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IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Appeal No. D-21 of 2016.

Present:

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio.

Appellant: Shikari son of Qadir Bux Jafferi, through his Advocate Mr. Shamsuddin Abbasi.

Complainant: Khalid Hussain through his Advocate Mr. Safdar Ali G. Bhutto.

Respondent: The State through Syed Sardar Ali Shah Rizvi Deputy Prosecutor General.

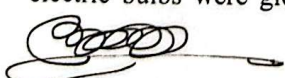
Date of hearing: 17.10.2017.

Date of Judgment: 14.12.2017.

J U D G M E N T.

KHADIM HUSSAIN TUNIO, J.- Through captioned appeal, appellant Shikari Jafari has assailed Judgment dated 11.04.2016, passed by learned Judge, Anti-terrorism Court, Shikarpur, in Special Case No.53 of 2014 Re: State V. Shikari and others, culminated from FIR No.72/2012 registered at Police Station Napar Kot, District Shikarpur, whereby he (present appellant) was convicted under section 265-H(2) Cr.PC, read with section 7(1)(e) of Anti-terrorism Act-1997 for offence under section 365-A, PPC and sentenced to suffer R.I for life and his property was forfeited in favour of State, however benefit of section 382-B Cr.PC was extended to the appellant.

2. Succinctly facts of the prosecution case are that complainant Khalid Hussain lodged F.I.R at Police Station Napar-Kot on 26.11.2012, at 1430 hours, stating therein that on the night of 25.11.2012 he alongwith his cousins, namely, Ghulam Hussain and Ghulam Akbar were present in his otaq, where electric bulbs were glowing and at about 09.00 p.m. five accused, namely, 1)



Hazaro, 2) Mazari, armed with KKs, 3) Shikari (present appellant) with Gun, 4) Habib with Repeater and 5) Ghulam Mustafa with KK, entered his Otaq. Accused Hazaro, Mazari and Ghulam Mustafa dragged him out of otaq on gunpoint, kidnapped him and directed PWs to arrange ransom amount of Rs.10,00,000/- (Ten Lac) for his release, while accused Shikari and Habib stood guard over PWs. After ten minutes, accused Shikari and Habib also joined the co-accused. Meanwhile, PWs raised cries on which villagers gathered and they all followed the accused. When the villagers reached near the accused and tried to apprehend them, accused Hazaro and Mazari fired upon them, which hit to his cousin Khadim Hussain, who fell down and died, thereafter all accused persons left him and escaped away, while making aerial firing. Complainant along-with villagers after obtaining letter from police took the dead body to Khanpur hospital for postmortem and after burial he went to police station and lodged instant FIR.

3. Initially, all the accused were absconders, as such, proceedings under Sections 87 and 88, Cr.P.C were initiated against them at Exhs.1 to 6 and they were declared as proclaimed offenders and the case against them was kept on dormant file vide order dated 13.5.2014. Subsequently, Shikari (present appellant) was arrested and produced before the Court through supplementary challan on 5.11.2014. After compliance of section 245, Cr.P.C, a formal charge was framed, to which the appellant pleaded 'not guilty' and claimed to be tried at Ex.03/A.

4. In order to prove its case prosecution has examined P.W-1, complainant Khalid Hussain at Ex.4, he produced FIR at Ex.04-A, PW-2 Ghulam Akbar at Ex.05, PW-3 Ghulam Hussain at Ex. -06, PW-4 Aftab Ahmed, Tapedar, at Ex.07, he produced sketch of place of incident at Ex.07/A, PW-5 Dr. Ghulam Asghar at Ex.08, he produced 'lash chakas' form at Ex.08-A and postmortem



report of deceased Khadim Hussain at Ex.8-B, PW-6 Barkat Ali at Ex.09, he produced memo of inspection of dead body at Ex.09/A, Danshtnama at Ex.09/B and mahsirnama of place of wardhat and recovery at Ex.09-C. The learned DDPP gave up PW/PC Sobho Khan vide statement at Ex.10. After that, PW-7 ASI Muhammad Afzal Jatui was examined at Ex.11, he produced photostat copy of mashirnama of formal arrest of accused at Ex.11/A, PW-8 PC Muhammad Amin at Ex.12, he produced receipt of delivery of dead body at Ex.12/A, PW-9 HC Sharafullah at Ex.13, PW-10 PC Maqsood Ahmed at Ex.14, PW-11 SHO Anwar Ali at Ex.15, He produced carbon copy of Heirship Certificate of deceased at Ex.15/A. The learned DDPP submitted report of chemical examiner with his statement and closed side of prosecution vide statement at Ex.16.

5. Learned counsel for the appellant contended that appellant has been falsely implicated by the complainant; that the evidence adduced by the prosecution at the trial has not been properly assessed and evaluated by the learned trial judge; that the evidence produced at the trial by the prosecution is insufficient to warrant conviction against the appellant; that the trial Judge has not observed the established rules of the appreciation of the evidence in deciding the case; that appellant Shikari and co-accused Mazari and Habib are real brothers and accused Hazaro is son of appellant Shikari, while accused Ghulam Mustafa is son of Mazari; that all the prosecution witnesses are interested to the incident in question and their statements cannot be relied upon, hence he prayed for acquittal of the appellant.

