IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No.S-36 of 2019

Present:
Mr. Justice Zulfiqar Ali Sangi.

Appellant:	Ali Nawaz son of Shah Nawaz by caste Sahito Through, Mr. Nisar Ahmed Bhambhro, advocate
State through	Mr. Khalil Ahmed Maitlo, DPG assisted by Mr. Abdul Mujeeb Shaikh, advocate for complainant.
Date of hearing:	***13.11.2023***
Date of decision:	**06.02.2024.**

J U D G M E N T

Zulfiqar Ali Sangi, J.– The appellant/accused named above has filed instant Crl. Jail Appeal through Superintendent Central Prison, Khairpur whereby he has impugned the judgment dated 01.03.2019, passed by 1st Additional Sessions Judge Khairpur, in Sessions Case No. 912 of 2014 (Re. The State Vs. Ali Nawaz and others) arising out of FIR No.148/2014 offence u/s 302, 324, 114 & 34 PPC registered at P. S Gambat, whereby he was convicted and sentenced to suffer imprisonment for "Life" and to pay compensation of Rs. 500,000/- to the legal heirs of deceased Ashique Ali, in terms of Section 544-A Cr.PC. In case of default of payment of compensation amount, the appellant/accused shall undergo S.I for six months more with benefit of 382-B Cr. P.C, hence he preferred the instant appeal.

2. Precisely, the case of prosecution as unfolded in the FIR lodged by complainant Mst. Sadori on 19.07.2014 at 1635 hours at PS Gambat are that some-time ago her brother Shah Nawaz brought Holy Quran to her saying that due to some problem they want to reside at her house, to which complainant allowed them. About 2/3 days before this incident complainant told her brother to arrange for his separate house and vacate the possession of the house, which annoyed accused Shah Nawaz. On the day of incident i.e 19.07.2014 she along with her sons namely Abdul Majeed, Punhal, Ashique Ali and other inmates of the house were available. It was about 03.30 p.m, where accused Ali Nawaz, Shah Nawaz armed with pistols, Mst. Irshad and Mst. Sanam empty handed entered into the house of complainant and they said to complainant that she is insist them to vacate the house and some hot words were exchanged between them, meanwhile accused Mst. Irshad and Mst. Sanam instigated other accused to commit murder of complainant party on which accused Ali Nawaz

made straight pistol fire with intention to commit murder upon her son Ashique Ali, which hit him and fell down. Then accused Shah Nawaz made direct fire upon her son Abdul Majeed in order to commit his murder, which went missed. Then, all the accused escaped away. Complainant party found Ashique Ali having firearm injuries under left nipple which went through and through, blood was oozing and he became unconscious. After arranging conveyance, injured Ashique Ali was shifted to Taluka Hospital Gambat, where he succumbed to injuries, complainant while leaving above named PWs over dead body to guard went to P.S and lodged FIR against the accused as stated above.

3. On the conclusion of usual investigation, challan was submitted against the accused for offence U/S 302, 324, 114 & 34 PPC.

4. After completing legal formalities, the trial Court had framed charge against appellant and other co-accused to which they pleaded not guilty and claimed to be tried.

5. In order to prove accusation against accused, the prosecution has examined 11 witnesses, they have produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed.

6. The appellant and other co-accused were examined under section 342 Cr.PC, wherein they had denied the allegations leveled against them and pleaded their innocence. After hearing the parties and assessment of the evidence, the trial Court acquitted accused Shah Nawaz, Mst. Irshad Khatoon and Mst. Sanam while convicted and sentenced the appellant /accused as stated above, against the said conviction appellant/accused has preferred this appeal.

7. Learned Counsel for appellant/accused contended that the appellants have been falsely implicated in the present case by the complainant party due to matrimonial affairs, that the witnesses being closely related to the deceased are interested witnesses hence they have falsely deposed against the appellant; that the evidence adduced by the prosecution at the trial is not properly assessed and evaluated by the trial Court which is insufficient to warrant conviction against the appellant/accused; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellant/accused; that the material contradictions appeared in the statements of prosecution witnesses on crucial points, but those have not been taken into consideration by the learned trial Court while passing impugned judgment; that the judgment passed by the trial Court is perverse and liable to be set-aside; that co-accused have been acquitted by the trial Court. Lastly he prayed that the appellant /accused may be acquitted by

extending him the benefit of doubt. In support of his contentions, learned Counsel for the appellant has relied upon the cases Pathan vs. The State (2015 SCMR 315), Safdar Abbas and others vs. The State (2020 SCMR 219), Tarique Ali Shah and another vs. The State and other (2019 SCMR 1391), Mst. Nazia Anwar vs. The State and others (2018 SCMR 911), and Muhammad Mansha vs. The state (2018 SCMR 772).

