

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

Criminal Appeal No.D-123 of 2019  
Confirmation Case No.23 of 2019

Present:-

**Mr. Justice Muhammad Iqbal Kalhoro**  
**Mr. Justice Adnan-ul-Karim Memon**

Dates of hearing: 01.10.2021 and 28.10.2021.

Date of decision: 02.12.2021.

Appellant: Hassan alias Ali Hassan.  
Through Mr. Ahsan Gul Dahri, Advocate.

Complainant: Mst. Halima Chandio  
Through M/s Riaz Ali Panhwar and Om Parkash,  
Advocates.

The State: Through Mr. Shahzad Saleem Nahiyoan, Addl.P.G.

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**MUHAMMAD IQBAL KALHORO,J:-** Impugned in this appeal is a judgment dated 29.06.2019 passed by Vth Additional Sessions Judge/MCTC, Shaheed Benazirabad convicting and sentencing appellant to death and burdening him to pay compensation of Rs.200,000/- u/s 544-A CrPC to the legal heirs of deceased Muhammad Punhal and Mst. Zuhra for committing their murder.

2. Briefly, complainant Mst. Haleema lodged an FIR No.100/2007 at P.S Kazi Ahmed u/s 302(b) PPC on 24.06.2007 at 1730 hours revealing that she had six sons. Muhammad Punhal, one of them, was married and aged about 29/30 years. On the same day at about 4-00 pm, Hassan alias Ali Hassan came to her house and called her said son out and took him to a watercourse for cleaning (dredging) it. At about 4-30 pm, she hearing fire shots coming from there went running there with her son-in-law Sarwar and brother Abdul Hameed and spotted accused Hassan and accused Ali Nawaz duly armed with pistols present. Accused Hassan called them out, and while declaring her son Muhammad Punhal as 'KARO' with his niece Mst. Zuhra d/o Amir Bux straightly fired at him. He fell down raising cries and died. Then, both the accused went towards house of Amir Bux and after a while cries started coming from there. The complainant party rushed there and saw Mst. Zuhra lying on the ground dead with a firearm injury. Accused

Hassan and Ali Nawaz, armed with pistols, warned the complainant party not to come close to them. Before fleeing from the scene they revealed that their niece was 'KARI' and hence they had killed her. Then complainant leaving the aforesaid witnesses over the dead body of her son appeared at police station and reported the matter.

3. After necessary formalities and filing of the challan. The trial started with framing of charge against the accused, and in the course of which evidence of following witnesses was recorded. Complainant Mst. Haleema (Ex-10), PW Abdul Hameed (Ex-21), PW Ghulam Sarwar (Ex-22), PW Dr. Naheed Saleh (Ex-23), PW Muhammad Hashim (Ex-24), PW Dr. Capt. Sikander Ali (Ex-25), PW Abdul Hameed (Ex-27), PW SIP Raja Abdul Haq (Ex-28), PW SIP Azizullah Morio I.O (Ex-29), PW Ali Madad Tapedar (Ex-30), and PW Bashiruddin (Ex-31). They have produced all the relevant documents which include FIR, all memos, postmortem reports, FSL report, sketch of place of incident, etc.

4. The accused in examination u/s 342 CrPC denied the case. They were however convicted and sentenced to death vide judgment dated 21.12.2012 which they challenged in appeals No.D-55/2012 and Cr. Jail appeal No.D-57/2012. This court vide judgment dated 31.01.2019 acquitted accused Ali Nawaz and remanded the case of appellant to the trial court for recording his 342 CrPC statement and deciding the case afresh. He vide impugned judgment has been returned guilty in the terms as stated in Para No.1, hence this appeal.

5. Learned defense counsel Mr. Ahsan Gul Dahri has contended that appellant is innocent; there are material contradictions and discrepancies in the evidence of prosecution witnesses; their presence at the spot is not without doubt; that the alleged incident is unwitnessed one; appellant has been implicated out of previous enmity; the PWs are interested and related to each other; co accused Ali Nawaz has been acquitted by this court on same set of evidence; the case of the appellant is almost on identical footings; conviction cannot be based on the circumstantial evidence; if a single infirmity arises, the benefit of which is to be extended to the accused not as a matter of grace, but as a right; that the alleged pistol has been foisted upon appellant and he has been acquitted in recovery case thereof; that against appellant the case is doubtful in view of contradictions in the evidence of witnesses and he is entitled to acquittal. He relied upon the case law reported in 2010 SCMR 1009, 2015 SCMR 1142, 2017 SCMR 486, 2017 SCMR 596, 2017 SCMR 2036, 2018 SCMR 344 and 2019 SCMR 129.

