

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

Cr. Appeal No. D — 45 of 2014.  
Confirmation Case No.09 of 2014.

**PRESENT**

**Mr. Justice Naimatullah Phulpoto**  
**Mr. Justice Rasheed Ahmed Soomro.**

Appellant: Chetan s/o Mengho Meghwar.  
Through Mr. Sajjad Ahmed Chandio, Advocate.

The State Through Syed Meeral Shah Bukhari, D.P.G.

Date of Hearing: 31.01.2017

Date of Judgment: 22.03.2017.

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**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J.** Appellant Chetan s/o Mengho Meghwar, was tried along with co-accused by learned Sessions Judge Badin, in S.C No.15 of 2011 arising out of F.I.R. No.09 of 2011, registered at Police Station Badin for offences under sections 302, 34 PPC vide Judgment dated 19.04.2014, he was convicted under section 302(b) PPC and sentenced to death. He was ordered to pay compensation of Rs.200,000/- to be paid to the legal heirs of the deceased Ramesh as provided under section 544-A Cr.P.C. In case of failure in payment of compensation the accused Chetan was ordered to suffer R.I. for two (02) years more. Co-accused Fakeero and Mitho were acquitted by the trial court by extending benefit of doubt. Trial court made reference to this court under section 374 Cr.P.C. for confirmation death sentence or otherwise awarded to appellant Chetan.

2. Prosecution story as set-out in the F.I.R. Ex.11/A, registered on the statement of complainant Prem is that he is a tailor and his brother

Ramesh (now deceased) was working with him. A few days prior to this incident, it is alleged that there was some quarrel in between deceased Ramesh and accused Chetan Meghwar. There was private settlement between the parties. It is alleged that accused Chetan had annoyance against the deceased Ramesh and deceased had informed the complainant that Chetan had declared that he would not be spared. It is alleged in the F.I.R. that on 11.1.2011 at night time complainant along with his brother Ramesh closed shop and proceeded to the fruit chowk Badin. Where it is alleged that P.Ws. Haboo and Davsi Mal Meghwar met them. Complainant party reached at Shahi bazaar Quaid-e-Azam road at 2015 hours. Street light was on. It is alleged that accused Chetan and Fakeero appeared there. Accused Chetan was armed with pistol and accused Fakeero had a lathi in his hand. It is alleged that accused Fakeero inflicted lathi blow upon them but hit to Ramesh on his head. It is further mentioned that accused Chetan fired four (04) shots from his pistol upon Ramesh which hit him at stomach, abdomen and other parts of the body. Complainant party raised cries, on which accused Chetan and Fakeero ran away. Complainant saw that his brother had sustained fire-arm injuries. Thereafter, Ramesh was taken by his brother to the Civil Hospital Badin. From where injured was referred to Hyderabad but on the way to Civil Hospital Hyderabad, Ramesh succumbed to the injuries. Dead body was brought back to Civil Hospital Badin. After postmortem examination dead body was handed over to complainant. Dead body was buried by complainant party. Thereafter, complainant went to the Police Station and lodged F.I.R. against the accused. It was recorded against the accused vide crime No.09 of 2011 under section 302, 34 PPC.

3. After completion of usual investigation report under section 173 Cr.P.C. was submitted against accused Chetan son of Mengho Methwar, Fakero son of Hadoo Meghwar and Mitho son of Wagho Mal Meghwar before the competent court of law.

4. Trial court framed charge against accused Chetan son of Mengho Methwar, Fakero son of Hadoo Meghwar and Mitho son of Wagho Mal Meghwar under section 302, 34 PPC at Ex.06. Accused pleaded not guilty and claimed to be tried.

5. In order to substantiate the charge, prosecution examined 07 prosecution witnesses. Thereafter, prosecution side was closed.

