah Wagan.
- v) Process server ASI Shahmir recorded his statement at Ex.23 to the effect that accused Muhammad Nawaz had died his natural death and such death certificate of Secretary Union council has been produced with his statement at Ex. 23/B and proceedings of this case were ordered to stand abated against him.
- vi) PW-04:- MO. Dr. Abdul Karim Ansari examined at. Ex. 24, who produced the copy of *Lash Chakas* Form/letter and post mortem report of deceased Manzoor Ahmed.

vii) PW-05 PC Liaquat Ali Khoso was examined at Ex. 25, who is well conversant with the signature and writing of deceased IO / ASI Hidayatullah Wagan.

viii) PW-06 Tapedar Munir Ahmed was examined at Ex. 26, who produced the sketch of place of incident at Ex. 26-A

5. Complainant submitted an application in which, she stated that she do not want to examine another eye witness, namely, Ghulam Yasin, vide Ex. 19, on that application the learned DDPP for the State gave up the evidence of PW/ Mashir, namely, Ghulam Yasin at Ex.20.


6. The learned DDPP for the State submitted the report of Chemical Analysis regarding test of blood stained earth of the deceased vide statement at Ex. 27 and such report at Ex. 27-A. Thereafter, learned D.D.P.P for the State closed the side of the prosecution vide statement at Ex. 28.

7. On closing the prosecution evidence statement of accused Jan Muhammad was recorded under section 342, Cr. Procedure Code, vide statement at Ex. 29, who submitted the true copy of judgment of crime No. 150/2004 of PS Thul as Ex. 29/A and he stated that he is innocent and complainant and PWs are related inter se and interested, hence they have deposed against him, due to old enmity, accused Ghulam Nabi vide statement vide Ex. 30 stated that complainant and PWs are related and interested hence they have deposed against him, due to old enmity, he claimed that he is innocent and the case is false one. He produced the copy of judgment dated: 29.12.2010, in session case No. 60/2008 Re-Hadi Bux and others Vs. The State, but they neither opted to record their statements under section 340(2) Cr. P.C, nor wished to produce evidence in their defense.

8. Thereafter, accused Ghulam Nabi expired due to his natural death. In this regard, statement of Process Server, namely, PC Abdul Latif, was recorded who stated that the accused, Ghulam Nabi has expired, and submitted the death certificate of accused Ghulam Nabi issued by Secretary of the concerned UC, duly attested by SHO, PS B-Section, Thul, therefore, proceedings against him were abated. It seems that the order of abatement has been passed twice by the trial Court, once on 14.3.2017 (which has been written as 14.3.2018) and again on 28.9.2017.

9. Learned counsel appearing on behalf of the present accused mainly contended that, there is no specific role attributed to the appellant in committing the murder of deceased Manzoor Ahmed. He further contended that, allegedly, the present accused being armed with TT Pistol aimed the same at complainant party and merely made aerial firing at the time and place of incident; hence he has not fired at deceased Manzoor Ahmed. The specific role for causing the direct fire at deceased Manzoor Ahmed is attributed to the co-accused Sikander, whose case has been bifurcated. He has argued that there are material contradictions in the evidence of prosecution witnesses. He contended that the appellant has been falsely roped in although he has nothing to do with the family feud. He has further contended that prosecution case is highly doubtful; therefore, its benefit may be given to the accused person. He has lastly prayed for the acquittal of present accused.

10. Learned APG for the State submitted the name of accused is mentioned in the FIR and that prosecution has successfully proved its case. He argued that motive of murder has been fully established. He argued that all surrounding circumstances directly connect the accused persons with the



-13-

commission of offence. He contended that all witnesses have furnished reliable and trust worthy evidence. He further contended that in spite of lengthy cross examination; the defence could not succeed in shattering the credibility and veracity of prosecution witnesses. He contended that, accused Jan Muhammad along with co-accused persons being armed with TT Pistols came at the time and place of incident, with plan to commit the murder of one innocent person, hence, in furtherance of their common intention, they had committed the murder of deceased Manzoor Ahmed, therefore, conviction and sentence of the present accused may be maintained accordingly.


11. I have heard learned counsel for the appellant and learned APG for State, and have also gone through the material available on record.

