JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr. Appeal No.536 of 2023

Date	Order .with signature of Judge

Appellant:	Nazar Ali through Mr. Muhammad Jameel, advocate.
Respondent:	State through Ms. Rubina Qadir, APG assisted by Mr. Raham Ali Rind, advocate for complainant.
Date of hearing:	12.11.2024
Date of decision:	19.11.2024.

J U D G M E N T

MUHAMMAD IQBAL KALHORO J: Appellant, charged u/s 302 PPC for causing murder of deceased Attaullah on 11.06.2015 at 2330 hours near the house of complainant Ali Akber situated at Ward 2, Mirpur Bathoro, Tauka Mirpur Bathoro District Sujawal, has been returned guilty verdict vide impugned judgment dated 07.10.2023 by the court of Ist Additional Sessions Judge, Sujawal in the terms whereby he has been convicted under the same offence and sentenced to suffer R.I. for life with benefit u/s 382-B Cr.P.C duly extended to him.

2. As per brief facts of the case, complainant has a Pan and Cigarette Cabin at main stop Bathoro and his family resides in Ward No.2 of the same town. Near his house there are two shops belonging to Nehal Shoro and over those shops a house is situated where appellant Nazir Shoro's friend Mehran and others are residing, who constantly nag his family. On 11.06.20215 at 2230 hours appellant Nazir Shoro, his friend Mehran armed with weapons came at his house and exchanged harsh words with his sons Zohaib Akber and Akash. This was resisted by the sons of the complainant but the appellant and his friend threatened them of dire consequences. He was available at his cabin when such information was given to him, hence he and his nephew (deceased) closed the cabin and reached the street near his home, where his above named sons were also standing. Meanwhile, at about 2330 hours appellant alongwith Mehtab, Shoukat and Mehran all armed with pistols and repeater arrived at the spot. As soon as they came, accused Mehran aimed repeater at the complainant

with intention to kill him but meanwhile Attaulah grabbed him. Thereupon appellant Nazar Shoro made a straight fire from his pistol on Attaullah, his nephew, with intention to kill him, which hit on his lower abdomen and he fell down, with blood oozing out of his injury. Thereafter all the accused by pointing out their pistols towards complainant party threatened them of dire consequences and left the scene. Complainant party arranged a vehicle and shifted the injured to Taluka Hospital Bathoro after getting a letter from Police Station. The Doctor there after giving him first aid referred him to Civil Hospital Hyderabad for treatment but he on his way succumbed to his injuries and died, hence he was brought back in the same hospital where his postmortem was conducted. After which, the dead body was shifted to home for burial and after burial complainant appeared at P.S. and registered the FIR.

3. After usual investigation, final report u/s 173 Cr.P.C was submitted in the court against accused persons. In the trial, a formal charge was framed against appellant and others, who pleaded not guilty, hence prosecution examined as many as 11 witnesses to prove the case, who have submitted all necessary documents including FIR, postmortem report, chemical examiner's report, matching FSL report of weapon and crime empty recovered from the spot etc. At the end of prosecution evidence, statements of appellant and other accused u/s 342 Cr.P.C were recorded. Thereafter learned trial court passed a judgment dated 29.10.2019 acquitting all the accused except appellant who was convicted to suffer a sentence of life imprisonment u/s 302(b) PPC.

4. Appellant, thereafter preferred an appeal No.813/2019 before this court which was decided by way of a judgment dated 19.10.2022, whereby conviction and sentence of the appellant were set-aside and the matter was remanded to the trial court to record appellant's statement u/s 342 Cr.P.C afresh by confronting him all pieces of evidence brought against him by the prosecution. In compliance, statement of appellant u/s 342 Cr.P.C was again recorded in which he has pleaded his innocence and stated that he has been falsely implicated in this case due to political rivalry between him, his family and complainant party. According to him, the deceased was having a love affair with a daughter of the complainant, and it was the complainant, who had hence murdered him and then falsely implicated him. However, he did not examine himself under oath or led any evidence in defence. By the impugned judgment, appellant has been convicted and sentenced u/s 302(b) PPC as Tazir to undergo R.I. for life. He has also been burdened to pay an amount of

Rs.200,000/- to the legal heirs of deceased. Notwithstanding, he has been extended benefit u/s 382-B Cr.P.C. Hence this appeal.