6. Statements of the accused were recorded under section 342 Cr.P.C. at Ex.22 to Ex.24. Accused Chetan denied the prosecution allegations and raised the plea that he was arrested by the police on 12.01.2011 at noon time from his shop and stated that prosecution witnesses have deposed against him due to enmity and denied recovery of pistol. Accused Chetan examined himself on oath in disproof of prosecution allegations at Ex.25. He has also examined one Bhayo s/o Natho as a defence witness at Ex.28. Co-accused Fakeero and Mitho had also claimed false implication in this case.

7. Learned trial court after hearing the learned advocate for accused and prosecutor, on assessment of evidence convicted and sentenced accused Chetan to death and acquitted co-accused as stated above.

8. Mr. Sajjad Ahmed Chandio, learned Advocate for appellant Chetan argued that it was nighttime incident; identification of the accused on street light was highly doubtful. It is contended that there was delay of 19 hours in lodging of F.I.R. for which no plausible explanation has been furnished. Learned Advocate further argued that prosecution witnesses are closely related to the deceased and interested and their testimony required independent corroboration which was lacking in the case. Learned Advocate for the appellant argued that prosecution has failed to establish the motive against the accused for commission of the offence. Learned Advocate for the appellant argued that co-accused Fakeero and Mitho have been acquitted by the trial court on same set of evidence and trial court wrongly convicted accused Chetan on same evidence. Lastly, it is argued that prosecution has failed to establish its case against accused

Chetan, and prosecution case was highly doubtful. Learned advocate for accused Chetan In support of the contentions has relied upon the cases reported as (i) **HAKIM ALI & 4 others v. THE STATE & another** [1971 S.C.M.R. 432], (ii) **SARDAR BAIG v. THE STATE** [1978 P.Cr.L.J. 690], (iii) **Haji AHMED & another v. THE STATE** [1979 P.Cr.L.J. 460] and (iv) **MUSHTAQ v. THE STATE** [2002 P.Cr.L.J. 1312].

9. Syed Meeral Shah Bukhari, D.P.G. argued that accused Chetan was identified on street light and accused was previously known to the complainant party. They felt no difficulty to identify the accused. As regards to the delay, learned D.P.G. contended that delay in lodging of the F.I.R. has been fully explained. He further argued that prosecution did not derive any benefit from delay in lodging of F.I.R. It is further contended that mere relationship of the complainant with the deceased is no ground to reject his testimony and second eye-witness Davsi was independent witness. Learned D.P.G. argued that prosecution witnesses had given plausible explanation regarding their presence with the deceased at the relevant time, as such, they were not chance witnesses. As regards to the motive learned D.P.G. contended that prosecution has established the motive at the trial. In support of his contentions learned D.P.G. has placed reliance upon the cases reported as **NAZIR AHMED v. THE STATE** [2009 S.C.M.R. 523], **ZAHID IMRAN v. THE STATE** [P.L.D. 2006 SC 109] and **TALIB HUSSAIN and others v. THE STATE** [1995 S.C.M.R. 1776].

10. We have carefully heard learned counsel for the parties and scanned the entire evidence.

11. Facts of this case as well as evidence produced before the trial court find an elaborate mention in the Judgment passed by the trial court and therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

12. As regards to the unnatural death of deceased Ramesh, Dr. Nawaz Ali has deposed that on 11.01.2011 S.H.O. Police Station Badin referred

to him, dead body of Ramesh for conducting the postmortem examination and report. He started postmortem examination on 12.01.2011 at 12-05 a.m. and finished on the same date at 02-30 a.m. Medical Officer found following injuries on the person of the deceased:

- (1) Round lacerated wound 1.5 cm x 1.5 cm with inverted margins on right lumbar region with blackening of the skin. Wound of entry.
- (2) Round lacerated wound 2 cm x 2 cm with averted margins on left lateral aspect of abdomen. Wound of exit.
- (3) Round lacerated wound 1 cm x 1 cm with blackening of adjacent skin and inverted margins on back of right elbow joint. Wound of entry.
- (4) Round lacerated wound 1.5 cm x 1.5 cm on middle of anterior aspect of right forearm with averted margins. Wound of exit.
- (5) Round lacerated wound 1 cm x 1 cm with inverted margins of blackening of adjacent skin on medial side of left forearm. Wound of entry.
- (6) Round lacerated wound 2 cm x 2 cm with averted margins on anterior side of left forearm. Wound of exit.