12. The learned trial Court framed the following three points for consideration and determination:

1. *"Whether, deceased Manzoor Ahmed, husband of complainant has died due to un-natural death?"*
2. *Whether the present accused Jan Muhammad alongwith co-accused Muhammad Nawaz, Ghulam Nabi and Sikander, being armed with TT Pistols, in furtherance of their common intention, had committed the murder of Manzoor Ahmed, as alleged?*
3. *What should the Judgment be?"*

13. Learned trial Court answered questions No.1 and 2 in the affirmative and convicted and sentenced the appellant as above. Hence this appeal.

14. The point whether deceased Manzoor Ahmed died unnatural death is not in dispute, therefore, it would be an exercise in futility to dwell upon the same.



15. In order to prove the second point, which is the bone of contention in this case, the prosecution examined complainant Mst. Fehmeeda, PW mashir Ali Nawaz, PW corpse bearer HC Zakir Hussain, PW PC Liaqat Ali and PW Tapedar Munir Ahmed.


16. Learned trial Court while reaching guilty verdict relied on the testimony of the complainant and PW-2 Ali Nawaz, both of whom were eye witnesses of the incident. The learned trial Court observed that *"Eye witness Ali Nawaz also deposed on the same line, as deposed by the complainant of this case, hence he has fully supported the version of the complainant."* However, deeper examination of the deposition of these two very material witnesses indicates that they are not supporting each other, rather there is clear contradiction in their evidence which neither can be termed minor contradiction nor can be reconciled. PW-1 Mst. Fehmeeda stated in her examination in chief that *"There is no village near to the place of incident and no one was present except us and accused at the time and place of incident. After escaping of the accused person, the persons of the nearby villages came at the place of incident after about 2-3 hours."* However, PW-2 Ali Nawaz tells a different story in his cross examination wherein he states *"I consumed half an hour for arranging the vehicle and after my return so many persons gathered at the place of incident, consisting of about 15/20 persons."* Thus, while PW-1 the complainant states that there was no village in close proximity to the place of incident and people of nearby villages came at the place of incident after about 2-3 hours. But, PW-2 Ali Nawaz differs with the complainant in this regard and states that he consumed half an hour for arranging the vehicle and after his return in half an hour there were about 15/20 people at the place of wardat. Therefore,

(77)

while the complainant claims that people of the nearby villages came at the place of wardat after 2-3 hours, the other eye witness states that the people of the nearby villages came to the place of incident in about half an hour. This is proved by the further deposition of PW-2 who states that "We directly went to hospital alongwith dead body" So, it cannot be said that after arrival of the PW-2 after arranging the vehicle, they may have stayed at the place of incident for some time and in the meantime people of the nearby villages might have reached the place of incident after 2-3 hours. The complainant PW-1 clearly states in her cross examination that "*we were also stayed at the place of incident over dead body for about 2-3 hours for arranging the conveyance.*" Contrary to the statement of PW-1 the complainant, the other eye-witness PW-2 Ali Nawaz states that he took half an hour in arranging the vehicle. Therefore, there is contradiction in the evidence of the witnesses which creates doubt in the prosecution case.

17. Apart from this, there is also another contradiction in the statement of witnesses as PW-1 states in her deposition that driver and the cleaner of the datsun were accompanied with them to Taluka Hospital Thul; however, PW-2 Ali Nawaz clearly states in his deposition that "I arranged Datsun pickup which was driven by driver only" meaning thereby that only driver accompanied the vehicle and the complainant to the Taluka Hospital Thul and there was no cleaner with the vehicle. Otherwise, it is a known fact on which there is no dispute that only driver drives a vehicle, therefore, there was no need to say so.

18. In view of the above contradictions in the evidence of prosecution witnesses and infirmities / flaws in the prosecution case, serious doubts have been created in the prosecution case. It is well settled principle of law that the




prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. In view of aforesaid defects and lacunas, it can safely be held that the prosecution has not succeeded in discharging such obligation on its part. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right. In the present case, there are many circumstances which create doubts in the prosecution case.

19. Complainant Mst. Fehmeeda stated in her examination in chief that this incident took place on 25.05.2012, when she along with her husband Manzoor Ahmed, PWs Ali Nawaz and Ghulam Yaseen were going to Thul town from their village and they were waiting for conveyance at Bolaki curve, when, at about 5-00 pm, four accused persons, namely, Sikander, Ghulam Nabi and Muhammad Nawaz by caste Suhundro and Jan Muhammad by caste Pahore, came there. She deposed that the above named accused persons took out TT pistols from their folds of shalwars and pointed upon them and challenged that, they (complainant party) had murdered their (accused persons') man; hence they will take revenge of the same. Saying so, accused Sikander Suhundro made straight fire at her husband Manzoor Ahmed, which hit him, at right side of his chest, who fell down on the ground, while raising cries. It is of utmost importance to note that while the accused Sikandar, Ghulam Nabi and Muhammad Nawaz are Suhundros by caste, appellant Jan Muhammad is not a Suhundro by caste, rather he belongs to Pahore caste. Therefore, a doubt creeps in the mind as to why a Pahore should involve himself in the fight of Suhundros as both the parties i.e. the complainant party and the above named other accused persons, namely, Sikandar, Ghulam Nabi and Muhammad Nawaz, are Suhundros.

