

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Criminal Jail Appeal No.S-21 of 2021

Appellant: Ghulam Shabir son of Muhabat Chandio
Through Mr.Farhat Ali Bugti, Advocate

Complainant: Abdul Raheem s/o Ahmed Khan Chandio
Through Mr.Suhendar Kumar Gemnani,
Advocate

The State: Through Mr.Aitbar Ali Bullo, D.P.G.

Date of hearing: **27-07-2023**

Date of decision: **04-08-2023**

JUDGMENT

KHADIM HUSSAIN SOOMRO, J:- The listed criminal jail appeal calls into question the impugned judgment dated 30.03.2021, delivered by learned 1st Additional Sessions Judge/MCTC, Qamber, in Sessions Case No.286/2013 (Re. St. Vs. Ghulam Shabir), emanating from FIR bearing Crime No.84/2013, for an offence punishable U/S.302, 337-H(ii), 148, 149 PPC registered with Police Station, Qamber, whereby the present appellant was convicted for an offence punishable U/S.302(b) PPC and sentenced to suffer rigorous imprisonment for life as *Tazir* with a fine of Rs.30,00,000/- to be paid to legal heirs of the deceased and in default whereof, to suffer simple imprisonment for six months more, with the benefit of Section 382-B Cr.PC.

2. Concise facts of the prosecution case, as unfolded in the FIR lodged by complainant Abdul Raheem Tamani Chandio on 24.04.2013, are to the effect that on an eventful day, the present appellant/accused accompanied by rest of the culprits, duly armed with sophisticated weapons, assembled at Waggan road near the shop of one Rahib Chandio and in the prosecution of their common object, after committing murder of Abdul Qadir and Saifullah @ Hallar (brother and nephew of the complainant), causing them fire

shot injuries, went away by making aerial firing to create harassment, for that the instant case was registered against them.

3. The police, on completion of the usual investigation, submitted the final report under Section 173 Cr.PC against the accused. The formal charge was framed against the present appellant/accused by the learned trial Court, to which he pleaded not guilty and claimed trial.

4. The prosecution to establish the accusation against the present appellant/accused, examined PW-01 Complainant Abdul Raheem, PW-02 Eye-witness Abdul Majeed Chandio, PW-03 Habib-ur-Rehman Chandio, PW-04 Tapedar Farman Ali Makol, PW-05 ASI Abdul Nabi, PW-06 Corpse bearer HC Nabi Bux, PW-07 Dr.Ramesh Lal, PW-08 SIO/SIP Mumtaz Ali Rahoojo, PW-09 Mashir HC Mazhar Ali Chandio, PW-10 Mashir Amanullah Chandio, PW-11 Author of FIR namely ASI Ashique Ali Gopang and PW-12 SIO/Inspector Muhammad Yaseen Taggar, who all produced certain relevant documents in support of their statements and then the prosecution closed its side.

5. The present appellant/accused in his statement recorded in terms of Section 342 Cr.PC denied the allegations levelled against him by pleading his innocence, stating therein that this matter was resolved through Nekkard, so other accused were acquitted. Now the complainant and eye-witnesses have become greedy and demanded more amount, so he prayed for justice. However, he did not examine himself on oath to disprove the charge nor lead any evidence in his defence.

6. The learned trial Court, on an appraisal of the evidence, brought on record and hearing counsel for the parties, convicted and sentenced the present appellant/accused vide impugned judgment, as discussed above.

