

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

PRESENT:

***Mr. Justice Amjad Ali Sahito***

## **Criminal Jail Appeal No.283 of 2019**

Appellant : Syed Azhar Ali S/o Syed Sikander Ali  
Through Malik Altaf Javed,  
Advocate.

Respondent : The State  
Through Mr. Siraj Ali Khan,  
Addl. Prosecutor General Sindh.

Date of hearing : 24<sup>th</sup> August 2020

Date of Short Order : 24<sup>th</sup> August 2020

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

**AMJAD ALI SAHITO, J.**— Being aggrieved and dissatisfied with the judgment dated 12.04.2019 passed by learned Additional District & Sessions Judge-1 Karachi East, in Sessions Case No.1723 of 2009 arising out of the FIR No.841/2009 for the offence under sections 302, 397/34 PPC registered at Police Station Shahrah-e-Faisal, Karachi, whereby the appellant was convicted under section 397 PPC and sentenced him to suffer R.I. for ten years and to pay fine of Rs.100,000/-. Appellant was also convicted under section 302(b), PPC for committing Qatl-i-Amd of the deceased and sentenced him to suffer imprisonment for life. The appellant was required to pay compensation of Rs.100,000/- to the legal heirs of deceased and in case of failure, he shall further undergo S.I. for six months. The benefit of section 382-B Cr.P.C. was also extended in favour of the appellant.

2. The case of the prosecution as depicted in the FIR is that complainant Habibullah son of Muhammad Qasim lodged an FIR at PS Shahrah-e-Faisal stating therein that his nephew namely Ghulam Muhammad informed him that Ghulam Nabi (deceased)

had received bullet injury and he was taken to the hospital. On such information, he along with his son and neighbours reached Darul Sehat Hospital situated at walking distance from Basera Apartment, the complainant saw that crowd of people and police were gathered at the main door of the hospital. The people present there disclosed that Ghulam Nabi went to the ATM Machine of the Standard Chartered Bank situated at Block No.19, Gulistan-e-Jauhar for withdrawal of money and where one unknown person entered inside the ATM room and tried to robbed money from him and on his resistance accused made a fire upon him. He entered into the hospital and saw that Ghulam Nabi was lying there and saw the mark of the bullet near his heart and the doctor informed him that he is no more in this world. The proceeding under section 174, Cr.P.C. was conducted, MLO Dr. Muhammad Tayyab conducted postmortem No.692/2009 of the deceased and SIP Abdul Latif obtained cause of death certificate of the deceased from the concerned MLO, who opined that the death was caused by firing and found the bullet injuries on the chest of the deceased. The dead body of deceased handed over to Navy Officials. Thereafter, instant FIR was lodged against unknown persons. During the investigation, SIP/I.O. Waseem Shah obtained CCTV footage of the ATM installed in the Standard Chartered Bank, Johar More and issued a public notice for the arrest of culprits. On 08.11.2009 the accused was arrested and during which he confessed his guilt. The accused voluntarily led police party to his house from where he got recovered crime weapon, which was sent to FSL for matching with the empties secured from the place of incident. Accused further disclosed that he owned one motorcycle, which he used in the commission of the offence. On his pointation, I.O. got recovered one motorcycle.

3. After completing the usual investigation charge sheet was submitted against the accused for the offence punishable under sections 302, 397/34 PPC before the concerned Court.

4. The learned trial Court framed the charge against the accused person at Ex.3, to which he pleaded not guilty and claimed to be tried to vide his plea Ex.3/A. To establish the

