

JUDGMENT SHEET
PESHAWAR HIGH COURT,
MINGORA BENCH
(Judicial Department)

Cr.A No. 68-M/2022

Pervaiz Khan son of Saleh Muhammad

(Appellant)

v/s

The State & another

(Respondents)

Present: *Syed Abdul Haq, ASC, for the appellant.*

Syed Sultanat Khan, Astt. A.G, for the State along with the respondent/ complainant, Rehmat Khan, in person.

Dates of hearing: 20.06.2023

JUDGMENT

SHAHID KHAN, J.- Through the subject criminal appeal, the appellant has challenged the order/judgment of his conviction & sentence passed by the learned Additional Sessions Judge 1st/Izafi Zila Qazi, Dir Upper, dated, 17.02.2022, in respect of case FIR No. 627 dated, 18.12.2018, U/Ss 302/34 PPC, P.S, Dir, District Dir Upper.

2. Reportedly, the police party headed by Sub Inspector, Fazal Karim Khan when reached to the Dir Upper hospital, pursuant to receipt of information that dead body of one Muhammad Zafar Khan has been brought therein. At emergency room of the

hospital, the complainant, Rehmat Khan reported the subject event to the visiting party of police to the effect that on the fateful day, date & time, he, with his father, Muhammad Zafar Khan (the deceased), his brother, Amir Baz Khan and wife, Mst. Fauzia Bibi, after attending court proceedings in connection with case FIR No. 461 dated, 03.08.2018, U/Ss 302/34 PPC, P.S, Dir, were returning to their home. On their arrival to the spot of occurrence, his father went to the nearby vegetable shop in order to collect his *Chaddar*, whereas, the rest of the complainant-party were waiting for his return near the patrol pump. In the meanwhile, the accused, Pervaiz (the appellant herein) and his co-accomplices, Mushtaq and Yousaf, (while being duly armed with pistols) emerged, the accused, Pervaiz fired at his father, with his pistol, as a result of it, he got hit on different parts of his body and died at the spot. In addition to the aforesaid complainant-party, the occurrence was claimed to have been witnessed by many people of the locality present at the spot. Motive for the occurrence was stated to be

previous blood feud enmity between the parties.

In view of the report of the complainant, the 'Murasila' (Ex. PW-1/1) was drafted which culminated into the *ibid* FIR (Ex. PW-5/1) registered against the accused/appellant and other co-accused at P.S concerned.

3. Initially, all the accused were avoiding their lawful arrest, therefore, proceedings U/S 512 Cr.P.C were initiated against them. Upon arrest of the accused/appellant & other co-accused followed by completion of the investigation, supplementary *challan* was drawn and was sent-up for trial to the learned trial Court. Accused were confronted with the statements of allegations through formal charge to which they pleaded not guilty and claimed trial.

4. To substantiate the guilt of the accused/appellant & other co-accused, the prosecution furnished its account consist of the statements of thirteen (13) witnesses. The accused were confronted with the evidence so furnished through statements of accused within the meaning of section 342 Cr.P.C.

5. On conclusion of proceedings in the trial, in view of the evidence so recorded and the assistance so rendered by the learned counsel for the accused/appellant and the learned counsel for the complainant/learned Public Prosecutor, the learned trial Court arrived at the conclusion that the prosecution has successfully brought home charge against the appellant/accused, Pervaiz Khan, through cogent & worth reliable evidence, as such, he was convicted & sentenced as under;-



U/S 302 (b) PPC to life imprisonment as *Ta'zir* with compensation of Rs. 500,000/- U/S 544-A Cr.P.C, (payable to the legal heirs of the deceased), which shall be recoverable as arrears of the land revenues and in default of the payment of the fine/compensation, the appellant shall further undergo six months, S.I.

The benefit of section 382-B Cr.P.C was also extended to the accused/appellant.