7. Per learned defence counsel, there are material contradictions in the evidence of prosecution witnesses which have shattered the veracity of their evidence; that the complainant and P.Ws being related inter-se are interested witnesses and their evidence having no credibility, cannot be relied upon without independent corroboration;

that there is conflict in between the ocular and medical accounts; that the prosecution has failed to prove motive. Summing up his contentions, the learned defence counsel submitted that the present appellant had been arraigned in this case on account of earlier enmity, which is discernible from the narration given in the FIR itself. He lastly concluded that the case of the prosecution is doubtful and the appellant is entitled to his acquittal in the circumstances of case. In support of his contentions, he relied upon case laws reported as *2022 SCMR-393, 2022 SCMR-986, 2021 SCMR-455, PLD 2019 SCMR-527, 2021 SCMR-471, 2017 SCMR-344, 2011 PCr.LJ-470, 2017 SCMR-1672 and 2017 SCMR-1468.*

8. Conversely, learned counsel for the complainant and learned DPG for the State submit that all the witnesses have fully supported the case of the prosecution and no central contradiction has been noticed in their evidence, and the evidence so led by the prosecution witnesses is consistent, confidence-inspiring and credible; that the appellant/accused has failed to establish his false involvement in this case and that the plea taken by him in his statement recorded under Section 342 Cr.PC is nothing but a concocted being an afterthought; that two innocents have been done to death brutally on account of previous ill-will; that the ocular evidence is consistent with the medical as well circumstantial account, in that situation, learned trial Court finding the present appellant/accused guilty of the offence has rightly convicted and sentenced him by way of the impugned judgment which even otherwise does not call for any interference by this Court; hence, the appeal filed by him being meritless is liable to its dismissal. In support of contentions, learned counsel for the complainant relied upon cases of *2021 SCMR-354, 2020 SCMR-597, 2011 SCMR-925 and 2011 SCMR-171.*

9. I have given due consideration to the arguments advanced by learned counsel for the parties and have minutely gone through the material made available on the record with their able assistance.

10. It is borne out from the record that eight accused were nominated in the present case, and each of them was tried one after

the other in various rounds of proceedings, and each round is highlighted individually for maximum effect.

11. In the first round of proceedings, accused Muhammad @ Khashoo s/o Jumo Tamani Chandio and Arbab s/o Niazal Tamani Chandio were tried, wherein PW-03 Complainant Abdul Raheem, PW-04 Abdul Majeed, PW-05 Habib-ur-Rehman (eye-witnesses) and PW-06 Ahmed Khan, PW-07 Mst. Kulsoom was examined, all the above eye-witnesses in the first round of proceedings unanimously deposed in their examination-in-chief against the accused Muhammad Yaqoob, who was acquitted in the second round of proceeding, the relevant pieces of evidence is reproduced as under:-

"All of sudden one unknown accused made pistol fire at my brother Abdul Qadir, which hit him above nose."

"Accused Yaqoob made pistol fire straight at my brother Abdul Qadir, which hit him on his left eye. Accused Ghulam Shabeer (present appellant) also made straight fire at my brother Abdul Qadir, which hit him below his right nose."

All of the witnesses, including eye-witnesses as cited above, admitted in their cross-examination that those named above accused were not present at the time of the incident; resultantly, they were acquitted by learned trial Court by way of the judgment dated 22.09.2020.

12. In the second round of proceedings, accused Muhammad Yaqoob s/o Nizamuddin Chandio was arrested and tried. PWs Abdul Raheem, Abdul Majeed and Habib-ur-Rehman, in their examination-in-chief, exonerated the above accused by saying that an unknown person made a straight fire at deceased Abdul Qadir, which hit him on his left eye. in their cross-examination, they admitted that accused Muhammad Yaqoob Chandio was not present at the time of the incident; however, looking at their evidence, learned DDPP for the State closed the prosecution side of evidence by filing a statement and consequently accused Muhammad Yaqoob was acquitted by learned trial Court vide judgment dated 03.11.2020.