accusation against the accused person, the prosecution examined complainant PW-1 Habibullah at Ex.3, who produced FIR at Ex.3/A, rahdari at Ex.3/B and superdaginama of the dead body at Ex.3/C. PW-2 HC Zafar Alam was examined at Ex.4, who produced memo of arrest at Ex.4/A and memo of recovery at Ex.4/B. ADPP has given-up one PW Naseerullah at Ex.5. PW-3 SIP Rahim Khan was examined at Ex.6, who produced memo of the arrest of accused at Ex.6/A. PW-4 Zulfiqar Jaffar was examined at Ex.7. PW-5 Faisal Haroon Badshah was examined at Ex.8, who produced memo of inspection of the place of incident at Ex.8/A. Learned ADPP has also given up PW Muhammad Umair at Ex.9. The order passed on 18.6.2011 at Ex.10. Receipt of CDs at Ex.11. PW-6 SIP Muhammad Latif was examined at Ex.12, who produced inquest report at Ex.12/A, memo of inspection of the dead body at Ex.12/B and letter addressed to MLO for conducting postmortem of deceased at Ex.12/C. Statement of Incharge Maalkhana was recorded at Ex.13, who produced the report at Ex.13/A and reports at Ex.13/B and 13/C respectively. Statement of Special Process Server ASI Bhurrul Shah was recorded at Ex.14 regarding service upon PWs Sajid, Rao Omar, Israr-ul-Haq, Muhammad Saleem, Fahimuddin, Jamaitullah, Riaz Hussain, Naveed Ahmed, Muhammad Nawaz, Muhammad Sabir stating therein that PWs are untraceable due to incomplete addresses, who produced BWs and his report at Ex.14/A and Ex.14/B respectively. PW-7 Muhammad Saleem was examined at Ex.16, who produced memo of handing over of the CDs at Ex.16/A and the case property viz. one CD along with an envelope and sealing cloth at Ex.16/B. Learned ADPP has also given up PW Rao Qamar at Ex.17. PW-8 I.O. Inspector Waseem Shah was examined at Ex.18, who produced a sketch of the area at Ex.18/A, letter to the Manager of Bank Branch for handing over footage of CCTV at Ex.18/B, photographs are taken from the CCTV footage at Ex.18/C to Ex.18/E respectively, the letter at Ex.18/F, the letter addressed to FSL Examiner at Ex.18/G, memo of recovery of the pistol at Ex.18/H, memo of pointation of the place of incident at Ex.18/I, FIR No.853/2009 at Ex.18/J, FSL letter regarding crime weapon at Ex.18/K, FSL report at Ex.18/L, the letter addressed to the Chemical Examiner

at Ex.18/M, the letter addressed to CRO Incharge at Ex.18/N, CRO record at Ex.18/O and 18/O-1 to 18/O-5, DD entry No.22 at Ex.19/P and Chemical report regarding wearing clothes of the deceased at Ex.18/Q. PW-9 Dr.Muhammad Tayyab was also examined at Ex.19, who produced postmortem report No.19/A and death certificate at Ex.19/B. Schedule certificate at Ex.20. PW-10 PC Mazhar Farooq was also examined at Ex.21. Thereafter, the prosecution closed its side vide statement at Ex.22. Statement of the accused was recorded under section 342, Cr.P.C. at Ex.23, wherein he denied the prosecution allegation levelled against him and stated to be innocent and prayed for justice. However, neither the appellant has neither been examined himself on oath under section 340(2), Cr.P.C. nor led any evidence in his defence.

5. The learned trial Court, after hearing the parties and appraisal of the evidence, convicted and sentenced the appellant to vide judgment dated 12.04.2019. The convictions and sentences recorded by the learned trial Court have been impugned by the appellant before this Court by way of filing instant Criminal Jail Appeal.

6. Malik Altaf Javed, learned counsel appearing for the appellant, has mainly contended that the impugned judgment is against the law and facts of the case; that the present appellant is innocent and has been falsely implicated in this case; that there are major contradictions between the evidence of the prosecution witnesses; that the name of the appellant does not find a place in the FIR and no strong circumstantial evidence was available on the record to connect the appellant with the alleged offence; that based on CCTV potages the appellant was booked in the instant case otherwise he is innocent; that the alleged recovery recovered from the appellant was foisted upon him; that neither any specific role has been assigned by the prosecution to the appellant and postmortem was conducted as per the wish of the complainant. He lastly contended that prosecution has miserably failed to prove its case against the appellant and thus, according to him, under the abovementioned facts and

circumstances of the case, the appellant is entitled for his acquittal.

7. Conversely, Mr. Siraj Ali Khan, Addl. Prosecutor General Sindh while supporting the impugned judgment has contended that the prosecution has proved its case beyond any shadow of doubt against the appellant; that the police officials had no enmity with the appellant. He lastly prayed for dismissal of the instant appeal.

8. I have heard the learned counsel for the appellant as well as learned Addl. Prosecutor General Sindh and have minutely perused the record with their able assistance.