8. Conversely, learned DPG appearing for the State assisted by Mr. Abdul Mujeeb Shaikh, learned counsel for complainant has opposed the appeal on the ground that prosecution has successfully proved its case against the appellant/accused beyond a reasonable doubt and all the witnesses have fully implicated the appellant/accused in their evidence recorded by the trial Court; that all the necessary documents memos, FIR including post mortem have been produced; that medical evidence is consistent with the ocular version; that during the cross-examination the learned counsel had not shaking their evidence; that there are no major contradictions in the evidence of prosecution witnesses, lastly he submitted that appellant/accused were rightly convicted by the trial Court and prayed that appeal of appellant/accused may be dismissed. In support of his contention he has relied upon, Anwar Shamim and another vs. The State (2010 SCMR 1791) and Muhammad Ashraf vs. The State and others (2019 SCMR 1368)

9. I have heard learned Counsel for the appellant/accused, learned D.P.G for the State and have examined the record carefully with their able assistance.

10. To establish the ocular account, the prosecution examined three eye-witnesses of the incident namely complainant Mst. Sadori wife of Muhammad Saleh (PW-1), Abdul Majeed son of Muhammad Saleh (PW-2) and Punhal son of Muhammad Saleh (PW-3), who being star/natural witnesses of the actual occurrence deposed unanimously in one voice that on the day of incident 19.07.2012, accused Shah Nawaz, Ali Nawaz both came duly armed with pistols. Accused Ms. Sanam and Mst. Irshad both came along with them. After coming, both the accused Mst. Irshad and Mst. Sanam instigated others to commit their murder. Accused Ali Nawaz then made fire upon Ashique Ali with intention to commit his murder which hit him on chest beneath the left nipple. As per evidence of complainant and PWs accused Shahnawaz also made fire upon Abdul Majeed (PW-2), which went missed. Then all accused escaped away. The injured was taken into hospital for treatment. During treatment at Gambat hospital, injured Ashique Ali succumbed to his injuries. The complainant while leaving PWs over dead body, went to P.S and lodged FIR. The dead body of deceased was handed over to Punhal (PW-3) after the postmortem. Complainant deposed that on her pointation police inspected the place of incident and secured one empty bullet and blood stained earth from the spot.

11. All the three witnesses were cross-examined at length but nothing favourable to appellant has been pointed out by the defence counsel. In the present case the eye-witnesses have fully supported the case, as has been discussed above. Even otherwise the sole evidence of a material witness i.e an eye-witness is always sufficient to establish guilt of the accused if it is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers quality of evidence and not its quantity to prove the charge. The accused can be convicted if the Court finds direct oral evidence of ***one eye-witness*** to be reliable, trustworthy and confidence-inspiring. In this respect, reliance is placed upon cases of ***Muhammad Ehsan v. The State (2006 SCMR 1857)*** and ***Niaz-Ud-Din v.The State (2011 SCMR 725)***. Further, the Supreme Court in case of ***Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)*** also held that "*even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable."* There can be no denial to the legally established principle of law that it is always the ***direct evidence*** which is material to decide a ***fact (charge)***. The failure of direct evidence is always sufficient to hold a criminal charge as 'not proved' but where direct evidence holds the field and stands the test of it being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can safely be placed on case of ***Muhammad Ehsan vs. the State (2006 SCMR-1857),*** wherein the Honourable Supreme Court of Pakistan has held that;-

> *"5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and* ***not a mandatory rule to be applied invariably in each case*** *rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence".*

12. The ocular account so furnished by above eye-witnesses is further substantiated by the medical evidence. The PW-10 Dr. Kamran Rasool who conducted post mortem of deceased Ashique Ali has deposed that on 19.07.2014, while conducting the post mortem of deceased Ashique Ali, he found the following injuries:-

> "1. Sixth rib was fractured
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> 2. Lacerated wound at left side of chest 1 cm and passed through and through with exit wound measuring 2 cm from right side

From external as well as internal examination of the dead body of deceased Ashique Ali, the doctor was of the opinion that the death had occurred due to firearm injuries as shown above, and excessively bleeding shock, as the injuries was ante-mortem in nature. All the injuries were caused by discharge from firearm weapon.

