

**2023 P Cr. L J 558**  
**[Balochistan]**  
**Before Zaheer- ud-Din Kakar and Muhammad Aamir Nawaz Rana, JJ**  
**Mir AHMED ---Appellant**  
**Versus**  
**The STATE--- Respondent**  
**Criminal Appeal No. 199 of 2021, decided on 29th November, 2022.**

**JUDGMENT**

MUHAMMAD AAMIR NAWAZ RANA, J. ---In the wee hours of 22nd July, 2012, Abdul Rauf, after keeping "fa st" and offering Fajr prayer, was about to sleep with his family members when his door was knocked at 04:50 a.m. Abdul Hameed, brother of Abdul Rauf asked, "who is there?". "Come out, I am Mir Ahmed son of Abdul Sattar" was the response from outside. Abdul Hameed opened the door, Abdul Rauf and his other brothers also moved towards outer gate, suddenly rapid firing started and according to Abdul Rauf, he along with his brother Ghulam Farooq, came out of the home and saw Abdul Hameed lying in the pool of blood seriously wounded, while Mir Ahmed (appellant) was seated on motorcycle, having a weapon resembling to Kalashnikov and shouted on seeing Abdul Rauf "If anyone comes forward, he would be killed". Subsequently, Mir Ahmed fled from the scene while extending threats of dire consequences. Abdul Hameed died at the spot and his dead body was shifted to Civil Hospital, Quetta. Motive behind this horrendous act of violence, according to Abdul Rauf is; a few days back Abdul Sattar had brought the proposal of marriage of Mir Ahmed with daughter of Abdul Rauf which was rejected by brothers and father of Abdul Rauf. These are the contents of FIR No.75/2012 lodged at Police Station Saddar on 22.07.2012 at 05:45 a.m. under sections 302, 109, P.P.C. by Abdul Rauf (complainant) against Mir Ahmed (appellant) and against father and brothers of Mir Ahmed, assigning them the role of conspiracy and abetment.

2. The appellant remained absconder since 22.07.2012 (the date of incident) till 17.07.2019 when he was arrested on spy information. The brothers and father of the appellant had previously faced trial and were acquitted vide judgment dated 07.04.2014 passed by learned Additional Sessions Judge -I, Quetta.

INVESTIGATION:

3. PW10, Abid Hussain Bukhari (IP, SHO), was entrusted with the investigation of the matter, he went to emergency ward of the Civil Hospital where he saw dead body of Abdul Hameed having marks of firearm injuries, he conducted the proceedings under section 174, Cr.P.C and handed over the dead body to the complainant, went to the place of incident from where he collected the blood samples through cotton bud, recovered 25 empties and prepared parcels, recorded the statements of eye-witnesses, sent blood-stained clothes and blood obtained from the place of incident to Forensic Science Laboratory for analysis and thereafter obtained the report and subsequently sent incomplete report under section 173, Cr.P.C to the competent Court of jurisdiction. PW11, Saood -ur-Rehman (SI), on spy information arrested the appellant on 17.07.2019, prepared his disclosure memo and also prepared memo of place of incident on the pointation of appellant and thereafter, on 01.08.2019, submitted report under section 173, Cr.P.C to the Court of competent jurisdiction.

TRIAL:

4. The prosecution, in order to bring home the charge against the appellant, produced following evidences:

EYE -WITNESSES:

- i. Abdul Rauf son of Abdul Saeed, complainant (PW1).
- ii. Ghulam Farooq son of Abdul Saeed, eye -witness (PW2).
- iii. Muhammad Ashraf son of Sha han Khan, eye -witness (PW5).
- iv. Abdul Saeed son of Haji Abdul Majeed, eye -witness (PW6).
- v. Shehzad son of Abdul Saeed, eye -witness (PW7).

CIRCUMSTANTIAL EVIDENCE:

5. Ali Shah, was produced as (PW8), his statement was more of circumstantial in nature, as he came at the place of incident when deceased Abdul Hameed was lying in the wounded condition, he shifted the deceased to hospital in his Rickshaw.

