

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**Criminal Appeal No. S - 105 of 2013**

Appellant : **Ameer Bux alias Miral & Ayaz Ahmed
through Mr. Wazeer Hussain Khoso, Advocate.**

Respondent : **The State
through Ms. Safa Hisbani, Assistant Prosecutor General,
Sindh**

Date of hearing : 9th & 22nd September, 2020

Date of judgment : _____

JUDGMENT

Omar Sial, J.: On 15-6-2006, Abdul Kareem along with his son Ghulam Haider, Nazeer Ahmed and Lal Dino were returning to their village when they were intercepted by 5 men armed with pistols riding on 2 motorcycles. Abdul Kareem recognized 3 of the armed persons as being Imam Bux, Ameer Bux and Ayaz Ahmed. While one of the unidentified men pointed his pistol at the 5 men, the 3 identified accused fired at Ghulam Haider and killed him.

Trial

2. The charge was framed against Ameer Bux and Ayyaz Ahmed as the others became absconders. At trial the prosecution examined 7 witnesses. **Abdul Kareem** (the father of the deceased and the complainant) was examined as **PW-1**. **Nazeer Ahmed** (a brother of the deceased and an eye witness was **PW-2**. The third prosecution witness (**PW-3**) was **ASI Muhammad Shahid**, the police officer who responded initially to the information that a murder had been committed. **LNK Abdul Ghafoor** was **PW-4**. He was a witness to the memo of seizure of the clothes of the deceased as well as the arrests of Ameer Bux and Ayaz. **SI Ghulam Akbar**, the investigating officer of the case was **PW-5**. The sixth prosecution witness **PW-6** was **Shaukat Ali**, who was the witness to various memos during the investigation. **Dr. Vijay Parkash**, the doctor who conducted the post mortem was **PW-7**.

3. The appellants recorded their section 342 Cr.P.C. statements in which they pleaded their innocence. Ameer Bux further stated that when the incident occurred he was a host at a circumcision ceremony in another place. He also

stated that he was acquitted in the case filed against him for possession of an illegal weapon. Ameer Bux also recorded a statement under section 340(2) Cr.P.C. in which he basically stated the same thing as he had in the section 342 Cr.P.C. statement. He produced Muhammad Hussain Junejo as his witness. Junejo testified that Ameer Bux had come to his village for the circumcision ceremony on 15-6-2006 at 1:00 p.m. and stayed there till the next morning. The murder had occurred at 7:30 p.m. on 15-6-2006. Ayaz on the other hand stated he was at his workplace in Karachi on that date. He produced a fellow security guard Abdul Wahab as witness who produced a muster roll of the security company to substantiate the claim that Ayaz Ahmed was on duty the day the murder occurred.

4. On 15-8-2013 the learned 3rd Additional Sessions Judge, Dadu announced his judgment in the case. Both appellants were convicted and sentenced as follows:

For an offence under section 147 P.P.C – 1 year R.I.

For an offence under section 148 P.P.C – 1 year R.I.

For an offence under section 302(b) P.P.C – Life imprisonment and compensation of Rs. 100,000 or suffer a further period of 6 months imprisonment.

It is the above judgment of that has been impugned in these proceedings.

Parties Heard

5. I have heard the learned counsel for the appellants as well as the learned APG and perused the record with their assistance.

6. The learned counsel has argued that the witnesses were not from the same locality; there was contradiction as to who informed the police; the eye witnesses were not witnesses to the memo of injuries; no independent witness was associated; the inquest report does not show the appellants name as being the assailants; the doctor testified that the wounds on the deceased were cartridge wounds; there was no blackening of the entry wounds; Ameer Bux was acquitted of the charge of possessing an illegal weapon; the appellants were not present on the scene of incident.

My observations are as follows.

F.I.R.

7. Incident occurred at 7:30 p.m. on 15-6-2006. The police was informed of the incident over the phone at about 8:35 p.m. by Nazir Ahmed while the injured was being moved from the place of incident to the hospital. This was testified by the complainant and confirmed by ASI Muhammad Shahid, the police officer who had received the call. The police arrived promptly at the hospital. The memo of inspection was prepared at 8:45 p.m. the same day. F.I.R. was lodged the same day at 10:00 p.m. The time in between was taken in moving the injured Ghulam Haider to the hospital where he finally expired; the police being called to the hospital and then the police conducting its preliminary investigation as well as the post mortem of the body. The two and a half hour delay in recording the F.I.R. was adequately explained. All initial steps were taken with reasonable promptitude without any unnecessary delays. The prosecution witnesses have corroborated each other's versions in this regard.

