

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Amjad Ali Sahito

Criminal Jail Appeal No.321 of 2016

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Appellant : Gul Bahar S/o Ghulam Qadir
Through Mr. Saif Ali Akbar, Advocate

Complainant : Sardar Ali S/o Jan Muhammad
Through Mr. Manzoor Hussain
Khosro, Advocate

Respondent : The State
Through Mr. Talib Ali Memon,
Assistant Prosecutor General Sindh.

Date of hearing : 08.09.2020, 16.09.2020 & 01.10.2020

Date of Short Order : 01.10.2020

J U D G M E N T

AMJAD ALI SAHITO, J.— By this common order, I intend to dispose of both the Criminal Jail Appeals filed by appellant Gul Bahar, who preferred Crl. Jail Appeal No.321/2016 on being aggrieved and dissatisfied with the judgment dated 22.08.2016 passed by learned Sessions Judge, Thatta in Sessions Case No.365/2013 arising out of Crime No.32/2013 under sections 302, 114, 34 PPC at PS Dhabeji ; whereby he was convicted and sentenced under section 302(b) PPC R.I for life and pay fine of Rs.1,00,000/to the legal heirs of deceased Ghulam Hussain as compensation, in case of default, he shall suffer S.I for six months. Appellant also preferred Crl. Jail Appeal No.322/2016 against the judgment dated 22.08.2016 passed by learned Sessions Judge, Thatta in Sessions Case No.364/2013 arising out of the Crime No.33/2013 registered under section 23(i)A & 25 of Sindh Arms Act, 2013 at PS Dhabeji; whereby he was convicted and sentenced to undergo for R.I three years and pay fine Rs.50,000/ in default, he shall suffer S.I for four months. The benefit of section 382-B Cr.P.C was extended to the appellant.

2. Briefly, the facts of the prosecution case are that complainant Sardar Ali S/o Jan Muhammad appeared at police station Dhabeji and registered his FIR on 24.11.2013 at about 1410 hours stating therein that there is matrimonial dispute in between his cousin Ghulam Husain Rind and one Ghulam Qadir Rind as Mst. Zahida, niece of deceased Ghulam Hussain Rind was married with one Gul Bahar and in lieu of that the daughter of Ghulam Qadir namely Mst. Bibi is given to the son of deceased Ghulam Hussain namely Muhammad Waris and such Nikah was performed but Rukhsati has not taken place to whom they (complainant party) asked them for Bahar Rind and Abdul Sattar Rind, all r/o Zareen Colony Dhabeji flatly refused but they were communicated through their relatives and elders but they did not pay any heed to that extend and warned them that if again they will ask for the hand of Mst. Bibi they will face the consequences and due to that reason, they exchanged hot words with each other. On the day of incident i.e. 23.11.2013, complainant alongwith his cousin Ghulam Hussain aged about 40/41 years, his brother Mehram Ali, Muhammad Waris (son of Mehram Ali) and Juma Khan as well as other inmates were available in the house when at about 08:30 am, accused Gul Bahar armed with pistol, accused Abdul Sattar armed with pistol and accused Ghulam Qadir empty handed entered in the house when Ghulam Hussain (cousin of complainant) was sitting on cot in room No.2, accused Ghulam Qadir instigated other accused not to spare them and on his instigation, both the accused made straight fire with their respective pistols with intention to kill him which hit at his chest due to which he fell down on the cot and went unconscious and seriously injured, then accused persons fled away. Thereafter, complainant party arranged the vehicle, took the injured towards Gharo Hospital but in the way, he succumbed the injuries. The complainant then also brought him (deceased) to hospital where the doctor(s) declared him as dead and after post-mortem the dead body was buried, hence the FIR.

3. On 17.03.2014, charge against all the accused persons was framed vide Ex.2, to which they pleaded not guilty and claimed their trial vide their pleas at Ex.3 to Ex.5 respectively.