From the external as well as internal examination of dead body of Ramesh, Medical Officer was of the opinion that his death occurred due to injuries No.1 and 2. The duration in between injuries and death was about 1 to 2 hours and duration in between death and postmortem was about 2 to 3 hours. All the injuries were caused by discharge of the firearm. Medical Officer produced postmortem report Ex.18/D. Learned advocate for the appellant did not dispute the unnatural death of the deceased Ramesh by means of firearm. We have no hesitation to hold that deceased died by means of the firearm injuries as described by the Medical Officer.

13. Even at the cost of the repetition it would be worthwhile to mention here that complainant Prem has deposed that deceased Ramesh was his brother. Present incident occurred on 11.1.2011 at 8-15 p.m. at Fruit Chowk Shahi bazaar Badin. A few days prior to this incident there was exchange of harsh words in between his brother Ramesh and accused Chetan. There was also settlement but accused Chetan was not satisfied. Complainant has stated that on 11.1.2011 at 8-15 p.m. he along with his brother Ramesh, P.Ws. Davsi and Haboo after closing the shop were going to the home when they reached at Quaid-e-Azam road Shahi bazaar appellant Chetan armed with pistol and co-accused Fakeero armed with lathi appeared there. Accused Fakeero tried to cause him lathi blow but the same hit to his brother Ramesh and he fell down. Accused Chetan fired four shots from his pistol upon Ramesh which hit him and he fell down. Thereafter, both accused ran away. Complainant party took injured Ramesh to the Civil Hospital Badin where doctors referred injured to L.U.M.H.S. Hyderabad but injured succumbed to the injuries on the way. Again dead body was brought to the Civil Hospital Badin. Police arrived in the Hospital completed formalities postmortem examination was conducted. Thereafter, complainant went to the Police Station and lodged F.I.R.

14. P.W. 2 Davsi second eye-witness has also deposed that present incident occurred on 11.1.2011 at 8-15 p.m. at that time he along with Haboo was present at Fruit Chowk Badin where Ramesh and Prem came. They were proceeding through Quaid-e-Azam road when they reached at main street Shahi Bazar situated at Quaid-e-Azam road at 8-15 p.m. accused Fakeero and Chetan appeared there. Accused Fakeero had lathi in his hand and accused Chetan was armed with pistol. Accused Fakeero inflicted lathi blow to Prem but it hit to Ramesh who fell down. Thereafter, accused Chetan fired 4 shorts upon Ramesh. He along with complainant took injured to the Civil Hospital Badin but doctors referred him to Hyderabad, on the way to Hyderabad he has deposed that Ramesh

expired. Again the dead body was shifted to the Civil Hospital Badin where postmortem examination was conducted and dead body of Ramesh was brought to the home. After necessary formalities complainant lodged F.I.R. He has stated that accused Mitho had instigated the accused Chetan for commission of the offence.

15. From the perusal of the evidence of the Prem and Davsi it transpired that evidence of the eye witnesses is consistent and straight forward. They have explained their presence with deceased at the time of incident and their evidence finds support from medical evidence and recovery of pistol. In our considered view, eye-witnesses cannot be declared as chance witnesses. No doubt, complainant Prem is the brother of the deceased but he had no motive to falsely implicate accused Chetan in the murder of his brother. Second eye-witness namely Davsi is independent witness only caste fellow of complainant. He has also given minute details of the incident. Eye-witnesses during cross examination remained firm on all major particulars of case i.e. date, time and place of occurrence. P.Ws. had no enmity with accused Chetan to falsely implicate him in the present case. Mere relationship of the complainant Prem with deceased would not be sufficient to discard his evidence. Learned D.P.G. in support of his contentions has rightly relied upon the case of **ZAHID IMRAN v. STATE** [P.L.D. 2006 S.C. 109]. Relevant portion is reproduced as under:-