6. On the other hand, learned APG and learned Counsel for the complainant supported the impugned judgment and contended that the learned trial Court has rightly convicted the appellant on the basis of strong incriminating evidence on record and the prosecution witnesses, who are natural witnesses, fully supported the prosecution case on all material aspects.



7. We have given due consideration to the submissions made by learned counsel for the appellant as well as learned APG and learned Counsel for the complainant and have examined the entire material available on record minutely.

8. According to the prosecution case, on the night of 25.11.2012, the complainant and P.Ws were present at his otaq, when at about 9.00 p.m. the present appellant along with co-accused showed up, and whilst holding everyone on gunpoint kidnapped Khalid Hussain and asked P.Ws to arrange ransom of Rs.10,00,000/= for release of Khalid Hussain. After a matter of few minutes, villagers gathered and they began chasing down the accused and reached close to them, upon which the accused persons fired at them and a bullet hit complainant's cousin Khadim Hussain, who fell down and then the accused persons fled whilst firing in the air.

9. Perusal of record shows that there are numerous contradictions in the evidence of P.Ws on material aspects. PW-1 complainant Khalid Hussain has deposed that on 25.11.2012 accused Shikar armed with gun, Hazaro, Ghulam Mustafa and Mazari abducted him on gunpoint, dragged him from the Otaq and asked the P.Ws that they were abducting him for ransom and further directed that they should arrange 10 lacs, pay the same on the next day and get him released. Accused Shikari and Habib controlled over the witnesses, while accused Hazaro, Ghulam Mustafa and Mazari took him towards the west. Ten minutes later, accused Shikari and Habib also came and joined the other accused, where after P.Ws raised cries and his cousin Khadim Hussain was leading and reached the accused and tried to save him from the accused persons, whereupon accused Hazaro and Mazari fired upon him directly with intention to commit his murder. Khadim Hussain sustained injury and fell down raising cries. The accused persons seeing Khadim Hussain falling down on the ground and other villagers



approaching, left him and ran away while making firing in order to spread terror. He further testified that Din Muhammad is their co-villager, who had lodged an FIR of murder against the same accused on 24.7.2013. He further deposed that Muhammad Hassan had lodged the FIR of aerial firing against the same accused in the year 2014. He further deposed that accused had also registered murder case against them and voluntarily mentioned that accused Mazari after killing his daughter by declaring her "Kari" had lodged such case against him and his witnesses. He also deposed that accused Shikari Jaffer has got 10/12 shops at Karampur Laro(Diversion) and denied the suggestion that accused Shikari Jaffer is owner of a fish farm of 200/300 jirebs. He also denied that thieves had entered into their house for committing theft, during which deceased was murdered and that accused Shikari Jaffer and his relatives were earning about 80/90 lac per year.

10. PW-2 Ghulam Akbar, who is also eyewitness of the alleged incident, deposed that on 25.11.2012 he, complainant Khalid Hussain, who is his cousin, his another cousin PW Ghulam Hussain were available in the Otaq, when at 9.00 p.m. five accused persons armed with weapons entered the Otaq, whom they identified to be Hazaro armed with KK, Mazari armed with KK, Shikari armed with gun, Habib armed with Repeater, Ghulam Mustafa armed with KK. He further deposed that accused Hazaro, Ghulam Mustafa and Mazari dragged complainant Khalid Hussain declaring that they were abducting him and asked them to arrange ransom of Rs.10 lac for his release, while accused Shikari and Habib remained there for controlling them, who also left the scene subsequently. He further deposed that on their cries deceased Khadim Hussain and co-villagers were attracted and they all chased the culprits and when Khadim Hussain reached near the culprits and the abductee and tried to rescue the abductee, accused Hazaro and Mazari fired straight upon him and he fell down by raising cries, whereafter the accused persons fled away by making aerial firing.



11. In cross-examination, PW Ghulam Akbar stated that village of accused/appellant Shikari would be about 300 paces away from his village. He denied that they have already filed some cases against the accused. He admitted that the accused apart from firing at the deceased had made firing upon them also. He denied that the accused had lodged murder case against them prior to this incident, though complainant Khalid Hussain in cross-examination admitted that accused Mazari had lodged murder case of his daughter against him and his witnesses.

12. PW-3 Ghulam Hussain, who is also eyewitness of the alleged incident, in his examination-in-chief gave the same facts of incident, as stated by complainant and PW Ghulam Akbar.

13. PW-4 Tapedar Aftab Ahmed Jatui by placing on record the site sketch gave description of the place of incident.

14. PW-5 Dr. Ghulam Asghar Manganhar giving detail of the injuries sustained by the deceased confirmed the death of deceased as a result of firearm injury on his head. He confirmed two wounds of entry and two of exit and stated that after sustaining injuries the deceased died instantaneously. To this extent, the evidence of this witness was not challenged by the defence, therefore, unnatural death of deceased appears to be admitted on record.

