

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

J.Cr.A No.26-P of 2019.

Ajdar Ali..Vs..The State

JUDGMENT

Date of hearing: 10.06.2021.

Mr. Ali Gohar Durrani, Advocate, for the appellant.

Mr. Umar Farooq, AAG, for the State.

Mr. Muhammad Saeed Khan, Advocate, for the complainant.



SYED ARSHAD ALI, J.- This single judgment in the instant criminal appeal filed by convict/appellant, Ajdar Ali, is also directed to dispose of criminal revision No.114-P of 2018, filed by complainant Gohar Irshad under Section 439 Cr.P.C for enhancement of the sentence of life imprisonment awarded to the appellant, as both pertain to the same case vide F.I.R No.1170 dated 23.12.2016 registered under Sections 302 of Pakistan Penal Code at Police Station City, District Hangu.

2. The appellant/accused was charged by complainant Gohar Irshad for the *qalt-e-amd* of his father Irshad Ali in case vide F.I.R No.1170 dated 23.12.2016 u/s 302 P.P.C, Police Station City, District Kohat. On the same date, the appellant was arrested and at the time of his arrest Noor Wali Khan ASI recovered from his possession a 30 bore pistol bearing No.F6058 alongwith fixed and spare charger containing 15 rounds of the same bore for which separate FIR No.1171 dated 23.12.2016 under section 15-AA was also registered against him.

3. Accordingly the present appellant faced trial and was convicted as under;

i. Under section 302(b) P.P.C:

Life imprisonment with fine of Rs.500,000/- payable to LRs of the deceased as compensation u/s 544-A Cr.P.C. In case of default, the appellant was directed to undergo further six months S.I.

ii. Under section 15-AA:

One (01) year simple imprisonment with fine of Rs.10,000/- or to suffer further one month S.I in case of default thereof.

Benefit u/s 382 (b) Cr.P.C was extended to the appellant and all the sentences were ordered to run concurrently.

4. Arguments of learned counsel for the appellant and learned AAG assisted by learned counsel for the complainant heard; and record gone through with their valuable assistance.

5. The incident was reported by Gohar Irshad, complainant, who is also son of deceased Irshad Ali at 16:40 hours (04:40 PM) to Nighmat Ullah Khan SI at emergency room of Civil Hospital Hangu on 23.12.2016 wherein he has narrated the occurrence; that on the time and date mentioned above, he alongwith his father Irshad Ali (deceased) had visited bazaar Saidan road and were present there, in the meantime, Ajdar Ali (appellant) duly armed with pistol emerged and immediately started firing at his father, as a result whereof his father got hit and died in the hospital. His report was recorded in the shape of *murasila* which was later translated into FIR Ex.PA.

6. In the present case, the investigation was conducted by Ghani Said Inspector (PW-7). After registration of the FIR, he received relevant documents and proceeded to the spot (place of occurrence) inspection, prepared the site plan Ex.PB at the instance of complainant, took into his possession blood through cotton Ex.P-1 from the place of the deceased, recovered 04 empties of 30 bore Ex.P-2 freshly

discharged from the place of accused vide recovery memo Ex.PW2/1, took into his possession blood stained garments of the deceased consisting of Qamees Ex.P-3, Shalwar Ex.P-4, Banyan Ex.P-5 vide recovery memo Ex.PW2/2, prepared the recovery memo Ex.PW4/1 vide which the Muharrir of the police station Qasid Ali presented pistol 30 bore Ex.P-7. Vide application Ex.PW7/2 he produced the accused before the Court for obtaining police custody and two days custody was granted, prepared the pointation memo Ex.PW7/3 in the presence of marginal witnesses. Vide application Ex.PW7/5 he produced the accused before the Judicial Magistrate for further police custody and two days custody was granted. He produced the accused before the Judicial Magistrate for recording his confessional statement and after recording the confessional received the copy of the same. He also placed on file list of legal heirs of the deceased which is Ex.PW7/7. Vide application Ex.PW7/8 he sent blood stained earth to the FSL, weapon of offence through application Ex.PW7/9 and empties recovered from the spot to the FSL, the result whereof is Ex.PZ and Ex.PZ/1. He has recorded the statements of the PWs u/s 161 Cr.P.C. After completion of investigation he handed over the case file to the SHO for submission of challan.