***“11. The ocular version which was given by the two eye-witnesses is consistent and straightforward, may be with some minor contradictions, which may be due to lapse of time. The reasons of their visit at the place, where the deceased was deputed in the examination hall has been explained by the two witnesses and the narration of the circumstances particularly the apprehending of the three appellants on the spot by them fully lends support to their version indicating their presence on the spot. Their version finds corroboration from the Medical evidence and also from the other***

***circumstantial evidence i.e. the recoveries of the iron-grips / iron club and Dandas at the instance of the appellants. The reasons of nominating the appellants in the F.I.R. have also been fully explained as to how they came to know about the names of the appellants and more so their identification by P.W's. at the time of examination in the Court. They have pointed out the appellants present in the Court to be the one who were responsible for the assault on the deceased. Regarding the recoveries of various weapons effected, a credible evidence has been led by the prosecution and there exists no reasons to disbelieve such evidence. Efforts were made to dislodge the prosecution evidence by producing the evidence in defence with different pleas showing some ill-will between the Police Officials and father of the appellants Shahzad and also the absence of some of the appellants on the spot but the said evidence is not of a such standard sufficient to create dent in the evidence of the prosecution."***

16. As regards to the contention of the defence counsel that it was night time and identification of accused was doubtful but it has come on record that incident occurred in the bazaar where there was street light and accused Chetan was identified on street light. Moreover, both parties knew each other since long. Complainant party had no difficulty to identify the accused at early hours of the night. Contention of the defence counsel that there was inordinate delay in lodging of the F.I.R. for which no plausible explanation has been furnished. We have deeply considered this aspect of the case and came to the conclusion that delay has been fully explained. After the incident the injured was taken to the Civil Hospital Badin as condition of the injured was critical he was referred to the Civil Hospital Hyderabad, but on the way injured succumbed to the injuries. Again dead body was shifted to the Badin Hospital where postmortem examination was conducted and dead body was brought to the home. Necessary formalities were completed thereafter, complainant went to the Police Station and lodged F.I.R. Moreover, from the delay in lodging the



F.I.R. no undue advantage was derived by prosecution. As regards to the motive since beginning it is the case of the prosecution that there was exchange of harsh words in between accused Chetan and deceased Ramesh. There was also settlement but appellant was not satisfied. Prosecution witnesses were subjected to lengthy cross examination yet their evidence remained unshattered. Record reflected that accused Chetan was arrested on 13.1.2011 in presence of the mashirs Achar and Bhayo Khan. During interrogation led the police to Devi Jungle on 23.01.2011 and produced pistol with 4 live bullets used by him in the commission of offence and report of Ballistic Expert was positive (Ex.20/C).

17. Efforts were made by accused Chetan to dislodge the prosecution evidence by producing defence evidence with defence plea that deceased had other enemies, accused had no reason to kill him. Defence witness Bhayo is uncle of accused Chetan. Defence evidence is not of such a standard sufficient to create dent in the evidence of prosecution case. From close scrutiny of the evidence of the complainant, we have come to the conclusion that complainant had no reason to falsely implicate the accused Chetan in the commission of the murder of his brother substituting him, letting off real culprit. There is no evidence on record which could indicate the substitution of the accused Chetan in this case with real culprit. Even otherwise, it is the settled position of the law that substitution is a phenomenon of a rare occurrence because even interested witnesses would not normally allow real culprits for the murder of their relations let-off by involving innocent persons. Reference can usefully be made to the case of **KHALID SAIFULLAH v. THE STATE** [2008 SCMR 688]. Relevant portion is reproduced as under:-

***“8. The complainant being close relative (Hamzulf of the petitioner) had no reason to falsely implicate the petitioner in the commission of the offence substituting him, letting off the real culprits. There is no such***

