

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Fahim Ahmed Siddiqui

Cr. Jail Appeal No.D-82 of 2004

Abdul Hameed

Versus.

The State.

Appellant : Abdul Hameed (who is present on bail)	Through Mr. Farhad Ali Abro, Advocate.
Respondent : The State	Through Ms. Rameshan Oad, A.P.G.
None present for the complainant.	
Date of hearing	30.10.2018
Date of judgment	30.10.2018

J U D G M E N T

ABDUL MAALIK GADDI, J.- Through this criminal jail appeal, the appellant has assailed the legality and propriety of the judgment dated 14.05.2004, passed by the learned Additional Sessions Judge, Sanghar in Sessions Case No.228 of 1999, arising out of Crime No.10 of 1999, registered at Police Station Khadro, under section 302 PPC, whereby the appellant has been convicted u/s 302(b) PPC and sentenced to suffer R.I. for life and also to pay fine of Rs.50,000/-. In case of default in payment of fine he was ordered to suffer R.I. for three years more. According to judgment, if the fine is deposited by the accused, the same shall be paid to the legal heirs of the deceased. Benefit of Section 382-B Cr.P.C. was also extended to the appellant/accused.

2. The facts briefly stated in the F.I.R. are that the complainant Jan Muhammad lodged F.I.R. on 02.11.1999 at about 1530 hours stating therein, interalia, that he was residing at the address given in the F.I.R. alongwith his father Nazar Muhammad and maternal uncles namely Abdul Kareem, Khuda Bux and Khan Muhammad. A week back, his maternal uncle Khan

Muhammad went out towards Khadro town after saying that he was going to shave his beard in the shop of barber Abdul Hameed Khaskheli. He came back to the house after about two hours. Complainant's father was not present in the house at that time. Complainant's maternal uncles Abdul Kareem disclosed to Khuda Bux in complainant's presence that during the course of time when barber Abdul Hameed Khaskheli was leveling his beard, some hot words were exchanged between them, and barber Abdul Hameed Khaskheli abused him. Complainant's maternal uncle Khuda Bux advised him to be patient (cool down) as matter pertains to the brotherhood, therefore, they would solve the dispute on brotherhood level. On 02.11.99 complainant's father went out from the house early in the morning to attend invitation in village Usman Shah Huri. Complainant and his uncles namely Abdul Kareem, Khuda Bux and Khan Muhammad were going through Khadro town in connection with their work. At about 09-00 am, when they reached near the shop of barber Abdul Hameed Khaskheli in Shahi Bazar Khadro town, at that time, barber Abdul Hameed Khaskheli after seeing his uncle Khan Muhammad abused him and also reminded that a week back he (deceased) exchanged hot words with him therefore he would not leave him on that day and thereafter he took out a T.T pistol from fold of his shalwar and he shot a straight fire on his uncle Khan Muhammad with intention to kill him and which hit on the forehead of his uncle Khan Muhammad, who shrieked and fell down on the ground. Complainant and his both uncles also raised cries. Accused Abdul Hameed Khaskheli escaped alongwith T.T. Pistol towards Western side. His injured uncle Khan Muhammad fainted. Blood was oozing from his forehead injury. They took him to Civil Hospital Nawabshah and thereafter he lodged F.I.R.

3. Initially the F.I.R. was registered under section 324 PPC, however, since injured Khan Muhammad succumbed to his injury on the same day in hospital, therefore, the accused was challaned under section 302 PPC.

4. Trial court framed charge against the appellant/accused at Ex.3, to which he pleaded not guilty and claimed to be tried vide his plea at Ex.4.

5. At trial, prosecution examined PW-1 complainant Jan Muhammad at Ex.5, who produced F.I.R. at Ex.5-A and receipt of handing over dead body at Ex.5-B; P.W-2 Abdul Kareem, who was son of the deceased, was examined at Ex.6; P.W-3 Khuda Bux, real brother of the deceased, was examined at Ex.7; P.W-4 Ghulam Rasool being mashir was examined at Ex.8, who

