

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Before:

Mr. Justice Mohammad Karim Khan Agha

Cr. Jail A. No.S-126 of 2013.

Muhammad Aslam

Versus.

The State.

Appellant : Muhammad Aslam	Through Mr. Inam Ali Malik, Advocate.
Respondent : The State	Through Mr. Shahid Ahmed Shaikh, A.P.G.
Date of hearing	13.04.2017.
Date of judgment	17.04.2017

**J U D G M E N T**

**MOHAMMAD KARIM KHAN AGHA, J.-** Appellant Muhammad Aslam was tried by learned Sessions Judge, Sanghar, in Sessions Case No.274 of 2005, arising out of crime No.40 of 2005, registered at Police Station Mangli, for offence under sections 302, 324 PPC. Appellant was found guilty by Judgment dated 11.09.2013 and was convicted and sentenced (1) under section 302-b PPC to suffer life imprisonment and fine of Rs.100,000/-, which after recovery shall be paid to the legal heirs of deceased Qadir Bux, in case of default, the accused shall further suffer S.I for six months more, (2) under Section 337-F(vi) PPC to pay daman amounting to Rs.50,000/- to Mst. Ameerzadi for causing her injuries, failing which to further undergo S.I of six months more. Benefit of Section 382-B Cr.P.C. was also extended to the accused. The appellant has challenged the judgment (the impugned judgment) through the instant appeal.

2. The brief facts of the prosecution case as disclosed in the F.I.R. are that on 01.10.2005 at 2100 hours Mohammad Uris Mallah lodged F.I.R at Police Station Mangli, in which he has stated that his brother Qadir Bux aged 30/31 years is married person resides with him by constructing house and cultivate the land of Faiz Muhammad Mallah. Some days back, Muhammad Aslam restrained his brother Qadir Bux

not to go at the house of Anwar Mallah. Today, in morning his brother Qadir Bux went to village Faiz Mohammad for harap work and he was present at his house. In evening, he went towards the house of his cousin Anwar Mallah and from his behind his cousin Gullo Mallah and Mohammad Hassan Mallah were also coming, when he reached near the house of Anwar Mallah, he saw Mohammad Aslam Mallah came running from his house having shot gun stopped outside the house of Anwar Mallah called Qadir Bux, on which Qadir Bux came out from the house of Anwar Mallah. Time was 6-00 p.m. (evening). Mohammad Aslam by raising hakkals asked his brother Qadir Bux that why you have come at the house of Anwar Mallah as he has restrained him, you have not spare by saying so straight fired upon Qadir Bux from shot gun with intention to commit murder and also caused another fire by loading the shot gun upon Qadir Bux, meanwhile the wife of Anwar Mallah namely Mst. Ameerzadi came running towards outside from her house, Mohammad Aslam caused third fire by loading the shot gun upon Qadir Bux, but Qadir Bux fell down on the ground and the fire hit to Ameerzadi, she also fell down on the ground. Gullo and Mohammad Hassan also came and saw the incident. On our seeing accused Mohammad Aslam escaped away along with shot gun. They saw, his brother Qadir Bux received one fire arm injury on right side of chest and another fire arm injury on left side of chest. blood was oozing. Mst. Ameerzadi received fire arm injury on right leg below the knee and also received pallet injury on left foot. blood was oozing. On our seeing Qadir Bux succumbed to injuries. Thereafter, they called Anwar from his shop, who came and disclosed him all facts, who after getting conveyance took his wife Mst. Ameerzadi to Civil Hospital, Sanghar for treatment. They informed on telephone to P.S. Mangh through Head Jamrao Police Post and then police came, who after completing the legal formalities sent dead body to Civil Hospital, Sanghar for postmortem. Thereafter, he went to Police Station and lodged report of the incident.

3. After completing the usual investigation, police submitted the challan against above named accused.

4. Formal charge against the accused was framed by trial court at Ex 2. Accused pleaded not guilty and claimed to be tried.



5. In order to prove its case prosecution examined as many as 11 witnesses and thereafter learned DDPP closed the side of prosecution vide statement Ex.21.
6. Statement of accused was recorded under section 342 Cr.P.C. at Ex.22, in which he denied the allegations of the prosecution. He however neither examined himself on oath nor led any evidence in his defence.
7. The learned trial court after hearing the learned counsel for the parties and on the assessment of the entire evidence convicted and sentenced the appellant/accused as stated above through the impugned judgment.
8. The facts of this case as well as evidence produced before the Trial Court find an elaborate mention in the impugned judgment passed by the trial Court therefore the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
9. Mr. Inam Ali Malik learned counsel for the appellant has contended that the impugned judgment should be set aside and the appeal may be allowed for, amongst others, the following reasons; that the complainant was not an eye witness and his evidence is purely hearsay; that the mashirnamas had been made before registration of the FIR; that no recovery had been made at the time of arrest; that there was only one eyewitness who was unreliable; that there had been a three months' delay in sending the articles to Chemical and Ballistic Examiners, which had been submitted after the prosecution had closed its side; that the confession statement of the appellant was not recorded in Sindhi, which was the language of the appellant / accused and as such could not be relied upon; that some of the P.Ws. were related to each other and as such could not be relied upon; that the appellant was entitled to the benefit of doubt. In support of his contentions, he placed reliance on the cases of **Muhammad Asif v. The State** (2017 S C M R 486), **Nasir Javaid and another v. The State** (2016 S C M R 1144), **Rehman and others v. The State** (P L D 1963 Lahore 464), **Tariq Pervez v. The State** (1995 S C M R 1345), **Muhammad Nadeem v. The State** (2013 P Cr. L J 701), **Shahid alias Waris and others v. The State and others** (2016 Y L R Note 97) (Lahore (Multan Bench), **Sher Azam Khan v. The State and 2 others** (2016 Y L R 1166) and **Khurram Jalali v. The State** (2017 P Cr. L J Note 19 (Sindh).