4. Learned defence counsel in his arguments has contended that appellant has been falsely implicated in this case; that on the same set of evidence, three co-accused have been acquitted by the trial court; that in the case of recovery of alleged pistol u/s 23-A Sindh Arms Act, appellant has been acquitted vide judgment dated 29.10.2019; that witnesses have contradicted each other on a number of essential points of the prosecution story; that there is delay of 14/15 hours in registration of FIR; that both the mashirs have been declared hostile; that in cross examination, the witnesses have admitted that they have not seen the appellant firing at the deceased, hence the case against the appellant is full of doubts and it is settled proposition that if a single circumstance creating a doubt creeps in the prosecution case, benefit of which has to be extended to the accused. He has relied upon 2024 YLR 1973, 2007 SCMR 670, 2024 SCMR 1731, 2024 YLR 1065, 2022 SCMR 1085, 2024 SCMR 1579, PLD 2019 SC 64 to support his arguments.

5. On the other hand, learned counsel for complainant and learned DPG have supported the impugned judgment. Learned DPG has contended that appellant is specifically nominated in the FIR, In the incident the appellant was clearly identified by the complainant and other witnesses as he is their neighbor and the evidence put up by the prosecution is confidence inspiring. Father of deceased, who was present in the court, also contended that appellant was the real culprit who at the time of getting bail from the trial court filed an affidavit admitting his guilt and they had given no objection to his bail as he had promised to settle the matter but later on backed out.

6. I have considered submissions of the parties and perused material available on record and the case law relied upon in defence. The prosecution has examined complainant as P.W.1 at Ex.9. He has reiterated the story of FIR in his evidence. He has been subjected to a very lengthy cross- examination but apparently, no worthwhile contradiction has come out. He has stood his ground and has narrated the entire story without wavering or contradicting himself on any of the material fact. He has been supported by P.W.2 namely Akash, his son Ex.10, who in his evidence, has repeated the same story revealed by his father in FIR and evidence. According to him, on the day of incident, he was available in the street infront of his house alongwith his real brother

Zohaib Akber, when accused had exchanged harsh words the information of which he had communicated to his father and deceased Attaullah on cell phone, hence they came at the spot, where appellant alongwith other acquitted accused duly armed with pistols arrived. Then accused Mehran (acquitted) kept his repeater on the chest of his father in order to kill him but his cousin Attaullah caught hold of him, hence appellant Nazar Ali made a direct fire on his cousin, which hit him in his testicles /lower part of abdomen. He fell down and blood started oozing from his injury. Then rest of the accused aimed their weapons on them and threatened that if they made any move, they would be killed. After they left, they arranged a conveyance and brought injured Attaullah to Taluka Hospital Mirpur Bathoro after getting a letter from police station for treatment. The doctor present there gave him first aid and then referred him to Civil Hospital Hyderabad due to his precarious condition. However, on the way he died, hence he was brought back at police station, where police made certain formalities and referred him to Taluka Hospital Mirpur Bathoro, where his postmortem was conducted. After postmortem, the dead body was handed over to them for burial.

7. His evidence is further supported by P.W.3 Zohaib Akber, who is another son of the complainant. In his examination in chief, he has repeated the same story and on material facts has supported the complainant and P.W.2. P.Ws 2 & 3 who both happened to be sons of the complainant have been subjected to a lengthy cross-examination but no worthwhile discrepancy has come on record in their evidence. All the suggestions decrying the story of FIR have been put to them by the defence counsel, but they have denied the same in one voice. In their cross-examination, nothing has come on record to suggest that appellant has been falsely implicated in this case or he has been substituted by a real culprit which, even otherwise, is considered as a rare phenomenon in the murder case.

8. Thereafter prosecution has examined one Muhammad Haroon as P.W.4 at Ex.12. He is basically a mashir. In his deposition, he has stated that on 12.06.2015 complainant had called him and requested him to come at the place of incident, which police had visited in his presence, and which was situated near the house of complainant. According to him, an empty of a pistol lying near sewerage line was collected by the police from there. Police had also collected blood stained earth at the pointation of complainant and had prepared such memo which was signed by him and another mashir Usman

Khatti. He has produced such memos in his evidence. After him, the prosecution has examined P.W.5 Sarkar Ali at Ex.13. He is Tapedar and had prepared sketch /site plan of the place of incident and has produced the same in his evidence. After Tapedar, the prosecution has examined Dr. Faiz Ahmed as P.W.6 at Ex.14. As per his evidence, initially at about 11.30 p.m. Attaullah was brought in an injured condition by his relatives with a police letter. He treated him immediately but since he was serious, he referred him to Liaqat Hospital Hyderabad but latter on he came to know that injured had died on his way, hence his dead body was brought back in the hospital where he conducted his postmortem and found a firearm injury 1.5 c.m. in diameter at the front of pubic region blow umbilicus, margins were lacerated and inverted. Blackening was present there with wound of exit measuring 2 c.m. in diameter at the upper 1/3rd of right thigh laterally. Margins were lacerated averted and blood was oozing from wound.