produced memo of site inspection at Ex.8-A, memo of injuries at Ex.8-B, memo of inspection of dead body at Ex.8-C, inquest report at Ex.8-D, Danistnama at Ex.08-E, Memo of securing clothes of deceased at Ex.8-F, memo of arrest of accused at Ex.8-G and memo of recovery of T.T. pistol at Ex.8-H; P.W-5 Inspector Muhammad Yousuf was examined at Ex.9, who produced carbonized copy of arrival entry at Ex.9-A, Chemical Examiner's report at Ex.9-B and Ballistic Expert's report at Ex.9-C; P.W-6 Muhammad Sadique (Tapedar) was examined at Ex.10, who produced sketches of vardat at Ex.11 to 13 and P.W-7 Doctor Imtiaz Ali was examined at Ex.14, who produced post-mortem report at Ex.15; thereafter, the learned DDA closed the side of the prosecution.

6. Statement of appellant/accused was recorded u/s 342 Cr.P.C. at Ex.16, wherein he denied the prosecution allegations and claimed his false implication in this case. In support of his said statement, the appellant produced photostat copies of F.I.R. No.22/1995, report under section 344 Cr.P.C, Challan in Crime No.20/1995, CTC of Judgment in Sessions Case No.166/95 at Ex.16-A to 16-D, respectively. He also examined himself on oath under section 340(2) Cr.P.C. at Ex.17, but he has not examined any defence witness. Thereafter, the learned defence counsel closed the side of defence.

7. Learned trial Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above by the impugned judgment. Hence this appeal.

8. 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.

9. Mr. Farhad Ali Abro, the learned Counsel for the appellant contended that the appellant has been falsely involved in this case due to enmity; that there are material contradictions in the evidence of prosecution witnesses, but the trial Court did not consider the same at all and passed the impugned judgment, which is against law and facts; that the evidence so brought on record is contradictory on material particulars of the case, therefore, the same cannot be safely relied upon for maintaining conviction; that all the three eye-witnesses in the case were closely blood related, therefore, they were interested witnesses and in absence of any independent corroboration of the

fact when allegedly murder was committed in broad daylight in main bazaar of Khadro town, no implicit reliance can be made merely on the evidence of interested witnesses; that the post mortem report contradicts with regard to the probable death time of the deceased which fact creates a doubt and appellant is entitled for such doubt; that the deceased was a criminal type of person and he was murdered by someone else at unknown place but present appellant due to enmity is involved in this case and on capital charge only the testimony of interested witnesses which remained uncorroborated by the independent evidence, cannot be made a base of conviction; that the F.I.R. was lodged with unexplained delay of 06 hours which is sufficient to prove that it was not free from consultation and due deliberation, and that was the reason owing to which present appellant was involved in this case falsely; that the complainant had admitted in his evidence that his village was situated at the distance of one mile or half mile from Khadro town, therefore, all the eye-witnesses were not the natural witnesses but they were chance witnesses and as such their evidence carries no much weight to prove the prosecution case; that there is no any documentary and cogent evidence to show that deceased remained admitted in Civil Hospital Nawabshah, died there and then his body was transported after post mortem; that the Head Constable, who allegedly brought the blood stained clothes and dead body of the deceased from hospital has not been examined, therefore the prosecution case is highly doubtful; that the crime weapon was allegedly recovered on the pointation of appellant on 05.11.1999 but it was sent to Ballistic Expert for report on 17.12.1999 with an unexplained delay of one and half month, therefore, the report of the Ballistic Expert even positive, is of no importance in this case; that according to the evidence of Tapedar, dead body was lying three feet away from one Abdul Razzak but said Abdul Razzak has not been examined by the prosecution, therefore, this fact also creates a doubt about the veracity of the prosecution case. Lastly he prayed that the instant appeal may be allowed and the appellant may be acquitted.

10. Conversely, Ms. Rameshan Oad, the learned A.P.G. while opposing the aforesaid contentions raised by the learned counsel for the appellant submitted that the prosecution has fully established its case against the appellant beyond reasonable doubt by producing consistent / convincing and reliable evidence and the impugned conviction / sentence awarded to the appellant is the result of proper appreciation of evidence brought on record, which needs no interference. She further submits that delay of six hours in

lodging the F.I.R. is very much explained, therefore, legally no delay occurred in lodging of such F.I.R.; that although the eye-witnesses had blood relation with deceased but their evidence cannot be discarded merely on this ground alone when their evidence is in consistence with each other and also corroborated by the Medical Evidence so also by strong circumstantial evidence in shape of recovery of crime weapon on the pointation of accused; that the discrepancies pointed out by the learned counsel for the appellant are of minor nature which can be overlooked and are not at all fatal to the prosecution case; that even after putting the evidence, produced by the appellant, in juxtaposition to that of evidence produced by prosecution it would reveal that the evidence produced by the prosecution is convincing, cogent and reliable because real brothers and real nephew had no any plausible reason to implicate the appellant in place of any other person who if was real culprit. She prayed for dismissal of the appeal.

