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

Crl. Jail Appeal No.D-75 of 2012

Present:

**Mr. Justice Muhammad Junaid Ghaffar,
Mr. Justice Muhammad Saleem Jessar,**

Appellant : Dildar aias Darro Umrani, through
Mr. Muhammad Aslam H. Jatoi, Advocete.

Respondent : The State, through Mr. Khadim Hussain
Khooharo, Addl. Prosecutor General.

None present for the complainant.

Date of hearing: 19-09-2017.

Date of Judgment: 19.09.2017.

J U D G M E N T.

MUHAMMAD SALEEM JESSAR, J.- This appeal is directed against judgment dated 22.06.2012 passed by the learned Judge, Anti-Terrorism Court, Larkana in Special Case No.24/2011 (Crime No.112/2011 of PS Rehmatpur, u/s 302, 324, 387, 504, 114, 148, 149, PPC and 6/7 Anti-Terrorism Act) and Special Case No.25/2011 (Crime No.115/2011, PS Rehmatpur, u/s 13(e) Arms Ordinance, 1965), whereby appellant was convicted as under:-


“Section 302 (b), r/w 149, PPC & Section 7 of Anti-Terrorism Act: Life imprisonment and fine of Rs.200,000/- [Two Lac rupees], in default RI for two years and if realized, to be paid to the legal heirs of the deceased as compensation under section 544-A, Cr.P.C.

Section 13(e), Arms Ordinance: R.I for Seven Years.”

2. The facts leading to this appeal may be briefly stated that a case under section 302, PPC was registered against appellant/accused at Police Station Rehmatpur, Larkana on the complaint of Muhib Ali

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Khoso on 03.9.2011. It was reported by the complainant that he owns Scrap Shop at Nazar Road, which was being run by his nephews, namely, 1) Liaquat Ali, 2) Gulshan, aged about 30 years, both sons of Din Muhammad, 3) Zameer Hussain son of Khan Muhammad, aged about 18 years. Few days back, Ghous Bux Umrani and Dildar alias Darro Umrani came to their shop and asked Gulshan and others to pay them Rs.50000/- as "Bhatta", which his nephews refused, whereupon exchange of harsh words took place between them and the accused persons went away threatening that they would cause them harm. Thereafter, the accused persons used to send messages to the complainant party and were demanding "Bhatta" and were extending threats. On 02.9.2011, the complainant and his nephew Sobdar son of Pehlwan Khoso went to their shop, where his nephews Liaquat, Gulshan and Zameer Hussain were already available, who were busy in their work. Complainant and Sobdar were chitchatting with each other. At about 5.30 p.m., accused persons, namely, 1) Ghous Bux, armed with Repeater Gun, 2) Muhbat, armed with pistol, both sons of Samandar, 3) Dildar alias Darro son of Khan, armed with pistol, 4) Zameer Hussain, armed with pistol, 5) Hizbullah, armed with gun, both sons of Ghous Bux, all by caste Umrani, resident of Murad Shah Colony, Nazar Mohalla, Larkana and two unidentified accused persons, both armed with pistols, appeared at the shop, out of whom accused Ghous Bux abused complainant's nephew Gulshan and asked for paying them "Bhatta", to which Gulshan and Zameer refused to pay the same to the accused, hence accused Ghous Bux instigated the other accused persons to kill the complainant party, on which accused Dildar alias Darro Umrani immediately fired with his pistol straight upon Gulshan, which hit him on his chest and he fell down, while accused Muhabat fired straight with his pistol at Zameer Hussain, which hit on his abdomen, who also fell down, blood started oozing from them. After that, the accused persons decamped from the place of incident.




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of evidence, the learned trial Court held the appellant guilty of the charge and convicted and sentenced him, as stated above.

6. We have had the privilege of hearing the arguments advanced by the learned counsel for the appellant/accused and learned Additional Prosecutor General for the State and with their assistance we have also gone through the evidence available on record. The evidence against the appellant/accused consists of ocular evidence, medical evidence confirming and corroborating the unnatural death of deceased, as a result of firearm injuries and recovery of crime weapon from appellant matched with empty bullet recovered from the place of wardat.

7. With regard to the ocular evidence, learned counsel for the appellant has argued that all the three alleged eyewitnesses are closely related to the deceased; that occurrence took place near Scarp shop of deceased Gulshan in Nazar Mohalla of Larkana town, where admittedly other people were also present but no independent witness was cited by the prosecution; that even witnesses of recovery and seizure process were not associated from amongst notable persons of locality as required under the law and only close relatives of the deceased and complainant were asked to join proceedings. He has further contended that the motive was not so strong, which was not proved and was shrouded in the mystery. He emphasized that no conviction or sentence was passed by the trial court with regard to injuries to injured Zamir Hussain, thus disbelieved the ocular version to the extent of causing injuries to PW Zamir Hussain, and reliance on same for recording conviction under section 302, PPC was not legally correct. He has further submitted that the prosecutions story being highly doubtful is not safe to be believed and appellant is entitled to the benefit of doubt, therefore, by accepting appeal, he may be acquitted of the charge.