Needless to mention here, that the co-accused, Rehman Yousaf and Mushtaq were acquitted of the charges levelled against them by extending them the benefit of the doubt, through the aforesaid impugned order/judgment.

6. It obliged the appellant/accused to approach this Court through the subject criminal appeal.

7. Arguments of the learned counsel for the accused/appellant as well as the learned Astt: A.G appearing on behalf of the States have been heard at a substantial length and the record gone through with their valuable assistance.

8. Needless to highlight that in this case the law of the land was set in motion when the police contingent, headed by the S.I, Fazal Karim Khan (PW-1) reached the emergency ward of Dir Upper Hospital, pursuant to receipt of a clue that the dead body of the deceased, Muhammad Zafar Khan has been brought therein, whereby, the complainant, Rehmat Khan (PW-6), (the son of the deceased) reported them the subject occurrence in terms that on the fateful day, he, with his father, Muhammad Zafar Khan (the deceased), his brother Amir Baz Khan (PW-7) and wife, Mst. Fauzia Bibi (the abandoned PW), after attending the Court proceedings of case FIR No. 461 dated 03.08.2018, U/Ss 302/34 PPC, P.S, Dir, were on their way to

352

their home. As soon as, they reached the venue of crime, his father went to the nearby vegetable shop in order to collect his *Chaddar*, in the meanwhile, the accused/appellant, along with other co-accused (while being duly equipped with pistols) emerged and the appellant/accused, Pervaiz Khan started firing at his father, due to which he got hit on different parts of his body and died at the spot.

9. There is no second opinion about the fact that the effective & specific role of firing at the deceased has been attributed to the present accused/appellant, Pervaiz Khan by the complainant in his initial report in the shape of '*Murasila*' followed by the FIR, with a specific motive which stated to be previous blood feud enmity between the parties. The FIR in the subject case has been lodged with utmost promptitude, as the occurrence has taken place on 18.12.2018 at 12:00 hours, whereas, the matter was reported to the local police on the same day at 12:15 hours i.e.

8/3

within a span of just 15 minutes. Other than the above, both the parties were known to each other due to existence of the previous motive (in connection with the aforesaid criminal case), as such, there was no chance of misidentification or false implication on the part of the complainant-party.

10. In order to prove their case, the prosecution has mainly been relying upon the eyewitness-account offered by the two prosecution witnesses, whose statements have been recorded as PW-6 and PW-7, respectively. The complainant of the subject case, Rehmat Khan, (who is none else but the real son of the deceased) offered a natural & straight-forward account of the occurrence, as highlighted in the '*Murasila*' followed by the FIR. He was cross-examined at a substantial length, however, he remained consistent on most of the material particulars of the subject case. Same was the case with the account of another PW, Amir Baz Khan who has given a similar narration of the occurrence in his

8/5/2

examination-in-chief while deposing as PW-7.

He had also remained consistent in his testimony during the course of his cross-examination. There has been some minor discrepancies occurring during the course of cross-examinations of these two PWs but the same cannot be taken as having a sweeping effect on their testimonies rather the trend of their cross-examinations would suggest that with the blessing of the learned counsel for the defence, the time of their departure from the house for the court proceedings, the factum of collection of the *Chaddar* from the vegetable shop and the presence of the rest of the complainant-party at the spot have been brought from the mouths of these witnesses. No doubt, there has been some variation existing in the evidence vis-à-vis, not knowing the name of the owner of the vegetable shop, from whose shop the father of the complainant was going to collect his *Chaddar* coupled with the number of injuries received by the deceased. The learned counsel

8/5/1

appearing on behalf of the appellant laid much stress on these discrepancies (as highlighted above) and claimed that the same were sufficient for disbelieving eyewitness-account offered in the case in hand, however, it is important to be noted here that an eyewitness/complainant may not be expected to have given an exact time of occurrence while lodging his first report thereof. The PWs while appearing in the Court after more than 02 years of the occurrence might not be recollecting the exact time of occurrence from their own memories but they may have been stood guided by the time of occurrence given in the FIR used for refreshing their memories before recording their statements. Substantial time had lapsed between happening of the events and its description by the two witnesses offered during the course of trial of the appellant. Recollection of events happening before, at the time and after the occurrence with a photographic precision and that also after a lapse of more than 02 years

