

ORDER SHEET

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No.8-104 of 2017

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

24.05.2021

Mr. Ahsan Ahmed Qureshi, Advocate for the Appellant

Mr. Aitbar Ali Bullo, Deputy Prosecutor General Sindh.

Learned counsel for the appellant has concluded his arguments. As the counsel for the complainant is called absent today, learned Deputy Prosecutor General requests for some time to prepare his brief.

Let it be re-listed on 31 05 2021. In the meantime, issue intimation notice to the counsel for the complainant.


Judge

> For Hg of case

Manzoor - notice issued to complainant's counsel.

31-5-2021.

Mr. Ahsan Ahmed Qureshi, Counsel for the appellant.
Mr. Noorullah Gulsher Khan Rind Counsel for the complainant.
Mr. ~~Aitbar~~ Ali Anwar Kaudho. Addl. P.G.
Arguments heard. Reserved for judgment.


Judge

IN THE HIGH COURT OF SINDH

CIRCUIT COURT LARKANA
Criminal Jail Appeal No. S-104 of 2017

Khadim Hussain Khaskeli vs The State

Date of hearing: 31-05-2021

Date of announcement of Judgment: 12-07-2021

Mr. Ahsan Ahmed Qureshi, Advocate for the Appellant.
Mr. Noorullah Gulsher Khan Rind, Advocate for complainant.
Mr. Ali Anwar Kandhro, Additional P.G.

Omar Sial, J.: Nazeer Ahmed Naich went to the Kamber police station at 4:00 p.m. on 12-7-2006 and reported that his 35 year old cousin named Iqbal Ahmed had been murdered earlier at 2:15 p.m. that day. Nazeer stated that his cousin Iqbal had a dispute with Khadim Hussain Khaskeli (the appellant in these proceedings) and another by the name of Mithal Siprio. In the afternoon that day Nazeer and his brother Hafeez Rehman went to meet Iqbal Ahmed where Iqbal's son Zubair Ahmed was also present. After a brief chat they all got up to leave and Iqbal headed towards his home just a short distance away. All the persons witnessed that when Iqbal reached close to his home 6 armed persons came there, 4 of whom were identified as Khadim Hussain Khaskeli (the appellant), Muhammad Malook Khaskeli, Muhammad Mithal Siprio and Sultan Siprio, whereas 2 of the assailants remained unidentified at that time. Khadim Hussain Khaskeli then proceeded to shoot Iqbal in his face with the pistol he was carrying. The assailants created a commotion by resorting to aerial firing and left the premises. Iqbal Ahmed died. Upon the information provided by Nazeer, the police registered F.I.R. No. 169 of 2006 under sections 302, 337-H(ii), 147, 148 and 149 P.P.C.

2. It appears that subsequently the 2 unidentified persons were identified as Abdullah and Darya Khan. The police arrested Sultan Siprio, in addition to Abdullah and Darya Khan whereas Khadim Hussain Khaskeli and others were declared proclaimed offenders. On 9-7-2009, Abdullah and Sultan entered into a compromise with the

legal heirs of the deceased and were acquitted. On 26-6-2012, the learned trial court was informed that Khadim Hussain Khashkeli was in jail in another case hence a Production Order was issued by the learned trial court the same day. Darya Khan and Khaidm Hussain Khashkeli were charged on 18-12-2012, to which they pleaded not guilty and claimed trial.

3. In order to prove its case the prosecution examined 10 witnesses at trial. **PW-1 Nazeer Ahmed** was the complainant who recalled how events had unfolded on 12-7-2006 which had led to the murder of Iqbal Ahmed. His examination in chief was in line with what he had narrated while lodging the F.I.R. He further stated in his cross-examination that Iqbal had been shot from about a 3 feet distance and that at the time of his murder he was about 30 feet away from the rest of them and very close to the door of his house. His (Nazeer's) son Aijaz Ali had arranged for the ambulance and after taking the dead body to Kamber hospital, Nazeer had alone, in his car, proceeded to the police station to report the murder. The police had accompanied him to the hospital and after the post mortem, the dead body was handed over to Nazeer and buried by the family at 10:00 p.m. that night. He did however state that an identification parade was held for which he was taken to the magistrate along with the accused persons.

