IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Jail Appeal No. S-08 of 2018

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Appellants:	Barkat Ali son of Ali Murad and Ghulam Ali son of Lal Bux both by caste Chano, Through Muhammad Aslam Gadani and Raja Iftikhar Hussain Ansari, Advocates for appellants /accused
State through:	Mr. Shafi Muhammad Mahar, DPG
Date of hearing:	**20.02.2024**
Date of decision:	**29.03.2024**

J U D G M E N T

Zulfiqar Ali Sangi, J.– The appellants/accused named above have preferred instant Criminal Jail Appeal through Superintendent Central Prison Sukkur, whereby they have impugned the judgment dated **17.01.2018** passed by Additional Sessions Judge Pano Akil, District Sukkur, in Sessions Case No. 317/2011 (Re. The State v. Barkat Ali and others) arising out of FIR No. 16/2011 offence u/s 302, 311 & 34 PPC registered at Police Station Cant, District Sukkur, whereby they were convicted and sentenced to suffer imprisonment for life as Tazir as provided under section 302 (b) Cr.PC. The benefit of Section 382-B Cr.P.C was extended to the appellants, hence they preferred the instant jail appeal.

2. Precisely, the case of prosecution as unfolded in the FIR lodged by complainant Hakim Ali are that on 27.03.2011 he along with his brothers namely Haji Muhammad Hashim and Habibullah were standing in the fields outside of the house of his brother-in-law Ali Murad. It was about 08.30 a.m, the accused Ali Murad son of Allah Bux armed with TT pistol, accused ***Barkat Ali*** armed with pistol of 20 bore and accused ***Ghulam Ali*** armed with gun arrived. Accused Barkat Ali gave hakal to Haji and asked him that he is Karo with his step mother namely Farzana and will commit his murder. Saying so, accused Barkat made straight fire upon his brother Haji in order to commit his murder which hit him, who cried and fell down. On hearing fires shot reports Mst. Farzana working in the fields also arrived there, then accused Barkat also fired upon him which hit her and she also while raising cries fell down. Thereafter, accused persons escaped away. The complainant party found Haji and Mst. Farzna having injuries on their body. They succumbed to injuries within their sight. Complainant leaving PWs over dead body to guard went to PS and lodged FIR as stated above.

3. On the conclusion of usual investigation, challan was submitted against the appellants/accused and another for offence U/S 302, 311 & 34 PPC.

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

5. In order to prove accusation against accused, the prosecution has examined in all 10 witnesses, they have produced certain documents and items in support of their evidence. Thereafter, the side of the prosecution was closed.

6. The appellants/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 against the appellants/accused, the trial Court convicted and sentenced them as stated above, against the said conviction they preferred this jail appeal.

7. Learned counsel for appellants/accused contended that the appellants have falsely been implicated in the present case by the complainant; that deceased has murdered by making fire shots from 20 bore pistol but not a single pallet was recovered during post mortem examination; that the manner in which the murders of deceased taken place has not been substantiated in the circumstances as disclosed by the prosecution witnesses; 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 appellants /accused; that the trial Court has failed to appreciate the factual as well as legal aspects of the case while convicting the appellants/accused; that the material contradictions appears 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. Lastly, he prayed that the appellants/accused may be acquitted by extending them the benefit of doubt.

8. Conversely, learned Deputy Prosecutor General appearing for the State, opposed the appeal on the ground that prosecution has successfully proved its case against the appellant/accused Barkat Ali beyond a reasonable doubt and all the witnesses have fully implicated the appellant/accused Barkat Ali 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 shaken their evidence; that there are no major contradictions in the evidence of prosecution witnesses. Lastly, he submitted that appellant/accused Barkat Ali was rightly convicted by the trial Court and prayed that appeal of appellant/accused may be dismissed. However, after going through entire evidence he has recorded his no objection for acquittal of appellant/accused Ghulam Ali.

9. I have heard learned counsel for the appellants/accused, learned Deputy Prosecutor General Sindh for the State and have examined the record carefully with their able assistance.