7. The Postmortem examination of deceased Irshad Ali son of Saqi Ghulam was conducted by Dr. Abid-ur-Rehman (PW-8) and found the following injuries;

External injuries: Mark of ligature: Nil. Condition of body: Fresh body of middle age man with blood stained clothes which were handed over to police.

Details of injuries:

1. Entry wound on right buttock about 1 x 1 cm.
2. Exit wound on right inguinal region about 1 x 1 cm and damaging the femoral vessel.
3. Entry wound on back of right thigh about 1 x 1 cm.
4. Exit wound of front of right thigh about 1 x 1 cm.
5. Entry wound on back of the right flank size of 1 x 1 cm.
6. Exit wound of same size on right iliac region.
7. Entry wound on right lumbar region having size of 1 x 1 cm and exit wound on anterior abdominal wall, lateral umbilicus having size of 1 x 1 cm.

Cranium and Spinal Cord: Healthy.

Thorax: Healthy.

Abdomen: Walls, peritoneum, small intestine, large intestine, liver, and right kidney were found injured while rest of the organs was found healthy.

Muscles, Bones, Joints: Healthy.

Opinion: In my opinion, this middle age man died from excessive bleeding, due to damage of right femoral vessels and intra abdominal mesenteric vessel due to firearm injuries.

Probable duration between injury and death 20-30 minutes while probable duration between death and postmortem 09-10 minutes.

8. Perusal of the record shows that the report/FIR was lodged with promptitude by complainant (PW-5) at emergency room of Civil Hospital Hangu, almost within 30 minutes of the occurrence and had charged the appellant as a single accused for the *qatl-i-amd* of deceased Irshad Ali. The occurrence, admittedly, took place on metal road Saidan Banda near Shaukat electric store which fact was also confirmed by the site plan prepared by the I.O and the report of FSL regarding the blood stained cotton secured from the scene of occurrence by the I.O during spot inspection and blood stained garments of the deceased. Similarly the appellant was arrested at 18:10 hours by the local police and from his possession the pistol 30 bore was recovered and accordingly FIR No.1171 dated 23.12.2016 under section 15-AA was registered. The FSL report regarding the recovered empties of 30 bore from the spot

has matched the 30 bore pistol which was recovered from the possession of present appellant by Noor Wali ASI. Likewise, the size of firearms four entry wounds with corresponding exit wounds on the dead body of the deceased Irshad Ali indicate use of one weapon of offence and four empties shell of 30 bore recovered by the I.O from the scene of occurrence during spot inspection also support the prosecution version. The FSL report also confirmed that four 30 bore crime empties marked C1 to C4 were fired from one and the same 30 bore weapon.

9. The appellant has also confessed his guilty before the Judicial Magistrate in the following words;

بیان کیا کہ میں محکمہ سی اینڈ ڈبلیو میں بحیثیت مالی ملازم ہوں۔ میرا بھائی انور علی محکمہ مال میں بطور گرو اور ملازم تھا۔ آج سے تقریباً 3/4 سال قبل ارشاد علی ولد ساقی غلام سکنہ بہادر گڑھی جنگلوں اور ان کے چار ساتھیوں (جو کہ میرا ان شاہ سے آئے تھے) نے واپڈا دفتر جنگلوں کے نزدیک میرے بھائی انور علی اور ان کے نائب قاصد عاشق علی ولد شہر علی کا راستہ روکا اور میرے بھائی انور علی کو اغواء کرنے کی کوشش کی۔ میرے بھائی انور علی اور عاشق علی نے مزاحمت کی جس پر ارشاد علی اور ان کے ہمراہیان نے ان پر فائرنگ کی جس سے میرا بھائی انور علی جان بحق جبکہ عاشق علی زخمی ہوا۔ اس نسبت مقدمہ تھانہ جنگلوں میں درج ہو چکا ہے۔ گزشتہ جمعہ کے دن میں دفتر محکمہ سی اینڈ ڈبلیو سے نکل کر گھر جا رہا تھا۔ راستہ میں ارشاد علی ولد ساقی غلام ملاقی ہوا جنہوں نے مجھے دھمکی دی کہ جس سے تمہارے بھائی انور علی کو قتل کیا ہے اسی طرح تمہیں بھی قتل کروں گا۔ میں وہاں سے گھر چلا گیا اور گھر سے پستول لیکر جنگلوں باز آ گیا۔ شوکت الیکٹرک سٹور جنگلوں کے سامنے ارشاد علی کو کھڑا پا کر ان پر پستول سے چار فائر کئے جس سے ہو لگ کر گر پڑا۔ میں وہاں سے نکلنے کی کوشش کر رہا تھا کہ پولیس نے مجھے گرفتار کیا۔ یہی میرا بیان ہے۔