13. It is observed that medical evidence is in the nature of *supporting, confirmatory or explanatory* of direct or circumstantial evidence, and is not *"corroborative evidence"* in sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with commission of the offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence concerning certain facts including the seat of injury, nature of injury, cause of death, kind of weapon used in the occurrence, duration between injuries and death, and presence of an injured witness or the injured accused at place of occurrence, but it does not connect accused with commission of the offence. It cannot constitute corroboration for proving involvement of accused person in commission of the offence, as it does not establish identity of the accused person. Reliance can be placed upon cases of ***Yaqoob Shah v. State (PLD 1976 SC 53); Machia v. State (PLD 1976 SC 695); Muhammad Iqbal v. Abid Hussain (1994 SCMR 1928); Mehmood Ahmad v. State (1995 SCMR 127); Muhammad Sharif v. State (1997 SCMR 866); Dildar Hussain v. Muhammad Afzaal (PLD 2004 SC 663); Iftikhar Hussain v. State (2004 SCMR 1185); Sikandar v. State (2006 SCMR 1786); Ghulam Murtaza v. Muhammad Akram (2007 SCMR 1549); Altaf Hussain v. Fakhar Hussain (2008 SCMR 1103) and HashimQasim v. State (2017 SCMR 986).*** In the case in hand, the medical evidence is fully supported with ocular evidence in respect of injuries received by the two injured persons and the deceased which as per this piece of evidence were caused by firearm weapon which also supports the time of receipt and duration of injuries as stated by three eye witness.

14. The ocular account supported by the medical evidence is further corroborated from the evidence of Mashir **PW-6 Muhammad Saleh** who deposed that inquest report was prepared in his presence. After inspection of the injuries of deceased such Mashirnama was prepared and his LTI was obtained thereon. Thereafter, place of incident was visited in his presence where from empty and blood stained was secured, which were sealed separately. Such mashirnama was prepared in his presence with his LTI. Then, last worn clothes of the deceased were produced in his presence, which were sealed by the IO and such mashirnama in his presence and with his LTI was prepared. **PW-9 ASI Allah Wadhayo** supported the arrest and recovery of TT pistol along with 05 live

bullets from the appellant. The investigation officer, author of FIR and the Tapedar who prepared the sketch of place of incident and other mashirs in respect of the arrest of co-accused who were acquitted by the trial court were also examined and supported the case of prosecution. All these witnesses were cross examined by the defence counsel at length but nothing favourable to the appellant come on the record.

15. Learned counsel for the appellant mainly contended that the witnesses are near relatives to deceased and are interested, therefore their evidence cannot be relied upon, the contention raised in this regard carries no force, as the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence wherein an innocent person was done to death brutally. Both the parties are known to each other as is evident from their evidence; therefore, there was no chance of mistaken identity of the appellant. The appellant is also in blood relation to the complainant party as has been admitted by the appellant party during the cross-examination and not denied such relations as deposed by the complainant party, in such circumstances it is hardly to believe that one can exonerate a real culprit and involved an innocent person who also being his near/blood relative. It is observed that where the witnesses fall within the category of natural witnesses and detailed the manner of incident in a confidence-inspiring manner then only escape available with the accused/appellant is to satisfactorily establish that witnesses are not the witnesses of truth but "**interested**" one. An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate an accused. Mere relationship of eye-witnesses with the deceased alone is not enough to discard testimony of the complainant and her witnesses. In matters of capital punishment, the accused would not stand absolved by making a mere allegation of dispute/enmity but would require to bring on record evidence that there had been such a dispute/enmity which could be believed to have motivated the "**natural witnesses"** in involving innocent at the cost of escape of **"real culprits"**. No tangible substance has been brought on record by the appellant to justify his false implication in this case at the hands of complainant party on account of enmity or ill will. Reliance is placed on the case of ***Zulfiqar Ahmed & another v. State (2011 SCMR 492)***, wherein the Supreme Court of Pakistan has held as under:-