4. To substantiate the charge, prosecution PW-1 Sardar Ali Rind (Complainant) at Ex.6, who produced receipt of handing over the dead body for burial purpose at Ex.6/A, copy of the FIR at Ex.6/B. PW-2 Mehram Ali Rind (eye witness) at Ex.7. PW-3 Jumma Khan Rind (he is also witnessed of the occurrence) at Ex.8. PW-4 Faqil Ali Gul Oddeh, being mashir of all the memos at Ex.9, who produced mashirnama of inspection of dead body at Ex.9/A, mashirnama of clothes of deceased at Ex.9/B, mashirnama accused persons at Ex.9/D, mashirnama of recovery of TT pistol from the possession of accused Gul Bahar Rind at Ex.9/E. PW-5 Dr. Allah Dad Baloch at Ex.10, who produced police letter of legal heirs in respect of not conducting internal postmortem examination of deceased at Ex.9/C and receipt of handing over dead body after postmortem at Ex.10/D. PW-6 ASI Muhammad Nawaz Hingoro (retired), who conducted investigation of the instant crime at Ex.11, produced carbon copy of letter addressed to MLO regarding autopsy of deceased at Ex.11/A, danishtnama at Ex.11/B, lash chakas form at Ex.11/C, entry of station diary at Ex.11/D, chemical examiner report at Ex.11/E, forensic science laboratory report at Ex.11/F, eight entries of station diary in respect of investigation of present crime at Ex.11/G to Ex.11/N and letter addressed to Civil Judge Mirpur Sakro @ Gharo for recording confessional statement of accused Gul Bahar. PW-7 Gurmukhdas G. Gehani, learned Magistrate who recorded confesional statement of accused gul Bahar Rind at Ex.12, who produced confessional statement at Ex.12/A. PW-8 Nabi Bux Baloch, Tapedar of the beat at Ex.13, who produced letter issued to Mukhtiarkar (R) Mirpur Sakro for preparing site plan at Ex.13/A and site sketch of place of occurrence at Ex.13/B. PW-9 Khan Muhammad Kalhoro, being examiner firearm FSL Laboratory at Ex.14. Thereafter, learned Deputy District Public Prosecutor for the State closed the side of prosecution vide his statement dated 28.10.2015 at Ex.15.

5. Statements of the appellants were recorded under section 342 Cr.P.C., wherein they denied the prosecution allegations levelled against them by saying that they have been falsely implicated in this case by the complainant party due to old

enmity over landed property and complainant party wants to usurp their property, therefore, they involved them. In fact, no such incident had taken place and they prayed for justice. However, they did not examine themselves on oath nor led evidence in their defence.

6. The learned trial Court, after hearing the parties and appraisal of the evidence, acquitted the accused Abdul Sattar and Ghulam Qadir by extended benefit of doubt in murder case and convicted and sentenced the appellant vide judgment dated 22.08.2016. Appellant Gul Bahar was also convicted and sentence for an offence under section 23(i)- A & 25 Sindh Arms Act,2013. The convictions and sentences recorded by the learned trial Court have been impugned by the appellant before this Court by way of filing the instant Criminal Jail Appeals.

7. Learned counsel for the appellant has mainly contended that the appellant is innocent and has falsely been implicated in this case due to matrimonial dispute; that there are major contradictions in the evidence of PWs as all the witnesses are interested and related; that all the witnesses/complainant are cousins of the deceased; that there is no independent person has been shown as a witness to believe that appellant has committed any offence; that all the witnesses have improved their statement dishonestly to strengthen the prosecution case; that the witnesses are chance witnesses; that there is delay of lodgment of FIR hence due deliberation and consultation cannot be ruled out; that there is delay of ten days for recording of the confessional statement and same has taken through coercive manner; that the ocular account was not such of character which would be relied to convict a person on capital charges; that on the basis of same set of evidence, learned trial Court has acquitted two accused namely Abdul Sattar and Ghulam Qadir by extending them benefit of doubt, as such, the case of appellant is also on similar footing and therefore, he is entitled for his acquittal. Lastly, he has contended that prosecution has miserably failed to prove its case against the appellant and thus, according to him, the appellant is entitled for his acquittal. In support of his contention, he has relied upon the cases of (1)