6. M/s Riaz Ali Panhwar & Om Parkash advocates for the complainant and learned Addl.PG have supported the impugned judgment saying that PWs have fully supported the case and there is no material contradiction in their evidence; their presence at the spot being residents of the same areas is natural and they despite being subjected to a lengthy cross-examination have remained consistent on all salient features of the incident; that the pistol was recovered from appellant and sent to lab with empties recovered from the spot for forensic examination and the report is in positive which shows that it was used in the alleged offence by the appellant; that ocular account is supported by medical and circumstantial evidence and that there is no delay in lodging the FIR.

7. We have considered submissions of the parties and have perused the material available on record including the case law cited at bar. Complainant and two eye witnesses have furnished a complete account of murder of two victims at the hand of appellant suspecting them as Karo Kari. Complainant is mother of one victim namely Muhammad Punnhal who was called out of the house by appellant and co accused Ali Nawaz and taken to a water course hardly two acres away on the pretext of dredging it. At that time complainant and the witnesses, close relatives, were present in the house and witnessed it. After a while hearing a fire shot coming from there, they ran towards the spot and saw appellant firing at Punnhal while declaring him Karo before them. When they were still mourning over the dead body, the appellant and co accused went to the house of Mst. Zuhra and killed her. However, the complainant party had gone there after hearing fire shots and had seen the accused present there with weapons and Mst. Zuhra lying dead with a firearm injury. The presence of the witnesses, albeit questioned by the appellant, in the house of complainant and then on the spot is natural. They are not only in close relation with the complaint but are also resident of the same area. Emphasis of learned defense counsel that as Pw Abdul Hameed has admitted in cross examination that he runs a hotel in Qazi Ahmed Town, his presence at the time of incident i.e.4.30pm is unbelievable is misconceived. For, firstly such revelation would not mean that said witness was not present at the spot. Secondly running a hotel by him does not mean or require his physical presence in the hotel entire time from dawn to dusk. It is a common knowledge in this part of our country that a hotel is always run by entire family which some time includes even cousins, uncles, etc. and they turn by turn remain present. Therefore, such revelation by witness Ghulam

Sarwar that he works in a hotel in Qai Ahmed or that he opens the hotel in the morning and closes at 12 pm would not cast a doubt on his claim that on the day of incident he was present in the house of the complainant and had reached the place of incident with her and another witness after hearing fire shot where he saw appellant committing murders of the deceased.

8. Learned defense counsel besides stressing on above point in arguments pointed out to some variations like difference stated by the witnesses in vehicles used in taking dead bodies to and from the hospital and by whom, the time consumed in such formalities, etc. to press his case for acquittal. With respect, we may say that although there are some variations over such aspects of the case, but they are minor in nature and too weak and casual to affect salient account of the incident. These variations, being over details inconsequential in nature, do not tend to reduce probative value of evidence and render it unworthy of reliance. In our humble view, it is not humanly possible for a person to capture all trivial details of an incident such as pointed out by learned defense counsel, in the heat of a moment taking away a loved one for ever and recall them with a photogenic precision at the time of giving evidence. Therefore, all such slight disparities in any part of story, accessory in essence, would not take away otherwise intrinsic value and confidence-inspiring ring found in the evidence of witnesses over main features of the incident. There has occurred no mistake by the witnesses in narrating place and time of incident, no error in identifying the accused firing at the victim and no fault in classifying the weapon used in the commission of the offence.