> *"...It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of 'interested witness' was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR-01) and it was held that 'friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused"*

16. Learned counsel for the appellant had pointed out some minor contradictions in the evidence which in my view are not sufficient to discard evidence of the eye-witnesses who have fully supported the case of prosecution on each and every aspect. Their evidence is further supported by the medical evidence and the circumstantial evidence which includes the recovery of crime weapon from the appellant which he used at the time of offence. The acquittal of the appellant from the arms cases does not entitle him to be acquitted in the murder case automatically, where strong evidence is available. Reliance is placed on the case of *Sikandar alias Tegharni alias Muhammad Bux Teghani v. The State (2016 YLR 1098).* It is settled principle of law that where in the evidence, the prosecution established its case beyond reasonable doubt then if there arise some minor contradictions which always are available in each and every case as no one can give evidence like a pen-picture, hence the same are to be ignored. The reliance is placed on case of ***Zakir Khan V. The State (1995 SCMR 1793)***, wherein the Supreme Court of Pakistan has held as under:-

> *"13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused."*

17. Acquittal of co-accused Shah Nawaz, Mst. Irshad and Mst. Sanam is also no helpful to the appellant as they apparently have a different case. It is observed that the principle of falsus in unofalsus in omnibus is not applicable to the present case. The Court(s) are always required to follow the principle of appraisal of evidence by sifting of grain out of chaff. For example, if an ocular testimony of a witness is to be disbelieved against a particular set of accused and is to be believed against another set of accused facing the same trial, then the Court must search for independent corroboration on material particulars. Thus, mere acquittal of one accused would never be sufficient to earn acquittal of another accused (convicted person), unless it is established that case of

convicted accused squarely is similar to that of acquitted accused and there was/is no independent corroboration /supportive material for such conclusion.

18. In case of ***Iftikhar Hussain v. State (*2004 SCMR-1185),** it has been observed by the Hon'ble apex Court that:-

> *"17. It is true that principle of falsus in unofalsus in omnibus is no more applicable as on following this principle, the evidence of a witness is to be accepted or discarded as a whole for the purpose of convicting or acquitting an accused person, therefore, keeping in view prevailing circumstances, the Courts for safe administration of justice follow the principle of appraisal of evidence i.e sifting of grain out of chaff i.e if an ocular testimony of a witness is to be disbelieved against a particular set of accused and is to be believed against another set of the accused facing the same trial, then the Court must search for independent corroboration on material particulars as has been held in number of cases decided by the superior Courts. Reference may be made readily to the case of **Sarfraz alias Sappi and 2 others v. The State 2000 SCMR 1758,** relevant para there from is reproduced here-in-below;*
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> *"thus the proposition of law in criminal administration of justice namely whether a common set of ocular account can be used for recording acquittal and conviction against the accused persons who were charged for the same commission of offence is an over-worked proposition. Originally the opinion of the Court was that if a witness is not coming out with a whole truth his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim falsus in unoflasus in omnibus but subsequently this view was changed and it was held that principle enshrined in this maxim would not be applicable and testimony of a witness will be acceptable against one set of accused though same has been rejected against another set of accused facing same trial. However, for safe administration of justice a condition has been imposed namely that the evidence which is going to be believed to be true must get independent corroboration on material particulars meaning thereby that to find out credible evidence principle of appreciation of evidence i.e sifting chaff out of grain was introduced as it has been held in the cases of SyedAli Bepari v. NibaranMollah and others (PLD 1962 SC-502).....*

19. For what has been discussed above, I have arrived at the judicious conclusion that the learned trial Court on being finding the present appellant/accused as guilty of murder of the deceased Ashique, has rightly convicted and sentenced him and thus has committed no illegality or irregularity while passing the impugned judgment which even otherwise is based on sound reasoning, therefore, it does not call for any interference by this Court. Resultantly, instant Criminal Jail Appeal being devoid of merits is hereby dismissed.

JUDGE