

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.D-63 of 2019

Before:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Amjad Ali Bohio

Appellant: Ghulam Hussain son of Ali Muhammad,
Through Mr. Roshan Ali Azeem Mallah,
Advocate.

Respondents: Nemo.

The State: Through Mr. Shahid Ahmed Shaikh,
Additional P.G Sindh [APG]

Date of hearing: 06.08.2024

Date of decision: 06.08.2024

JUDGMENT

AMJAD ALI BOHIO, J: This appeal challenges the judgment dated 11.07.2019, passed by the Model Criminal Trial Court/1st Additional Sessions Judge, Hyderabad in FIR No. 125 of 2012, registered at P.S Market, under sections 302, 324, 427, 114, and 34 of the Pakistan Penal Code through which, the trial court acquitted the respondents/accused by extending the benefit of the doubt, while the case against the absconding accused Irshad Shah, Abbas Shah, and Badar Shah has been kept on the dormant file.

2. The brief facts of the prosecution case are that on 19.07.2012, at 6:00 PM, complainant, Ghulam Hussainson of Ali Muhammad, lodged above FIR, alleging that after attending the Court of the 4th Additional Sessions Judge, Hyderabad, he, along with his brothers Gulab, Wazir and his brother-in-law Abdul Razzaque, visited the daughter of Abdul Razzaque's second brother-in-law, who was admitted to the civil hospital. They were traveling in a white Mehran car. Gulab was sitting on driving seat, Abdul Razzaque on the front seat, and Ghulam Nabi, Wazir and he were sitting on the rear seat. As they left the hospital and were heading towards the OPD,

they reached near Kashmiri Hotel at about 12:00 p.m., where a golden Corolla car was parked nearby, wherein Hussain Bux Veesar sitting on the front seat greeted them. Abdul Razzaque responded to the greeting, and Gulab slowed down the car. The Corolla then drove towards Jail Road. At that moment, three accused namely Dr. Qurban Shah, Irshad Shah, and Badar Shah on one motorcycle, and Abbas Shah, Shoukat Shah, and Majeed Veesar on another motorcycle, approached from both sides of their car and started firing upon them. As a result, Ghulam Nabi, Wazir, Abdul Razzaque and Gulab sustained gunshot injuries. Despite his injuries, Gulab managed to drive them back to the civil hospital, where the complainant and other witnesses took the injureds to the hospital for treatment. However Abdul Razzaque succumbed to his injuries, and about an hour later, Ghulam Nabi also died in the ICU. After the post-mortem and funeral proceedings, for which, the aforementioned FIR was lodged.

3. After usual investigation, police submitted the challan. Charge was framed against the respondents/accused on 27.02.2018 to which they pleaded not guilty. During trial of the case, accused Pir Irshad Shah absconded, leading to the bifurcation of his case on 09.05.2019.

4. To prove its case, the prosecution examined series of witnesses, including complainant Ghulam Hussain (PW-1), Wazir Ali (PW-2), Gulab (PW-3), MLO Dr. Hoto Mal (PW-4), ASI Aurangzeb (PW-5), Aijaz Ali (PW-6), and I.O SIP Tarique Baladi (PW-7). During their testimonies, the witnesses also produced several documents in evidence. The prosecution then closed its side of the evidence vide statement Exh. 17.

5. Respondents No. 1 to 6 in their statements recorded under Section 342 Cr.P.C., repudiated the prosecution allegations and professed innocence. The accused-respondents did not examine themselves on oath in their defence as contemplated by 340(2), Cr.P.C. so also did not produce any evidence in their defence.