9. Their unshaken account, despite lengthy but unfruitful cross examination, is further supported by medical evidence that gives exact account of locale of injuries sustained by the victims as narrated by them. The circumstantial evidence i.e. recovery of crime weapon from the appellant and positive forensic report qua its matching with empties recovered from places of the incident further seals the frame around narration of incident given by the witnesses about role played by the appellant. There is no delay in sending the crime weapon and the empties, recovered on the same day i.e. 24.06.2007, to forensic expert to induce any idea of contrivance in setting up such evidence against the appellant. All such pieces of evidence tend to reflect a complete mosaic the incident is made of in which appellant's involvement in the offence is indelibly noticeable. There could be assumed no other hypothesis in

presence of such evidence except guiltiness of the appellant. The acquittal of the appellant in the case of recovery of the pistol from him will not have any adverse bearing on merits of this case. For the reason, such acquittal at the maximum would mean the prosecution was not able to establish its possession by the appellant at the time of its recovery from him, or that manner and mode of recovery of the pistol from the appellant, as asserted by the prosecution, has not be established. Its use by the appellant to murder the deceased is altogether a different fact which has been proved not only from the evidence of eye witnesses but from matching profile aligning the empties recovered from the spot with the pistol.

10. Further, learned defense counsel in arguments tried to draw a parallel between the case of co accused Ali Nawaz, since acquitted, and the appellant to get same benefit. But we are not inspired by it either. He was not assigned any role in the commission of the offence and was simply shown present when appellant Hassan killed Punhal and Mst. Zuhran. Plus in investigation no incriminating article was recovered from him. Considering such facts and the fact that there was no evidence of his sharing common intention with the appellant in the commission of offence, he was acquitted. The case against the appellant is however on different footings i.e. direct evidence, medical account, recovery of crime weapon, forensic report, etc. Even though in FIR and testimony, it is not said by the witnesses that they saw appellant killing Mst. Zuhran, which fact too contributes to their being truthful, the circumstantial evidence i.e. reaching of the complainant and witnesses in her house immediately after hearing fire shots coming from there and seeing the appellant armed with the pistol and her lying dead with a firearm injury furnishes a reliable account connecting the appellant with her killing. It is further corroborated from positive forensic report establishing matching between the pistol recovered from the appellant and the empty obtained from the spot.

10. Apart from above, learned defense counsel in his arguments drew our attention to sketch of place of incident Exb. 30A drawn by the Tepedar PW 10 and urged that the distance shown therein between place of incident and house of complainant is one kilometer, which belies declaration by the witnesses in their deposition that such distance is two acres. And that it is unbelievable that from a distance of one kilometer fire shot would be heard and within no time the witnesses would reach there and see the appellant firing at the victim. In our view,

this is not a correct analysis. Sketch of place of incident is invariably considered as supporting evidence. It aims to specify probable location of victim, accused and the witnesses at the relevant time as pointed out by the complainant for the court to have an opinion about mode and manner of commission of offence as alleged. It is not considered a conclusive proof of means and bounds or exact measurement of place of incident or position of the parties. Nor its evidentiary value is understood to override to that of direct account in this respect given by the witnesses. For favour of this view, the case law reported in 2012 PCrLJ 1662 can be cited. The witnesses have unanimously said the distance between the spot and house of complainant as two acres. They are not shown to be literate or expert in measurement etc. and therefore have given this figure of distance as best as an idea. And from that distance, more or less, it is not abnormal to hear fire shot and reach the spot in time.

11. Lastly we come to discuss quantum of sentence. Normal punishment for an offence u/s 302 (b) is death. It is only when circumstances extenuating gravity of the offence are available on record; a departure from that penalty would be warranted. In the present case, appellant was arrested on 24.07.2007 and is in continuous confinement since then, which is more than 14 years and is almost a full term. Besides, as discussed above, there are minor discrepancies in the evidence of the witnesses. The murder of two persons at the hands of appellant has although been proved beyond a shadow of doubt but the motive alleged has not been established. All these factors point out to circumstances overwhelmingly mitigating in nature and justify conversion of death sentence. Accordingly, the appeal is dismissed and conviction of the appellant is maintained but his death sentence is converted into life imprisonment each against each murder. Both the sentences are however are ordered to run concurrently and benefit provided u/s 382 (b) is duly extended to the appellant. The order of compensation passed by the trial court to be paid by the appellant to legal heirs of each deceased u/s 544-A shall remain intact. With these observations the instant appeal is disposed of and confirmation reference No.23of 2019is replied in negative and disposed of accordingly.

JUDGE

JUDGE