

**IN THE HIGH COURT OF SINDH, AT KARACHI**

**PRESENT:-**  
**Mr. Justice Muhammad Iqbal Kalhoro**  
**Mr. Justice Shamsuddin Abbasi.**

**Spl. CrI. Anti-Terrorism Appeal No.D-13 of 2018**

Appellants	1. Yasir Ali son of Kareem Bukhsh through Mr. Nandan A. Kella, Advocate. 2. Rashid son of Abdul Ghani through Mr. Muhammad Jamil Ahmed, Advocate.
Respondent	The State through Mr. Faheem Hussain Panhwar, DPG.
Dates of hearing	12.08.2020 and 19.08.2020
Date of Judgment	04.09.2020 <><><><><>

**JUDGMENT**

**Shamsuddin Abbasi, J:-** Appellants Yasir Ali son of Kareem Bukhsh and Rashid son of Abdul Ghani alongwith two others were tried by Anti-Terrorism Court, Hyderabad. By a judgment dated 31.10.2015 both appellants were convicted for offence under Section 6{2}{a} of Anti-Terrorism Act, 1997 and sentenced to imprisonment for life with fine of Rs.200,000/- {Rupees two hundred thousand} each and in default whereof they were ordered to undergo simple imprisonment for one year more. They were also convicted under Section 6{2}{n} and sentenced to ten years' imprisonment with fine of Rs.100,000/- {Rupees one hundred thousand} each and in case of default in payment of fine they were ordered to suffer simple imprisonment for six months' more. Both of them were also convicted under Section 392, PPC and sentenced to undergo rigorous imprisonment for seven years' with fine of Rs.70,000/- {Rupees seventy thousand} each and in default whereof they were ordered to undergo simple imprisonment for 3½ months more. Appellant Yasir Ali was also convicted under Section 23-A of Sindh Arms Act, 2013 and sentenced to undergo rigorous imprisonment for ten years' with fine of Rs.100,000/- {Rupees one hundred thousand} and in case of default in payment of fine he was ordered to suffer simple

imprisonment for six months more while rests of the two accused namely, Sanaullah and Irfan were acquitted of the charge, however, the benefit in terms of Section 382-B, Cr.P.C. was extended in favour of the appellants.

2. The facts giving rise to this appeal, briefly stated, are that on 19.09.2012, the appellants alongwith their accomplices entered into Habib Bank Limited, LUMS Sub Branch, Jamshoro, with muffled faces and fired at Constable Bashir Ahmed, who was on duty in the said bank, who sustained injuries and died at hospital, and then committed robbery of Rs.13,04,830/- on the show of weapons and while decamping made indiscriminating firing. Therefore, a case vide Crime No.231 of 2014 was registered at Police Station Jamshoro, District Jamshoro under Sections 396, 302 and 337-H{ii}, PPC on 19.09.2014. It is also the case of the prosecution that on the same day viz 19.09.2014 the police party of Police Station Jamshoro, headed by ASI Abdul Hameed, was on patrolling duty. During patrolling they received information that three unknown robbers involved in bank robbery and killing of HC Bashir are present on back side of Physiotherapy Department and going towards Katcha road. The police party, on receipt of information, proceeded to the pointed place and reached there at 1040 hours. They saw three persons going on foot, out of them one was carrying rifle on his shoulder and one was having cloth bag/thelie in his hand. The culprits on seeing the police party coming towards them made straight firing with intention to kill. In retaliation, the police returned the fires in self defence and succeeded in causing the arrest of two culprits, who become injured due to police firing, while one culprit made his escape good taking advantage of devi jungle and hilly area. The apprehended culprits disclosed their names as Yasir Ali Brohi and Rashid Buledi {appellants} and the names of their companion as Murtaza. During personal search, the police recovered a pistol of 30 bore from Yasir Ali and one SMG rifle with empty magazine from Rashid Buledi while a cloth bag/thelie containing robbed amount of Rs.13,04,830/- was recovered from Yasir Ali. The police arrested both accused at the spot and sealed the recovered property under a mashirnama prepared at spot and then brought them at LUMS Hospital for treatment. Hence, a case vide Crime No.232 of 2014 was

registered at Police Station Jamshoro District Jamshoro under Sections 353 and 324, PPC while separate case for recovery of unlicensed pistol was also registered against accused Yasir Ali. From hospital ASI Hameed came at HBL LUMS Jamshoro and conducted relevant formalities in respect of deceased HC Bashir Ahmed.

3. During investigating the police also arrested accused Irfan and Sanaullah in Crime No.231 of 2014 against whom separate cases for recovery of unlicensed arms were also registered, while accused Ghulam Murtaza @ Bhutto and Mujahid Chandio, alleged to have been involved in the aforesaid crime could not be arrested.