***material available on record which would indicate substitution of the petitioner in the case with the real culprit. Substitution is a phenomenon of a rare occurrence because even the interested witnesses would not normally allow real culprits for the murder of their relations let-off by involving innocent persons. In this context, reference can usefully be made to the case of Irshad Ahmed and others v. The State and others PLD 1996 SC 138. The petitioner has not been able to establish any animosity of the complainant or the police for his false involvement in the case.”***

18. As regards the contention of learned Advocate for appellant that the co-accused Fakeero and Mitho have been acquitted by the trial court on same set of evidence. The perusal of evidence reflected that appellant Chetan had caused firearm injuries to deceased Ramesh and co-accused were acquitted by the trial court by extending benefit of doubt as no effective role had been attributed to them. It was duty of the trial court to sift the grain from the chaff. There is huge evidence against the appellant to find guilty in this case. No benefit can be extended to appellant Chetan on this ground. Contention of the defence counsel is without any substance.

19. Learned Advocate for the appellant could not point out any illegality or infirmity in the impugned judgment. Learned D.P.G. in support of his contention has also rightly relied upon the case reported **NAZIR AHMED v. THE STATE** [2009 S.C.M.R. 523] in which it is observed as follows:-

***“12. We have considered the contentions raised at the bar and have also appraised the entire evidence with their assistance. The occurrence had taken place on 8.8.2002 at 1-00 a.m. and the F.I.R. was lodged promptly wherein appellant has been named as accused. The ocular account furnished by complainant and eye witnesses is fully corroborated by the medical evidence; though the P.Ws. were subjected to lengthy cross examination yet their evidence remained unshattered. Sofaras the motive is concerned, it was held by this court in the case of NAWAZ ALI & another v. THE STATE 2001 SCMR***

***726 that in case of lack of motive altogether or if the prosecution is unable to prove motive for murder, it does not affect the imposition of normal penalty of death in murder case, if the prosecution otherwise has been able to prove its case against accused beyond reasonable doubt. It was also held by this court in the case of AHMED NISAR v. THE STATE 1977 SCMR 175 that absence of motive or failure on the part of the prosecution to prove it does not, therefore, adversely affect the testimony of the eye-witnesses if they are otherwise reliable. Learned counsel could not point out any illegality or infirmity in the impugned judgment.***

20. We have no hesitation to hold that prosecution had established its case against the appellant beyond any shadow of doubt.

21. As regards to the quantum of the sentence, learned Advocate for the appellant couldn't point out any mitigating circumstance for reduction of the death sentence to imprisonment for life. Death sentence in a murder case is a normal penalty as held by Honourable Supreme Court in the case of JAWED MALIK v. THE STATE [2005 SCMR 49].

***“9. The judgment of the learned Judge, who modified the death sentence to life imprisonment, is neither based on sound and cogent reasons, nor any mitigating circumstance was available warranting a lessor punishment in the case of heinous crime of brutal murder of the deceased. In our considered view, the prosecution evidence is confidence inspiring. A cold-blooded murder was committed by the appellant, which was fully supported by the ocular and circumstantial evidence as well as the medical evidence. This Court time and again has held that when a case for Qatl-e-Amd is proved against accused, normal sentence of death should be awarded, and this is the case in which the learned High Court has rightly awarded the death sentence under the law, which does not warrant interference. We do not find any mitigating circumstance for modifying the sentence from death to imprisonment for life.”***

22. In the view of above all circumstances referred by us above we have come to the conclusion that prosecution evidence is confidence inspiring and no mitigating circumstance is pointed out, appellant has committed a brutal murder in a street / bazaar.

23. For the facts, circumstances and reasons stated herein above appeal is dismissed. The conviction of appellant under section 302(b) PPC is maintained and his death sentence is confirmed. However, appellant shall undergo simple imprisonment for six months in default of compensation **instead of two years rigorous imprisonment**. Reference for confirmation of death sentence is answered in **affirmative**.

JUDGE

JUDGE

A.