ORDER SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

Criminal Jail Appeal No.S- 181 of 2006

DATE	ORDER WITH SIGNATURE OF JUDGE

For hearing of case.

13.03.2023.

Ms. Riffat Bano, Advocate for appellant.

Mr. Shahid Shaikh, Additional P.G and Miss Sana Memon, Assistant P.G for State.

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Appellant is present on bail. I have heard the arguments of learned counsel for appellant and learned A.P.G for State. Reserved for judgment.

Tufail

Defence of Self Defence rejected

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.S-181 of 2006

Israr Ahmed Qureshi

Versus

The State

Appellant : Israr Ahmed S/o Haji Sikandar Ali Qureshi (present on bail)	through Syeda Riffat Bano Advocate
Respondent : The State	through Mr. Shahid Ahmed Shaikh, Additional P. G. along with Ms. Sana Memon, Assistant P.G
None present for complainant without intimation despite direct intimation notice of this time and date fixed matter.	
Date of hearing	13.03.2023
Date of judgment	15.03.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- This criminal jail appeal is directed against the judgment dated 15.07.2006, passed by the learned Ist. Additional Sessions Judge, Mirpurkhas, in Sessions Case No.95 of 2003 (re: The State V Israr Ahmed), emanating from Crime No.22 of 2003, registered at Police Station Taluka Mirpurkhas, under section 302, 324, 504 PPC, whereby the appellant has been convicted u/s 302(b) PPC for committing murder of Jan Muhammad and Mir Fakir and sentenced to suffer imprisonment for life.

He was also directed to pay a fine of Rs.50,000/-; and, in case of non-payment of the said fine, he shall suffer further R.I for 01 year. The appellant was also convicted u/s 337-F(iv) PPC for causing injuries to P.W Ali Bux Brohi and sentenced to suffer R.I for 03 years and to pay Rs.20,000/- as daman to injured/victim Ali Bux Brohi. However, he was awarded benefit of section 382-Cr.P.C.

2. Facts of the prosecution case as stated in the FIR lodged by the complainant Abdul Hakeem at Police Station Taluka Mirpurkhas on 03.06.2003 at 1930 hours, are as under:-

> *"That, the mango garden of his uncle Mir Fakir was on lease with accused Israr Ahmed for the last two years and some lease amount was outstanding against accused Israr Ahmed. That on 03.06.2003, he (complainant) along with his uncle Mir Fakir aged about 70-75 years, cousin Jan Muhammad aged about 32 years and his relatives Liaquat Ali and Muhammad Moosa went to the said mango garden, where accused Israr Ahmed and his labourers were available. His uncle Mir Fakir and cousin Jan Muhammad demanded the remaining lease amount from accused Israr Ahmed on which accused Israr Ahmed became enraged and abused expressing that complainant party have caused torture to him on which Mir Fakir and Jan Muhammad prevented the accused from giving abuse. Consequently, at about 1700 hours accused made fire shots from his revolver at Mir Fakir and Jan Muhammad with intention to kill them. On receiving fire shot injuries, Mir Fakir and Jan Muhammad fell down on the ground. Complainant party tried to catch accused but he extended threats to kill them if they would come near to him, as such due to fear they did not go near to accused. During such fight Ali Bux Brohi, the labourer of accused Israr Ahmed also sustained injury. Accused then ran away. Complainant party found that Jan Muhammad due to said injuries had died, while Mir Fakir and Ali Bux Brohi were injured. Thereafter, the complainant lodged FIR."*

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed charge against the accused/appellant, to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 10 PWs and exhibited numerous documents and other items. The statement of the accused was recorded under section 342 Cr.P.C whereby he denied the allegations leveled against him and claimed it was a case of self defence. He also gave evidence on oath to this effect and called two DW's, Syed Muhammad Kamil and Suhail Sangi, in support of his defence case as well as bringing documents on record in this regard.