9. The case of the prosecution rests upon the circumstantial evidence i.e. CCTV footages, CCTV recording/CD, recovery of empty bullet and subsequent arrest of the appellant and recovery of the pistol from his possession, which was sent to the office of Chemical Examiner for its report and recovered incriminating articles so also medical evidence. Though generally, circumstantial evidence is considered as a weak type of evidence, yet, such *weakness* alone is no ground to record an acquittal rather administration of justice, for such like situation, requires more care and caution, while appreciating the evidence. In such like cases, the criterion to see whether circumstantial evidence can hold a conviction or not depends *purely* on a single principle which stood reiterated in the case of **Azeem Khan & another v. Mujahid Khan & Ors 2016 SCMR 274** as:-

31. As discussed earlier, the entire case of the prosecution is based on circumstantial evidence. **The principle of law, consistently laid down by this Court is, that different pieces of such evidence has to make on chain, an unbroken one** where one end of it touches the dead body and the other the neck of the accused. In case of any missing link in the chain, the whole chain is broken and no conviction can be recorded in crimes entailing capital punishment.

10. The present case was involving the capital punishment and the entire evidence is based upon the circumstantial evidence and the same is required to be considered with utmost caution and care. In the instant case, the prosecution has relied upon the

CCTV footages and video recording through CCTV camera in which it is very much clear that how the appellant has robbed the amount and committed the murder. In this case, learned Addl. PG has forcefully argued that the appellant can be seen clearly in the CCTV camera installed in the said ATM room, which was produced by PW-7 Muhammad Saleem (Bank Officer); hence, it is appropriate to discuss whether the evidence recorded through the modern device is an admission piece of evidence or not. It is, therefore, appropriate to reproduce article 164 of Qanoon-e-Shahadat.

**164. Production of evidence that has become available because of modern devices, etc.** In such cases, as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

11. A bare reading of article 164 makes it quite clear that the Courts not only may allow any evidence, became available because of modern devices or techniques but can also consider the same. At this point. I would like to write here paragraph/passage taken from the book of “**Electronic Evidence**” Second Edition by Stephen Mason.

“10.46. Audiotapes were also accepted as a discoverable document in *Grant v. Southwestern and Country Properties Ltd*, in which the meaning of a document was defined by its quality to convey information, as determined by Walton J at 198: ‘I conclude that a tape recording, provided of course that what is recorded is indeed information – relevant sounds of some description is a document.’ Television film is also considered a document, as is the output of facsimile transmissions, data stored on a computer (in this instance, a database) constitute a document for the purposes of the obligation to discover under the provisions of Order 24 of the Rules of the Supreme Court, and a label on a bottle containing a specimen of blood provided by the accused/ the material may sometimes determine the admissibility of the evidence, but the definition is considered wide enough to bring any medium into its ambit without causing difficulties. The term document is something upon which information is stored. This must be correct, because if the information is not stored, the content is not available, and therefore, remains oral evidence.”

“10.91. **Surveillance cameras are very much part of life in the twenty-first century, the foundations of which began in the latter decades**

**of the twentieth century. Evidence of images from security cameras can be very helpful in identifying the perpetrators of crimes, and the enhancement of the images, together with the use of more advanced techniques such as facial mapping, can help to identify parties to an offence. Such evidence has been admitted in English Courts, mainly in criminal cases.”**

The above book is available at the given below website:-

**[http://humanities-digital-library.org/index.php/hdl/catalog/view/electronic\\_evidence/16/93-1](http://humanities-digital-library.org/index.php/hdl/catalog/view/electronic_evidence/16/93-1)**

12. Thus, it can safely be said that evidence of CCTV footages & DVD cassette/video recording, produced in trial Court, is admissible in evidence under Article 164 of Qanoon-e-Shahadat hence was relevant for proving claimed fact. Needless to say that mere production of same would not be sufficient to take such document (*modern device*) as proved rather would require examination of the person, who claims to have produced/prepared the same. Guidance is taken from the case of **Asfandiyar & another v. Kamran & another 2016 SCMR 2084** wherein it is observed as:-