4. Pursuant to the registration of FIRs, the investigation was followed and in due course separate challans against each crime were submitted before the Court of competent jurisdiction, whereby the appellants and two others were sent-up to face the trial while accused Ghulam Murtaza @ Bhutto and Mujahid Chandio shown as absconders.

5. Joint trial was ordered in terms of Section 21-M of Anti-Terrorism Act, 1997.

6. A charge was framed against appellants and two others at Ex.17 to which all of them pleaded not guilty and claimed to be tried.

7. At trial, the prosecution has examined as many as ten witnesses namely, Javed Ahmed {Manager HBL LUMS Jamshoro} as PW.1 at Ex.23, Manzoor Alam {Manager HBL LUMS Branch Jamshoro} as PW.2 at Ex.24, S. Saghir Ahmed {Cashier HBL LUMS Branch} as PW.3 at Ex.25, Muhammad Saleem {Security Guard} as PW.4 at Ex.26, Muhammad Nouman {Peon LUMS Branch} as PW.5 at Ex.27, PC Altaf Hussain as PW.6 at Ex.28, MLO Dr. Nazir as PW.7 at Ex.30, Meer Khan {Tapedar Moro Jabat} as PW.8 at Ex.31, ASI Abdul Hameed as PW.9 at Ex.32 and SHO Abdullah as PW.10 at Ex.33 and then closed its side vide statement Ex.34.

8. Statements of appellants Yasir Ali and Rashid under Section 342, Cr.P.C. were recorded at Ex.36 and Ex.38 respectively, wherein

they denied the commission of offence and professed their innocence. They opted not to examine themselves on Oath under Section 340(2), Cr.P.C. and did not lead any evidence in their defence.

9. Trial Court, on conclusion of trial and after hearing the learned counsel for the parties as well as assessment of evidence on record, convicted the appellants as detailed in para-1 {supra} vide judgment dated 31.10.2015, impugned herein. Feeling aggrieved by the convictions and sentences, referred herein above, the appellants have preferred this appeal.

10. It is jointly contended on behalf of the appellants that they are innocent and have been falsely implicated in this case on account of malafide intention and ulterior motives. It is next submitted that the convictions and sentences recorded by the learned trial Court are bad in law and facts and without application of a judicial mind to the facts and surrounding circumstances of the case. It is also submitted that the matter needs sympathetic consideration with regard to innocence of the appellants particularly when no incriminating evidence has been brought on record. The learned counsel have further added that the prosecution has failed to produce any independent witness in support of its case and the witnesses who have been examined are inimical to the appellants as such no reliance can be given to their testimony; that there are serious dents in the investigation; there is difference in mentioning of time of incident etc. in the documents; that the learned trial Court has not properly evaluated the evidence brought on record as well the contradictions and discrepancies on material aspects of the matter which has demolished the whole case of the prosecution. The learned counsel while summing up their submissions have prayed that the prosecution has miserably failed to prove its case against the appellants and, thus, according to them, under the abovementioned facts and circumstances of the case the convictions and sentences recorded by the trial Court are liable to be set-aside and the appellants deserve acquittal by extending them the benefit of doubt. In support of their respective submissions, they have relied upon the cases of *Manzoor Hussain and others v The State* {2016 SCMR 1426}, *Muhammad Asif v The State* {2017 SCMR 486},

*Nadeem alias Kala v The State and others* {2018 SCMR 153}, *Muhammad Ashraf and others v The State* {2010 SCMR 407}, *Jalaluddin v The State* {2015 P.Cr.L.J. 1096}, *Sansar Ali Abro v The State* {2018 P.Cr.L.J. 153}, *Muhammad v The State* {2006 P.Cr.L.J. 526}, *Sultanat Khan v The State and another* {2014 P.Cr.L.J. 715}, *Latif and 3 others v The State through Assistant Advocate General of Sindh* {PLD 2005 Karachi 205}, *Inayatullah alias Zahid alias Farho Chandio v The State* {2016 P.Cr.L.J. 10}, *Faqeer Muhammad alias Hafizullah Jamali and 2 others v The State* {2012 MLD 1826} and *Deedar Ahmed v The State* {2016 P.Cr.L.J. 1911}.

