

JUDGMENT SHEET
PESHAWAR HIGH COURT, D.I.KHAN BENCH
(Judicial Department)

Cr.A. No.14-D/2022.

Muhammad Fazal
Vs.
The State etc.

JUDGMENT

For Appellant: Muhammad Yousaf Khan, Advocate.
For State: Mr. Adnan Ali, Asstt: A.G.
For Respondent: Mr. Ghulam Muhammad Sappal,
Advocate.
Date of hearing: 30.01.2023.

8/3
SHAHID KHAN, J.- Through this judgment, we shall dispose of Cr.A.No.14-D/2022, preferred by the appellant against his conviction and the connected Cr.R.No.01-D/2022, filed by the complainant for enhancement of the awarded sentence, as both have arisen out of one and the same judgment dated 31.01.2022, rendered by learned Additional Sessions Judge-II/Judge Model Criminal Trial Court, D.I.Khan, whereby the appellant charged in case FIR No.731 dated 05.8.2018, under Sections 302/324 PPC, police station Cantt: D.I.Khan, has been convicted under Section 302(b) PPC and sentenced to imprisonment for life with fine of Rs.8,00,000/- to be paid to the legal heirs of deceased Muhammad Kashif, in terms of Section 544-A, Cr.P.C. or in default thereof to further suffer six months

simple imprisonment. He has been further convicted under Section 324 PPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.100,000/- each or in default thereof, to further undergo two months simple imprisonment. Both the sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.P.C. has been extended to the convict/appellant.

2. The resume of facts of the prosecution case as divulged from the FIR, registered on the basis of murasila Ex.PA, in brief, are that on 05.8.2018 at 7:35 hours, complainant Muhammad Javed (PW-3), while present with the dead body of his son Muhammad Kashif, reported the matter at Emergency Room of Civil Hospital, D.I.Khan, to the effect that on the eventful day he alongwith his afore-named son and nephew Muhammad Hasnain (PW-3) were proceeding from their house on their respective motorcycles for earning livelihood; that he was ahead of them, whereas his son and nephew were following him on their motorbike, at about 6:50 hours when they reached on the spot, he heard voice of firing from backside, upon which he stopped and noticed the accused firing at his son and nephew with the intention to do them away, as a result whereof, his son got severely injured, fell to the ground and succumbed to his injuries, whereas his nephew

85

fortunately escaped unhurt. After commission of the offence, the accused decamped from the spot. Besides the complainant, the occurrence was stated to be witnessed by his afore-named nephew. Motive for the offence was stated to be compelling his son by the accused for friendship, who was forbidden by them upon which he was annoyed.

83
3. On completion of the investigation, complete challan was submitted before the trial Court where at the commencement of trial, the prosecution produced and examined as many as twelve witnesses, while Salahuddin Additional Moharrir was examined as CW-1, who produced daily diaries as Ex. CW 1/1 to Ex. CW 1/5 whereafter, statement of the accused under Section 342, Cr.P.C. was recorded wherein he professed innocence and false implication, however, neither he wished to be examined on oath in terms of Section 340(2), Cr.P.C. nor produced defence evidence. The learned trial Court after hearing both the sides, vide judgment impugned herein, convicted the appellant and sentenced him, as mentioned above, which has been questioned by the appellant through the instant criminal appeal, whereas the complainant has filed the connected criminal revision for enhancement of sentence, therefore, both the matters are being disposed of through this single judgment.

4. Arguments of learned counsel for the parties heard which would be dealt with at appropriate stages. Record minutely perused.

5. In order to assess, as to whether the approach of the learned trial Court is based on proper appreciation of evidence and that the learned trial Court applied its judicial mind to the facts and circumstances of the case, we deem it appropriate to re-assess the available evidence, so as to avoid miscarriage of justice. No doubt, the appellant is singularly charged for murder of the deceased, but that alone is not sufficient to absolve the prosecution to prove its case on the basis of available evidence. No doubt, the substitution of single accused in a murder charge is a rare phenomenon, but at the same time the apex Court has also laid down the law through various dictum that to put the rope around the neck of an accused charged singularly, there must be ocular account of unimpeachable character, trustworthy and confidence inspiring, corroborated by circumstantial evidence.

8/5

In case titled, "Arshad Beg Vs. The State" (2017 SCMR 1727), it was held that:-

"Even otherwise this is a case of single accused and substitution in such like cases is a rare phenomenon as normally kith and kin of the deceased (in this case real brothers) would not implicate an innocent person by letting off the real culprits".

6. It is the case of prosecution that on the day of incident complainant (PW-3), his deceased son and his nephew (PW-4) were proceeding from their house on their respective motorcycles for earning livelihood, the complainant was ahead of them, whereas his son and nephew were following him on their motorbike, at about 6:50 hours when they reached on the spot, he heard voice of firing from backside, upon which he stopped and noticed the accused firing at his son and nephew with the intention to do them away, as a result whereof, his son got severely injured, fell to the ground and succumbed to his injuries, whereas his nephew fortunately escaped unhurt. The occurrence in the present case occurred on 05.8.2018 at about 6:50 hours, whereas the matter was reported on said date at about 7:35 hours, which indicate that the incident was reported with a remarkable promptitude, followed by postmortem examination, excluding possibility of deliberations and consultations.

