

**THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

Crl. Jail Appeal No.S-75 of 2020  
(*Dilbar Shar v. The State*)

Crl. Jail Appeal No.S-76 of 2020  
(*Dilbar Shar v. The State*)

Appellant : **Dilbar Shar**, through Mr. Shafique Ahmed Khan Leghari, Advocate.

Complainant : **Mehboob Ali**, through Mr. Shamsuddin N. Kobhar, Advocate.

The State : Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing(s): **06-05-2024**  
Date of decision: **14-05-2024**

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

**MUHAMMAD IQBAL KALHORO, J:-** Appellant Dilbar along with Mehmood Ahmed (since acquitted) was tried by learned Additional Sessions Judge / MCTC, Ubauro in Sessions Cases No.173 and 110 of 2019, arising out of Crime No.16 of 2019 (under sections 302 & 34) PPC and Crime No.17 of 2019 (under section 24 Sindh Arms Act), registered at P.S, Reti-Ghotki and vide judgments dated 13.03.2020, he was convicted for offence under Section 302(b) PPC and sentenced to imprisonment for life as Ta'zir with fine of Rs.500,000/- to be paid to legal heirs of deceased and in default thereof, to suffer S.I for six months more. For offence u/s 24 Sindh Arms Act, 2013, he was sentenced to suffer S.I for four years plus fine of Rs.10,000/- and in case of default, to suffer S.I for one month more, with benefit of Section 382-BCrPC, duly extended to him.

**2.** As per brief facts, complainant Mehboob Ali lodged an FIR on 07.03.2019 at about 2120 hours alleging that deceased Ghulam Hussain Shar was his elder brother. Two years ago, a fight had taken place between complainant party and accused Dilbar and others over border (Bana) of land, and Dilbar had received injuries. However, a Faisla was held, and complainant party paid Rs.200000/- to accused Dilbar and born his treatment expenses, yet he was annoyed. On the fateful day viz. 07.03.2019, in the morning, Ghulam Hussain, went to Reti town and did not return. After realizing something wrong, the

complainant along with his brother Ghulam Muhammad and nephew Soomar left the house on a motorcycle for his search. When at 1000 hours, they reached an abandoned Railway Crossing near Cement Wari Mori, they saw Ghulam Hussain crossing it and coming over the bridge, where accused Dilbar, Shabir Ahmed armed with pistols and one unidentified person with a lathi were present. Accused who had a lathi stopped him. Then accused Dilbar said to him that his days were over and fired upon him along with other accused having pistols, with intention to commit his murder. He raised cries and fell down on the road. Thereafter, complainant party raised hue and cry, whereupon the accused made their escape good. Then complainant party saw Ghulam Hussain had received one injury at his left side of armpit which was through & through, one injury at his interior side of left elbow, one injury at left hand thumb and he was bleeding. He then succumbed to injuries and died. They informed the Reti Police, who after arrival, took the dead body of deceased to Taluka Hospital Daharki for postmortem. Then complainant after his funeral lodged the FIR.

**3.** After due investigation, appellant Dilbar and Mehmood Ahmed were arrested. In the trial, remaining accused were declared proclaimed offenders. To a formal charge, the appellant pleaded 'not guilty'. Hence, the prosecution examined as many as eight witnesses, who have produced all the necessary documents including FIR, all relevant memos, FSL report, postmortem report etc. After which, statement of appellant under section 342 CrPC was recorded. He has denied the case against him and pleaded his innocence. Neither he examined himself on oath, nor led any evidence in his defence. However, by impugned judgments, appellant has been convicted and sentenced in the terms, as detailed in para-1. Hence, these appeals.

**4.** Learned counsel in defense has argued that appellant is innocent and has been convicted and sentenced by the trial Court on the basis of evidence which does not ring true and contains so many contradictions and inconsistencies; that there is a difference in medical evidence and ocular account, the ocular account states that deceased died out of injuries instantaneously, but the medical evidence suggests time between his death and injuries as within half an hour, meaning thereby that witnesses were not present at the spot

when the incident had occurred; that in evidence, witnesses have made certain improvements by alleging specific role against the appellant which is not reflected in the FIR; that enmity in FIR and evidence is admitted which means that false implication of appellant cannot be ruled out; that initially an entry in daily diary was made by the police on the basis of information received from complainant in which the latter did not name any culprit involved in the case. He has relied upon the cases reported as **2019 SCMR 129**, **2017 SCMR 596**, **2023 MLD 629** and **2023 PCr.LJ 49**.

5. On the other hand, learned counsel for complainant and learned Deputy P.G, both have supported the impugned judgments and have stated that the defense counsel has failed to point out any major contradiction in the case; that the time mentioned in medical certificate between death and injuries is only probable and does not run contrary to evidence of witnesses who being laymen could not have realized/noted exact death time of deceased after sustaining injuries. They have relied upon cases reported as **2022 SCMR 1280**, **2018 SCMR 354** and **2020 SCMR 597**.