9. He has been cross examined at length by the defence counsel but except that the said P.W. is a distant relative of complainant party and is caste fellow, nothing insofar as the injury to the person of deceased or its description is concerned, has come on record militating against the prosecution story. After him, the prosecution has examined P.W.6 Sarfraz at Ex.15, who has deposed to have signed memo of arrest of accused and recovery at police station, hence he was declared hostile and was cross-examined by the prosecutor for the State. At Ex.16, prosecution has examined SIP Muhammad Jameel. According to his evidence, on the day of incident he was posted as ASI at P.S. Mirpur Bathoro where complainant came and disclosed about the incident and named Nazar Shoro, the appellant as accused. He gave him a letter for treatment and incorporated such facts in Daily Diary, which he has produced. According to him, he also prepared memo of injury with his signature and signature of mashirs.

10. After him, prosecution has examined another mashir namely Danish Aziz as P.W.9 at Ex.17. Per his evidence, he signed memo of injury and other documents at police station. He was, therefore, also declared hostile by the prosecutor for the State and was cross-examined by him. Prosecution has examined Inspector Rab Nawaz as P.W.10 at Ex.18. He is the I.O. of the case and has given a detailed account of the investigation. According to him, on 21.06.2015 he visited police station Jati where accused Mehran (acquitted) and appellant Nazar Ali were confined having already been arrested in the case. He

interrogated the accused and recovered a repeater on the pointation of accused Mehran (acquitted). He made necessary documents in regard to such recovery which he has produced alongwith relevant entry in DD. Per his evidence, he recorded statements of witnesses and sent all the necessary articles for chemical examination including pistol and empty recovered from the spot and from appellant for FSL, and that after completing investigation, he submitted the Challan.

11. SHO Moula Bux P.W.11 has been examined by the prosecution as a last witness. According to him, at about 1.20 a.m. on 12.06.2015 the dead body of deceased was brought at police station by complainant party with information that he was killed by the Shoro clan He prepared such memo as well as inquest report/Danistnama. He also issued a letter to Medical Officer for postmortem examination of deceased. According to him, he also collected blood stained clothes of the deceased form the doctor and made such memo in presence of witnesses. He sent blood stained clothes to office of chemical examiner for analysis. After which he handed over dead body to his legal heirs and obtained such receipt. As per his evidence, on 14.06.20215 on pointation of witnesses, he arrested appellant and accused Mehran from Ghari Mori, Khorwah Road. From personal search of appellant, a pistol used in crime was recovered, hence a memo of arrest and recovery was prepared. The accused was then brought at P.S. where relevant FIR u/s 23 of Sindh Arms Act was also registered against appellant. According to his evidence, he also collected bloodstained earth from place of incident so also 1/2 empties of 30 bore which he had sealed. Per him, he had also recorded statements of some of the witnesses on 12.06.2015.

12. After prosecution evidence, statement of appellant was recorded in which he has simply denied the prosecution case without offering anything in defence or examining himself under oath.

13. A holistic survey of entire evidence brought by the prosecution would indicate that prosecution has proved the case against appellant from all angles. There is an eye account furnished by three witnesses who happened to be present at the place of incident when the same took place. The appellant living nearby in the same town was already known to the complainant party, hence there is no chance of mistaken identity of appellant by the complainant party. All the three witnesses, who have furnished the firsthand eye account, have supported each other on all material facts of the case. There is not a single

discrepancy or contradiction in their evidence, which may be held to be substantial enough to undermine the prosecution case. Their evidence is further supported by the circumstantial evidence in the shape of recovery of crime weapon from the appellant. The crime weapon was sent alongwith an empty recovered from the place of incident and FSL report has come in positive showing that the empty found at the place of incident was fired from the said pistol.

15. The description of injury as given by the eyewitnesses finds support in the medical evidence as well. The MLO has supported the seat and locale of the injury narrated by the eyewitnesses in their evidence. The place of incident is established from the evidence of Tapedar who under the directions of Mukhtiarkar concerned went there and made its site plan. In the FIR and evidence, the appellant is the only one identified to have fired at the deceased. Although other accused Mehran has been shown to be present there but apparently he has not been assigned any active role in the death of deceased, hence he has been acquitted. Whereas the appellant is shown to have been armed with a pistol and made a single straight fire at the deceased which proved fatal and subsequently the victim died. The eye account given by the witnesses is in full synchronization with the medical evidence. As per medical evidence, initially the victim was brought in injured condition, he was given first aid and was referred to Liaqat Hospital Hyderabad for further treatment but he died on the way. Subsequently he was brought at the same hospital for a postmortem. Exactly the same account has been given by the eyewitnesses that initially the victim was taken to local hospital in injured condition and after being administered first aid was being taken to Liaqat Hospital Hyderabad but on the way he succumbed to his injuries and died. I have not found any variation between eye account and the medical evidence to give its benefit to the appellant. Both accounts are complementary to each other and are supported by all relevant documents. Such evidence is further espoused by the evidence of I.O. and SHO who had initially registered FIR, arrested the appellant and recovered crime weapon from him.