10. On evaluation of the material brought on the record, it appears that the case of prosecution mainly depends upon the ocular testimony furnished by the prosecution in shape of statements of complainant Hakim Ali, eye witnesses Habibullah and Muhammad Hashim (PW-2 and PW-3) which is corroborated by the evidence of medical officers Dr. Rehana and Dr. Gul Hassan (PW-08 and PW-9) including circumstantial evidence of rest of witnesses only against the appellant/accused Barkat Ali. It is born out from the record that on the day of incident at about 08.00 a.m complainant, his witnesses Muhammad Hashim and Habibullah were standing in fields of Ali Murad near his house, it was about 08.30 a.m the accused persons namely Ali Murad son of Allah Bux with TT pistol, accused Barkat Ali 20 bore pistol and accused Ghulam Ali having gun came there. Appellant/accused Barkat Ali cautioned to Haji (deceased) that who having illicit terms with his step mother namely Mst. Farzana, saying so he made straight fire upon Haji which hit him near abdomen who fell down, due to fear of weapons they did not ahead. Mst. Farzana while hearing the voice of fire arm came running there, whom the appellant/accused Barkat made straight fire upon her she also fell down while raising cries. Then all three accused persons ran away, then complainant party found Haji has been died on the spot, they also found Mst. Farzana one gun shot on her right arm, the fires were also seen on her back she was also found died. Complainant leaving PWs to guard went to PS and lodged FIR. He produced such FIR at Exh.13/A. After registration of FIR, dead body was inspected and post mortem of the deceased was conducted. The version of the complainant was supported by PWs, who have deposed the same story in their examination-in-chief as deposed by the complainant. In the instant matter, the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manners. The ocular account furnished by above said eye-witnesses is substantiated with the medical evidence adduced by medical officers with regard to the injuries, date, time of incident and weapon used in the commission of offence. The prosecution has also examined PW-04 Mirza who is mashir, in whose presence the memo of inspection of dead bodies of the deceased, securing of last worn clothes of deceased so also place of incident were prepared. The prosecution has also examined PW-7 ASI/IO Muhammad Shahban who is investigation officer, who inspected the dead body of deceased and visited the place of incident, secured blood stained earth empty cartridges. The recovered blood stained earth and empties were sent to FSL for its analysis purpose and such report was received, which he produced at Exh.19/H and the same is in positive. Although, the witnesses named above, were cross examined by the defence at length, wherein the learned counsel for

the defence asked multiple questions to shatter their confidence so also their presence at the scene of occurrence, but could not extract anything in favour of the appellant/accused Barkat Ali, who remained consistent on all material points. No malafide, ill will, previous enmity or personal grudge was brought on record showing that the evidence furnished by the prosecution was based on malice. The perusal of record shows that the complainant party had no malafide or reason to falsely involve the appellant/accused Barkat Ali. While recording the statements u/s 342 Cr.P.C, when a question was put to the appellant Barkat Ali that why the PWs have deposed against him, he simply answered that due to enmity they have deposed. Lastly, he prayed that he is innocent. No any cogent proof has been brought on record by the appellant/accused which supports his plea.

11. It is well settled that each case must be adjudged strictly in view of its own specific perspective and circumstances and Court should emphasis on the aspect that whether the evidence adduced by the prosecution is convincing a prudent mind or based on evil designed object or tainted with any kind of animosity to settle a personal vendetta. Even statement of a single witness is sufficient to convict an offender, if it is trustworthy, confidence inspiring and free from ulterior motives. In case of ***Muhammad Ali and others v. The State (1999 SCMR 1957)***, The Supreme Court has observed that "Solitary statement of a witness, when appearing reliable and confidence inspiring is deemed sufficient for bringing home guilt of the accused". In another case of ***Muhammad Ismail v. The State (2017 SCMR 713),*** The Supreme Court has observed that "Testimony of a solitary witness, which was found to be true and reliable and was also corroborated by some other evidence could be made basis for conviction on capital charge."Keeping in mind the above settled principle of law, it can safely be held that in the instant case, there is very strong ocular evidence against appellant/accused Barkat Ali, in shape of the evidence of complainant and two eye witnesses, which further lends supported by medical evidence and circumstantial evidence besides the motive.

12. On the overall assessment of the evidence brought on record, in shape of ocular, circumstantial, medical and motive, it would appear that ocular account of the incident furnished by the complainant and PWs by circumstantial and corroborative piece of evidence, was worthy of reliance in regard to the appellant/accused Barkat Ali as it has been proved that indeed on 27.03.2011 the deceased Haji and Mst. Farzana were murdered at the hands of the accused Barkat Ali as he in furtherance of his common intention had committed their murder in front of complainant and PWs, by causing fire shot injuries to them, who have furnished confidence inspiring evidence and their presence at the place of the incident at the relevant time has fully been proved and their presence at the place of incident cannot be termed to be chance witness rather would fall within category of natural witness. The reliance is placed upon the

case of ***Abid Ali & 2 others v. The State (*2011 SCMR 208)** wherein the Hon'ble Supreme Court of Pakistan has held that:-