6. I have heard learned counsel for parties and perused material available on record and taken guidance from the case law cited at bar. The charge against the appellant is that he along with acquitted and absconding accused, duly armed with pistols committed qatl-i-amd of deceased Ghulam Hussain, a brother of complainant, by firing upon him at Dandai link road, Ali Murad Shar Chowk, Cement Wari Mori, situated in Deh Haiko, on 07.03.2019 at about 1000 hours. The prosecution has examined in all two eyewitnesses to establish the charge. First eyewitness is complainant himself. His evidence is available at Exh.9 as PW-3. He has reiterated the entire story which he has mentioned in FIR that on 07.03.2019, his brother Ghulam Shabir went shopping to Reti town in the morning, but did not return. Hence, he along with his brother Ghulam Muhammad and nephew Soomar proceeded on a motorcycle for his search. On the way to Reti, they saw his brother Ghulam Hussain crossing a Railway Crossing at Cement Wari Mori, Reti town, where one accused waylaid him. Then they saw appellant Dilbar, Khadim Hussain and Bashir all armed with a pistol each. They threatened his brother and then appellant Dilbar made a straight fire from his pistol at him which hit

under his left armpit and went through and through. Accused Khadim made a second fire at his brother hitting upper part of his left arm. Accused Shabir made a third fire from his pistol hitting thumb of his left hand. His brother started bleeding and fell down. Accused on their cries made escape good. After which, they saw injured Ghulam Hussain succumbing to his injuries after writhing in pain.

**7.** PW-4 (Exh.10) Ghulam Muhammad is also an eyewitness. He too happens to be a brother of deceased. He has revealed entire story in alignment with the version stated by the complainant. They both have been subjected to a lengthy cross-examination, but no tangible contradiction or discrepancy has come on record to induce an element of doubt in the prosecution case. They have narrated the incident in a parallel detail without conflicting with each other on main parts of the event. They have also specifically and pointedly described role of appellant and that of the absconder accused in murdering their brother by firing upon him from their respective pistols.

**8.** The medical evidence rendered by MLO (PW-9 at Exh.16) is in complete conformity with the nature of injuries told by the witnesses. The weapon used for causing such injuries, locale of injuries, as pointed out, finds support in medical evidence. Besides three firearm injuries revealed by them, the doctor has found two more injuries on the person of deceased which, however, are bruises. They naturally occur over the body of a person falling down on the ground after sustaining firearm injuries. Therefore, nothing shocking undermining the oral account furnished by the eyewitnesses has come in evidence of MLO, which may persuade me to suspect truthfulness of their version.

**9.** The controversy raised in defense about probable time between injuries and death does not appear to be material confounding the case of prosecution either. The witnesses have stated in evidence that deceased had died on receiving firearm injuries after writhing in pain. They do not describe exact time between death and injuries. The time indicated by MLO i.e. within half an hour is at the best probable and not exact. Neither the witnesses had stated that the death was instantaneous, nor the MLO endorse the same point of view qua time

between death and injuries of deceased. More so, complainant and his brother both being laymen would not be considered expert to describe exact time of death of deceased after injuries. To them, the deceased, going into unconsciousness after sustaining three fatal firearm injuries, would appear dead until and unless it is verified by the doctor on his medical examination. The witnesses saying that deceased died on the spot does not mean he died instantaneously. Or that such statement means that the deceased actually and verifiably died there and had not gone unconscious. For, it is only the doctor who can verify the exact time of death of the deceased on his medical examination. Therefore, such discrepancy would not be considered fatal to trustworthiness of confidence inspiring evidence of the witnesses who have otherwise not waived or faltered in cross-examination to any of suggestions made to them for eliciting some favour to the appellant in the shape of any contradiction.

**10.** The prosecution has also examined Tapedar (PW-1 at Exh.7). He had prepared site plan/sketch after receiving such directions from the Mukhtiarkar concerned, who was approached for the said purpose by the I.O. The site plan also suggests evidence of prosecution witnesses insofar as place of incident is concerned is beyond doubt.

**11.** Evidence of PW-02 SIP Godho Khan is in respect of receiving information of incident on 07.03.2019 and reaching the place of incident and finding deceased lying there on a cot; and afterward making such entry in daily diary. He also supports completing necessary formalities then and there in presence of mashirs, registering FIR subsequently on narration of events culminating at murder of deceased by complainant, carrying on necessary investigation including preparing necessary memos, sending the recovered pistol from the appellant Dilbar and empties to a lab for FSL report, conducting interrogation of appellant Dilbar, who was arrested on 10.03.2019 by ASI Mushtaque Ahmed, recording statements of witnesses under section 161 CrPC etc. In his lengthy cross-examination, nothing favourable to the appellant has come on record suggesting that SIP Godho Khan had not conducted investigation in the manner he has postulated in his evidence. On all the necessary aspects of his role as I.O, he has withstood his ground.