We are conscious of the fact that in this case the accused/appellant was arrested on 23.12.2016 whereas his confession was recorded after delay of 05 days thus in order to use this confessional statement which was recorded at belated stage requires very strong and unimpeachable corroboration.

10. The complainant is the only eyewitness of the occurrence who at the relevant time was aged about 18/19 years old. This witness is a natural witness and his presence alongwith his father at the relevant time inspires confidence. Not only promptitude in registration of the FIR but the absence of motive to falsely implicate the present appellant belies the impression regarding the non presence of this witness at the time of occurrence, who appeared before the Court as PW-5 and reaffirmed the mode and manner of occurrence which he has narrated in the FIR. Even at the time of recording his statement before the Court he does not disclosed the motive for the occurrence which indeed was known to the deceased and the appellant as explained in the confessional statement of the appellant. The learned counsel appearing on behalf of the appellant has mainly relied upon the cross examination of this PW while referring to the following portion of his cross examination *"It is correct that*

accused was known to me before this case. After the occurrence the accused not arrested on the spot and decamped from the spot and he was arrested later on by the police. The accused was recognized to me by the local police; however I did not know his name at the time of arrest”

The learned counsel while referring the aforesaid portion of cross examination has argued that the name of the accused was given in the mouth of the complainant by the local police. However, we do not tend to agree with the aforesaid submissions of the learned counsel for the appellant because it is settled law that the Court would always look at the overall structure of the prosecution case in order to see whether the evidence of the witnesses otherwise coincide with the other circumstances of the case. If the evidence given by witnesses coincide with the other circumstances of the case then any confusion if created through some contradiction or confusion in his cross examination would be of no help to the appellant because a witness at times may either be confused by a vigilant/shrewd lawyer escaping the attention of the learned Presiding Officer or even the State counsel and would thus be able to extract something favoring or less favoring the appellant without letting the witness know the purpose of the said question. The apex Court in the

case of “Roshan and 4 others..Vs..The State” (PLD 1977 S.C 557) has observed that;

“Some counsel devote all their energies to create contradictions, and to this end lengthy cross-examination is conducted for hours and days which is intended to confuse, even an intelligent person, and is not calculated to elicit any useful information. This exercise is undertaken because Courts give undue importance to contradictions found in the statements of the prosecution witnesses. The primary consideration in appraising the evidence given by a witness is to determine, firstly, why has he offered to testify? Has he seen the occurrence? If so, has the witness a motive to implicate a person who was not among the culprits or to exaggerate the part played by any of them? If a witness satisfies these two tests, then the Court should watch the general demeanour of the witness in order to judge the quality of his perception and his faculty to recall the past incidents. A witness may make contradictory statements on some of the details of the incident in respect of which he is deposing in Court. The variation may be due to mere lapse of memory or the confusion caused in his mind by a relentless cross-examination. Very often a witness gives an incorrect statement because he must answer every question regardless of the fact whether he knows the answer to it or not. It is not uncommon that the cross-examiner puts words in the mouth of witness and the presiding officer is not vigilant enough to check it. It is also common experience that, without any particular intent, even educated people exaggerate when describing an event. Some witnesses may be prone to it more than others. Mere contradictions, therefore, do not lead to the result that whatever the witness has said on the salient features of

the case and which conforms to the other evidence on the record is to be thrown over-board.”