Muhammad Ismail and others. V. The State (2017 SCMR 898), (2) Kaleem Ullah v. the State and another (2018 YLR 2363, (3) Wisal v. The State and another (2018 MLD 1108), (4) Imtiaz Hussain v. The State (2018 PCRLJ 750), (5) Azeem Ahmed and another v. Mujahid Khan and others (2016 SCMR 274), (6) Mohsin Raza and others v. The State (2019 YLR 3), (7) Muhammad Akram v. The State (2009 SCMR 230), (8) Tariq Pervez v. The State (1995 SCMR 1345), (9) Syed Muhammad v. The State (2019 YLR 337), (10) Zafar v. The State and others (2018 SCMR 326), (11) Mst. Rukhsana Begum and others v. Sajjad and others (2018 SCMR 596), (12) Muhammad Asif v. The State (2017 SCMR 486), (13) Altaf Hussain v. The State (2019 SCMR 274), (14) Naseebullah v. The State (2019 MLD 746) and (15) Ihsan Elahi v. The State and others (2018 YLR NOTE 181).

8. On the other hand, learned counsel for the complainant as well as learned APG while supporting the impugned judgment have argued that all the prosecution witnesses have fully supported the case of complainant beyond any shadow of reasonable doubt; that there is no material brought on record to show that appellant is not involved in the commission of the offence; that the ocular evidence finds corroboration from the medical evidence; that the appellant has voluntarily produced the crime weapon which was sent to the office of Chemical Examiner which report received as Positive; that the appellant has also voluntarily confessed his guilt and given the detailed story that how he has committed the murder. The confessional statement was recorded by the Judicial Magistrate in which he has given the detailed story which shows that the confessional statement was recorded voluntarily without fear and force. Lastly, they pray for dismissal of the instant appeal.

9. I have heard the learned counsel for the parties and have gone through the material available on record.

10. From perusal of material brought on record, it appears that the prosecution story solely depends upon the ocular testimony in shape of complainant and eyewitnesses supported by the medical evidence as well as recovery of the crime weapon along

with circumstantial evidence. Complainant Sardar Ali, who is cousin of deceased and also cousin of the appellant deposed that on the day of incident he was present in his house along with Ghulam Hussain (deceased), Mehram Ali Rind (Brother) Jumma Khan (Cousin) and other family members. In the meantime, the accused namely Ghulam Qadir, Gul Bahar and Sattar entered into the house and on instigation of co-accused, accused Gul Bahar made straight fires on the deceased Ghulam Hussain which hit on his chest and other parts of the body. The accused Sattar Rind also fired up on the deceased. Resultantly, the deceased fell down on the cot and due to his injuries, the accused persons made their escaped good. The deceased was shifted to the hospital and on the way, he succumbed to his injuries. In cross-examination he/complainant admits that **“the accused Gul Bahar conducted two fires upon the deceased, who received one fire from his pistol at the mid of his chest and another on his lower right thigh above the knee.”** In support of his contention, the prosecution examined Mahram Ali (PW-2), and Jumma Khan (PW-3) They have almost narrated the same story that in their presence accused/appellant has fired upon the deceased resultantly he received the fire arm injuries and died on the way to hospital. They admit in his cross-examination that accused and complainant party had a family dispute and the motive in the said incident set up by the prosecution was that the accused Ghulam Qadir refused to give hand of Mst. Bibi to Muhammad Waris and due to this, both parties were annoyed and having strange relationship with each other. Both the parties were not on good terms. It is important to note here that all the witnesses/complainant is cousins of deceased as well as cousin of the accused persons.

11. The ocular evidence also finds corroboration from the medical evidence concerning the cause of death and time of incident and weapon used in the commission of offence. It is established from the evidence of Dr. Allah Dad (PW-5), who received the dead body of deceased Ghulam Hussain on 23.11.2013 at 09:15 am. Thereafter, he started the postmortem

at 09:30 am and finished the same at 11:30 am. From examination of the body, he found the following injuries:

Surface Wounds & Injuries

(A)Firearm wound of entry:

- i) A punctured firearm wound on chest, below the right nipple, 1cm deeply seated with inverted margins, with burned skin surrounding the wound
- ii) A punctured firearm wound on back of chest (left side of body) 1 cm deeply seated with inverted margins, with burned surrounding the wound
- iii) A punctured firearm wound on lower part of chest (near right side of sternum) 1 cm deeply seated with inverted margins.

(B)Firearm wound of exists:

- i) A punctured wound of firearm on back of chest (right side of body) 2 cm with averted margins.
- ii) A punctured wound of firearm on chest (below the first wound) 2 cm with averted margins.
- iii) A punctured wound of firearm on back of abdomen, 2 cm (above the right hye bone) with averted margins.