8/5/

would be unrealistic expectations from these PWs. In such circumstances, the contradictions mentioned above may safely be taken as minor in nature having no bearing on the material aspects of the subject case, in respect of which the evidence of these PWs have mostly remained unshaken, confidence inspiring & worth reliable. In case titled "Khadim Hussain v/s The State" reported as PLD 2010 Supreme Court 669, the Apex Court has held that creeping in of minor contradictions in the testimony of PWs, with passage of time, have been natural and the same could be ignored easily. Relevant part of the observation of the august Court is reproduced for ready reference;

We have also adverted to the contention of learned ASC that various contradictions in the statements of the prosecution witnesses have not been taken into consideration causing serious prejudice against the appellant. It has been held time and again by this Court that minor contradictions do creep in with the passage of time and can be ignored safely.

Similarly, in case titled "Muhammad Ilyas v/s The State" reported as

"2011 SCMR 460" the Hon'ble Supreme

Court has also observed as follows;

Contradictions which are not grave in nature can be ignored safely as minor contradictions creep in with passage of time. Merely on the basis of contradictions, statement of a prosecution witness cannot be discarded if corroborated by other incriminating material.
(underline supplied)

Further reliance in this respect may also be placed on the judgment of Apex Court rendered in case titled "Zulfiqar Ahmad v/s The State" reported as "2011 SCMR 492".

11. Apart from the above, the credibility of the ocular-account cannot be doubted in the case in hand on the ground that no question has been put to the eyewitnesses with respect to any obstacle or hurdle existed between their visibility range vis-à-vis the accused-party, in particular, the accused/appellant, Pervaiz Khan, who have been assigned a specific role firing at the deceased. The prosecution has also been able to prove the place of occurrence, wherefrom, the Investigating Officer has also collected substantial materials in the shape of blood

832

stained earth, two empties of 30 bore pistol, vide different recovery memos. The place of occurrence has not at all been seriously disputed by the defence side during the course of cross-examinations of these PWs. The prosecution has also been able to sufficiently explain the presence of the PWs at the spot. When their presence stood established on the record, they were found truthful in their narrations being natural and confidence inspiring, then their testimonies may be made the basis of conviction even in absence of any independent corroboration. In this respect, reliance is placed on the judgment of Hon'ble Supreme Court of Pakistan rendered in case titled "Muhammad Waris v/s The State" reported as "2008 SCMR 784", wherein, it has been held;

"The explanation offered by the said two eye-witnesses regarding their presence at the place of occurrence at the relevant time had been accepted by the two learned Courts and no reason exists which could persuade us to hold otherwise. Both these P.Ws. were thus, natural and independent witnesses of the occurrence who had been rightly delivered by the two learned Courts. Corroboration is only rule of caution and not a rule of law and if the eye-witness account is found reliable and trustworthy then there is hardly any need to look for any corroboration."

12. The medical evidence so furnished in the subject case is also inconsonance with the story of the prosecution. The dead body of the deceased, Muhammad Zafar Khan has been examined by Dr. Sahib Gul, PW-8. His report Ex. PW-8/1, speaks loud & clear about the nature of the firearm injuries received by the deceased and that too on the vital organs of his body. He was put to lengthy & searching cross-examination by the defence but nothing beneficial could be extracted from his mouth qua the innocence of the accused/appellant.

3/2

13. The other circumstantial evidence brought on the record by the prosecution do support their case to a large extent, which includes the pointation of the place of occurrence by the accused/appellant, after his arrest, recovery of blood stained earth and crime empties of 30 bore pistol from the spot as well as blood stained garments of the deceased coupled with its positive FSL reports, therefore, in view of the aforesaid corroboratory evidence too, the accused/appellant has rightly been found guilty of

the commission of offence by the learned trial Court.