Similarly the Supreme Court of India in case of “*Leela Ram (D) Through Duli Chand..Vs..State of Haryana and Anr*” (AIR 1999 SC 3717) has observed;

“While appreciating the evidence of a witness, the approach must be whether the evidence of the witness read as a whole appears to have a ring of truth. Once that impression is formed, it is undoubtedly necessary for the Court to scrutinize the evidence more particularly keeping in view the deficiencies, drawbacks and infirmities pointed out in the evidence as a whole and evaluate them to find out whether it is against the general tenor of the evidence given by the witness and whether the earlier evaluation of the evidence is shaken as to render it unworthy of belief. Minor discrepancies on trivial matters not touching the core of the case, hypertechnical approach by taking sentences torn out of context here or there from the evidence, attaching importance to some technical error committed by the investigating officer not going to the root of the matter would not ordinarily permit rejection of the evidence as a whole. If the Court before whom the witness gives evidence had the opportunity to form the opinion about the general tenor of evidence given by the witness, the appellate court which had not this benefit will have to attach due weight to the appreciation of evidence by the trial Court and unless there are reasons weighty and formidable it would not be proper to reject the evidence on the ground of minor variations or infirmities in the matter of trivial details. Even honest and truthful witnesses may differ in some details unrelated to the main incident because power of observation, retention and reproduction differ with individuals.”

11. To recapitulate the prosecution case it appears that the occurrence had taken place at 16:10 hours, the report was lodged at 16:40 hours on the same day with promptitude, the accused/appellant was directly named in the FIR by the complainant as single accused who had no motive to falsely implicate him. After two hours of the occurrence the accused was arrested by the police alongwith the crime weapon which according to the FSL report is the same weapon from which the empties recovered on the spot were fired. The medical evidence is in line with the prosecution case followed by the confession of the appellant.

12. Moving on to FIR No.1171 dated 23.12.2016 under section 15-AA. Record shows that 30 bore pistol bearing No.F6058 loaded with 15 live rounds of the same bore was recovered from the personal possession of the accused/appellant by complainant Noor Wali ASI through recovery memo EX.PW1/1 in the presence of witnesses which is the crime weapon of main murder case FIR No.1170 dated 23.12.2016 under section 302 PPC, registered at Police Station City District Hangu. The pistol in question has been sent to the FSL alongwith four 30 bore crime empties recovered from the spot and the report was received in positive. The PWs produced by the prosecution were

examined through lengthy cross examination but nothing helpful to the accused/appellant has extracted from their month.

13. In view of above, the convictions of the appellant by the learned trial Court vide judgment dated 21.06.2018 is not open to any exception.

14. Moving on to the question of quantum of sentence. Keeping in view the safe administration of justice and the motive disclosed by the appellant in his confessional statement, we are not persuaded to enhance the sentence from life to death. Consequently, finding no merit in the criminal revision No.114-P/2018, same is also dismissed.

Announced.
10.06.2021

J U D G E

J U D G E

(D.B) *Hon'ble Mr. Justice Lal Jan Khattak and Hon'ble Mr. Justice Syed Arshad Ali.*

(M. Iqbal, SSS)

In case of **“RIAZ HUSSAIN and others..Vs..THE STATE”**
(1994 P Cr.LJ 1730) has also observed;

“The primary consideration in appraising the evidence given by a witness is to determine, why he has offered to testify? Has he seen the occurrence? If so, has the witness a motive to implicate a person, who was not amongst the culprit. If a witness satisfies these two tests, then the Court should watch the general demeanour of the witness in order to judge the quality of his perception and his faculty to recall the past incident. A witness may make contradictory statements on some of the details of the incident in respect of which he is deposing in the Court. The variation may be due to lapse of memory, or a confusion caused in his mind by a relentless

cross-examination. Very often a witness gives incorrect statement because he must answer every question regardless of the fact whether he knows the answer to it or not. Mere contradictions, therefore, do not lead to the result that whatever the witnesses had said on salient features of the case and conforms to the other evidence on record is to be thrown over-board”