

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No.S- 109 of 2019.

Appellant: Mukhtiar Chandio through Mr.Razi Khan R. Chandio, Advocate.

Respondent: The State through Mr.Ali Anwar Kandhro, Addl: P.G.

Complainant : Zahid Ali in Person

Date of hearing: 11.01.2021.

Date of judgment: 15.01.2021

JUDGMENT

Mohammad Karim Khan Agha -I:- Through this criminal appeal appellant Mukhtiar Chandio has assailed impugned judgment dated 25.10.2019 passed by learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Kamber in Sessions Case No.51 of 2019 re: State v. Mukhtiar Chandio & others arising out of Crime No.85 of 2018 of P.S Warah registered for an offence under Sections 302, 114, 148 and 149 PPC whereby the appellant has been convicted and sentenced to suffer life imprisonment as Tazir and pay compensation to the tune of Rs.500,000/= to the bereaved family/LRs of the deceased, in case of default in payment thereof he shall suffer S.I for six months more. The benefit of section 382(b) Cr.P.C has also been extended to the appellant/accused.

2. The prosecution case as per FIR is that;

" There was an ongoing old matrimonial dispute between us and Muhammad Hassan and others. Due to that, they used to be annoyed with us. Today, I, my father Rabnawaz S/O Wali Muhammad age around 50/55 years and uncles each Imamuddin (2) Abdul Gaffar both S/O Wali Muhammad by caste Chandio R/O village Wali Muhammad Chandio near village Kaman Junejo were waiting for conveyance at bridge of Sim Shaakh to go to Warrah city for work. At time 9 o'clock, five persons came on two motorcycles whom we saw and identified as Muhammad Hassan S/O Shah Bakhsh Chandio with cudgel (lathi) in hand (2) Hassain S/O Bakhshal Chandio (3) Hamid S/O Muhammad Ali Chandio (4) Nadir S/O Abdullah Chandio R/O village Wandar Khan Taluka Warrah (5) Mukhtiar S/O



Aalam Khan by caste Chandio R/O at present near Court Warrah; they came and stopped (their) motorcycle. They took pistols from their folds and point straight at us and asked us to remain silent. We remained silent due to fear. Muhammad Hessian instigated others saying "Kill Rubnawaz to death. He is not giving us faisla (arbitration)." On his instigation, Hussein shot fire of pistol on my father with intention to commit murder which hit him in belly. Humid shot a fire from pistol which hit him in chest. **Mukhtiar (the appellant) shot fire of pistol which hit him in belly**, and Nadir shot fire of pistol which hit him in hand. He fell down raising a cry. Seeing him fallen, all accused escaped towards north on their motorcycles. We did not chase them out of fear and neither could read their motorcycle numbers. We saw that our father **had one firearm injury on left side of navel** escaped from back through and through, one firearm injury on left side of chest and one firearm injury on left hand near fingers, one firearm injury on forearm of left hand and he was bleeding. He was unconscious. We took him to Talk Hospital War rah for quick treatment. On being referred, we took him to CMC Hospital Larkana where he succumbed at time 11 o'clock noon. We took his body to Talk Hospital War rah. Leaving the above witnesses on the security of corpse, now present before you, **I am complaining that the above accused, with common intention, arrived with pistols, making ruckus, on old matrimonial issue, on instigation of Muhammad Hassian, with intention to commit murder, shooting straight fires, have killed my father Rubnawaz to death. I am the complainant, investigation may be held."**

3. During investigation, appellant Mukhtiar was arrested and was sent up to stand trail under charge sheet in which rest of accused were shown as absconders. Charge was framed against the accused to which he pleaded not guilty and claimed trial.

4. To prove its case the prosecution examined 8 prosecution witnesses and exhibited numerous documents and other items and thereafter the side of the prosecution was closed. The statement of the accused was recorded u/s 342 Cr.PC wherein he denied all the allegations and claimed false implication. The appellant also examined himself on oath and called one DW in support of his defense case which in effect was one of alibi as according to him he was some where else at the time of the incident.

5. Learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Kamber after hearing the learned counsel for the parties and assessment of evidence available on record, vide the impugned judgment dated 25.10.2019, convicted and sentenced the



appellant as stated above, hence this appeal has been filed by the appellant against his convictions.

6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the judgment dated 25.10.2019 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for appellant has contended that none of the PW eye witnesses was present at the scene of the incident and that they are all related witnesses upon whom no reliance can be placed; that the appellant was not present at the time of the incident as he was working with the town counsel; that the medical evidence does not support the ocular evidence; that the pistol was foisted on the accused and for any of the above reasons the appellant should be acquitted of the charge by extending him the benefit of the doubt.

8. On the other hand learned Addl. Prosecutor General and the complainant have fully supported the impugned judgment and contended that the eye witnesses are all reliable, trustworthy and confidence inspiring and fully implicate the appellant in the murder, that the medical evidence supports the ocular evidence; that the murder weapon was recovered from the appellant and both the chemical reports and FSL reports are positive and as such the prosecution has proved its case beyond a reasonable doubt against the appellant and the appeal should be dismissed.

9. I have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by the appellant, the impugned judgment with their able assistance and have considered the relevant law.

10. After my reassessment of the evidence I find that the prosecution has proved beyond a reasonable doubt the charges against the appellant for the following reasons;

- (a) The FIR in respect of the incident was filed within hours of the incident and such prompt filing of the FIR rules out the possibility of the complainant concocting a false case against the appellant with the police or any other third party. Even otherwise the complainant had no enmity with the appellant



and had no reason to falsely implicate him in a case. Any slight delay which there may have been in lodging the FIR has been accounted for by the prosecution taking the body to a hospital and then yet another hospital where the deceased expired.

