

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.S-97 of 2018

Date of hearings: 11.11.2022 & 18.11.2022.

Date of decision: 18.11.2022.

Appellant: Dilber, Wali Muhammad @ Dado and Saeed,
Through Mr. Ahsan Zahoor Baloch advocate.

The State: Through Mr. Nazar Muhammad Memon, Addl.P.G
Sindh and Mr. Shawak Rathore, DPG.

J U D G M E N T

MUHAMMAD IQBAL KALHORO, J.- Appellant Dilber for having committed murder of deceased Ali Murad and appellants Wali Muhammad @ Dado and Saeed instigating him to commit murder of the deceased on 25.03.2014, stood a trial in the court of 3rd Additional Sessions Judge, Shaheed Benazirabad, in Sessions Case No.822 of 2014 emanating from Crime No.21/2014 registered at PS Sinjhoru u/s 302, 114, 34 PPC, have been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life as Tazir and to pay Rs.100.000/- each as compensation to heirs of the deceased Ali Murad u/s 544-A CrPC, with benefit of Section 382-B CrPC, vide judgment dated 18.04.2018, have challenged the same by means of this appeal.

2. Complainant is mother of deceased Ali Murad, and is originally resident of Mehrabpur District Naushehro Feroze. She has stated in FIR that she, her husband Wazir, her sons Ali Murad, Juman Jani and Ghulam Rasool had gone to visit her relative accused Wali @ Dado resident of Sinjhoru, District Sanghar on 25.03.2014. She was present in his house when at about 04:30 p.m her husband Wazir came running and informed her that he, his sons and accused while roaming around reached "Dam Wah" near "Talhee Tree" where appellant Dilber was already present. No sooner they arrived than he was instigated by appellants Wali Muhammad and Saeed not to spare Ali Murad because he had won from them a huge amount in gambling and had given loss to them. Upon which, accused Dilber armed with a country made pistol straightly fired on posterior side of head of Ali Murad, as a result of which he died on the spot. FIR, however, was registered next day viz. 26.03.2014 at about 1530 hours, after almost 24 hours when, after information of death of deceased was given to his maternal uncle namely Pehlwan and he arrived

there. The inquest report shows that information to police was first communicated on 26.03.2014 at about 1530 hours and police had reached the spot at about 1630 hours on the same day and brought dead body for postmortem at Taluka Hospital Sinjhora at about 05:55 pm on 26.03.2014, where PW-4 Dr. Tahir Ayoob (Ex.18) conducted his postmortem and issued such report (Ex.18/C). The appellants were arrested on 30.03.2014. On 02.04.2014, appellant Dilber during interrogation admitted possessing crime weapon and led police party to wheat crop of Choudhry Habib and produced it: pistol from beneath earth beside the electric pole.

3. After usual investigation, the Challan was submitted and trial commenced. Prosecution in order to prove the charge examined 09 PWs and produced all necessary documents including FIR, Post Mortem Report, Memos, Inquest Report, Sketch of Place of Incident etc. In their statement u/s 342 CrPC, appellants have denied the charge and have pleaded innocence. The trial court after hearing both the parties and appreciating the evidence has convicted and sentenced the appellants in terms as set out in Para-1 above.

4. Learned defense counsel has contended that appellants are innocent and have been falsely implicated in the case; the incident is unseen and the witnesses have been inducted in the case later on which is evident from the fact that at the place of incident the dead body was lying for almost 24 hours without being attended by anyone; it is strange that although the incident happened within the sight of witnesses but they did not inform the police or tried to take body to hospital to seek confirmation about his death which makes their presence at the place of incident highly suspicious; the ocular evidence is in conflict with the medical evidence; the distance from which the deceased received injury is altogether differently stated by the witnesses than what has been described by the Medico Legal Officer (PW-4 Ex.18) in his evidence. Learned counsel pleading these points has requested for acquittal of the appellants and has relied upon the cases reported as 2018 SCMR 506, 2016 SCMR 2021 and 2018 SCMR 153.