10. On the other hand, learned A.P.G. fully supported the impugned judgment which according to him was comprehensive and had covered all the relevant issues in the case. He further contended that in support of the prosecution case there was an eyewitness; that the appellant had made a confessional statement; that the medical, chemical and ballistic evidence supported the prosecution case; that there were no major contradictions in the evidence of the P.Ws; that it was not relevant that the Chemical and Ballistic reports have been placed on the record after closure of the prosecution evidence; that it was irrelevant that some of the P.Ws. may have been related and as such the impugned judgment should be upheld and the appeal dismissed. In support of his contentions, learned A.P.G. has relied upon the cases of **Naik Muhammad alias Naika and another v. The State** (2007 S C M R 1639) and **Muhammad Ehsan v. The State** (2006 S C M R 1857).

11. I have considered the arguments of learned counsel, perused the record and the case law cited by them at the bar.

12. In this case PW 3 Ms Meerzadi is an eye witness. She knew the accused and gave direct evidence that she saw him shooting the deceased before shooting her. She is not a chance witness and her reliability and credibility was not damaged during cross examination. She in my view is the key witness. I find her evidence to be confidence inspiring and her evidence is also corroborated by the medical evidence and PW 1 Dr. Hotool Mal in connection with the cause of death of the deceased by fire arm injury. Her own injuries are also corroborated by numerous PW's especially PW 13 Dr. Najma Hyder. In addition some corroboration can be found in the evidence of PW Muhammed Hassan who saw the accused running outside the village with the gun after the shots. The complainant's evidence is corroborative but is hearsay. Even if we discount the other corroborative evidence of PW 6 Gullo whose evidence seems to be exaggerated. In this respect reference can be made to the case of **Muhammad Ehsan v. The State** (2006 S C M R 1857) where it was held at P.1860 at Para 6 as under:

"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. It be noted that this Court has time and again

held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence'

13. With regard to interested witnesses based on the evidence before me I do not consider this to be of much, if any, relevance and in this respect reference is made to the cases of **Muhammad Ehsan** (Supra) and **Naik Muhammad's case** (Supra) and **Ameer Ali V State** (1999 MLD 758 (Lahore) This is more so since no animus or enmity has been shown towards/against the appellant by any of the PWs.

14. The accused was arrested on the day of the incident, the FIF was lodged on that day, the post mortem was carried out on that day and the appellant also lead the police to the murder weapon which belonged to him and was found in his home on that same day. The ballistics report also shows that at least 2 of the ammunitions were fired from this very weapon and the chemical report is also supportive of the prosecution's case.

15. Importantly, a **day after the incident**, the accused gave a S 164 confessional statement before the magistrate whereby he confessed to the crime whereby he gave his motive for committing the crime being that he had discovered that the wife of his maternal uncle (PW 3 Ms Meerzadi) was committing Zina bil Raza with the deceased PW 11 Shahid Hussain who was a civil judge recorded his statement and produced the same before the Court in addition to his own evidence on this issue. Although the language used in the S 164 statement is not Sindhi which is the mother tongue of the accused I do not consider this to be of much relevance as the S 164 statement specifically states that it was read back to him in Sindhi and as such he was fully aware of its contents.

16. The fact that the court allowed the prosecution to call PW 11 Dr Najma Hyder after closing its side I consider to be of no significance as a proper application was made for reopening the case which was allowed by the learned trial Judge which decision was not appealed by the appellant. There is also no legal bar to the filing of the chemical reports and ballistics reports after the prosecution has closed its case.



17. It is true that there are some discrepancies in the evidence of some PW's however I consider such discrepancies to be of only a minor nature and when considered against the totality of the evidence to be of little, if any, significance in the context of this case. In this respect reference may be made to the cases of **Zakir Khan & others v. The State** (1995 SCMR 1793) and **Ameer Ali V State** (1999 MLD 758 (Lahore))

18. I entirely agree with learned counsel for the appellant that the accused should be entitled to the benefit of the doubt in criminal cases which is a well settled legal principle however I am guided in this respect by the case of **Faheem Ahmed Farooqui V State** (2008 SCMR 1572) where it was held as under at P.1576 at Para D

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, **a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of the charge makes the whole case doubtful.** Merely because the burden is on the accused to prove his innocence it does not absolve the prosecution from its duty to prove its case against the accused beyond any shadow of doubt."(bold added)

19. In this case I am of the view that when the evidence is read in totality there would be no doubt in a reasonable and prudent person's mind that the appellant was guilty of the offense for which he has been charged not with standing the few minor procedural irregularities and minor contradictions in the evidence of the PW's which even otherwise are not fatal to the prosecutions case.

20. In my view the evidence of the key PW's on a whole is reliable, trustworthy and confidence inspiring (barring PW 6 Gullo whose evidence seems to be exaggerated) none of whom were seriously damaged, if at all, during cross examination. Such evidence in my view also represents a continuous chain of evidence from the time of the crime connecting the appellant to the crime especially when the medical, ballistic and chemical evidence is taken into account.

21. Thus, for the above reasons I up hold the impugned judgment and hereby dismiss this appeal.