14. The accused/appellant with other co-accused has also remained absconder for sufficient length of period. In order to prove the factum of their absconsion, the prosecution has not only initiated proceedings against them U/S 512 Cr.P.C but they have also recorded the statements of as many as 09 witnesses in their absence. The prosecution has also relied upon the testimony of Fazal Malik, DFC, whose statement was recorded as SW-1. He has stated in his statement, that he had obtained warrant U/S 204 Cr.P.C against the appellant from the Court of learned Judicial Magistrate concerned along with a proclamation U/S 87 Cr.P.C. In respect of execution of warrant U/S 204 Cr.P.C he visited the village of the appellant and in presence of the witnesses searched-out the appellant but he could not be traced, as statedly he has been migrated to an unknown place & changed his abode. He had also obtained signatures of the elders of the locality on the warrant and submitted his report to the



concerned Court. He has further stated that he had also visited the village of the appellant for the execution of the proclamation notice, and in presence of the witnesses, affixed the same on the door of house of the appellant as well as on the notice board of concerned District Courts and other conspicuous places of the village. When the question regarding absconsion of the appellant was put to him during his statement recorded U/S 342 Cr.P.C, he could not reply the same satisfactorily. The appellant has admittedly been resident of the same village & locality. He could not be arrested by the local police despite being charged in a murder case. In this respect sufficient materials in the form of warrant U/S 204 Cr.P.C and proclamation U/S 87 Cr.P.C have been brought by the prosecution on the record, as such, it can thus safely be held & concluded that the accused/appellant had absconded so as to avoid his lawful arrest, after the occurrence and lodging of the report.

15. Absconsion by itself cannot be held sufficient for recording conviction on a

capital charge, but when other reliable evidence is available with the prosecution, then such a prolonged unexplained absconsion may safely be taken into account as a corroboratory piece of evidence against an accused person. Hon'ble Supreme Court of Pakistan in case titled "Mawas Khan v/s The State & another" reported as PLD 2004 Supreme Court 330 has held as under;-

85
"Besides that the factum of absconsion has rightly been considered as corroboratory piece of evidence. There is no cavil with the proposition that factum of absconsion cannot altogether be ignored and corroborative value of the abscondence carries substantial weight.

5. We are not persuaded to agree with learned Senior Advocate Supreme Court that no authentic judgment is available to the effect that factum of absconsion can be considered as corroboratory piece of evidence. In view of the precedent law incorporated in the authorities as mentioned hereinabove on the basis whereof it can be inferred safely that factum of absconsion can be considered as corroboratory piece of evidence subject to certain exceptions which are not available in this case."

Further reliance in this respect may also be placed on the judgments reported as PLD 1978 Supreme Court 103 and 2001 SCMR 177.

16. In light of what has been discussed above, the prosecution had been able to prove their case against the appellant through eyewitness-account of the occurrence

offered by PW-6 and PW-7, respectively.

There has also been corroboratory evidence available against the appellant in the shape of his unexplained & willful absconsion and identification of the place of occurrence as well as the medical evidence/report of the dead body of the deceased, therefore, the prosecution, on all counts, successfully proved their case beyond reasonable doubt against the appellant and the learned trial Court has rightly found him guilty of the commission of the offence.

17. In light of the above re-appraisal of the evidence of prosecution coupled with the legal principles on the subject, the conviction & sentence recorded by the learned Additional Sessions Judge 1st / Izafi Zila Qazi, Dir Upper, through the impugned order/judgment dated, 17.02.2022, is upheld & maintained and consequently, the subject appeal is dismissed.

Date of announcement

Dt. 20.06.2023

Date of writing judgment

Dt. 03.07.2023



JUDGE



JUDGE

Office
10/07/2023
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