> *21. To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be a universal principle that in every case interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that* ***a particular witness was present on the scene of crime*** *and* ***that he is making true statement****. A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement, which is illogical and unbelievable,* ***no prudent man despite his nobility*** *would accept such statement.*

13. I would not hesitate that where the witnesses fall within category of **natural witnesses** and detail the manner of incident in a confidence inspiring then only escape available to the accused is that to satisfactorily establish that witnesses, in fact, are not the witnesses of **truth** but **'interested'** one. No suggestion has been brought on record on behalf of the appellant Barkat Ali to justify his false implication in this case at the hands of complainant party on account of previous enmity. The minor discrepancies in statements of the prosecution witnesses are not enough to demolish the case of prosecution because the discrepancies always occur on account of lapse of time which can be ignored. The weapon viz. 20 bore pistol used in the commission of offence was recovered from possession of appellant/accused Barkat Ali.

14. The upshot of above discussion is that the prosecution has successfully established its case against the appellant/accused Barkat Ali through ocular account furnished by eyewitnesses, which is corroborated by the medical evidence coupled with circumstantial evidence and motive. Learned counsel for the appellant/accused Barkat Ali has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing impugned judgment, which in my humble view is based on appreciation of the evidence and the same does not call for any interference by this Court to the extent of case of appellant/accused Barkat Ali. Thus, the conviction awarded to the present appellant/accused Barkat Ali by the learned trial Court in Sessions case No. 317/2011 Re-State vs. Barkat Ali and others vide judgment dated ***17.01.2018*** is hereby maintained ***and his appeal is dismissed.***

15. So far as the case of appellant/accused Ghulam Ali is concerned, admittedly he is nominated in FIR duly armed with gun but as per contents of FIR and evidence adduced at the trial he did not assigned any active role in the commission of offence however, mere presence of appellant/accused Ghulam Ali is shown at the scene of offence. The specific role of causing firearm injuries to both the deceased is assigned to the appellant/accused Barkat Ali. The case of present appellant/accused Ghulam Ali is on different footings to that of appellant/accused Barkat Ali. It is hardly believe that a person duly armed with

deadly weapon came at spot for committing some offence and on his arrival he not used the said weapon but only witness the incident. In the present case it is established that appellant/accused Ghulam Ali was not available at the scene of offence and was falsely implicated by the complainant party. The concept of benefit of doubt to an accused person is deep-rooted in our country for giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in prudent mind about the guilt of accused, then accused will be entitled to the benefit not as a matter of grace or concession but as a matter of right. The reliance is placed on the case of ***Muhammad Masha Vs. The State (2018 SCMR 722),*** wherein the Honourable Supreme Court of Pakistan has held that:-

> *"Needless to mention here that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt, if there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, "it is better that ten guilt persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervaiz Vs. The state (1995 SCMR 1345).Ghulam Qadir and 2 others Vs.The state (2008 SCMR 1221), Muhammad AkramVs.The state (2009 SCMR 230) and Muhammad ZamanVs.The state (2014 SCMR 749)".*

In another case titled as ***Ayoub Masih vs. The State (PLD 2002 SC 1048)*** in which it has been held as under:-

> "*Rule of benefit of essentially rule of prudence, which cannot be ignored while dispensing justice in accordance with law. Doubt must be reasonable and not imaginary. Said rule was based on maxim, " it is better that ten guilty persons be acquitted rather than one innocent person be convicted and occupied a pivotal place in the Islamic Law and inforce rigorously in view of the saying of Holy Prophet (PBUH) that " mistake of Qazi(judge) in releasing a criminal is better than a mistake in punishing an innocent"*

16. Keeping in view the above circumstances, instant jail appeal to the extent of appellant/accused ***Ghulam Ali*** is allowed. The conviction and sentence recorded against the appellant/accused ***Ghulam Ali*** vide judgment dated ***17.01.2018*** passed by the Court of Additional Sessions Judge Pano Akil, in Sessions case of No. 317/2011 Re-State vs. Barkat Ali and others U/S 302, 311 & 34 PPC is set-aside to the extent of case of appellant/accused ***Ghulam Ali.*** Resultantly, appellant/accused ***Ghulam Ali*** is hereby acquitted of the charges. He is confined in Central Prison Sukkur, therefore jail authorities are directed to release him forthwith if he is not required in any other custody case/crime.

J U D G E

M.Ali/steno*