5. On the other hand, learned Additional PG and Deputy PG although have supported the impugned judgment but have accepted that delay of 24 hours in registration of FIR by the complainant party is not normal in the given facts and circumstances.

6. I have heard the parties and perused material available on record including the case law cited in defense. FIR in this case was registered with delay of almost of 24 hours of the incident by mother of the deceased Mst. Basheeran, who herself is not the eyewitness. The explanation given in this

regard that she had contacted her brother Pehlwan, living at some other place, on phone and, only after his arrival, had approached the police for FIR does not appeal to the prudent mind. In that, the normal human behavior in the face of such tragedy would have been to inform the police immediately and rush the body to the hospital to get verification of his death. It is also worth noting that she was informed by her husband namely Wazir about the incident and role of each appellant, but strangely when he came in the witness box (as PW-9 Ex.24), he denied to have seen the incident and has stated that when they reached the spot, they saw the dead body of his son lying there. He was declared hostile by the prosecution and only in cross examination by State Counsel has admitted seeing the incident. By his conduct, he has proven to be an unreliable witness. He has not only contradicted himself but shaken the very root of the prosecution case. His evidence in fact has inducted doubt into veracity of presence of witnesses and role of each appellant.

7. The police was informed after 24 hours and for 24 hours the dead body was lying unattended near a village which is reasonably populated. Failure of complainant party, originally resident of Mehrabpur District Naushehro Feroze, a place far away from the place of incident at Sinjhora within District Sanghar, to inform the police within time strongly posits their absence. Non arrival of any person at the spot from nearby village has further doubted the prosecution case. PW-2 (Ex.15) Ghulam Rasool in his evidence has revealed that only on the next morning they had contacted with Pehlwan, their maternal uncle, who then had come at the place of incident at 02:00 pm and only thereafter his mother had gone to Police Station for lodging FIR. Waiting for whole evening and night and making a phone call on the next day of the incident does not appear to be normal and creates a doubt about description of incident made by the witnesses. The question as to why only after arrival of PW Pehlwan, police was informed about the incident, has not been explained properly either.

8. Further, the alleged motive: in gambling appellants had lost certain amount to the deceased has not been established by the prosecution. There is absolutely no evidence that appellants Wali Muhammad and Saeed, who had instigated appellant Dilber to commit murder of the deceased, had played gambling with the deceased and had lost money to him. The witnesses in fact have admitted in their evidence that they had never seen the said appellants and the deceased playing gambling with each other. The question as to why they instigated Dilber and why on their instigation Dilber committed such a heinous crime as murder has not been answered satisfactorily by the prosecution. Besides, in the evidence of eyewitnesses there are many lacunas

regarding distance from which appellant Dilber had fired at the deceased and the distance between the witnesses and the deceased.

9. The recovery of alleged crime weapon was effected from appellant Dilber on 02.04.2014 but it was sent for forensic report on 08.04.2014. Safe custody of the crime weapon kept meanwhile for 6 days at Police Station has not been established. Neither the register recording entry of keeping the crime weapon at Malkhana, nor the in charge of Malkhana, has been produced or examined to verify the safe custody thereof. Further, doctor's evidence shows that in postmortem from the head of the deceased pellets were recovered. But those pellets were not sent along with the pistol and empty cartridges to verify that the same were in fact fired from the same pistol and were part of the same cartridge available in the chamber of the pistol. Therefore, the said pistol to be the crime weapon has not been established satisfactorily either. When I look at such evidence as above, I get persuaded that prosecution has not been able to prove its case beyond a reasonable doubt. As a result of such opinion, this appeal is allowed, the impugned judgment is set-aside and the appellants are acquitted of the charge on a benefit of doubt. They shall be released forthwith, if not required in any other custody case. The appeal in hand is accordingly disposed of in above terms. These are the reasons of short order dated 18.11.2022.

Dt: 25.11.2022

JUDGE