16. Learned defence counsel in his arguments while relying upon the acquittal of the appellant in the case of recovery of weapon emphasized that since appellant has been acquitted in recovery case, the crime weapon is not established, hence benefit of doubt may be given to him. I do not find such argument persuasive. Acquittal of the appellant in the recovery case does not

have adverse effect over merits of present case in which from the unimpeachable evidence, it has been established that appellant, the one who had fired upon the deceased, had murdered him. The acquittal in recovery means the recovery or the manners of recovery as postulated by the prosecution could not be established, hence the appellant was given a benefit of doubt and was acquitted. It nonetheless would not mean that the weapon, the recovery of which from the appellant, the prosecution could not prove, was not used by him at the time of offence. The said weapon to be the crime weapon has been established from the positive FSL report matching with empty recovered from the spot, which shows that it was the same weapon which was used in commission of offence. The mode and manner of recovery of a weapon is quite distinguishable and does not match with the fact whether said weapon was used in commission of an offence by a particular accused or not. The prosecution in the present case was burdened to prove the said weapon to have been used in the crime by the appellant. This burden, the prosecution has fully discharged by examining relevant witnesses who have identified the said weapon and by producing FSL report. Hence acquittal of the appellant in the recovery case will not be counted to have any adverse bearing over merits of this case.

17. Learned counsel in his arguments referring to the evidence of P.Ws.2 & 3 Akash and Zohaib Akber has urged that in cross-examination, both the witnesses have admitted that they had not seen the accused Nazar Shoro firing at the deceased. I have considered such plea, the answers referred by him appear to be satirical, humoring defence counsel for asking repeatedly the same question as is evident from the note put down by the trial court stating that such reply is given after the suggestion was put to the witness thrice. This note makes it clear that defence counsel was continuously nagging the witnesses to give reply of his choice and finally the witnesses in order to humor him satirically, uttered in the end that it is correct that they had not seen accused Nazar Shoro firing at deceased Attaullah. Otherwise, their examination in chief and replies to various suggestions in cross-examination have clearly established the fact that they were available at the place of incident and had seen it. The trend, tone and tenor of their evidence as well as circumstantial evidence supported by the investigation point out to their presence at the place of incident when the incident took place. Therefore, such reply satirically humorous, as it is, is not helpful to the defence either.

18. Another ground taken in defence is that on the same set of evidence, co-accused have been acquitted, suffice it to say that co-accused had not been assigned any specific role by the complainant and other witnesses except that they were present at the spot. It is only the appellant who has been ascribed active role of firing at the deceased, hence their acquittal will not help the appellant to gain acquittal for the simple reason that emphasis of entire prosecution case is on the role played by the appellant and not by the other accused who were acquitted by the trial court on the benefit of doubt.

19. As to another defence of the appellant that two mashirs have been declared hostile. It may be said, evidence of hostile witness is not necessarily to be read in favour of the accused. Such evidence, it is settled, has to be taken into account with other evidence produced by the prosecution to determine its import and scope. Here, the hostile declared witnesses are marginal witnesses, and have not denied their signature on the memos. They have simply said that the said memos were prepared at the police station. Their evidence is only restricted to preparation of memos at police station, will not impinge the eye account furnished by the eyewitnesses and investigation identifying the appellant as the culprit. The maximum impact of their evidence would be to conclude that those few memos are not worthy of reliance as far as their place of preparation is concerned. But it will not make the whole prosecution case based on confidence inspiring evidence as doubtful.

20. The prosecution by presenting the evidence as discussed above has fully established the case against appellant beyond a reasonable doubt. Appellant has offered nothing in defence in his statement u/s 342 Cr.P.C to compare it with the prosecution evidence and give its benefit to him. Strangely, he has claimed that deceased was done to death by the complainant himself because he had a love affair with a daughter of complainant, but has not produced any witness in support of such plea. Such plea taken by the appellant on the face of it is ridiculous and appears to be an afterthought.

21. Therefore, I am of the view that prosecution has fully proved the case against appellant. The trial court has gone through the entire evidence and has recorded its findings supported by the reasons. There is no material to justify intervention by this court, hence I find this appeal meritless and accordingly dismiss it.

The Cr. Appeal is disposed of.

JUDGE

A.K