6. After the hearing, the trial court held the respondents innocent in the impugned judgment.
7. We have heard the learned counsel for the appellant and Mr. Shahid Ahmed Shaikh, Additional Prosecutor General (Addl. P.G.) for the State, and have reviewed the evidence produced by the prosecution against the respondents.
8. The learned counsel for the appellant argued that the trial court failed to consider properly the evidence provided by the prosecution witnesses, which duly corroborated the alleged incident. He contended that there were no material contradictions between the testimonies of the complainant and the eyewitnesses. The trial court, he argued, also overlooked the evidence of the injured witnesses, Wazir and Gulab, who were natural witnesses to the incident. The incident occurred in broad daylight, making it unlikely that the witnesses could have mistakenly identify the accused. Furthermore, the ocular account was corroborated by medical evidence, including post-mortem reports and medical certificates issued by the Medical Officer. The FIR was promptly lodged within six hours on the same day of the incident, with no delay. Additionally, the chemical report confirmed that the deceased's blood-stained clothes contained human blood. Therefore, the respondents/accused were liable to be convicted and therefore appeal may be allowed.
9. Conversely, the learned APG argued that the inspection memo of the car only indicated a single bullet hole through the back seat, with no other bullet or pellet marks found on the vehicle. This is significant because, according to the FIR, all six culprits fired from both the left and right sides of the car from a close distance, where the deceased, the injured witnesses, and the complainant were seated at the time of the incident, making the prosecution story questionable. The APG also acknowledged the trial court's reasoning, specifically noting the improbability that injured witness Gulab, despite sustaining a through-and-through gunshot wound to his neck, could have driven the car to the hospital. The APG partially supported the appellant's counsel's argument by agreeing that Abdul

Razzaque and Ghulam Nabi died unnatural deaths, but not in the manner described by the prosecution in the FIR. He maintained that the impugned judgment is well-reasoned; hence, the instant appeal is liable to be dismissed.

10. To evaluate the ocular account, the prosecution examined Ghulam Hussain, Wazeer Ali, and Gulab as eyewitnesses to the incident. Among them, Wazeer Ali and Gulab sustained firearm injuries during the occurrence. According to the prosecution's narrative, these witnesses were seated inside the car with the deceased, Abdul Razzak and Ghulam Nabi. As per the eyewitnesses, Abdul Razzak was seated in the front passenger seat, while Ghulam was driving. Complainant Ghulam Hussain was sitting in the middle of Wazeer Ali and Ghulam Nabi on the rear seat. The incident occurred when two motorcycles, each carrying three accused, surrounded the complainant's car from left and right sides. Accused Dr. Qurban Shah, Irshad Shah and Babar Shah were on one motorcycle, and other motorcycle carried Abbas Shah, Shoukat Shah, and Majeed Veesar. The accused opened indiscriminate fire on the car from both sides before fleeing the scene. Surprisingly the complainant Ghulam Hussain, who was sitting between Ghulam Nabi and Wazeer Ali, did not sustain any injuries, despite Ghulam Nabi and Wazeer Ali being shot. It is also noteworthy that Gulab, who was driving, received a gunshot wound to his neck. The medical certificate of Gulab, issued by Dr. Hoto Mal, details the injuries he sustained as under:

- (i) *Lacerated wound of firearm gutter shape 5 c.m. x 1.5cm on superior aspect of right shoulder directed upward surrounded by smoking area.*
- (ii) *Lacerated firearm wound 5 c.m. x 1 c.m. gutter shape on upper part of right upper arm.*
- (iii) *Lacerated wound of entry 1 x 1 c.m. with inverted margins on left under chin (on neck) passed through and through with lacerated wound of exit 1.5 c.m. x 1 c.m. on right antero-lateral neck below chin with everted margins.*

11. According to the Medical Legal Officer (MLO), Injury No. 3 sustained by PW Gulab, located on the left side under his chin (on

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the neck), was **a through-and-through gunshot wound**. Despite suffering such serious injury, it is surprising that instead of complainant Ghulam Hussain, who remained uninjured PW Gulab was driving the car to the hospital. This unbelievable fact led the trial court to rightly express doubts about the credibility of the complainant's evidence, as observed below:

"16. Secondly, aspect appearing in the complainant's evidence is that, very surprisingly complainant disclosed that injured Gulab after the incident, took the injured to civil hospital in same car. This is very surprising evidence of complainant for the reason that when the complainant, if he was, present with the injured and not a single bullet hit him besides not a single scratch on him, in indiscriminating firing allegedly made by the accused, why he did not prefer to take driver seat of the car and took the injured to the hospital. From doctor evidence it appears that injured Gulab had received injury at his neck which was through and through. This means that even if the injured Gulab was not in drossy conditions but he must have felt severe pain of said injury; therefore, he was not in position to drive the car smoothly after turning it from its directions to the emergency ward of hospital at congested and such a busy place. When the complainant was alive and not received a single shot injury then why and how he allowed to severe injured Gulab to drove the car for taking the injured to the hospital for treatment. This is another aspect creating doubt in mind about credibility of complainant evidence on the scene of incident."

