

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Jail Appeal No. S- 90 of 2019

Appellant : Muhammad Jaro @ Mando s/o Gul Muhammad by caste Veesar, through Mr. Sajid Hussain Mahessar, Advocate

The State : Through Mr. Aitbar Ali Bullo, D.P.G.

Date of hearing: 16-01-2023

Date of decision: 26-01-2023

## **JUDGMENT**

**ZULFIQAR ALI SANGI, J:-** The above listed criminal jail appeal is directed against the judgment dated 12.09.2019, delivered by learned 1<sup>st</sup> Additional Sessions Judge/MCTC, Larkana, in Sessions Case No.446/2016 (Re. St. Vs. Muhammad Jaro @ Mando Veesar), emanating from FIR bearing Crime No.77/2016, for offence punishable U/S.302 PPC registered with Police Station, Ratodero, whereby the appellant has been convicted for an offence punishable U/S.302 (b) PPC and sentenced to suffer rigorous imprisonment for life as “Tazir” with compensation of Rs.500,000/- to be paid to the legal heirs of deceased and in default thereof, to suffer simple imprisonment for six months, with benefit of Section 382-B Cr.PC.

2 . Succinctly, the facts of case as depicted in FIR lodged by complainant Muhammad Ali on 07.05.2016, at 1800 hours, are to the effect that on 06.05.2016, there was exchange of harsh words in between his father Zamir Ahmed Veesar and his uncle Muhammad Jaro alias Mando Veesar over the matter of kids whereupon his uncle on being annoyed, threatened him of murder but the complainant paid no heed to it and then he alongwith his father, uncles Aijaz Ali and Mushtaque Ali were chit-chatting in a common street adjacent to his house, in the meantime, at about 07.30 P.M, he saw his uncle Muhammad Jaro @ Mando Veesar (present appellant) came in anger and while raising hakal took out pistol from his fold and fired four shots at his father Zamir Ahmed which hit him and he fell down raising cry. The complainant party raised hakals to the accused but he made his escape good with his pistol. They then saw Zamir Ahmed having fire arm injuries on different parts of his body which were bleeding and after intimating the police, he was immediately shifted to Taluka Hospital Ratodero but he succumbed to injuries. After observing usual formalities of postmortem, the dead body of his father was delivered to the complainant who after funeral, came at police station and lodged FIR against the accused.

3. On completion of investigation, the police submitted final report under section 173 Cr.PC against present appellant/accused before the Court of concerned Judicial Magistrate where the case papers were supplied to him under receipt. Thereafter, the case on being sent up before the Court of learned Sessions Judge, Larkana, was then made over to learned trial Court for its disposal according to law.

4. The formal charge was framed against present appellant/accused, to which he pleaded not guilty and claimed trial.

5. In order to establish accusation against the appellant/accused, the prosecution examined in all eight witnesses i.e PW-01 Complainant Muhammad Ali, PW-02 Eye-witnesses Mushtaque Veesar, PW-03 Aijaz Ali, PW-04 PC Faiz Muhammad, PW-05 Tapedar Nazir Hussain Machhi, PW-06 Author of FIR/SIO Gul Muhammad Korai, PW-07 medical officer Dr.Ali Asghar Abbasi and PW-08 Mashir Nasrullah Veesar, who all produced certain relevant documents in support of their statements. Thereafter, learned State Counsel closed the side of prosecution.

6. The present appellant/accused in his statement recorded in terms of Section 342 Cr.PC, denied the allegations leveled against him by pleading his innocence. However, he neither examined himself on oath in disproof of the charge nor led any evidence in his defence.

7. The learned trial Court on evaluation of the material brought on record and hearing counsel for the parties convicted and sentenced the present appellant/accused vide impugned judgment, as discussed above.

8. Per learned defence counsel, there are material contradictions in the evidence of prosecution witnesses which have shattered veracity of their evidence; that the complainant and PWs being related inter-se are interested witnesses and their evidence has no credibility, as such the same cannot be relied upon without independent corroboration; that there is conflict in between the ocular and medical account; that the prosecution has failed to prove motive; that the weapon allegedly secured from appellant/accused was indeed foisted upon him at the behest of complainant party. Summing up his contentions, the learned defence counsel submitted that present accused has been arraigned in the present case on account of earlier grudge over the matter of kids which is discernible from the

narration given in FIR itself. He lastly concluded that the case of prosecution is doubtful and appellant/accused is entitled to his acquittal in circumstances of the case. In support of his contentions, he relied upon case laws reported as *Abdul Jabbar alias Jabbari v. The State (2017 SCMR-1155)*, *Muhammad Asif v. The State (2017 SCMR-486)*, *Muhammad Mansha v. The State (2018 SCMR-772)*, *Dur Muhammad and another v. The State and another (2020 YLR-470)* and *Naseer Ahmed v. The State and others (2020 YLR-488)*.

