

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No. S – 65 of 2020
(*Nisar Ahmed Ghori and others versus The State*)

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Cr. Jail Appeal No. S – 67 of 2020
(*Abdul Jabbar alias Jabbar Ghori versus The State*)

Dates of hearing : **13.05.2024 & 20.05.2024**

Date of announcement : **31.05.2024**

Mr. Sohail Ahmed Khoso, Advocate for appellants.
Mr. Ghulam Nabi Junejo, Advocate for complainant.
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – Appellants were charged for committing murder / *qatl-i-amd* of Ghulam Fareed, a brother of complainant, in the dates-garden of appellant / accused Abdul Jabbar Ghori, Deh Hajna Shah, Taluka Kingri, District Khairpur on 05.03.2011 in presence of witnesses including complainant. They were tried against such charge by learned Additional Sessions Judge-I (MCTC), Khairpur, and have been returned guilty verdict vide judgment dated 06.10.2020 in Sessions Case No.757 of 2011, arising out of Crime No.19 of 2011, registered as Police Station Ahmedpur, District Khairpur u/s, among others, 302 PPC, and sentenced to undergo imprisonment for life and to pay compensation of Rs.1,00,000/- (*Rupees one lac*) each, as required u/s 544-A CrPC, to the legal heirs, in case of non-payment, to suffer SI for six (06) months more. Benefit of Section 382-B CrPC has also been extended to them.

2. As per facts of FIR, registered on 05.03.2011 at about 1630 hours, accused party was not seeing eye-to-eye with complainant party on usage of a common street situated in the village. On the same day viz. 05.03.2011, complainant, his brother Ghulam Fareed, relatives Hakim Ali and Ghulam Shabbir were going to their land by using the same common street. When they reached in garden of date palms at about 03:00 pm, appellants armed with deadly weapons and co-accused, namely Rashid and Khadim (since acquitted) and Rabnawaz alias Dhol (since dead) called them out on the same issue. Thereafter, appellants Abdul Jabbar, Nisar Ahmed and Khalid from their respective guns fired at Ghulam Fareed hitting different parts of his body, whereas, co-accused Rashid and Rabnawaz alias Dhol fired upon complainant

hitting his right leg. Co-accused Khadim made aerial firing from his Kalashnikov, and then they all went to their village. Complainant saw his brother Ghulam Fareed critically injured with firearm injuries on different parts of his body, who within their sight succumbed to injuries and died after bleeding profusely. Complainant then leaving the witnesses behind appeared at police station in injured condition and registered FIR as stated above.

3. On 08.03.2011, during investigation, appellants Nisar Ahmed and Rashid were arrested and from them a DDBL gun each, used in crime, with four live cartridges of 12 bore (*from each one*) were recovered, which were sent to lab for a ballistic report. Appellant Khadim Hussain was arrested on 10.04.2011. Appellant Abdul Jabbar alias Jabbar was arrested on 08.05.2018, and from him a TT pistol of .30 bore with four live bullets was secured.

4. After usual investigation, Challan was submitted in the Court, and after due formalities, a charge was framed against the accused. They pleaded not guilty; hence, prosecution examined nine (09) witnesses who have produced all the necessary documents i.e. FIR, postmortem report, memos etc. to prove the charge against the appellants. Thereafter, statements of accused u/s 342 CrPC were recorded. They have denied prosecution's case, professed their innocence on the contrary, and opted not to examine either themselves on oath or any witness in defense. The trial Court, after examining the entire record, has handed down the impugned judgment as stated above.

5. Learned Counsel for the appellants has argued that they are innocent, have been falsely implicated in this case; no confidence inspiring evidence has been brought on record against them; the evidence of witnesses is weak in that on various features of the story they have contradicted each other; medical evidence contradicts version of events stated by the witnesses; it is contrary to the case set up by the prosecution and makes the presence of witnesses at the spot doubtful; the weapons have been imposed upon the appellants and mothering was recovered from them; the positive reports have been manipulated to favour the prosecution's case by the IO; evidence of IO rings ordinary, he has revealed the events mechanically in routine manner, which shows that he conducted investigation and submitted its report blindly at the instance of complainant. Learned Counsel also in arguments has doubted presence of *mashirs* by stating that their evidence lacks necessary details, and is not confidence inspiring. The prosecution's case is full of inconsistencies and contradictions, which learned trial Court has conveniently overlooked while recording conviction and sentence of the appellants.