5. Learned trial Court after hearing the learned counsel for the parties and evaluating the evidence available on record convicted and sentenced the appellant, as stated in the earlier part of this judgment.

6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.

7. Learned advocate for the appellant has contended that the appellant is innocent and has been falsely implicated in this case; that the appellant has raised the defence of self defence which he has proven through his evidence under oath and DW's; that some of the prosecution witnesses were not present at the scene of the incident and are planted witnesses; that the appellant had no reason to shoot the deceased and no motive has been proven; that the medical evidence supports the appellant's version of events; that the appellant surrendered one day after the incident and handed over the murder weapon to the police which was then substituted by the police and that for any or all the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt. In support of her contentions she placed reliance on the cases of **Muhammad Asif V The State** (2017 SCMR 486), **Muhammad Akram V The State** (2012 SCMR 440) and **Sudheer through Senior Superintendent, Central Prison, Hyderabad V The State** (2023 PCr.LJ 25).

8. Learned Additional Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has fully supported the impugned judgment. In particular he has contended that the prosecution eye witnesses are reliable, trust worthy and confidence inspiring and-as such their evidence is to be believed; that all the eye witnesses knew the appellant and as such there was no case of mistaken identity especially as it was a daylight incident; that the pistol was recovered on the pointation of the appellant; that the medical evidence fully supported the prosecution case; that the motive for the murder was that the appellant wanted to avoid paying the lease fee which he owed to the deceased and as such the prosecution had proved its case beyond a reasonable doubt and the appeal be dismissed. In support of his contentions,

he placed reliance on the cases of **Muhammad Bashir and another V The State and others** (2023 SCMR 190, **Amanullah V The State and another** (2023 SCMR 527), **Imtiaz alias Taji and another V The State and others** (2020 SCMR 287) and **Ali Ahmad and another V The State and others** (PLD 2020 Supreme Court 201).

9. I have considered the submissions of the parties and have perused the material available on record and considered the case law cited at the bar.

10. This is an old appeal of 2006 and learned counsel for the complainant has rarely put in an appearance. On the last date of hearing learned counsel for the complainant was called absent without intimation and was given direct intimidation notice of today's date and time fixed matter however he preferred to remain absence. Thus, since this old matter needs to be decided and cannot be allowed to linger on forever in the interests of justice I have proceeded to decide this appeal with the complaint's interest being protected by the learned APG.

11. Based on my reassessment of the evidence of the PW's and the appellant especially the medical evidence and other medical reports and blood at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Fakir and Jan Muhammed (the deceased) were shot and murdered by firearm respectively on 03.06.2003 at about 5pm in the Mango Garden of Fakir situate at Deh Kak Taluka Mirpurkhas.

12. The only question left before me therefore is whether it was the appellant who murdered both the deceased by firearm in cold blood or killed them in self defence at the said time, date and location?

13. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charge against the appellant keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) In this case the appellant has taken the particular plea of self defence. In this respect I have proceeded to put the prosecution case in juxtaposition with the defence case of self defence to see if this defence is at all plausible and can caste any doubt on the prosecution case.

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(b) That the FIR was lodged with promptitude being approximately 2 and a half hours after the incident considering that the complainant had to walk for 1 and a half hours from the place of incident to the PS. All the eye witnesses as well as the injured and deceased are named in the FIR and the appellant is given a specific role. The complainant had no proven enmity with the appellant and thus had no reason to implicate him in a false case. The promptitude in which the FIR was lodged also gave no time for the complainant to cook up a false case in collusion with the police.