13. The third round of proceedings is based upon trial against the accused, namely 1).Deedar s/o Nazroo Chandio, 2). Gul Hassan s/o Imamuddin Chandio, 3). Rahab s/o Ameer Bux Chandio and 4). Mehmood s/o Ghulam Hussain Chandio, wherein all these eye-witnesses, namely Abdul Majeed and Habib-ur-Rehman, deposed that accused persons arrived with muffled faces, without any reason, directly fired upon Abdul Qadir and Saifullah @ Hallar, whereas PW Ahmed Khan who is the father of the deceased deposed that his sons had informed him about the incident. The prosecution side of the evidence was closed by the learned DDPP for the State filing such a statement saying therein that the complainant of the case had gone out of the station and would not appear to record his testimony. Hence, the learned trial court acquitted all the above-cited accused by judgment dated 10.11.2020. It is important to note here that all the acquitted accused, tried from the first to third round, were nominated in the FIR, and all eye-witnesses recorded their statements under section 161 CrPC, in which they fully supported the version of the complainant by assigning the specific role and active roles of firing to the accused Muhammad alias Khashoo and Yaqoob; however, none of the eye-witnesses deposed against the accused, and resultantly, they were acquitted by the learned trial court.

14. The fourth round of proceedings relates to the trial against the present appellant/ accused. In that round, each of the eyewitnesses has taken a U-turn by adducing conflicting stances from their earlier statements recorded in the first, second and third rounds of proceedings. At this juncture, they, in order to implicate the present appellant, have unanimously deposed in their examination-in-chief. That **"All of sudden, one unknown accused made pistol fire straight at my brother Abdul Qadir, which hit him above the nose. Accused Yaqoob made pistol fire straight on my brother Abdul Qadir, which hit him on his left eye and accused Ghulam Shabir (present appellant) has also made a straight fire on my brother Abdul Qadir, which hit him below his right nose"**. All the eyewitnesses almost deposed the same word by word. The veracity and the conduct of the eyewitnesses can be judged from the facts that in the first round of proceedings, they denied the presence of the

acquitted accused Muhammad alias Khashoo and Arbab, at the venue of occurrence. Likewise, in the second round, they denied the presence of acquitted accused Yaqoob. In the third round, they deposed that all the accused with muffled faces fired upon the deceased without any reason and in the fourth round, these eyewitnesses deposed against all accused nominated in the FIR, including those who were acquitted from the first to third rounds of proceedings and those judgments of their acquittal have not been challenged by the complainant, till today and the same have attained its finalities.

15 . Whether on the basis of wavering, inconsistent statements of the prosecution witnesses recorded from the first round of proceeding to the fourth rounds of proceedings, the appellant can be awarded capital punishment?

16. The evidence of eye-witnesses so recorded from the first to fourth rounds on deeper analysis have been found false, wavering, misleading and untrustworthy throughout the proceedings with regard to the implication of the acquitted accused and their participation in the commission of the offence. The eye-witnesses in the first to third rounds exonerated accused Muhammad alias Khasho, Arbab, Yaqoob and Deedar and others, however in the fourth round of proceedings, they have implicated, although all the above accused were acquitted by the learned trial court ; as such, the credibility of such witnesses regarding the involvement of the present appellant in the same occurrence would be irreversibly shaken, not a trustworthy. It is a well-settled principle of law that if the witnesses are not telling the truth in their entirety, then their testimonies are to be discarded, and such useless evidence cannot be used to convict the accused

17. The administration of the criminal justice system depends upon the principle of fairness and equality to ensure that every individual is to be treated justly. When false evidence is presented, it distorts the truth and can lead to unjust outcomes where Innocent individuals may wrongly be accused and convicted, while the guilty might escape from accountability. False evidence disrupts the pursuit

of justice and can lead to wrongful convictions or dismissals of legitimate cases. This undermines the trust and confidence of the people in the judicial system, which can result in innocent individuals suffering undeserved consequences. Any compromise on truth is a compromise on a society's future as a just, fair and civilized society since truth is the cornerstone of justice and justice is the Centre and bedrock of a civilized society.