9. In rebuttal to above contentions, learned D.P.G for the State submits that all the witnesses have fully supported the case of prosecution and no any major contradiction has been noticed in their evidence; that an innocent person has been done to death at the hands of appellant/accused over the matter of kids; that the ocular evidence is consistent with medical as well circumstantial account; that recovery of empties from the venue of occurrence and that of weapon secured from the possession of present appellant/accused on chemical analysis has substantiated the involvement of present appellant/accused in commission of the incident; that the chemical examiner's and FSL reports have fully supported the case of prosecution, in that situation, the learned trial Court finding the appellant/accused guilty of the offence has rightly convicted and sentenced him by way of impugned judgment which does not call for any interference by this Court, hence, the appeal filed by him being meritless is liable to its dismissal.

10. I have given due consideration to the arguments advanced by learned counsel for the parties and have minutely gone through the material made available on record with their able assistance.

11. The prosecution examined three eyewitnesses of the incident viz. PW-01 Muhammad Ali (complainant), PW-02 Mushtaque and PW-03 Aijaz Ali who have fully supported the case and they being the natural witnesses were available at the place of incident situated in front of their house in a street alongwith deceased being real father of complainant and brother of PWs Mushtaque and Aijaz. They in one voice deposed that on 06.05.2016, they alongwith deceased Zamir Ahmed were busy in chit-chatting in the main street situated at their house where at 07.30 p.m, accused Muhammad Jaro (real brother of deceased and two PWs Mushtaque and Aijaz) came there, took out pistol from fold of his shalwar, fired upon the deceased who received two fires shots on left arm, one fire shot below his elbow and other fire shot on his chest and fell down. PWs raised hakal to accused, whereupon, accused fled away. They took the deceased to Taluka Hospital Ratodero but he died of injuries on the way. After conducting postmortem they buried the deceased and on next date i.e 07.05.2016, the FIR was registered by them against the accused. All three eye-witnesses were cross-examined by learned defence counsel but no major contradiction was brought on record which may suggest that the appellant was falsely involved in a murder case of his real brother.

12. The ocular account furnished by above three eyewitnesses is further supported by the medical evidence in which PW-07 Dr.Ali Asghar in his evidence deposed that he conducted postmortem of deceased Zamir Ahmed and found that the deceased received 07 firearm injuries, 03 were entry wounds and 03 were exit wounds, however 7<sup>th</sup> injury was of entry without exit and the doctor recovered one bullet from left side back chest which was the continuation of wound of entry No.7, as per his opinion, all the injuries were anti-mortem in nature and caused by firearm. The death of deceased occurred due to excessive hemorrhage and intra thoracic cavity and irreversible shock due to the main organs and vessels i.e right lung, left kidney, cardiac vessels. It is observed that medical evidence is in the nature of *supporting, confirmatory or explanatory* of direct or circumstantial evidence, and is not "*corroborative evidence*" in sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with commission of the offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence concerning certain facts including the seat of injury, nature of injury, cause of death, kind of weapon used in the occurrence, duration between injuries and death, and presence of an injured witness or the injured accused at place of occurrence, but it does not connect accused with commission of the offence. It cannot constitute corroboration for proving involvement of accused person in commission of the offence, as it does not establish identity of the accused person. Reliance can be placed on cases of *Yaqoob Shah v. State (PLD 1976 SC 53)*; *Machia v. State (PLD 1976 SC 695)*; *Muhammad Iqbal v. Abid Hussain (1994 SCMR 1928)*; *Mehmood Ahmad v. State (1995 SCMR 127)*; *Muhammad Sharif v. State (1997 SCMR 866)*; *Dildar Hussain v. Muhammad Afzaal (PLD 2004 SC 663)*; *Iftikhar Hussain v. State (2004 SCMR 1185)*; *Sikandar v. State (2006 SCMR 1786)*; *Ghulam Murtaza v. Muhammad Akram (2007 SCMR 1549)*; *Altaf Hussain v. Fakhar Hussain (2008 SCMR 1103)* and *Hashim Qasim v. State (2017 SCMR 986)*.

13. In the present case, three eyewitnesses have fully supported the case as has been discussed above. However, the sole evidence of a material witness i.e an eyewitness is always sufficient to establish guilt of the accused if the same is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers quality of evidence and not its quantity to prove the charge. The accused can be convicted if the Court finds direct oral evidence of *one eye-witness* to be reliable, trustworthy and confidence-inspiring. In this respect, reliance is placed on cases of *Muhammad Ehsan v. The State (2006 SCMR 1857)* and *Niaz-Ud-Din v. The State (2011 SCMR 725)*. Further, the Honourable Supreme Court in case of *Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)* also held that "*even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable.*" There can be no denial to the legally established principle of law that it is always the *direct* evidence which is material to

decide a *fact (charge)*. The *failure* of direct evidence is always sufficient to hold a criminal charge as '*not proved*' but where *direct evidence* holds the field and stands the test of it being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance can *safely* be placed on case of ***Muhammad Ehsan vs. the State (2006 SCMR-1857)***, wherein the Honourable Supreme Court of Pakistan has held that:-