(b) In my view the foundation of the prosecution's case rests on the eye witnesses to the murder whose evidence I shall consider in detail below.

(i) **Eye witness PW 1 Zahid Ali.** He is the complainant in the case. According to him the incident took place on 07.11.2018 at about 9am when he was with his father Rabnawaz and two uncles Imanuddin Chandi and Abdul Ghaffar both of whom are also eye witnesses. According to his evidence 5 persons came on two motor bikes and alighted and each made direct fire at his father Rabnawaz including Muhammed Hassan and the appellant Mukhtiar with pistols and the appellant's shot hit his father in the abdomen. It was a day light incident and PW 1 Zahid Ali knew the appellant as prior to this incident a matrimonial dispute had arisen between them and Muhammed Hasan who was annoyed with them. Mukhtiar is also named in the FIR with the specific role of shooting his father in the belly with a pistol which was registered a few hours after the incident so there was no time for the complainant to cook up any false story or not correctly identify the appellant and thus no identification parade was required. Hassan and his friends also had a motive to kill Rabnawaz due to the matrimonial dispute. In this respect reliance is placed on **Ghazanfar Ali V The State** (2012 SCMR 215) which in relevant part at Para 13 at P.224 reads as under;

*"Even otherwise the holding of identification parade is not mandatory and it is merely a corroborative piece of evidence. If the statement of a witness qua the identity of an accused even in Court inspires confidence, if he is consistent on all material particulars and there is nothing in evidence to suggest that he is deposing falsely, the absence of holding of identification parade would not be fatal to the prosecution. In Harbajan Sindh v. State of Jammu and Kashmir ((1975) 4 Supreme Court Cases 480), the Court upheld the conviction where no identification parade had been held and observed that the failure to hold identification parade would not be fatal in cases where enough corroborative and conclusive evidence was available. A similar view was taken in Jadunath Singh v. State of U.P. ((1970) 3 Supreme Court Cases 518). (bold added)"*

Admittedly the eye witness was related to the deceased however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which there was not in this case. In fact

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the reverse was the position in this case. This eye witness was a natural witness and not a chance witness. He lodged his FIR with promptitude and named the other eye witnesses in the FIR along with the accused with specific roles. He had no enmity with the appellant and had no reason to falsely implicate him. His evidence was not dented despite lengthy cross examination and as such I believe the evidence of this eye witness especially in terms of his correct identification of the appellant and the appellant's role in the crime. I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same. In this respect reliance is placed on **Muhammad Ehsan v. The State** (2006 SCMR 1857).

(ii) Eye witness PW 2 Abdul Ghaffar corroborates PW 1 Zahid Ali in all material respects. He is named in the FIR shortly after the incident and gave his S.161 Cr.PC eye witness statement on the same day as the incident and the same considerations apply to him as to PW 1 Zahid Ali.

(iii) Eye witness PW 3 Imam-u-din corroborates PW 1 Zahid Ali and eye witness PW 2 Abdul Ghaffar in all material respects. He is named in the FIR shortly after the incident and gave his S.161 Cr.PC eye witness statement on the same day as the incident and the same considerations apply to him as to PW 1 Zahid Ali and eye witness PW 2 Abdul Ghaffar.

Thus, based on my believing the evidence of the 3 eye witnesses what other supportive/corroborative material is their against the appellant?

(c) In my view the medical evidence given by PW 7 Dr.Qadir Khan who carried out the post mortem of the deceased fully supports the oral evidence in that she found 4 gun shot wounds and one was to the abdomen which according to the evidence of the eye witnesses came from the pistol shot fired by the appellant which was one of the fatal shots. There is also no blackening around the wounds which corroborates the prosecution case that the fire was made from about 5 feet away. Although there is a slight contradiction over whether the deceased was hit by 4 or 5 shots I do not find this to be particularly relevant based on the particular facts and circumstances of the case and even otherwise it is settled that oral evidence will take preference over medical evidence.

(d) That on his arrest a 30 bore pistol was recovered from the accused which matched with 2 of the 4 empties which were recovered at the scene according to a positive FSL report and that the pistol recovered from the appellant on his arrest was unlicensed.

(e) That there was a positive chemical report in respect of human blood found at the scene.

(f) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence I 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 **Zakir Khan V State** (1995 SCMR 1793). Their evidence provides a believable corroborated unbroken chain of events from



the shooting to the death of the deceased to the arrest of the appellant.

(g) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defense case to see if it at all can cast doubt on or dent the prosecution case. It is claimed by the appellant that this is a concocted case by eye witnesses and that he was at work on the day of the incident however as admitted by his counsel he had no ill will or enmity with the eyewitnesses which would lead to them falsely implicating them in this case. He claims to be at work yet in our view his story is not believable of going around in his tractor giving water to drink especially when his DW who corroborates this states under oath that this was not his duty to follow the accused around and that he had only done it only once before. This DW in my view is a put up witness. The certificate of the appellant being at work on the day of the incident I place no reliance on as the appellant did not call its author as a DW which he could easily have done if he had so wanted and raises the question as to whether the letter is a forgery. Thus, in the face of three reliable, trust worthy and confidence inspiring eye witnesses I do not believe the defense case which has not at all dented the prosecution case.

11. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above I have no doubt that the prosecution has proved its case against the appellant beyond a reasonable doubt for the offenses for which he has been convicted and sentenced and as such the appeal against conviction filed by the appellant is **dismissed** and the impugned judgment is upheld.

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

15/01/24