12. The trial court also discussed contradictions between the testimonies of PWs Wazeer and Gulab as to which of the accused caused firearm injuries to the various PWs and the deceased, as detailed in Paragraph 17 of the judgment. It is observed that the complainant and the injured persons arrived at the civil hospital together after the alleged incident. However, discrepancies in the medical records raise doubts about the incident's timeline as described in the FIR. According to the postmortem report by Medical Officer Hoto Mal, the deceased Abdul Razzak arrived at 12:45 p.m., while the deceased Ghulam Nabi arrived at 3:00 p.m. Additionally, the injured Gulab arrived at 12:25 p.m., and the injured Wazeer arrived at 12:20 p.m. on 19.06.2012. These variances in arrival times cast doubt on the accuracy of the incident as narrated. Furthermore,



the medical evidence alone does not provide independent corroboration to support the eyewitness accounts. These contradictions were not rebutted by the learned counsel for the appellant during the course of arguments. It is further observed that before the alleged incident, all the PWs, along with the deceased Abdul Razzak and Ghulam Nabi, visited a patient named Sadaf and her parents. PW Aijaz Ali was also present at the hospital during this visit. However, Aijaz Ali failed to corroborate the presence of Abdul Razzak with the complainant (PW Ghulam Hussain), PW Gulab, PW Wazeer, and the deceased Ghulam Nabi at the time they visited Sadaf in the hospital. As a result, the prosecution's story regarding Abdul Razzak's presence with the other PWs inside the hospital during the visit is not supported by the record. Furthermore, the complainant did not mention the name of the patient girl in his FIR, nor did he specify how long she had been admitted to the hospital or the nature of her illness. According to the complainant, only Allah Dino, the girl's father, was present when they arrived to see her, and the complainant did not mention the presence of PW Aijaz Ali at that time. This omission supports the respondent's counsel's argument that PW Aijaz Ali may have been a setup witness. Additionally, the complainant admitted that no documentary evidence regarding the treatment of Allah Dino's daughter at the hospital was collected by the Investigating Officer (I.O.).

13. In evaluating the evidence related to the alleged incident, it is to be noted that neither the FIR nor, the testimonies of the PWs provide any description of the motorcycles involved, such as their registration numbers or colors. Additionally, no details about the Mehran car in which the complainant party was commuting are mentioned in the FIR. According to the complainant, the distance between the motorcycles and the Mehran car was about one foot. However, the Medical Officer did not observe any blackening on the deceased's body, which would typically indicate a close-range gunshot wound. The complainant also stated that the incident lasted around seven minutes. He mentioned that as soon as the firing began, he laid down, while PWs Wazeer and Gulab fell on him. In contrast,



PW Wazeer testified that the accused arrived suddenly. Under these circumstances, the complainant's ability to recognize all six accused at that moment is questionable. Furthermore, PW Wazeer could not explain the exact distance between the car and the culprits, admitting that he did not know how the firing occurred or in what manner. He also could not recall the number of shots fired, though he estimated that the shooting lasted between five and eight minutes. It appears that the occurrence has not taken place in the manner as suggested by the prosecution and a wide net has been thrown by the prosecution to implicate all the accused related inter se. The upshot of whole discussion is that it was doubtful that the incident occurred in the manner as narrated by the prosecution. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of the P.Ws. would not stamp them truthful witnesses, It has been held in the case of Muhammad Hayat and another v. The State (1996 SCMR 1411), it has been observed as under:

"10. There is no cavil with the proposition laid down in the case of Zaab Din and another v. The State (PLD 1986 Peshawar 188) that merely because the P.Ws. had stamp of firearm injuries on their person was not per se tantamount to a stamp of credence of their testimony."

In the case of Mehmood Ahmed and 3 others v. The State and another (1995 SCMR 127), it has been observed as under:

"For an injured witness whose presence at the occurrence is not disputed it can safely be concluded that he had witnessed the incident. But the facts he narrates are not to be implicitly accepted merely because he is an injured witness. His testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution witness."

14. From the above evidence of the P.Ws., they do not appear to be truthful witnesses; therefore, no implicit reliance can be placed on their evidence. Standards of assessing evidence in appeal against acquittal are quite different from those laid down for appeal against conviction. There is a significant difference between appraisal of evidence in the appeal against the conviction and in the appeal against acquittal. In the appeal

against the conviction appraisal of evidence is done strictly and in the appeal against the acquittal, the same rigid method of appraisal is not to be applied as there is already finding of acquittal given by the trial Court after proper, analysis on record. In the acquittal appeal, inference is made only when it appears that there has been gross misreading of the evidence which amounts to miscarriage of justice. The ordinary scope of appeal against acquittal of accused-respondents is considerably narrow and limited as held in the cases of Muhammad Usman and 2 others v. The State (1992 SCMR 498) and The State v. Muhammad Sharif and others (1995 SCMR 635).