4. **PW-2 Zubair Ahmed** was the deceased Iqbal Ahmed's son and an eye witness to the murder. His testimony at trial corroborated what his father had stated in all respects. In his cross examination, Zubair clarified that Nazeer and his brother Hafiz Rehman had come to discuss the purchase of fertilizer with his father that ill fated day and it was after they were saying their goodbyes that the incident had occurred. According to Zubair's recollection, Iqbal was shot from a distance of about 4 feet and that at the time of the murder Iqbal was about 25 to 30 feet away from the rest of them

5. **PW-3 Sikander Ali** was a witness to the inspection of the dead body by the police as well as the inspection of the place of incident. He testified that at 5:00 p.m. on 12-6-2006 he was informed that Iqbal Ahmed had been murdered. He went to the hospital in

Kamber where he saw the dead body of Iqbal. Later at about 5:30 p.m. the police took him to the place of incident from where it had recovered 12 empties of 13 bore pistols. A month later he also accompanied Nazeer Ahmed to the identification parade which was held for only Darya Khan. He recognized Darya Khan as being the same person who Nazeer had identified. In his cross-examination Sikander Ali explained that the deceased was his son-in-law but that Nazeer the complainant was not his relative.

6. PW-4 Dr. Muhammad Yakoob was the doctor who performed the post mortem on the deceased. He testified that on 12-7-2006 while he was on duty at the Kamber hospital, he had done the post mortem from 3:40 p.m. to 4:40 p.m. He stated that the deceased had been hit by one bullet that entered his mouth and exited from the back of the skull. He was of the opinion that the shot had been fired from 3 to 5 feet away.

7. PW-5 P.C. Mohammad Ramzan was one of the two police officers who had first visited the hospital upon receiving the information of the murder. He testified that the doctor had started the post mortem at 2:30 p.m. He had then handed over the body to the complainant after the post mortem was done.

8. PW-6 A.S.I. Muhammad Khalid testified that he was the police officer who had arrested Khadim Hussain Khaskeli in the present crime while he was confined in another case at the Shahdaskot Sub-Jail. PW-8 H.C. Raza Muhammad was the witness to the arrest.

9. PW-7 S.I. Ahmed Ali Sodhar was the first investigating officer of the case and testified all that he had done during the investigation. He stated that the section 161 Cr.P.C. statements of eye witness Zubair Ahmed and Hafeez Rehman were taken by him the same day of the incident. PW-9 S.I. Aashique Ali was the second investigation officer of the case. PW-10 Asghar Ali was the Tapedar who prepared the sketch of the place of incident.

10. Khadim Hussain Khaskeli in his section 342 Cr.P.C. statement pleaded his innocence and stated that he was falsely involved in the case due to a land dispute.

Darya Khan simply stated that he was falsely involved and that he was innocent. Khadim Hussain Khashkeli in his defence produced Muhammad Supro as his witness who testified that there was a land dispute between the parties originating in 1972 and that Khadim Hussain Khashkeli was in Balochistan when the murder happened.

11. On 19-10-2017 the learned 1st Additional Sessions Judge, Kamber announced his judgment in which he acquitted Darya Khan whereas he sentenced Khadim Hussain Khashkeli under section 302(b) P.P.C. to a life in prison and to pay a compensation of Rs. 1 million (or in default to stay in prison for a further period of 6 months). It is this judgment that has been called into question in these proceedings by Khadim Hussain Khashkeli.