*“No doubt the trial Court, under section 164 of the Order, 1984, may allow to produce the said footage of C.C.T.V but it is incumbent upon the defence to prove the same in accordance with the provisions of the Order, 1984. The defence had ample opportunity to produce in his defence, the concerned person who had prepared the said footage from the C.C.T.V system in order to prove the same. In that eventuality, the adverse party would be given an opportunity to cross-examine the said witness regarding the genuineness or otherwise of the said document. **Any document brought on record could not be treated as proved until the same is proved strictly in accordance with the provisions contained in the Order, 1984.** While discussing these aspects of the case, the High Court restricted the admissibility only to the extent of Article 79 of the order, 1984 whereas there are certain other provisions / Articles in the Order, 1984 for proving the documents which are procured through the modern devices and techniques. Mere producing any footage of C.C.T.V as a piece of evidence in the Court is not sufficient to be relied upon unless and until the same is proved to be genuine. **In order to prove the genuineness of such footage it is incumbent upon the defence or prosecution to examine the person who prepared such footage from the C.C.T.V system.**”*

(Emphasis is provided)

13. In this case, the prosecution examined PW-7 Muhammad Saleem, the bank officer, who was serving with Standard Chartered Limited and was posted as Assistant Security Officer/Manager Head Office, II Chandigarh Road, Karachi, who in his examination-in-chief deposed that on 04.11.2009 in the night time received information that a murder was committed inside the ATM room of Standard Chartered Bank, Branch Gulistan-e-Johar, Karachi. The investigating officer advised him to provide record/footages from the CCTV camera installed in the said ATM room, which was provided to him. On next day viz. 05.11.2009 at about 01:00 PM, I.O. of the case SI Waseem Shah came to head office to collect the footages and CD, which were provided to him in his presence and Rao Qamar. The I.O. received two CDs and prepared such memo of receiving with the signature. The I.O. sealed one CD on the spot and one CD kept unsealed for investigation purpose as both CDs were containing the same recording. He has produced memo of handing over the CD at Ex.16-A, which bears his signature and Rao Qamar. Though the chance was given to learned counsel for the appellant he has chosen cross Nil. In support of his contention, the prosecution examined complainant PW-1 Habibullah, who has given detail of the FIR and stated that his nephew Ghulam Muhammad informed him that Ghulam Nabi has received a bullet and was taken to hospital. He further disclosed that since the deceased belongs to Navy as Chief Petty Officer, therefore, Navy officials were also present in JPMC when he reached there. On 06.11.2009, Navy officials came to attend the *soyem* of the deceased where they showed CCTV footages and videos, which were made in the mobile and told them that the accused would be arrested soon. They further informed them that within 25 seconds, the incident took place and he saw the news on Geo TV regarding occurrence and CCTV footages and movie, which were also shown to him. Though he was cross-examined learned Council for the appellant failed to extract from his mouth. It also appears from the record that when such news was flashed through media, appellant to change his appearance/feature, came to the shop of PW-4 Zulfiqar Jaffar, who is a hairdresser



and requested him to cut his hair and after cutting hair, he asked him to change his shave by making French style. To confirm such facts, the prosecution examined the PW-4 Zulfiqar Jaffar, who narrated the same story.

14. The I.O. of the case PW-8 Waseem Ahmed Shah, Inspector CTD, Karachi has received the investigation of the case and visited the place of the incident inside the ATM wherefrom he seized one empty of 30 bore pistol, 1 Sikka and one live bullet of 30 bore where CCTV was installed inside ATM room. He secured all these things under the mashirnama. He has also handed over a letter to the branch manager for handing over the footages and CCTV of the crime scene inside the ATM. Thereafter he has obtained a CCTV under a memo of seizure of CTV footages. Before the sealing of CCTV, he has taken the photographs from the CCTV footages and produced all the photographs from Ex-18-C and Ex.18-E. On 05.11.2019 he has submitted a letter to SSP for sending empties recovered from the place of incident to FSL examiner for its forensic examination. On 08.11.2009 SIP Raheem Khan of Police Station Shahrah-e-Faisal during patrolling, received spy of information that one accused, who committed the murder is present near the gate of Numan Avenue, as such, police reached the pointed place and arrested him. After his arrest, he has disclosed that he has committed a dacoity at the ATM room and murdered the deceased Ghulam Nabi. He has also produced/recover motorcycle LXH-1315 Honda 125 used in the commission of the offence, the crime weapon 30 bore pistol was also recovered from the appellant, which was sent to the forensic for its working condition and matching the number. The appellant failed to produce the registration of documents of motorcycle and from the concerned department, it was found that the said motorcycle was stolen property of crime No.856/2009 under section 381-A PPC of the police station of Shahrah-e-Faisal. The appellant also failed to produce license of the recovered pistol hence another FIR being Crime No.853/2009 was registered. The I.O produced FSL report at Ex.18-L and as per the opinion of the Assistant Inspector-General of Police, **“Forensic Division Sindh Karachi, one 30 bore crime empty**