Abdul Zahir was produced as (PW3) who is witness to the recovery memo of blood

samples obtained from the place of incident and witness to the recovery memo of 25 empties which were received from the place of incident and also witness to the memo of site inspection.

Bismillah, SI (PW9), is the witness to the disclosure memo (Fard -e-Inkishaf) of appellant and also witness to the pointation memo of place of incident.

MEDICAL EVIDENCE:

6. PW4, Dr. Ghulam Haider, Police Surgeon, Sandeman Provincial

Hospital, Quetta

recorded his statement before the trial Court and produced

Medico Legal Certificate (Exp/4 -

A) of deceased Abdul Hameed with following description of the injuries:

"Injuries:

1. Entrance wound Epigastric, Region 0.5 x 0.5 cm.
2. Gutter wound on abdomen right umbilical region.
3. Entrance wound on left knee joint 0.5 x 0.5 cm.
4. Exit wound on interior left knee joint.
5. Entrance wound on left lower leg 0.5 cm.
6. Exit wound on left lower leg 5x1 cm anterior.
7. Entrance wound on right foot metacarpal with Ankle joint 4 x 1 cm.
8. Eye closed, Mouth is open.

X-Ray Report:

X-Ray report No.18653 dated 22.07.2012 of Chest Abdomen, Left Knee Joint, Left

Tibia and Right Foot shows.

"Multiple metallic density firm body seen, in abdomen left chest and left leg with fracture of left tibia and fibula with left sided nemo thorax is also seen."

Probable Cause of Death:

Is injury to vital organ of abdominal cavity, internal and external haemorrhage, shock and death caused by firearm".

7. Abid Hussain Bukhari (PW10) was the first Investigation Officer who appeared

before the trial Court and explained the details of his investigation, whereas, Saood- ur-

Rehman (PW11) also recorded his statement to the effect that on spy information, the appellant was arrested who, according to said witness, made disclosure on 29.07.2019 and pointed out the place of incident.

8. On conclusion of the prosecution evidence, the appellant's statement under section

342, Cr.P.C was recorded. The appellant neither opted to record his statement on oath, as envisaged under section 340(2), Cr.P.C nor produced any witness in his defense, thereafter, the trial Court i.e. learned Additional Sessions Judge -VI/MCTC -II, Quetta, by recording the verdict of proven guilty, vide impugned judgment dated 22.04.2021, convicted and sentenced the appellant in following terms:

"Hence, the accused Mir Ahmed has committed an offence under section 300, Qatl -i- and, P.P.C., which is punishable under section 302(b), P.P.C.. Therefore, the accused Mir Ahmed son of Malik Abdul Sattar is convicted offence under section 302(b),

P.P.C. and sentenced to suffer for Life Imprisonment with direction to pay Rs.500,000/- (Rupees Five Lac), as compensation under section 544- A, Cr.P.C. to the heirs of the deceased Abdul Hameed. In default of payment of the compensation amount of Rs.500,000/- the accused Mir Ahmed shall further to suffer simple imprisonment for a period of Six (06) Months. The benefit of section 382- B, Cr.P.C. is also extended in favour of the accused Mir Ahmed from the date of his arrest i.e. 17.07.2019."

ARGUMENTS OF LEARNED COUNSEL FOR THE PARTIES:

9. Learned counsel for the appellant contended that since all the eye-witnesses inter se are close relatives of the deceased, Abdul Hameed, therefore, their testimony is not worth reliance; further contended that all the eye-witnesses have given different account of the incident, therefore, their statements are not reliable, as according to learned counsel, they were planted witnesses in order to strengthen the prosecution case. Learned counsel 1, while concluding his arguments, pointed out contradictions amongst the prosecution witnesses and submitted that in fact Abdul Hameed was murdered by his brother, Attique -ur-Rehman, as he had an illicit relationship with the wife of Abdul Hameed (deceased) and further stated that the appellant has wrongly been involved in the instant case with mala fide intention. Learned counsel relied upon the cases of Major (R.) Nadir Ali v. The State 1, Mir Mat Khan alias Matokai v. The State<sup>2</sup>, Sobho v. The State<sup>3</sup>, Sha fique Ahmed v. The State<sup>4</sup>, Mir Hassan v. The State<sup>5</sup>, Riaz Ahmed v. The State<sup>6</sup>, The State v. Muhammad Haroon<sup>7</sup> and Muhammad Mukhtiar alias Moju v. The State<sup>8</sup>.