(C)Others wound:

- i) A punctured firearm wound of frontal side of right thigh with fracture of femur, 1 cm with inverted margins.
- ii) Lacerated wound on left thumb 6cm x 1cm.

The Medical Officer from external as well as internal examination found firearm wounds on chest, abdomen, right leg, left thumb, with heavy bleeding resulting firearm. He opined that the cause of death of deceased was due to shock and hemorrhage. The time elapsed between injuries and death was about 15 minutes. The time which elapsed between death and postmortem was about one hour, 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 reliance is placed upon the case of ***ZAHOOR AHMED Vs. The STATE* [2017 SCMR-1662]**, wherein the Hon'ble Supreme Court of Pakistan has held that:-

“4. The ocular account, in this case, consists of Muhammad Khan complainant (PW-06) and Shahbaz (PW-07). They gave the specific reasons of their presence at the place of occurrence as, according to them, they along with the deceased were proceeding to harvest the sugarcane crop. Although they are related to the deceased but they have no previous enmity or ill-will against the appellant and they cannot be termed as interested witnesses in the absence of any previous enmity. They remained consistent on each and every material point. The minor discrepancies pointed out by the learned counsel are not helpful to the defense

because with the passage of time such discrepancies are bound to occur. The occurrence took place in broad daylight and both parties knew each other so there was no mistaken identity and in absence of any previous enmity, there could be no substitution by letting off the real culprit especially when the appellant alone was responsible for the murder of the deceased. The evidence of two eyewitnesses was consistent, truthful and confidence-inspiring. The medical evidence fully supports the ocular account so far the injuries received by the deceased, time which lapse between the injury and death and between death and postmortem. Both the Courts below have rightly convicted the appellant under section 302(b), PPC.

(Underlined by me)

12. The medical evidence has also supported the ocular version. The ocular evidence is further supported by the recovery of a Pistol recovered from the appellant so also blood-stained earth where the deceased had received firearm injury. Prosecution examined ASI Muhammad Nawaz (PW-6), who has issued letter to Doctor to conduct the postmortem and produced such letter at Ex.11/A. He has also prepared danishtnama and the memo of the dead body and produced the same at Ex.11/B and 11/C. He lodged the FIR and subsequently after registration of the said FIR, he arrested all the accused persons and prepared such memo of arrest at Ex.9/D. During interrogation accused Gul Bahar confessed his guilt and he has also led the police party for the recovery of pistol used by him in commission of offence. On his pointation, the crime weapon viz. pistol along with two bullets was secured by the I.O of the case and prepared such memo of recovery on the spot in presence of mashirs Faqir Ali and Gul Sher. Police has registered a separate case against him/appellant Gul Bahar under section 25 of Sindh Arms Act, 2013. The pistol was sent to the office of Forensic Expert and received its report as Positive with endorsement that 'Two 30 bore crime empties now marked as "C1" & "C2" were fired from the above mentioned 30 bore Pistol No.788-KAI, in question, in view of the following major points i.e. striker pin marks, breech face marks and ejector marks etc. are **Similar.**' The FSL report was also produced. He has also collected the earth with clothes of the deceased and sent to the office of Chemical Examiner, which report received with endorsement that all the