11. We have considered the arguments advanced before us and perused the record.

12. As mentioned earlier, in the present case, the incident had taken place at 0900 hours whereas the F.I.R. was lodged on the same day i.e. 02.11.1999 at 1530 hours by the complainant who is one of the eye-witnesses of the incident. Admittedly, both parties were known to each other and F.I.R. was lodged without any inordinate delay, which rules out any possibility of substitution or consultation to falsely rope the appellant. The deceased Khan Muhammad, as per case of prosecution, after receiving the firearm injury at the hands of appellant died at hospital on same day. All the three eye witnesses of the incident namely complainant Jan Muhammad and P.Ws. Abdul Kareem and Khuda Bux have fully supported the case of prosecution to the extent of firearm injury caused by the appellant to the deceased. In this regard apart from the evidence of eye-witnesses namely complainant Jan Muhammad and P.Ws. Abdul Kareem and Khuda Bux, the evidence of medico-legal officer namely Dr. Imtiaz Ali is of material value, who examined the deceased on the same day and issued such post-mortem report, which is available on record at Ex.15; he had opined that the death of the deceased was the result of firearm injury caused at his forehead and his evidence regarding death of the deceased and cause of death was not challenged during cross-examination; therefore, it is established that Khan Muhammad died on 02.11.1999 due to firearm injury.

13. As per case of the prosecution, appellant Abdul Hameed has made straight fire at deceased Khan Muhammad, which hit him on his forehead. In the instant case there are three eye-witnesses namely complainant Jan Muhammad and P.Ws. Abdul Kareem and Khuda Bux and they all have categorically deposed that in their presence appellant Abdul Hameed fired at the deceased from his pistol and there is no contradiction in the evidence brought on record regarding time, place and manner of the incident. So far as the contention of the learned counsel for the appellant that all witnesses are related to the deceased as well as each other is concerned, it is observed that no doubt they are related to the deceased, but their evidence cannot be disbelieved merely on the ground of their relationship with the deceased, unless they are proved to be on inimical terms with the appellant. Mere relationship of eye-witnesses with the deceased is not always enough to declare such witnesses to be partisan or interested witnesses, when their testimony was confidence inspiring and corroborated with all types of circumstantial evidence. In this context, reliance is placed on the case of **Nasir Iqbal alias Nasra v. The State** (2016 SCMR 2152).

14. During his statement recorded under section 342 Cr.P.C, the appellant has taken the stance that he has been involved in this case due to enmity, but except such verbal assertion he has not brought anything on record in respect of his enmity with the complainant party. He has also not examined any witness to prove such enmity.

15. As regards the recovery of the crime weapon is concerned, it is observed that the incident took place on 02.11.1999 and the appellant was arrested on 05.11.1999 and the crime weapon i.e. T.T. Pistol was recovered on the same day on the pointation of the appellant in presence of mashirs Ghulam Rasool and Khuda Bux, out of them Ghulam Rasool was examined by the prosecution at Ex.8, who in his evidence in clear term stated that recovery of the crime weapon was made in his presence on the pointation of the appellant from his shop. This witness is a private person having no inimical terms with the appellant; even otherwise, the appellant during recording of his statement under section 342 Cr.P.C. has also not alleged any enmity with this witness.

16. As regards the delay in sending the crime weapon / T.T. pistol to the Ballistic Expert for report, it is observed that the Ballistic Expert Report is in positive which even otherwise was not put on challenge. However, the

contention of learned counsel for the appellant was that the parcel of the crime weapon was dispatched with inordinate delay of one and half month, which has lost the evidential value of the Ballistic Expert Report. It is expedient to mention here that the Ballistic Expert Report shows that the sealed parcel was received with intact seals. It is a matter of common observation that in the formalities of the official procedure delay normally occurs in dispatching of the parcels to Ballistic Expert for report, therefore, such delay could not be fatal to the prosecution case in any manner, when parcel received in the office of Ballistic Expert was with intact seals.