11. In contra, the learned Deputy Prosecutor General while supporting the impugned judgment has argued that the prosecution has successfully proved its case against the appellants beyond any shadow of reasonable doubt; that the complainant, eye witnesses and police officials have no enmity with the appellants; that the robbed amount and crime weapons have been recovered from their possession; which is sufficient to connect them with the commission of offence. He further submits that the prosecution has examined ten witnesses and all of them have supported the case of the prosecution and fully implicated the appellants with the commission of offence without major contradictions and discrepancies. Finally, submitted that the prosecution has successfully brought home the guilt of the appellants beyond shadow of reasonable doubt and prayed for dismissal of appeal.

12. We have given anxious consideration to the submissions of learned counsel for the appellants and the learned DPG for the State and perused the entire material available before us with their able assistance.

13. To prove its case the prosecution examined Javed Ahmed, Manager HBL LUMS Jamshoro, where robbery alleged to have been committed, as PW.1 at Ex.23, who in his evidence has deposed that on 19.09.2014 while he was present in the bank all of a sudden three persons with muffled faces entered in the bank and within their arrival they fired at police constable, who was on duty at bank, and killed him. Thereafter, they came in his office and then

went to the cash counter and robbed Rs.13,04,830/- on the show of weapons and while decamping made indiscriminating firing outside the bank. Meanwhile, they informed the higher authorities as well as police and within few minutes there was an encounter between police and the dacoits during which the dacoits become injured and removed to hospital. He further deposed that police brought cash and KK of deceased police constable as well as a pistol recovered from the accused in bank, they counted the cash, prepared paper work and then returned the same to police and after 2/3 days the police requested them to keep the cash in safe custody and on the last date took back the same for production in Court, he alongwith his senior Manager and security guard went P.S. and lodged FIR vide Crime No.231 of 2014. PW-2 Manzoor Alam, who is Senior Manager in HBL LUMS Branch, Jamshoro, narrated the same story as deposed by the complainant and supported the case of the prosecution. In support of its version, the prosecution has also examined PW-3 S. Saghir Ahmed {Manager HBL LUMS Branch, Muhammad Saleem {Security Guard} and Muhammad Nouman {Peon}, who have also supported the case of the prosecution. PW Muhammad Nouman has further deposed that on the same day the police prepared Danishnama in his presence, he had shown the place of wardat to police and police prepared memo of wardat in his presence. He further deposed that police secured three empties and blood-stained earth from the place of wardat on his pointation and on 20.09.2014 the police had shown him blood-stained clothes of deceased.

14. The prosecution has also examined PW.9 ASI Abdul Hameed, who is complainant of FIR No.232 of 2014, who in his evidence has deposed that on 19.09.2014 he alongwith HC Peeral, PC Altaf, PC Maqsood, PC Punhal and PC Buxhal was busy in patrolling of the area in official mobile. It was about 10.30 am when they received information through wireless that an incident of dacoity has taken place at Habib Bank and the dacoits after commission of offence ran towards Physiotherapy laboratory. On receipt of such information, they proceeded to the pointed place and saw three persons were going, who on seeing them started firing, the police also made firing and in result thereof two persons become injured

and apprehended at spot while third one made his escape good. The apprehended accused disclosed their names as Yasir Brohi, from whom one pistol and a thelie containing robbed amount of Rs.13,04,830/- were recovered while the other one disclosed his name as Rashid Buledi and from his possession one KK No.35006191 was recovered. He arrested the accused and taken into custody the recovered property under a mashirnama prepared at spot in presence of mashirs PC Maqsood and Altaf Ahmed and then taken the accused to hospital where memo of injury was prepared in presence of same mashirs. He alongwith the mashirs went to bank where PC Bashir Ahmed was found dead. He completed relevant proceedings and then returned back to P.S. where Bank Manager Javed Alam appeared and lodged FIR with regard to commission of dacoity in bank and murder of police constable. He also registered FIR of police encounter and a separate FIR for recovery of unlicensed arm against appellant Yasir. He also got photographs of accused as well as of place of wardat. He recorded the statements of witnesses under Section 161, Cr.P.C. The witnesses disclosed that there were six culprits out of whom three entered in the bank namely, Yasir, Rashid and Murtaza @ Bhutto Chandio and those who remained outside the bank were Sanaullah, Irfan and Majid Chandio. Thereafter, the investigation was entrusted to Inspector Abdullah Sethar by the orders of SSP. He has been supported by PW.6 PC Altaf Hussain, who has narrated the same story as deposed by the complainant ASI Abdul Hameed.