*"5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence".*

14. The ocular evidence which was supported by medical evidence as discussed above is further corroborated from the evidence of duty incharge PW-6 ASI/SIO Gul Muhammad who registered FIR of the complainant and thereafter conducted investigation of the case, he deposed that on 07.05.2016 while posted at P.S Ratodero being ASI/day incharge, complainant Muhammad Ali Veesar came and narrated the facts of cognizable offence which he incorporated in book of 154 Cr.PC and obtained his LTI and signed himself. After registration of FIR, he rushed to Taluka Hospital Ratodero where he found dead body placed in mortuary room of hospital, prepared mashirnama of dead body of deceased in presence of mashirs namely Nazir Ahmed and Nasrullah and obtained their LTIs, he handed over dead body of the deceased to PC Faiz Muhammad for conducting postmortem. As per his evidence, he visited the place of vardat on pointation of the complainant in presence of same mashirs wherefrom he recovered blood stains earth and 04 empties of 32 bore pistol which were sealed by him separately and prepared such mashirnama. He also prepared danistnama and obtained LTIs of both the mashirs. The accused was arrested by him on 21.05.2016 from Korkani turn alongwith 32 bore pistol in presence of private mashirs namely Altaf Hussain and Ali at evening time under the mashirnama of arrest. Thereafter, he brought the accused and case property at P.S where he registered separate case U/S.25 S.A.A, 2013 against accused on behalf of State. His evidence was further corroborated by ***PW-8 Nasurullah Veesar (Mashir)*** who deposed that on 07.05.2016, one Sobedar by caste Korai rushed at Taluka Hospital Ratodero who examined dead body of the deceased, prepared mashirnama which was signed by him and co-mashir. As per his evidence, the place of vardat was inspected by investigation officer from where he recovered 04 empty cartridges and blood stains earth and prepared mashirnama in their presence and obtained their LTIs. Thereafter, Sobedar sealed the case property at the spot. He deposed that danistnama was also prepared by the same ASI. Both these witnesses were cross-examined by learned defence counsel but could not find any substance favourable to the appellants.

15. Learned counsel for appellant mainly focused on the point that the witnesses are near relatives to deceased and are interested therefore their evidence cannot be relied upon, hence the contention raised has no force as in the instant matter, the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence. Both the parties are known to each other as is evident from their evidence and this is a day time incident, ***the appellant is also real brother of the deceased and two eye-witnesses who have deposed against him.*** There was no chance of mistaken identity of the appellant. It is observed that where the witnesses fall within the category of natural witnesses and detailed the manner of the incident in a confidence-inspiring manner then only escape available with the accused/appellant is that to satisfactorily establish that witnesses are not the witnesses of truth but "**interested**" one. An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate an accused. Mere relationship of eye-witnesses with the deceased alone is not enough to discard testimony of the complainant and his witnesses. In matters of capital punishment, the accused would not stand absolved by making a mere allegation of dispute/enmity but would require to bring on record evidence that there had been such a dispute/enmity which could be believed to have motivated the "**natural witnesses**" in involving innocent at the cost of escape of "**real culprits**". No substance has been brought on record by the appellant to justify his false implication in this case at the hands of complainant party on account of any previous enmity. In case of ***Zulfiqar Ahmed & another v. State (2011 SCMR 492)***, the Supreme Court of Pakistan has held as under:-

*...It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of 'interested witness' was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR-01) and it was held that 'friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused.*

16. Although, learned counsel for the appellant had pointed out some minor contradictions in the evidence which in my view are not sufficient to discard evidence of the eye-witnesses who have fully supported the case of prosecution on every aspect. It is settled principal of law that where in the evidence, the prosecution established its case beyond reasonable doubt then if there arise some minor contradictions which always are available in each and every case as no one can give evidence like a pen-picture, hence the same are to be ignored. The reliance is placed on case of ***Zakir Khan V. The State (1995 SCMR 1793)***, wherein the Supreme Court of Pakistan has held as under:-

*"13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on*

*the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused."*

17. Whatsoever has been discussed above, I have arrived at the judicious conclusion that the learned trial Court on being finding the present appellant guilt of committing murder of the deceased, has rightly convicted and sentenced him and thus has committed no illegality or irregularity while passing the impugned judgment which even otherwise is based on sound reasoning, therefore, it does not call for any interference by this Court. Resultantly, instant criminal jail appeal fails and the same is **dismissed**; the conviction and sentence awarded to the appellant by learned trial Court shall hold the field.

**JUDGE**