articles/clothes are stained with human blood. In order to support his contention of ASI Muhammad Nawaz (PW-6),, the prosecution examined Faqeer Ali Gul (PW-4), who is mashir of the case and confirmed the contentions of PW-6 ASI Muhammad Nawaz and states that in his presence, accused was arrested and he has led to the police party for recovery of the crime weapon which was recovered in his presence along with two live bullets. Police also secured bloodstained shalwar kameez and other clothes of the deceased including two empty bullets one live bullet along with bloodstained. He has also produced two live bullets and one empty and in cross-examination, he admits that Gul Bahar is the only accused, who led the police party to place of crime weapon from where he has produced the crime weapon. Prosecution also examined Gurmukhdas G. Gehani (PW-7), Judicial Magistrate, who recorded the confessional statement of the appellant. He deposed that on 03.12.2013 the appellant was brought before him for recording of his confessional statement. After removal handcuff of the appellant, he was set in his chamber for three hours and after refreshing his memory learned Magistrate informed him that he is a Magistrate and whatever he will say before him, it will be used against him. Appellant Gul Bahar voluntarily admits his guilt and then he has recorded his confessional statement which he has produced at Ex.12/A. While recording his concessional statement, the appellant states that about six years back, he married with one Mst. Zahida but no issue was born from the said wedlock; however, after two years, he suspected his wife for developing illicit relationship with her maternal uncle Ghulam Hussain/deceased. He stopped his wife from time to time to discontinue her illicit relationship but she threatened him for murder at the hands of his uncle/deceased. Two children born by his wife were not from him but from the deceased. He also admits that his wife also taunted him as such he has committed the murder of deceased. A perusal of confessional statement of the appellant reveals that it was recorded voluntarily after observing all the necessary/codal formalities. In confessional statement, the appellant has admitted his guilt. Lastly, prosecution examined Khan Muhammad (PW-9), who was posted as Examiner at Forensic

Science Laboratory Hyderabad. He explained that the empties are same which were sent to him and fire was made from the said Pistol. The crime weapon was recovered in presence of independent person and after recovery of said crime weapon, same were sent to the Chemical Examiner and received its report as Positive.

13. The prosecution witnesses are in line in respect of the vital points in their depositions and they could not be shaken during cross-examination. The availability of the appellant at the place of incident is also established through the evidence of eye witnesses. I have not observed any major contradiction in the depositions. The eye witnesses have satisfactorily explained date, time and place of occurrence as well as each and every event of occurrence in clear cut manners. The parties are known to each other as is evident from their evidence, so there was no chance of mistaken identity of the appellants. In matters of capital punishments, the accused would not stand absolved by making a mere allegation of dispute/enmity over landed property but would require to bring on record that there had been such a dispute/ enmity, which could be belived to have motivated the witnesses in involving the innocent at the cost of the escape of real culprit(s). I would not hesitate that where the witnesses fall within the category of “**natural witnesses**” and detail the manner of the incident in a confidence, inspiring manner then only scope available to the appellant is that to satisfactorily establish that witnesses are not the witnesses of truth but “**interested**”. In the instant matter the witnesses are cousins of the appellant as well deceased. No substance has been brought on record by the appellant to justify his false implication at the hands of the complainant party on any account or previous enmity.

14. The plea taken by the appellant in his statement recorded under section 342 Cr.P.C. that he has been falsely implicated in this case by the complainant party due to dispute over the landed property. On the other hand while recording his confessional statement before Magistratre he has confessed that he has committed the murder of deceased Ghulam Hussain. On next question in his 342,Cr.P.C the appellant replied that he has

not confessed his guilt and his signature is not available on the confessional statement. However, from perusal of his confessional statement Ex.12/A, each and every page of confessional statement was signed by him and in the end of confessional statement, a footnote was written by learned Magistrate where he has certified that he/learned Magistrate has already explained that he is not bound to make confessional statement but if he/the appellant does, the same will be used against him and he was of the opinion that confessional statement made by the appellant is voluntarily, which was read over to him and he admitted it to be true and correct. Hence, the plea taken by the appellant having no value in the eyes of law.

15. The evidence collected by the I.O finds corroboration from the evidence of prosecution witnesses, coupled with medical evidence duly supported by the crime weopen viz Pistol and other circumstantial evidence leads to the end that the appellant is a real culprit who committed the murder of one innocent person namely Ghulam Hussain/deceased. It is important to note here the complainant also field Criminal Acquiottal Appeal No. 300 of 2016 before this court same was dismissed as not pressed by the learned Counisel for the complainant vide order dated 01.10.2020.

16. The minor discrepancies in statements of all the witnesses are not enough to demolish the case of prosecution because these discrepancies always occurred on account of lapse of time which can be ignored. It is also settled principle that statements of witnesses have to be read as a whole and the Court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party, the contradictions must be material and substantial to adversely affect the case of the prosecution.

17. 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 illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which is based on the

appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction and sentence awarded to the appellant by learned trial Court are hereby maintained and the instant appeals filed by the appellant merits no consideration, which is **dismissed** accordingly.

J U D G E

Karachi
Dated. ____-10-2020.