The motive of the murder, as stated above by the complainant, is old blood enmity between the parties with regard to murder of a person from the accused side by the complainant side. It has not been explained in the deposition of PW-01 Mst. Fehmeeda, widow of the deceased, or, for that matter, by any other witness, as to how the appellant fits in the jigsaw as he is not a Suhundro and therefore, no one from his caste or family was murdered by the complainant party, thus he is not a party to the family feud.

20. As regards the plea taken on behalf of the accused that, in fact, due to old enmity prevailing between the parties, complainant party has falsely implicated the accused in the case, it may be observed that the Superior Courts have time and again held that enmity is a double-edged weapon which would cut both ways and where, on the one hand, it may be a motive for implicating the accused falsely, on the other hand it could also be termed as strong motive for committing offence by the accused.

21. The other question which comes to mind is that in case all these accused persons were so enraged with the complainant party, then why they spared the other two male persons accompanying the complainant when the accused were fully armed and well in control of the situation to take further revenge by inflicting a far more serious damage on the complainant party by killing the young male members of the opposing party. On the contrary it is alleged that the other members of the accused party resorted to areal firing and left the place of wardaat. It appears that the alleged incident did not take place in the way as depicted by the witnesses. It is not denied that the deceased Manzoor Ahmed died unnatural death but to connect the appellant with his death is the duty of the prosecution which it has failed to perform properly.



22. There is another lacuna also in the prosecution case. As per the impugned Judgment, the complainant submitted an application stating therein that she does not want to examine another eye witness, namely, Ghulam Yasin (Exh.19) and on the basis of such application the DDPP for the State did not examine the other eye-witness of the incident. However, no reason for such change of mind has been given by the complainant or the DDPP for the State. This is also injurious to the prosecution case as it is settled principle of law that despite availability of witnesses, non-examination of such witness in the case gives rise to inference as envisaged under Article 129(g) of Qanoon-e-Shahadat Order, 1984, that in case such witness had been examined, he would have deposed against the prosecution.

23. In the case of Bashir Ahmed alias Manu vs. the State reported in 1996 SCMR 308 it was held by Honourable Supreme Court that despite presence of natural witnesses on the spot they were not produced in support of the occurrence and adverse inference under Article 129(g) of Qanun-e-Shahadat Order could easily be drawn that in case they were produced, they would have not supported the prosecution version.

24. In another case reported as Mohammad Shafi vs. Tahirur Rehman (1972 SCMR 144) it was held that large number of persons had gathered at the place of occurrence but prosecution failed to produce single disinterested witness in support of its case, therefore no implicit reliance could be placed on evidence of interested eye-witnesses.

25. In the case of Ghulam Shabir Versus The State reported in 1980 SCMR 708, it was observed that no witness of locality nor owner of hotel was produced in support of prosecution case nor any independent evidence

(85)

to corroborate testimony of the three eye-witnesses was produced, as such, the acquittal was upheld by the Honourable Supreme Court.

26. As per contents of the F.I.R., on the fateful day, the complainant was accompanied by her husband Manzoor Ahmed and two sons of her brother-in-law namely Ali Nawaz and Ghulam Yasin. While Ali Nawaz has been examined as PW-2, eye witness Ghulam Yasin was given up on the application of the complainant herself for which no explanation was tendered. In view of the above cited authorities from the superior courts, I am constrained to draw adverse inference in terms of illustration (g) to Article 129 of the Qanoon-e-Shahdat Order, 1984.