18. We are directed and informed by the verses of the Quran as to the significance that Islam places on the burden of proof that must be met. In fact, the "Holy Qur'an" places such a high value on meeting the required standard of evidence that it not only provides for a penal punishment but also for the withdrawal of such a person's civic right to give evidence in all matters of his life. Let's seek guidance from Islam which provides a complete code to human life and provides management to all spheres of human life, from the cradle to the grave; Islam is logical and rational. Almighty Allah in directed us not to conceal testimony, be persistently standing firm for Allah and be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relative. Almighty Allah says Surah Al-Baqarah: Verse 23 says that “ . And do not conceal testimony, for whoever conceals it-his heart is indeed sinful” again in the same surah in verse no 283) "O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just, that is nearer to righteousness. And fear Allah; indeed, Allah is acquainted with what you do" (Surah Al-Ma'idah: Verse 8) “O you who have believed, be persistently standing firm in justice, witnesses for Allah, even if it be against yourselves or parents and relatives" (Surah Al-Ma'idah: Verse 106)"And avoid false statement"(Surah Al-Haj: Verse 30)"And they who do not bear witness to what is false"

19. It is clear from the above that individuals who remain steadfast in their testimonies are among the virtuous and faithful and that doing so is an obligatory duty. Among the necessities of faith is giving truthful testimony, even if that witness is against oneself or a close family. If there aren't enough eyewitnesses to provide a fair trial, and the victim's rights are in danger of being violated; as a result, the burden of proof falls squarely on the shoulders of those who can

testify. Concealing evidence is disapproved of in Islam and reviled by the laws of nature; therefore, Muslims must testify openly. There are various problems with testifying falsely, including that it fosters injustice and hostility and undermines the cause of justice. It also endangers public safety and security while undermining justice.

20. The Sunnah refers to the teachings, actions, approvals, and statements providing practical explanations and elaborations on how to implement the teachings found in the Quran. According to the Holy Prophet (Peace Be Upon Him), false testimony is one of the greater sins in Islam, and the following Ahadith demonstrates the significance attached to giving true testimony of the Prophet Muhammad (peace be upon him). It serves as the second source of Islamic law and complements of the Quran;

It was narrated by Hazrat Anas (R.A) that the Prophet (PBUH) was asked about the great sins. He said, they are (1) To join others in worship with Allah; (2) To be undutiful to one's parents; (3) To kill a person (which Allah has forbidden to kill) (i.e. to commit the crime of murdering) and (4) to give a false witness.

It was narrated by Hazrat Abdullah (R.A) that the Prophet (PBUH) said if somebody takes a false oath in order to get the property of a Muslim (unjustly) by that oath, then Allah will be angry with him when he will meet Him.

"To testify falsely tantamounts to polytheism." It is mentioned in Tafsir Abdul Al-Fath Razi that the Holy Prophet (PBHU) repeated said statement thrice and then quoted Verse No. 30 of Surah Al-Haj stating that "... And avoid false statement."

21. This aspect of the case suggests that the prosecution witnesses have tried to prove the case by making dishonest improvements in the all four rounds of proceedings before the trial court as discussed above. The guidelines to this aspect of the case have been taken from a case of **Muhammad Mansha v. The State (2018 SCMR-772)**, wherein it has been observed that;-

"Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony

is not worthy of credence. The witnesses in this case have also made dishonest improvement in order to bring the case in line with the medical evidence (as observed by the learned High Court), in that eventuality conviction was not sustainable on the testimony of the said witnesses. Reliance, in this behalf can be made upon the cases of Sardar Bibi and another v. Munir Ahmad and others (2017 SCMR 344), Amir Zaman v. Mahboob and others (1985 SCMR 685), Akhtar Ali and others v. The State (2008 SCMR 6), Khalid Javed and another v. The State (2003 SCMR 1419), Mohammad Shafique Ahmad v. The State (PLD 1981 SC 472), Syed Saeed Mohammad Shah and another v. The State (1993 SCMR 550) and Mohammad Saleem v. Mohammad Azam (2011 SCMR 474).”