8. On the other hand, it is argued by learned Addl. Prosecutor General that the occurrence took place during broad day light; identification of the accused is not in doubt, who is nominated in the FIR; that the names of the prosecution witnesses are also given therein; that the time and place of incident is not disputed. He has further submitted that prosecution successfully proved its case against the appellant/accused, therefore, judgment passed by the learned trial court is based on sound reasons and needs no interference by this Court.

9. We have carefully considered the impugned judgment in the light of the evidence on record.

10. It appears that occurrence in this case had taken place on 02.9.2011, at 05.30 p.m., while the matter was reported to the police by [P.W-4] Muhib Ali, uncle of deceased, at police station which was at the distance of 03 furlongs, on 03.9.2011, at 1500 hours. The name of appellant/accused, the role he played, weapon used for the commission of the offence, manner of the occurrence and the names of eyewitnesses, were mentioned in the F.I.R. Two empties of 30-bore pistol were recovered from the spot vide memo at Ex.22-B. On 08.9.2011 appellant/accused was arrested and during interrogation he agreed to produce the crime weapon viz. 30 bore pistol used in the commission of the offence, which was secured on his pointation. After having gone through the entire evidence in depth, we are of the considered view that the prosecution established the guilt of accused upto the hilt. There is no denial that the complainant is uncle and injured eyewitness Zameer Hussain is cousin of the deceased, while another eyewitness namely Liaquat Ali is the real brother of deceased. It has come in their evidence that the deceased, injured PW Zameer Hussain and eyewitness Liaquat Ali used to run the Scrap Shop jointly. It is well-settled law that mere relationship does not hold a witness

interested to a party, reliance is placed on the case reported as Nizamuddin v The State (2010 SCMR 1752). The complainant and both eyewitnesses have highlighted the details of tragic incident that at the time of incident they all were present at their Scrap Shop along with the deceased, where appellant/accused along with co-accused came and demanded "Bhatta", on refusal of the complainant party to pay the same, the appellant/accused and co-accused annoyed and he fired straight with his pistol upon deceased Gulshan, while co-accused Muhabat fired upon injured PW Zameer Hussain. Both injured persons were taken to Casualty Ward of CMC Hospital, Larkana. Subsequently, Gulshan succumbed to injuries on 04.9.2011 at hospital. The defence has not offered serious objection to the Scrap shop of the deceased being the place of occurrence. If the shop of the deceased was situated in Nazar Mohalla of Larkana town, then no serious exception could be taken to the claim of all the three eyewitnesses i.e. complainant, injured PW Zameer Hussain and PW Liaquat Ali that they were present there at the time of incident. All the three eyewitnesses were subjected to an exhaustive and lengthy cross-examination but in spite of various searching questions nothing advantageous to the accused could be extracted from them. No enmity whatsoever was alleged against the complainant and eyewitnesses and besides that being uncle, real brother and cousin, the question of substitution of real culprit with that of appellant/accused, does not arise which otherwise is a rare phenomenon.

11. The ocular account is fully corroborated by medical evidence. Dr. Muneer Ahmed Shaikh [P.W-2], who conducted postmortem of the deceased stated in his deposition that on 04.9.2011 he started postmortem of deceased at 9.40 p.m. and finished the same at 11.40 p.m. and that on examination he found two firearm injuries (one wound of entry and the other exit) and the death of deceased was

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the result of hemorrhage (Intra-thoracic + Intra abdomen) and shock (Spticemia) on account of firearm injury sustained by the deceased at the hands of appellant/accused. Thus, we do not find any conflict in between ocular and medical evidence which rather is corroborative on date, time of the incident and seat of the injury.

12. Coming to the recovery of the empties from the place of incident and that of the crime weapon on the pointation of appellant/accused, admittedly crime empties were recovered on the same day of incident and sealed then and there, whereas the crime weapon i.e. 30 bore pistol was recovered on the pointation of accused/appellant, which too was sealed and both articles were thereafter sent to the Forensic Science Laboratory, Forensic Division, Larkana for examination. The report of Expert produced at Ex.22-I clearly indicates that two 30 bore empties recovered from the place of incident were fired from the 30 bore pistol recovered on the pointation of accused/appellant, as such, the recovery has also fully supported the prosecution case.

13. As far as the motive is concerned, in a case of murder, it may be stated that even failure of the prosecution to prove the motive is not fatal to the prosecution case. In this regard, reliance can be placed on the case reported as Syed Mukhtar Shah v Muhammad Azam & 2 others (2005 SCMR 427). Per prosecution case, on refusal to pay "Bhatta", the accused persons were annoyed with complainant party and appellant fired upon the deceased, while co-accused Muhbat fired upon injured Zameer Hussain. Injured PW Zameer Hussain, who is the star witness and his presence at the place of incident at the relevant time cannot be denied, has fully implicated the appellant/ accused for causing injuries to deceased Gulshan.

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14. From the above discussion, we have reached the irresistible conclusion that the impugned judgment is neither perverse nor arbitrary nor it suffers from any illegality or irregularity but is quite in consonance with evidence on record and law laid down by superior courts. No case is, therefore, made out for interference with the impugned judgment. The appeal of appellant/accused merits no consideration, therefore, the same was dismissed by short order passed on 19.9.2017. Above are the reasons for the same.

~~XXXXXXXXXX~~
Judge
09/11/2017

[Handwritten Signature]
Judge
9.11.17