(c) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and whether I believe their evidence, over that of the appellant, whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Abdul Hakeem. He is the complainant and the nephew of deceased Fakir.** According to his evidence on 03.06.2003 at about 5pm he, along with PW's Liaquat Ali and Muhammed Moosa came to the Otak of Fakir who was sitting with his son Jan Muhammed which is situate in a garden. Fakir asked them to accompany them to visit the garden when they came across the appellant and his workers who were filling boxes of mangoes. Fakir demanded the remaining lease amount from the appellant on which the appellant became annoyed and abused Fakir. Jan Muhammed told the appellant to stop abusing after which the eye witness **saw** the appellant pull out a revolver and shoot both Fakir and Jan Muhammed who both fell down and one fire shot also hit labourer Ali Bux. They did not intervene as the appellant threatened them and then ran away with the revolver. Jan Muhammed died on the spot and Fakir and Ali Bux were both injured. He then left Liaquat Ali and Moosa with the dead body and the injured whilst he went to inform the police.

This eye witness is related to the deceased however no enmity or dispute has been proven between the eye witness and the appellant and thus his mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness **knew the appellant before the incident** which occurred at 5pm in June when there would have been sufficient light to identify the appellant especially as the incident occurred quite close to him and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellant. His presence at the scene of the incident is corroborated by PW 3 Liaquat Ali and PW 4 Moosa. **Even otherwise** in his defence plea the appellant has admitted his presence at the scene of the crime and the killing of both Fakir and Muhammed Jan and the wounding of Ali Bux **but** has contended that the incident happened in a different manner.

This eye witness was not a chance witness as he lived in the area and had every reason to be with the deceased who was his relative at the time of the incident. He gave his S.154 Cr.PC statement with promptitude which was not significantly improved on during his evidence. He named the accused in his FIR along with the other eye witnesses. He gave his evidence in a natural manner and was not dented at all during cross examination and as such we find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially when put in juxta position with the defence version of how the events unfolded which I shall come to later.

I can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the cases of **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case I find the evidence of this eye witness to be of good quality and believe the same. **In this case however there is more than one eye witness.**

(ii) **Eye witness PW 3 Liaquat Ali. He is not related to the deceased or the appellant and in that respect is an independent witness.** His evidence corroborates **PW 2 Abdul Hakeem's** evidence in all material respects. He knew the appellant from before, he saw the incident from close range and is not a chance witness. He is named in the FIR as an eye witness and his evidence is not materially improved from his S.161 Cr.PC statement. It is true that he gave his Section 161 Cr.PC statement after a delay of 8 days which can be fatal to his evidence however since he was named in the promptly lodged FIR and the fact that he gave his Section 161 Cr.PC statement one day after the injured Fakir died in hospital I am inclined to believe his evidence but give **lesser weight** to it as opposed to PW 2 Abdul Hakeem's evidence otherwise the same considerations apply to his evidence as the evidence of **PW 2 Abdul Hakeem.**

(iii) **Eye witness PW 4. Muhammed Moosa. He is not related to the deceased or the appellant and in that respect is an independent witness.** His evidence corroborates **PW 2 Abdul Hakeem's** and **PW 3 Liaquat's** evidence in all material respects. He knew the appellant from before, he saw the incident from close range and is not a chance witness. He is named in the FIR as an eye witness and his evidence is not materially improved from his Section 161 Cr.PC statement. It is true that he gave his Section 161 Cr.PC statement after a delay of 8 days which can be fatal to his evidence however since he was named in the promptly lodged FIR and the fact that he gave his S.161 Cr.PC statement one day after the injured Fakir died in hospital, like PW 3 Liaquat, I am inclined to believe his evidence but give **lesser weight** to it as opposed to PW 2 Abdul Hakeem's evidence otherwise the same considerations apply to his evidence as the evidence of **PW 2 Abdul Hakeem.**

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(iv) **Eye witness PW 1 Ali Bux.** He is not related to either the complainant's side nor the appellant and as such is also an independent witness with leanings towards the appellant who s his boss. According to his evidence at about 5 or 5.30pm he and the appellant were working in the garden of Fakir packing mangoes. He saw Fakir, Jan Muhammed and the appellant talking to each other when all of a sudden firing started and he sustained fire arm injury to his shoulder. He did not see who made the firing and later regained his senses in the civil hospital where he learnt that Jan Muhammed had died on the spot and that Fakir had been seriously injured.