17. As regards the contention of learned counsel for the appellant that the deceased was a criminal type of person and involved in many criminal cases is concerned, it is observed that no doubt, as per record, the deceased remained involved in different cases but he was acquitted in those cases. Even otherwise, these cases were registered for the offences punishable under S.17(4) Offences Against Property (EHO) Order, 1979, and 13 (E) of Arms Ordinance at Police Station Jhol and not at P.S. Khadro which even otherwise do not show the enmity of any person with the deceased. Moreover, when the eye witnesses had no motive to depose falsely against the appellant then blood-related eye witnesses would never substitute another person in place of real culprit. The defence taken by the appellant in this regard is very much weak, unconvincing and unbelievable.

18. As observed above, during the course of arguments and from perusal of the record with the able assistance of learned parties' counsel, it transpired that the incident is daylight; the appellant was alone nominated in the F.I.R. with specific role that at specific time and place of incident he made direct fire from his pistol at the deceased, which hit the deceased at his forehead. There are three ocular/eye-witnesses of the incident namely complainant Jan Muhammad, Abdul Kareem and Khuda Bux, who in their evidence have categorically supported the prosecution case by stating that present appellant in their presence took out T.T. pistol and made straight fire on deceased which hit the deceased on his forehead. These witnesses were cross-examined at length, but their evidence has not been shaken. There is recovery of crime weapon on the pointation of the appellant from his shop in presence of the mashirs. There is also Ballistic Expert's report in support of the case of prosecution as well as the medical evidence. All these aspects of the case, *prima facie*, show the involvement of the appellant in this case.

19. During the course of arguments, we have specifically asked the question from learned counsel for the appellant to point out any illegality, perversity or infirmity in the impugned judgment, but he has not been able to answer plausibly and satisfactorily.

20. As observed above, the evidence led by the prosecution has fully proved that the appellant has committed murder of deceased Khan Muhammad and the testimony of the ocular witnesses as well as mashir of arrest and recovery is found confidence inspiring and unimpeachable. There could not be any reason on their part to falsely implicate the appellant in connection of such heinous offence.

21. In view of the above, we see no error or illegality in the impugned judgment warranting interference by this Court, which is maintained. Accordingly, the instant criminal jail appeal being devoid of any force is dismissed. The appellant is present on bail, his bail bond is cancelled and surety stands discharged. He is taken into custody and remanded to jail to serve out the sentence awarded to him by the trial Court through impugned judgment. However, the appellant would be entitled for benefit of section 382-B Cr.P.C.

22. As far as the notice issued by this Court to the appellant for enhancement of his sentence vide order dated 29.10.2007 is concerned, suffice it to say that the appellant is in young age and he is facing agony of protracted trial as well as hearing of this appeal since 1999, therefore, under these circumstances, we do not find any reason to enhance the sentence already awarded to him through the impugned judgment. Accordingly, the said notice is recalled.

23. This appeal was heard by us in early part of the day and by short order dated 30.10.2018 passed in open Court, the same was dismissed and the impugned judgment dated 14.05.2004, passed by the learned Additional Sessions Judge, Sanghar in Sessions Case No.228/1999 was maintained and above are the detailed reasons for same. The short order is reproduced as under:

“Parties’ advocates have been heard at length. They have concluded their arguments. For the reasons to be recorded later on, the instant criminal jail appeal is dismissed; the impugned judgment dated 14.05.2004, passed by the learned Additional Sessions Judge, Sanghar in Sessions Case No.228/1999, relating to Crime No.10/1999, under

section 302 PPC, registered at Police Station Khadro is maintained. The appellant/accused is present on bail; he is taken into custody; his bail bond is cancelled and surety stands discharged. He shall be remanded to jail to serve out the sentence as awarded against him through the said impugned judgment.

However, the notice for enhancement of sentence issued against the appellant vide order of this Court dated 29.10.2007, stands vacated.”

JUDGE

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