Not a single suggestion made to him has undermined credibility of his part in investigation. He has submitted all necessary papers including FIR in evidence which too support the prosecution case, as set up from the very start. He has also produced FSL report at Exh.8/B, which shows that empties at C/1, C/2 & C/3 recovered from the site were found fired from .30 bore pistol recovered from appellant Dilbar connecting him with the alleged offence beyond a reasonable doubt.

**12.** Mashir Muhammad Rahib examined as PW-5 at Exh.12 has also narrated the part played by him in the investigation as a mashir. He has verified that the police had inspected dead body in his presence and another mashir namely Muhammad Eidan. He was having injuries, as described by complainant and other witnesses in their evidence. He has confirmed conducting a preliminary enquiry by the police by collecting blood stained earth from the site, preserving it properly, securing three empty shells of pistols from there, preparing certain documents relating to such recovery, Danishnama etc. His part of acting as mashir has not been made doubtful in his cross-examination. He has described every patch of investigation he was part of ranging right from discovery of dead body to arrest of acquitted accused Mehmood Ahmed on 12.04.2019.

**13.** PW-6 PC Mujahid Hussain (Exh.13) was a part of the police team working under ASI Godho Kihan that visited the site on receiving information and had completed all necessary formalities there. He has verified all these facts in his evidence and the fact that after postmortem report dead body of deceased was handed over to his brother Mehboob Ali. Nothing shocking to narration of facts described by him has come on record in his cross-examination to doubt his evidence. ASI Mushtaque Ahmed examined as PW-7 at Exh.14 has confirmed the fact of arresting appellant on 10.03.2019 along with a pistol used by him in the commission of offence. His evidence has not been shattered in cross-examination on that point either. The recovery of a pistol and his arrest on the same day witnessed by mashirs has been confirmed by him in his evidence. The evidence of PW-8 Inspector Ahsan Ahmed at Exh.15 is confined to recording further statement of complainant naming Mehmood Ahmed to be the one shown as unidentified accused in FIR. In

statement under section 342 CrPC, appellant has simply denied the story and has not offered any explanation to the incriminating pieces of evidence produced by prosecution against him.

**14.** A holistic view of entire evidence, discussed above would show that prosecution has proved its case beyond a reasonable doubt against the appellant by leading confidence inspiring evidence. The evidence comprises oral account supported by medical evidence, recovery of crime weapon from appellant, positive FSL report showing the same to have been used in the commission of offence, site plan prepared by Tapedar, account of investigation finding appellant involved in the case. All these pieces of evidence were subjected to lengthy cross-examination by defense counsel, but as has been stated above, no worthwhile contradiction or inconsistency has come on record to give its credit to the appellant. The only inconsistency highlighted by defense counsel in his arguments was limited to alleged discrepancy in the medical evidence *qua* time of death of deceased after receiving injuries, but the same has been explained above and is not found contrary to the evidence of eyewitnesses. The argument of learned counsel that in daily diary recorded on information of the incident given by the complainant name of accused is not mentioned. It may be said that it is not requirement of law that name of any accused shall be mentioned in daily diary at the instance of complainant. The purpose of keeping daily diary by the police is to preserve record of events and activities conducted by them in the course of a given day. It is not a substitute of a book under section 154 CrPC, which records information provided by the complainant making out a cognizable offence, setting at motion investigation to collect evidence, or otherwise against the accused. Therefore, non-mention of name of accused and or a detail of the incident, if any, in daily diary in this case does not vitiate genuineness of the prosecution case or even contents of FIR.

**15.** From all angles, the prosecution has succeeded in establishing the case against the appellant. I do not find any reason to upset the findings of conviction and sentence, recorded by the trial Court against the appellant and acquit him. In the murder cases, it is settled that Courts are required to take dynamic approach and ignore minor discrepancies which although come on record but do not have

any adverse effect over merits of the case. Such discrepancies do occur in the evidence of witnesses due to a number of factors. The time lapse between actual incident and recording of evidence, a peculiar perception of each witness in absorbing main features of the event, his understanding, his angle to see the incident from etc. The discrepancies or contradictions, not injuring salient features of the case, are not to be given much weight so much so that on the basis thereof acquittal is recorded.

**16.** Accordingly, in view of above, the conviction and sentence recorded in both the cases by the trial Court are maintained. Consequently, both listed Appeals being devoid of any force are **dismissed** and **disposed of** accordingly. ***Office to place a signed copy of this order in captioned connected matter.***

**J U D G E**

Ahmad