7. In the present case, the ocular account of the incident has been furnished by the complainant and his nephew Hasnain, who were examined as PW-3 and PW-4, respectively. No doubt that the complainant is step-father, while PW-4 is brother-in-law of the deceased, however, it is well established principle of law that testimony of a witness which is trustworthy and

confidence inspiring cannot be discarded merely on the basis of close relationship. Reliance in this regard is placed upon the case law reported as "Ghulam Murtaza Vs. The State" (2021 SCMR 149), wherein it has been held by the Apex Court that:-

Although the deceased-Mst. Saima Bibi is the daughter-in-law of the eye-witness Mst. Rukhsana (PW.7) but it has been settled by this Court that mere relationship of a witness with the victim would not discard her/his evidence if it is otherwise confidence inspiring and trustworthy. Besides, the medical evidence also supports the prosecution version. We have observed that besides the crime empties, the weapon of offence i.e. .30 bore pistol was recovered from the possession of the appellant. These were sent to the FSL, for analysis and the report in this regard is positive which is available on file as Exh.PW.14/8.

While going through the ocular account, we find no material contradictions between the two, which also find support from the medical evidence and site plan. Despite facing taxing cross examination, both the witnesses remained consistent in their depositions on material aspects of the case. Their testimony is further corroborated by the testimony of shopkeeper, who was an independent witness. He examined before the trial Court as PW-5. We find that his natural deposition fully establishes presence of the eyewitnesses on the spot at the time of incident. The ocular account is further supported by Fazal Manan, Emergency Officer, Rescue

1122, who was examined as PW-12. He also testified the venue of lifting the dead body by mentioning the time as 7:00 A.M., which further strengthens the prosecution story.

In case titled "Aurangzeb Vs. The State (2020 SCMR 612), it has been held that:-

"The incident was reported with a remarkable promptitude, followed by post mortem examination that cannot be viewed as delayed, factors excluding possibility of deliberations and consultations, in retrospect suggestive of witnesses' presence at the stated point of time, coinciding with the durations mentioned in the autopsy report. Though inconsequential for want of forensic verification, nonetheless, the weapon recovered on petitioner's disclosure is consistent with the nature of fatal injury. Occurrence being a broad daylight affair before a large gathering, does not admit hypothesis of substitution. Appraisal of evidence carried out by both the Courts below, on our own independent analysis, is found by us in accord with the principles of safe administration of criminal justice and as such does not call for interference".

Learned counsel for the appellant/convict vehemently submitted that both the eyewitnesses have improved their testimony while appearing before the trial Court, however, it cannot be denied that it is well settled that the FIR is not encyclopedia of all details, which is meant to set the law in motion with regard to a cognizable offence. In this view of the matter, the

testimony of eyewitnesses could not be discarded for giving benefit of doubt to the appellant/convict.

8. In addition to the above, the Investigating Officer (PW-10), during the spot inspection recovered blood-stained earth from the place of the deceased and also collected two empties of .30 bore pistol from the spot. He also recovered a motorbike relating to the deceased during the spot inspection. The accused was arrested by this witness and .30 bore pistol having fit magazine containing three live rounds of the same bore was also recovered from personal possession of the accused, regarding which the marginal witness namely Muhammad Mukhtiar ASI was examined as PW-2. Although it was vehemently argued that there was no entry in the daily diary register with regard to arrival and departure of the Investigating Officer with regard to above recovery, however, same would not benefit the accused for the reason that we have already believed the ocular account furnished by the eyewitnesses in the present case. In this view of the matter, the positive report of FSL regarding the empties and pistol further supports the prosecution case.


9. Motive in the present case was stated to be compelling the deceased by the accused for friendship, however no evidence was brought in this respect, which remained a mystery till this stage of the case and

probably it reacted towards quantum of sentence, otherwise, the prosecution fully proved its case for sustaining conviction of the appellant. Even, during statement of the accused under section 342, Cr.P.C., specific question with regard to motive alleged by the prosecution was put to the accused, which was denied by him.

10. For the reasons mentioned above, this Court has reached to an inescapable conclusion that the prosecution has succeeded in bringing home charges against the appellant, through confidence inspiring evidence and that the witnesses remained consistent on material aspects of the case. Furthermore, the medical evidence fully supports the ocular account with no room for substitution, even otherwise in case of a single accused substitution is a rare phenomenon. The instant appeal alongwith revision petition, having no merit and substance are hereby dismissed.

Announced.
DI: 30.01.2023.
Kifayat/*


JUDGE


03/02


JUDGE
30.1.2023

(D.B)
Hon'ble Justice Muhammad Faheem Wali
Hon'ble Justice Shahid Khan