In that eventuality, the conviction upon the statements of the witnesses who, in the assessment of the High Court, made dishonest improvements and their divergent stances in the FIR and the private complaint made them doubtful then there was no legal justification to convict the appellant Muhammad Mansha on the same set of evidence without independent corroboration conspicuously lacking in the instant case, as held by this Court in the cases of Ghulam Sikandar and another v. Mamaraz Khan and others (PLD 1985 SC 11), Sarfraz alias Sappi v. The State (2000 SCMR 1758), Iftikhar Hussain and others v. The State (2004 SCMR 1185), Akhtar Ali and others v. The State (2008 SCMR 6), Muhammad Ali v. The State (2015 SCMR 137), Mst. Sughra Begum and another v. Qaiser Pervez and others (2015 SCMR 1142) and Shahbaz v. The State (2016 SCMR 1763). The above principle has been appreciated by the High Court in the instant case, but erroneously convicted the petitioner against the said settled principle.”

22. The prosecution in order to substantiate the circumstantial account, examined Tapedar Farman Ali, who prepared the sketch of the place of the incident and produced the same at Ex.10-A, but in his cross-examination, he admitted that he did not accompany the complainant at the place of incident. PW-5 Abdul Nabi was also examined, who arrested the present appellant on 15.02.2021 being absconder in the present case and in some other cases; while taking his body search, one unlicensed pistol of 30 bore along with four live bullets was recovered from him, and a separate FIR being crime no 13 of 2021 U/S.23-of S.A.A 2013, at P.S Mahi Makhol was registered

against the appellant; however, he was acquitted of the above crime by the trial court vide judgment dated 23-12-2021.

23. The rule of benefit of the doubt is essentially a rule of prudence, which cannot be ignored while dispensing justice in accordance with law. The conviction must be based on unimpeachable evidence and certainty of guilt and doubt arising in the prosecution case must be resolved in favor of the accused. The said rule is based on the maxim “It is better that ten guilty persons be acquitted rather than one innocent be convicted” which occupied a pivotal place in the Islamic Law and is enforced strictly in view of the saying of the Holy Prophet (PBUH) that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent”.

24 The overall discussion involved a conclusion that the prosecution has failed to prove the guilt against the present appellants beyond any reasonable doubt, and it is a well-settled principle of law that for creating the shadow of a doubt, it is not necessary that there should be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused, not as a matter of grace or concession but as a matter of right. The reliance is placed on the case of **Bashir Muhammad Khan Vs. the State (2022 SCMR-986)**, wherein the Honourable Supreme Court of Pakistan has held that:-

“It is a settled law that single circumstances creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefits, not as a matter of grace and concession but as a matter of right. The conviction must be based on unimpeachable; trustworthy and reliable evidence. Any doubt arising in prosecution’s case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable shadow of doubt. However, as discussed above, in the present case the prosecution has failed to prove its case beyond any reasonable shadow of doubt.”
“Reliance in this behalf can be made upon the case of Muhammad Mansha VS the State.(2018 SCMR 772), Tariq Pervez VS The State (1995 SCMR 1345), Ghulam Qadir and 2 others VS The State (2008 SCMR 1221) Muhammad Akram VS The State (2009

SCMR 230) and Muhammad Zaman VS The State (2014 SCMR 749).”

25. The case law which is relied upon by learned counsel for the complainant being on distinguishable facts and circumstances is not helpful to his case.

26. The sequel of above discussion is that the learned trial Court has not evaluated the evidence in its true perspectives and thus arrived at an erroneous conclusion, holding the present appellant guilty of the offence. Thus, the conviction and sentence recorded against him through the impugned judgment could not be sustained, it is set aside. Consequently, the instant Criminal Jail Appeal is **allowed** and appellant Ghulam Shabir Chandio is acquitted of the charged offence. Let the release writ be issued, directing the concerned jail authority to release him forthwith in the present case, if he is no more required in any other custody case. The instant appeal is disposed of in the above terms.

JUDGE