Shots fired and medical examination

8. 5 shots were fired. 2 fires each were made by Imam Bux and Ayaz whereas Ameer Bux fired one shot. All eye witnesses supported this version. Dr. Vijay Parkash, who conducted the post mortem also reported 5 entry wounds. The doctor confirmed that the deceased had been shot from three different sides. The doctor had concluded that the injuries were caused by firearms. The reference to a cartridge with pellets that the doctor made during his cross examination and which has been relied upon by the learned counsel for the appellants, is a presumptuous observation made. The entry and exit wounds as described by the doctor are indicative of bullet injuries. The medical report in all manners reconciled with the ocular version.

Inspection and recovery

9. The police visited the place of station at 6:30 a.m. the next day i.e. 16-6-2006. The delay in visiting the scene of incident was once again adequately explained as after the body had been taken home and the F.I.R. lodged, the complainant had to arrange the funeral of his son. Blood of the deceased and 3 empties were recovered from the scene by the police. Shaukat and Manthar were witnesses to the inspection and recovery. Shaukat and Manthar lived in the same vicinity i.e. within a distance of 5 kms. ASI Muhammad Shahid testified that

some people had gathered at the hospital when he responded to the information that a person had been shot and killed and that he asked them to be witnesses but the people present declined to do so. There is no force in the argument of the learned counsel that the witnesses to the memos could not be relied upon as they were not from the same area.

One of the pistols crime weapon was recovered on the lead of Ameer Bux. The recovery was made from under the ground near a tree in a grave yard. Though Ameer Bux was subsequently acquitted of the charge of holding an illegal weapon, in view of the strong evidence otherwise recorded in this case, I am of the view that the acquittal in that case will not be sufficient to overturn the impugned judgment.

Eye witnesses

10. Presence of the witnesses was natural as they all lived in the same area. While Nazeer Ahmed had come separately for his own personal work, he had met up with the remaining 3 persons of the complainant party at a tea stall where they all had tea together.

All eye witnesses were cross examined at length. While a number of questions were asked as to the geography of the place of incident, how come the witnesses were all there, which hotel did they go to, how did they sit in the hotel, who paid the bill, the time when they reached and when they departed from the hotel, which route did they take to go back home, the distance at which the accused were, the distance at which the fires were made, the number of motorcycles and who was riding which motorcycle, who fired, how many fires were made, the manner in which Ghulam Haider fell to the ground and the sequence of events after the shooting – all eye witnesses were in a unison with their respective accounts. No meaningful contradiction occurred between them during their testimonies. I found the testimonies of the eye witnesses confidence inspiring.

Motive

11. The motive for the murder, as explained by Nazeer Ahmed, the brother of the deceased, was that a girl by the name of Najma had married his brother Ghulam Haider with the blessings of their respective parents but Imam Bux was not happy at Najma getting married. He had threatened and intimidated the

family so much that the father of the deceased was compelled to file a petition in this Court seeking protection from Imam Bux. The petition was disposed of as Imam Bux had stated before the court that he had nothing to do with Najma or Ghulam Haider. Though the motive was not proved at trial, the manner in which the deceased was singled out and killed does suggest the possibility of it being correct. In any case, concession for the motive not having been proved has already been given to the appellants by the learned trial court while sentencing the appellants to life imprisonment.

Defence plea

12. Muhammad Hussain Junejo's testimony in support of Ameer Bux's alibi is not confidence inspiring. It is sketchy and vague. He was unable to produce any photograph that would show the presence of Ameer Bux at the circumcision ceremony. I also find it surprising that Ameer Bux could only produce one witness in his support as if he had actually been in the ceremony a number of people would have happily testified in his support. Similarly, the testimony of Abdul Wahab, who appeared as a witness for Ayaz Ahmed was also not confidence inspiring. It was not explained as to why a security guard was producing the muster roll of the security company. The muster roll produced had a number of irregularities which made it further doubtful. Ayaz Ahmed and Abdul Wahab, both could not also prove at trial that they were employees of the said security company. When the defence plea is put in juxtaposition with the prosecution case it is the latter that sounds believable.

Conclusion

13. In view of the above observations, I find no reason to interfere with the judgment of the learned trial court. The appeal therefore is dismissed.

JUDGE