6. On the contrary, learned Counsel for the complainant and learned Additional Prosecutor General have both supported impugned judgment, and have stated that no worthwhile contradiction has been pointed out by learned defense Counsel to give its benefit to the appellants. The FIR was promptly lodged containing all necessary details for initiating investigation against the nominated accused. In the investigation also, they were found guilty and the Challan was submitted accordingly. The appellants have been held guilty of the offence on the basis of confidence inspiring evidence. They have relied upon **2011 SCMR 460, 2012 SCMR 43, 2014 SCMR 348, 2018 SCMR 1001, 2020 SCMR 597, 2022 SCMR 1882, 2023 SCMR 831 and 2023 SCMR 1278.**

7. I have considered submissions of the parties and perused material available on record including the case law cited at bar. In this case, prosecution has examined two eyewitnesses including complainant. Out of them, complainant was injured at the spot. As per his evidence, he along with deceased Ghulam Fareed, PW Ghulam Shabbir and Hakim Ali were going to their land for grazing cattle, and when they reached the land of accused Abdul Jabbar at about 03:00 pm, he with a DBBL gun, Nisar Ahmed with a DBBL gun, Rashid (since acquitted) with a DBBL Gun, Khalid with a repeater, Rabnawaz alias Dhol (since dead) with a country-made pistol and Khadim Hussain (since acquitted) with a Kalashnikov accosted them from behind and cautioned them stating that despite their objection they had used the disputed street. And saying so, appellant Abdul Jabbar made straight fires upon Ghulam Fareed hitting left side of his abdomen, appellant Nisar Ahmed made fires from his gun at him hitting back side of his body, appellant Khalid also from his repeater made a direct fire upon him hitting left side of his wrist and elbow. Apart from describing such role of the appellants striking deceased with firearms, complainant has also stated that accused Rashid and accused Rabnawaz alias Dhol had made straight fires upon him hitting his left leg. He further states in evidence that acquitted accused Khadim had made firing from his Kalashnikov but without any loss.

8. PW-5 Ghulam Shabbir S/o Ajan Ghouri, in his evidence, has supported version forwarded by the complainant almost in same vein and has assigned direct role of firing upon deceased to the appellants. The part of the story, whereby complainant has alleged role of firing upon him to accused Rahid and Rabnawaz, has also been supported by him. He has also stood with the complainant over role of acquitted accused Khadim Hussain making aerial firing. Both the witnesses have been subjected to a lengthy cross-examination over material aspects of the case, but nothing disputing the facts constituting core of the incident has come on record to cause dent in the prosecution story.

They have stood firm, without wavering or faltering, to all the suggestions in cross-examination calling into question authenticity of their evidence and their presence on the spot.

9. Learned defense counsel, while referring to cross-examination of PW-6 Medico Legal Officer (*Exhibit 58*), has argued that the injuries to the complainant have been declared by him to be self-suffered. Therefore, his presence and consequently the entire case has become doubtful. It may be stated that although the Medico Legal Officer has stated in cross-examination the above fact, but at the time of issuing medical certificate of injured, he had not put down such remark thereon and thereby driving authenticity or validity of the injuries of the complainant to a serious doubt. Further, while recording his examination-in-chief, he has not referred to any such fact or document to show such aspect being part of his evidence. Therefore, it is not clear on basis of what notes or conclusion drawn by him at the time of examination of the injured, he in cross-examination has declared the injuries to the complainant to be self-suffered. Such blind declaration by him, without necessary record recording his first opinion over the same injury to be self-suffered or his notes putting down such opinion or a question mark, to a suggestion in cross-examination would not be counted as reliable. Further, he has not explained or supported his statement in the words or through the record to satisfy judicial consciousness of the Court to trust him on that point, when it is otherwise clear that nowhere in the record, he has said so. Therefore, mere such statement by the doctor would not undermine presence of complainant at the spot or nature of injuries suffered by him during the course of the incident. Complainant himself got injured in this case and in his evidence has reasonably explained all the facts and circumstances pertaining to the incident, particularly manner of its execution and the role of each appellant. Nothing unconscionable calling into question truthfulness of his evidence or for that matter evidence of the witnesses or validity of version put forwarded by them has come on record suggesting innocence of the appellants.

10. Appellants Nisar Ahmed and Rashid were arrested on 08.03.2011 and from them a DBBL gun each was recovered, which were then sent to the lab for FSL report. Such report has come in positive holding that the said guns, on the basis of matching profile with the empties recovered from the spot, have been used in the crime. Learned defense counsel, while referring to the delay in sending the crime empties and crime weapons to the lab for such report, has argued that such recovery and a positive report are not reliable. The report shows that the articles were received by the lab in a sealed condition and seals were found intact. Relevant memos recording recovery of weapons and crime

empties also show that at the time of their recovery they were duly sealed at the spot. The lab report finding the same seals intact would mean that no mishandling, tampering or manipulation happened meanwhile to establish circumstances leaning in favour of the appellants on this point. Even otherwise, nothing adverse has been suggested by the appellants against the police official who had conducted investigation in this case and preserved the incriminating evidence as above for lab reports. The recovery from the appellants was effected during the investigation of the case, which continued for some time, and meanwhile, the articles were sent to the lab for above purpose. Nothing shocking can be attributed to either conduct of the IO in preserving such evidence or to the lab for issuing positive report in respect of such evidence.