**now marked as “C” was fired from the pistol recovered from the appellant**”. The chemical examiner report was also produced and as per chemical examiner report the **“articles No. one to three noted are stained with human blood”**. During the investigation, the I.O. of the case also collected a criminal record of the appellant which shows that the appellant is a habitual offender and previously involved in number of cases as such he has produced five FIRs registered at different police stations placed at Ex.18/O2 to 18/O5.

15. From the all above discussion, it is clear that the death of the deceased inside the ATM room was unnatural and due to firearms injury. Photographs and CCTV recording/video produced by the I.O. also confirm the presence of the appellant in which he can be seen clearly that after snatching the amount/cash from the deceased, he murdered him by firing. The complainant saw the news which was flashed on Geo TV, the CCTV and movies collected under the mashirnama by the I.O from the bank/Security officer same were produced. On 05-11-2009 Inspector Waseem Ahmed Shah P.S Shahrah-e- Faisal secured one 30 bore empty bullet from the ATM room which was sent to FSL and after the arrest of the appellant, crime weapon viz. pistol 30 bore recovered from his possession was also sent to FSL, which report was received as **“Positive”** with the endorsement that the said crime empty was fired from the pistol recovered from the appellant. This also corroborates the evidence furnished by the prosecution witnesses; hence another piece of evidence connected the appellant with the commission of the offence.

16. The prosecution evidence also finds corroboration from the medical evidence concerning the case of death and time of the incident. It is evident from the evidence of medical officer Muhammad Tayyab, who received the dead body of the deceased for postmortem examination. He started the postmortem at 1 PM and completed at 2 PM. On examination, he found the following injuries:

### **Surface Wounds:**

- 1) Firearm punctured wound 0.5 cm x 0.5 cm margins round, rough inverted over left chest near the nipple. **(entry wound)**
- 2) Firearm punctured wound 1 cm x 1 cm margins round, rough everted over right lumbar region posteriorly. **(exit wound)**

17. From the external as well as an internal examination on the dead body of deceased Ghulam Nabi, he opined that the cause of death of deceased occurred cardiorespiratory failure due to irreversible hemorrhagic shock due to firearms injury in the chest. The time between injury and death was instantly and the time between death and postmortem was 3 to 4 hours which is sufficient to say that the cause of death was unnatural and thus, this also corroborates the evidence furnished by the prosecution witnesses; The ocular evidence also finds corroboration from the medical evidence that the death of the deceased was unnatural. Hence, another piece of evidence connecting the appellant with the commission of the offence. Further, the I.O. of the case has sent the articles to chemical analyzer viz. Director Laboratories & Chemical Examiner to the Government of Sindh, Karachi received a report with stained human blood also supported the version of the complainant. The appellant is a habitual offender was involved in five different criminal cases such FIRs were produced by I.O of the case

18. The plea taken by the appellant in his statement recorded under section 342 Cr.P.C. is only that he has denied the allegation of murder of the deceased and further he has stated that I.O. of this case has demanded money from him and on refusal, he has implicated him in this case but he failed to produce any documentary evidence or any defence witness to support his version but he has simply denied the allegation levelled against him. The evidence collected by the I.O. finds corroboration from the evidence of prosecution witnesses along with circumstantial evidence coupled with medical evidence leads towards the end that he is a real culprit who after snatching the money, committed the murder of the deceased in the ATM room.

The different pieces of the above evidence have to make a chain, an unbroken one where one end of it touches the dead body and the other the neck of the accused.

19. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in my humble view, is based on an appreciation of the evidence and the same does not call for any interference by this Court.

20. For the reasons discussed hereinabove, the instant Criminal Jail Appeal was dismissed vide short order dated 24.08.2020. The convictions and sentences awarded to the appellant by the learned trial Court i.e. Additional District & Sessions Judge-1 Karachi East, vide impugned judgment dated 12.04.2019 were maintained

21. The above are the reasons of my short order dated 24.08.2020.

**J U D G E**

Karachi  
Dated \_\_\_ -09-2020