12. The learned counsel for the appellant has argued that the prosecution was unable to prove its case against the appellant for the following reasons. Hafeez Rehman, an eye witness to the murder, was not examined at trial; there was a difference in what the complainant said compared to what Zubair said regarding how far the place of incident was from the police station; complainant said that the fire was made from 3 feet, Zubair said that it was made from 4 feet whereas the doctor said that it was made from 5 feet; Zubair said that Iqbal died in 10 to 15 minutes from the shot whereas the complainant said he had died within seconds; complainant said one injury had been caused whereas the doctor said 2 injuries were noted; because there was an enmity between the parties therefore independent corroboration should have been sought; the post mortem report contains the F.I.R. number which was not possible; case property was not produced and duplicate police papers were produced at trial and finally that the memo of inspection of the body shows that it was prepared at 5:00 p.m. whereas the doctor said that he had concluded the post mortem at 4:40 p.m. The learned DPG and the learned counsel for the complainant have both supported the impugned judgment.

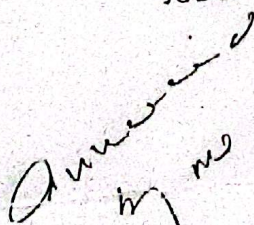
13. I have heard the learned counsels as well as the learned D.P.G. and with their able assistance also perused the record. My observations are as follows.

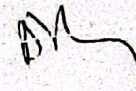
- i) I find the witnesses as being honest and their testimony trustworthy and confidence inspiring. A read of their testimony reflects that they have not tried to exaggerate or manipulate the same in any manner. They have very honestly conceded what they saw and what they did not see. It is true that Hafeez Rehman, who was also an eye witness, was not examined at trial and that no explanation for his absence seems to be in record, however, in view of the reliable and strong testimonies recorded by the 2 eye witnesses who fully corroborate even the minutest of details, I do not consider the absence of Hafeez Rehman at trial to be material enough to deserve any interference with the impugned judgment.
- ii) The complainant very honestly testified that he had gone with the police and the accused Darya Khan (though in different cars) for the identification parade. This lapse does not affect the case as far as Khadim Hussain Khashkeli is concerned as he was known to the complainant party and in any case was not being identified that day. Darya Khan was given the benefit of the doubt created by this lapse and was acquitted.
- iii) It was explained at trial that secondary evidence was produced and that the case property could not be produced as the entire record had been burnt at the time of the assassination of a political leader. The burning down of the maalkhana and the records was also not called in to question by the counsel for the accused during the trial.
- iv) The difference in timings as given by the witnesses are minor and at places insignificant. To the contrary, the differences reflect, in the present case, the honesty of the witnesses. The witnesses gave their estimation regarding the distance from which the shot was fired and in any case the variation is a couple of feet only. The witnesses could not be expected to measure and be absolutely accurate and in synch with each other as to the distance from which the shot was fired.
- v) There is no difference between the number of injuries as argued by the learned counsel. Only one bullet was fired and the two "injuries" referred to are the entry and exit wounds. There is no contradiction between the witnesses in this regard.

- vi) While there is a slight discrepancy between the time of inspection of the dead body by the police and the post mortem; the discrepancy is minor and immaterial. It is also a matter of record that the post mortem was conducted after the registration of the F.I.R. and hence the F.I.R. number of the crime finds a mention in the post mortem report.
- vii) All steps taken by the complainant party were with promptitude leaving no space for manipulation or consultation. The statements of the eye witnesses were recorded on the same day and shortly after the formalities vis a vis the body were carried out. As mentioned above, I find the testimonies trust worthy. The medical evidence reconciles with the ocular evidence.
- viii) Motive is a double edged sword and in this particular case, prima facie provided reason for the murder. As far as the accused is concerned, he was given the concession for the same not having been fully proved, though admitted by the accused himself, by the accused not being sentenced to death.
- ix) Though Khadim Hussain Khaskheli's witness claimed he was in Baluchistan at the time of the incident, he could not corroborate this assertion in any manner. Had this been true it would have not been difficult to do so.
14. In view of the above observations I have concluded that the prosecution was able to successfully prove its case against the appellant. The grounds raised and argued by the learned counsel for the appellant are not material or strong enough to upset the sentence awarded by the learned trial court.

15. The appeal stands dismissed.


JUDGE


by me


13/7/2021
Adnan W. Khan