15. PW-6 Barkat Ali Mirani, who is mashir of inspection of dead body, has deposed that he was shown dead body of deceased Khadim Hussain by PC Sharafdin Bijarani lying in a datsun parked at Police Station Naper Kot. According to him the deceased had one through and through firearm injury on his neck and second injury below the left side eye, which was also through and through. Such mashirnama was prepared and his signature and signature of co-mashir Ghulam Yasin were obtained on it. According to him, police during inspection of wardat shown by complainant on 29.11.2012 secured blood stained



earth, 20 empties of KK and 24 empty cartridges of 12 bore from the place of wardat and sealed the same and prepared such mashirnama, which was signed by him and co-mashir Ghulam Yasin. In cross-examination, he admitted that the complainant and P.Ws are related to him.

16. Evidence of PW-8 PC Muhammad Amin Bhayo, corpse bearer shows that on 25.11.2012 on the directions of HC Sharafullah Bijarani he took dead body of deceased Khadim Hussain to taluka hospital for postmortem and after postmortem he handed over the dead body to complainant and demanded the last worn cloths of deceased, which the complainant stated to produce at police station after burial of dead body.

17. PW-9 Sharafullah Bijarani deposed that on 25.11.2012 he was available at police station as duty officer, when at 9.30 p.m. complainant Khalid Hussain appeared at police station and disclosed that five accused persons had fired upon his cousin and had committed his murder, whereupon he went to the place of incident, where he saw dead body of deceased lying in a datsun. He saw injuries on the body of deceased and prepared lash chakas form and mashirnama of inspection of dead body. He then removed the dead body to hospital and returned to police station and on the next day i.e. 26.11.2012 complainant again appeared at police station and lodged FIR. In cross-examination he has denied to have seen the dead body at police station and further denied that electricity was not available at the place, where the dead body was lying.

18. Investigation Officer Muhammad Malook Samejo had expired, therefore, Anwar Ali Abro, SHO of Police Station Qubo Saeed Khan, who was well conversant with his signature, was examined as PW-11 and he deposed that he had not played any role in the investigation of this case.


19. From the above evidence of complainant Khalid Hussain and eyewitnesses Ghulam Akbar and Ghulam Hussain it is clear that the complainant

and accused party were known to each other prior to the incident and their villages are also located within same locality. So much so, there existed previous enmity between the parties and such cases were also lodged by the accused party against the complainant party. In such circumstances, the story/allegation of abduction of complainant for ransom by the accused does not appeal to reason and is not tenable. There are number of contradictions in the evidence of complainant and P.Ws on material aspects of the case. According to complainant, after the departure of accused he took the dead body with the help of witnesses and villagers to police station and after getting letter from PS they went to Civil Hospital, Khanpur for postmortem, while PW-9 Sharafullah Bijarani deposed that complainant appeared at P.S at 9.30 p.m. and narrated the incident to him, where after he accompanied the complainant to place of incident, where he found the dead body of deceased lying in a datsun and prepared mashirnama of place of incident and Danistnama on 25.11.2012 i.e. one day before registration of FIR, whereas mashir Barkat Ali has deposed that the dead body lying in a datsun was shown to him by PC- Sharafdin Bijarani at police station and mashirnama and Danistnama were prepared there and his signatures were obtained. From the evidence of HC Sharafullah Bijarani, who on approach of complainant visited the place of incident just after the incident, inspected the place of incident as well as dead body and prepared such mashirnama and Danistnama, it is clear that neither he recovered any empty from the place of incident, nor even collected blood-stained earth. Complainant in cross-examination stated that police had not come to their otaq on 26.11.2012. In such circumstances, the positive report of chemical examiner regarding the blood-stained earth allegedly recovered from the place of incident, which was placed on record through the statement of DDPP, is of no value under the law. According to complainant Khalid Hussain, there was some light of bulbs coming from nearby villages, whereas according to eyewitness Ghulam Akbar there was darkness at the place of incident and

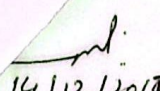


Tapedar Aftab Ahmed in cross-examination has stated that the villages were located at the distance of about $\frac{1}{2}$ or $\frac{3}{4}$ kilometer from the place of incident. Tapedar Aftab Ahmed Jatui has also given distance between the position of accused and that of the deceased to be 16 feet, whereas according to Dr. Ghulam Asghar, who conducted postmortem of deceased, the deceased was fired at from the distance of 06 feet.

20. In view of above glaring contradictions and discrepancies in the prosecution evidence, we are of the opinion that the prosecution was not able to bring home the guilt of accused/appellant up-to the hilt and the conviction awarded to the appellant by the learned trial Court is not sustainable in law. Consequently, we allow the appeal, set aside the impugned judgment dated 11.4.2016 passed by the learned Judge, Anti-Terrorism Court, Shikarpur and acquit the appellant/accused of the charge. The appellant is confined in jail. He shall be released forthwith, if not required to be detained in any other case.



Muhammad Sir



14/12/2017
ZAFAR AHMED RASPUTI

Qazi Tahir PA/*