This witness was named in the FIR and was injured at the scene of the incident and as such his presence cannot be doubted. He does not particularly support the prosecution case but definitely does not support the defence case. This is because although he does not know who the firing came from he does not mention any grappling between the parties. Importantly, if the deceased were talking to the appellant if the deceased had fired on the appellant how they could have missed the appellant with a fire shot and hit this witness instead. This eye witness was working for the appellant and thus might have been reluctant to elaborate on the precise details.

(d) That the medical evidence is supportive /corroborative of the prosecution case in so far as it can be relied upon. According to the medical evidence the firing came from close range as when the pistol touched the body and fired it would leave a red the mark around the wound. This opinion I do not find supported by any medical jurisprudence whereby close range shots of less than three feet leave red marks around the wound rather they leave blackening and then the closer you get, charring, tattooing and burning and not a red mark. The red mark would indicate that the fire shot was made from a distance of over three feet which does **not** support the defence case of grappling and then a close range shot.

(e) That it does not appeal to logic, commonsense or reason that a real nephew would let the real murderer of his uncle get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758)

(f) That the murder weapon was found on the pointation of the appellant after his arrest at a hidden place only he would have been aware of as per mashirnama of recovery and police evidence.

(g) That one of the empties in the recovered pistol matched the pistol which was recovered by the appellant on his pointation.

(h) That it has not been proven through evidence that any particular police PW's had any enmity or ill will towards the appellant and had no reason to falsely implicate him in this case for example by foisting the pistol on him and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such I rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

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(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellant. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669).The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the appellant got annoyed with the deceased for demanding his rental payment to the appellant shooting the deceased to the arrest of the appellant to the recovery of the pistol on his pointation to a positive FSL report.

(j) That the motive for the appellant shooting the deceased was that he did not want to pay them the lease money which he owed them.

(k) Now I shall examine the appellants' defence of self defence. By the very nature of the defence a per his Section 342 Cr.PC statement and evidence under oath the appellant has (a) admitted his presence at the crime scene and (b) admitted killing the deceased albeit in self defence. The question is whether we believe his evidence or the prosecution evidence. The prosecution evidence against the appellant has been discussed in detail above. As regards the appellants defence of self defence he has not produced a single defence witness in this regard. Even his worker Ali Bux who gave evidence as PW 4 did not support his case. The DW's he produced only suggested from their sources that he might have been in police custody on 07.06.2003.His direct complaint was made **more that one month** after his arrest and no explanation has been given for this long delay which on the face of it appears like an after thought. As discussed above if he was so close to the deceased how could they have missed him with his fire shot and hit Lal Bux instead. This does not appeal to logic, reason or common sense. Like wise it does not appeal to logic, reason or common sense that while he was grappling with Jan Muhammed a fire shot hit Fakir which caused his death and then another fire shot hit Jan Muhammed. Why was he unable to disarm Jan Muhammed? In short I find there to be no merit in the appellant's defence case of self defence especially in the face of reliable trust worthy and confidence inspiring eye witness evidence and other supportive/corroborative evidence. I find his defence of self defence a cleverly constructed after thought which does not dent the prosecution case at all and raises no doubt in the prosecution case.

14. Thus, based on the above discussion I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offence for which he has been convicted and hereby maintain his conviction and sentence and dismiss the appeal. The appellant's bail is recalled with immediate effect; NBW's are issued for his arrest which shall be executed through SHO PS Taluka Mirpurkhas who shall arrest the appellant and return him to Central Prison Hyderabad to serve out the remainder of his sentence. A Copy of this Judgment shall be sent to SSP Mirpurkhas who shall

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put up his compliance report before the Additional Registrar of this court within 4 weeks of the date of this Judgment.

15. The appeal is disposed of in the above terms.