15. During investigation, the Investigating Officer (I.O.) seized the car involved in the incident and prepared a memo on 19.06.2012 in the presence of witnesses Allah Dino and Aijaz Ali. This memo was produced by PW Aijaz Ali as Exhibit 15/F. During cross-examination, PW Aijaz Ali admitted that there was no bullet mark on the driver's seat, though a bullet mark was present adjacent to the front seat. However, a previously observed bullet mark on the back seat was no longer visible. I.O./SIP Tarique Baladi, in his cross-examination, testified that the car memo did not mention bullet marks on either side of the car, despite his careful examination. He further admitted that the memo (Exhibit 15/F) did not note any bullet marks on the car's rooftop or floor. Additionally, the memo failed to mention bullet marks on the dashboard, interior doors, back seat, or backrest of the car. It is important to note that, although the injured parties allegedly sustained firearm injuries inside the car, but no blood samples were collected from the vehicle. This oversight is evident from the I.O.'s testimony, as detailed below:

"It is correct to suggest that I did not find blood samples in the car, as per same memo. It is correct to suggest that I did not collect the blood sample from the car nor sent the blood sample collected from the car for chemical examination."


16. It has been observed that the Investigating Officer (I.O.) could not recall whether he prepared the memo of the car incident before or after the FIR was registered. He also admitted that the time of preparation of the car memo (Exhibit 15/F) was not recorded.



When shown the memo of inspection of the place of the incident, the I.O. testified that there was no mention of any blood drops at the scene. Additionally, the time of preparation for the memo of inspection (Exhibit 15/G) was left blank, with only the word "hours" written. The I.O. further admitted that the memo did not document the entry or departure from the police station to inspect the place of the incident or the car. Moreover, the I.O. did not find any bullet casings in the car. He stated that all memos were prepared by a W.P.C., whose name he could not remember, and he also did not associate said W.P.C., as a witness in the case.

17. From the evidence of the Investigating Officer (I.O.), it appears that the investigation in this case was not conducted properly. The memo of inspection for the place of the incident, produced by mashir Aijaz Ali as Exhibit 15/G, does not specify the time of its preparation. However, it does mention Crime No. 125 of 2012, which indicates that the memo was prepared after the FIR was registered under the same crime number. The FIR, produced by the complainant as Exhibit 8/A, shows that it was registered on 19.06.2012 at 1800 hours. Yet, during his testimony, mashir Aijaz Ali stated that the police prepared the memo of inspection for the place of the incident on 19.06.2012 by 1300 hours, suggesting that the inspection was completed before the FIR was officially registered. Additionally, the complainant admitted that there was an ongoing dispute between the complainant party and the accused, with civil suits being adjudicated between the parties over a bungalow/house, a plot, and agricultural land located in Deh Pasaki.

18. It is settled by now that onus of proof in criminal cases never shifts and it is for the prosecution to prove its case against the accused beyond reasonable doubt. It is also well-settled law that if there is a single circumstance which creates doubt regarding the prosecution case, the same is sufficient to extend benefit of doubt to the accused, whereas, the instant case is replete with number of circumstances which have created serious doubts about the prosecution story. In "Tariq Pervez v. The State" (1995 SCMR 1345),



the Hon'ble Supreme Court of Pakistan, at page No.1347, was pleased to observe that 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 a prudent mind about the guilt of the accused, then, the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. The apex Court reiterated the same principle in the case of "Muhammad Akram v. The State" (2009 SCMR 230).

19. Considering the above facts, it is evident that the alleged incident did not occur in the manner described in the FIR and as stated by the prosecution witnesses. There are significant inconsistencies and contradictions in the testimonies of the prosecution witnesses, which were thoroughly examined by the trial court. The trial court rightly concluded that the prosecution failed to prove its charges against the accused. Therefore, the instant acquittal appeal, being without merit, is dismissed. These are the detailed reasons for ^{four} short order dated 06.08.2024.


JUDGE 04/09/2024.


JUDGE 04/09/2024

Shahid