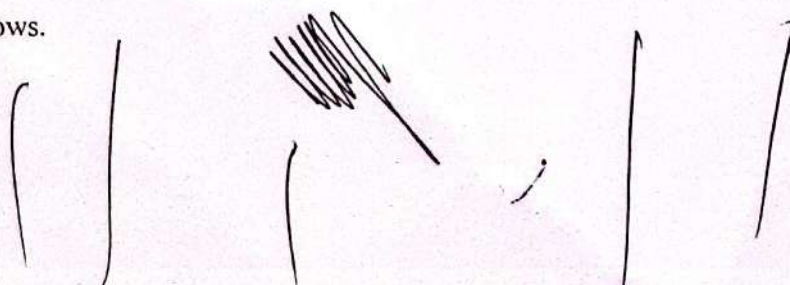
27. In order to connect the appellant with the commission of the alleged crime, it is alleged that the other co-accused made aerial firing in order to spread harassment in the area. In this regard it is also stated by the complainant that six empties were secured from about 6/7 paces away from the place of incident. However, nothing incriminating has been recovered from the possession of the present appellant. Neither any pistol was recovered nor is there any forensic report to connect the appellant with the crime. There is nothing on the record to prove that the empties were fired by a pistol / revolver belonging to the appellant. Although when accused Muhammad Nawaz was arrested it is alleged that one TT pistol of 30 bore was recovered from him, however, even in respect of this weapon there is no forensic report to show that any of the empties collected from the place of incident, were fired by such pistol.

28. Apart from this, in his cross-examination, HC Balach Khan stated that it is correct that the handle of the pistol is in broken condition. He further stated that it is correct that he has not mentioned such fact in the memo of

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arrest. Why this fact was not mentioned in the memo of arrest also creates doubt in the case of the prosecution.

29. Enmity between the parties is admitted even by the complainant herself in her evidence as well as in the F.I.R. As regards the plea taken on behalf of the accused that, in fact, due to old enmity prevailing between the parties, complainant party has falsely implicated the accused in the case and in this regard they have also produced some judgments of the Courts, it may be observed that the Superior Courts have time and again held that enmity is a double-edged weapon which would cut both ways and where, on the one hand, it may be a motive for implicating the accused falsely, on the other hand it could also be termed as strong motive for committing offence by the accused. However, it is an admitted position that the enmity is between complainant party and the accused Sikandar, Muhammad Nawaz and Ghulam Nabi as both these parties are Suhondro by caste while the present appellant is not Suhondro by caste, therefore, it cannot be denied that he is not a party to the dispute between the complaint and above said three accused. This also causes a dent in the case of the prosecution as no explanation / reason has been given as to how a Pahore will be a party in a dispute between Suhondros. It may be pointed out that Prosecution has to establish its case beyond all reasonable doubts, and there is no duty cast on the accused to disprove the case of the prosecution. If the evidence produced by the prosecution is short of such standard, it is better to discard such evidence so that an innocent person might not be sent behind bars or to the gallows.



(89)

30. In view of the scrutiny of the entire evidence and careful re-appraisal of the same I am of the considered opinion that the prosecution case is full of improbabilities and factual infirmities of fatal nature, contradictions and is bristling with doubts of grave nature. Thus, the prosecution has miserably failed to connect the neck of the appellant with the dead body in any manner whatsoever even his presence has not been established.

31. The effect of the above said contradictions in the evidence of prosecution witnesses and infirmities / flaws in the prosecution case is that serious dents have been put and doubts have been created in the prosecution case. It is well settled principle of law that the prosecution is bound under the law to prove its case against the accused beyond any shadow of reasonable doubt. In view of aforesaid defects and lacunas, it can safely be held that the prosecution has not succeeded in discharging such obligation on its part. Needless to emphasize the well settled principle of law that the accused is entitled to be extended benefit of doubt as a matter of right. In the present case, there are many circumstances which create doubts in the prosecution case. Even an accused cannot be deprived of benefit of doubt merely because there is only one circumstance which creates doubt in the prosecution story. In the case reported as Tariq Pervaiz vs. The State 1995 SCMR 1345 the Honourable Supreme Court held as under :-

"The concept of benefit of doubt to an accused is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

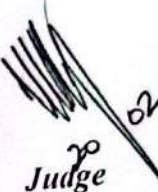
32. For the aforesaid reasons, by a short order passed on 25.01.2019 instant appeal was allowed and conviction and sentences, including



(91)
imposition of fine, awarded to the appellant vide impugned judgment dated 22.10.2017, was set aside to the extent of the appellant. The appellant Jan Mohammad Pahore was acquitted of the charges. The appellant was confined in Jail, it was ordered that he be released forthwith if not required in any other case.

33. Above are the reasons for the said short order.

34. Let R&Ps of Sessions Case No.325/2012 re-State Vs Jan Mohammad Pahore alongwith copy of judgment be sent to learned trial court through learned Sessions Judge, Jacobabad for their record.


02.2.2019 -
Judge