15. PW.7 is Dr. Nazir, who has examined injured accused Rashid and Yasir, appellants herein, as well as deceased HC Bashir Ahmed. He has reproduced the detail descriptions of the injuries found on the persons of appellants and deceased constable and deposed that deceased HC Bashir Ahmed died due to firearm injury, which is the case of the prosecution. Investigating Officer Inspector Abdullah was examined as PW.10, who has successfully deposed in respect of conducting investigation in the case particularly recovery of crime weapon and empties, sending the same to FSL, receiving reports of FSL and chemical report, which is positive. He also arrested accused Sanaullah and Irfan Ali Lakhir,

got recovered unlicensed arms from each of them, made arrival and departure entries, recorded statements under section 161, Cr.P.C. of witnesses and submitted challans in Court.

16. All the witnesses, referred herein above, were subjected to lengthy and searching cross-examination but nothing could be extracted in favour of defence showing that either the offence not happened in the manner narrated in the FIR or deposed by the PWs. Similarly, no mala-fide, ill-will, previous enmity or personal grudge could be brought on record showing that evidence furnished by the prosecution is based on malice or ill-will. The perusal of the record shows that complainant and witnesses have no motive or reason to falsely involve the appellants particularly when they did not plead any specific enmity against them. Admittedly, the accused persons were muffled faces when they entered in the bank. However, the witnesses while recording their evidence have identified them from their appearances. Besides, there is recovery of crime weapons as well robbed amount of Rs.13,04,830/- from the appellants which connect them with the commission of offence. Such pieces of evidence are relevant under Article 129 of Qanun-e-Shahadat Order, 1984, and can be relied upon. It is pertinent to mention here that alleged incident of encounter took place within 10 minutes of earlier incident of bank robbery and in that both appellants become injured and arrested at spot alongwith robbed amount and recovery of official K.K. of deceased HC Bashir Ahmed was also effected from their possession, which is sufficient evidence to connect them with the commission of offence.

17. There can be no denial to legally established principle of law that it is always the direct evidence which is material to decide a charge. The failure of direct evidence is always sufficient to hold a criminal charge as 'not proved' but where the direct evidence holds the field as well stands well with test of its being natural and confidence inspiring then requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance may well be made to the case of *Muhammad Ehsan v. The State* {2006



SCMR 1857}, wherein the Hon'ble Supreme Court of Pakistan held as under:-

*"5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence."*

18. The direct evidence, as detailed above, is in shape of evidence of PW.1 Javed Muhammad {complainant of FIR No.231 of 2014} and ASI Abdul Hameed {complainant of FIR No.232 of 2014}, who have supported the contentions of the FIRs as well as memo of arrest and recovery and finds corroboration from the other witnesses coupled with medical evidence in shape of PW.7 Dr. Nazir, which is sufficient to hold that the appellants have committed the offence charged with. In the instant matter, the witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manners. In addition to this, they were cross-examined by the learned counsel for defence at length where multiple questions were asked by the learned defence counsel, but could not extract anything from them, as they remained consistent on all material points. The minor discrepancies in the statements and in the documents particularly regarding minor difference in mentioning of times of different proceedings in the investigation are not enough to demolish the case of prosecution because these discrepancies always occur and more so always possible time of occurrence is mentioned in the documents. In the case in hand, the appellants have failed to bring on record any material to show any animosity or ill-will with complainant and the prosecution witnesses, thus in the absence thereof, the competence of prosecution witnesses was rightly believed by the learned trial Court. Insofar as the contention of learned defence counsel that there are so many defects in the investigation benefit of which

ought to have been given to the appellants, suffice it to say that a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The reference in this context may well be made to the case of *State/ANF v. Muhammad Arshad* {2017 SCMR 283} wherein the Hon'ble Supreme Court of Pakistan held that:-

*"We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of a crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case."*

19. The prosecution, in our considered opinion, has led sufficient evidence to prove the case against the appellants beyond any shadow of doubt and when once the burden of proof is discharged by the prosecution with cogent evidence then the appellants become heavily burdened to prove their innocence through reliable evidence. The appellants did not opt to appear as their own witnesses under Section 340{2}, Cr.P.C. nor examine any witness to prove their innocence. There is no evidence on the record on behalf of the appellants that the prosecution witnesses have some grudge against them to falsely implicate them in the instant case. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellants have failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. As to the case law cited by the learned counsel for the appellants, in support of their submissions, in our humble view, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the appellants.

20. Considering the facts and circumstances, as discussed above, we are of the humble view that the prosecution has successfully proved its case against the appellants beyond any shadow of doubt. Learned counsel for the appellants has failed to

point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence, hence calls for no interference by this Court. Thus, the convictions and sentences awarded to the appellants by the learned trial Court through impugned judgment dated 31.10.2015 are hereby maintained and the instant Spl. Crl. Anti-Terrorism Appeal is dismissed as being devoid of any merit.

JUDGE

JUDGE

Naeem