11. Even otherwise, recovery of weapons is only supporting evidence and has to be considered along with eye-account of the case. When the version furnished by the eyewitnesses is found confidence inspiring and without any major contradiction or inconsistency, the same would be sufficient to record conviction and sentence of the accused. Supporting evidence works only to verify the story and all relevant details which somehow are left while reporting the matter to the police in the heat of the movement. Such evidence, and its weakness, if any, neither can neutralize eye-account, nor can be used as a substitute of the version forwarded by the eyewitnesses, and given importance more than the one given to latter for determining guilt of the accused. It only props the story in the shape of material such as incriminating weapons, blood stained earth, lab reports etc. to lend validity, or otherwise, to the version of events brought up by the complainant and eyewitnesses to the fore for a probe by the Court.

12. Learned defense counsel, in his arguments, also suggested that injuries sustained by the deceased do not sync with the injuries described by the witnesses to have been sustained by him in that the Medico Legal Officer has stated that injuries on the person of deceased were discharged by firearm like Kalashnikov rifle. In this connection, it may be said, this ostensible discrepancy otherwise does not align with the findings of Medico Legal Officer recorded by him in postmortem report of the deceased. In the postmortem report, he has opined that the death of deceased was caused by discharge from firearm. He has not named any weapon or the fact that the injuries sustained by the deceased tally with the injuries which could be caused by a Kalashnikov rifle etc. Interestingly, the postmortem report shows that a pallet was recovered by the doctor at the time of postmortem and it was handed over by him to a PC in a sealed condition. With recovery of a pallet from the body of deceased and no

opinion recorded in the postmortem report by the doctor, his statement disclosing that these injuries could have been caused from the discharge of firearm like Kalashnikov appears to be hollow on the one hand and on the other obliging in nature aimed at favouring the accused for the reasons best known to him. More so, the tone and tenor of such statement shows that even the doctor is not sure about validity of his declaration as he has stated that injuries could have been caused by the discharge from firearm like Kalashnikov. This means that even he was not sure about the injuries to have been caused by the rifle like Kalashnikov etc. Therefore, even in presence of such statement, the injuries to the deceased to have been caused from fires issued from the guns / repeater could not be doubted.

13. Apart from these minor discrepancies, nothing substantial was pointed out by learned defense counsel in his arguments, which may trigger streak of suspicion in the mind to give its benefit to the appellants. Some discrepancies as to who had gone with the complainant to the police station for FIR or along with the police who had come at the spot to take the dead body to police station and hospital, as highlighted by learned counsel in defense to be the major contradictions, are in fact minor in nature leaving no adverse impact over salient features of the case.

14. The evidence of other witnesses like *mashir* and IO etc. has also gone unchallenged insofar as their respective role in the case is concerned. IO in detail has described entire account of investigation, arrest of appellants and recovery of incriminating weapons from them. These witnesses have also been subjected to a reasonably lengthy cross-examination, but nothing shocking insofar as their performance in investigation or in evidence has come on record to infer that entire investigation and recoveries effected were manipulated to cause prejudice to the appellants.

15. In my view, entire chain constituting the original incident to completion of investigation, and evidence and its manifest character is without any missing link. The prosecution has succeeded in establishing charge against the appellants through best evidence, which is without any major contradiction. The minor discrepancies, pointed out in defense, always come on record due to varied factors like lapse of time in the incident and recording of evidence. It is however settled that such lapses in the evidence of witnesses cannot be given much importance for a reason that they don't happen to undermine essence of the case put up to the Court for a consideration. The appellants have already been dealt with leniently by the learned trial Court on being visited with imprisonment for life instead of death penalty, a normal punishment. Nothing is

available on record, as discussed above, to give further leniency to the appellants by considering their case falling u/s 302(c) PPC instead of 302(b) PPC as concluded by the trial Court.

16. Appellants Nisar Ahmed and Abdul Jabbar alias Jabbar have also challenged their conviction and sentence recorded vide impugned judgments dated 06.10.2020 for possessing a DDBL gun with four live cartridges of 12 bore, and a TT pistol of .30 bore with four live bullets recovered from them on 08.03.2011 in investigation of main crime and on 08.05.2018 during arrest respectively. In trial, the prosecution, in order to establish such charge against them, has examined three (03) PWs in each case. Nothing has been pointed out by learned defense counsel to show that police had any enmity to falsely implicate them in such cases and effect recovery of weapons from them, which, as per lab reports, as mentioned above, are identified as crime weapons. The recovery from appellants has been proved and in cross-examination of witnesses no worthwhile contradiction undermining recovery proceedings from the appellants has come on record, and none in fact was pointed out by learned defense counsel in his arguments to think appellants' involvement in such cases to be outcome of some manipulation.

17. In view of above discussion, I find the appeals in hand meritless and accordingly **dismiss** them upholding and maintaining the conviction and sentence awarded to the appellants.

The appeals are accordingly **disposed of**.

J U D G E

Abdul Basit