Whereas, learned counsel appearing for the complainant, while refuting the contentions of counsel of appellant, submitted that the murder was seen by a number of witnesses, so there is no question of false implication. The appellant was given specific role of murdering Abdul Hameed (deceased) with Kalashnikov, in unison by all the eye-witnesses and since appellant remained absconder for approximately 07 years, so the conduct of the appellant, after the incident, proves his guilt beyond any reasonable doubt. While learned Additional Prosecutor General supported the

impugned judgment and submitted that, considering overwhelming evidences available on record, the appeal against the conviction is devoid of merit and deserves dismissal.

DETERMINATION:

10. The FIR was lodged with remarkable promptitude in which single accused i.e. appellant is nominated. The ocular account in this case has been furnished by the

complainant Abdul Rauf (PW1), Ghulam Farooq (PW2), Muhammad Ashraf (PW5), Abdul Saeed (PW6) and Shehzad (PW7), so five eye-witnesses were produced by the prosecution.

The presence of these eye-witnesses at the place of incident is justified as Abdul Saeed

(PW6) is the father of the deceased, while Abdul Rauf (PW1), Ghulam Farooq (PW2) and Shehzad (PW7) are real brothers of deceased and they all are living in the same house which fact was not disputed by the defense side during cross-examination. Apart from that

Muhammad Ashraf (PW5) is also eye-witness who lives in the neighborhood of the

deceased, therefore the presence of these witnesses at the place of incident was natural and logically they were the natural eye-witnesses as incident took place just after Sehri time, in early hours of the morning, in front of the house of deceased.

11. The argument of learned counsel for the appellant that since the eye-witnesses are

closely related with each other, the refore their testimony is not reliable, is without any

substance; considering the facts and attending circumstances of this case, though there cannot be a universal principle that in every case interested witnesses should be disbelieved or disinterested witnesses be believed in fact the intrinsic value of the statement of the witnesses coupled with attending circumstances of each case has to be considered with

holistic approach. In criminal jurisprudence the prosecution evidence is not weighed on the

basis of quantity but quality of evidence has always been the sine qua non for believing or

disbelieving the testimony of any witness; in Niaz -ud-Din v. The State<sup>9</sup>, it was held by the

Hon'ble Supreme Court that conviction in a murder case can be based even on the testimony

of a single witness provided the Court is satisfied that his testimony is reliable; the same

view was expressed by the Apex Court in the cases titled as Asim v. The State<sup>10</sup>, Lal Khan v.

The State<sup>11</sup> and Muhammad Sadiq v. The State<sup>12</sup>.

12. In this case at least five eye-witnesses recorded their

statements and identified the appellant as he was previously known to them, therefore there was no question of misidentification so the testimony of these witnesses, though they are relatives of deceased, could not be discarded on the basis of mere relationship. It is by now well settled principle of law that mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard such witnesses unless previous enmity or ill -will is established on record to falsely implicate the accused in the case. Reliance in this regard is being placed upon the case titled as Shamsheer Ahmed v. The State

13.

13. The contention of learned counsel for the appellant that since there are discrepancies and inconsistencies in the statements of the eye -witnesses, therefore their statements be discarded on this ground too. We don't find any substance in this argument as well, as the discrepancies or contradictions pointed out were trivial in nature and considering the long absconson of the appellant for more than seven years, these immaterial discrepancies are but natural and if such minor contradictions having no significance are given importance then we are afraid there would hardly be any conviction. Reliance in this regard is being placed upon the case titled as Allah Bakhsh v. Ahmad Din

14.

14. The appellant after the incident chose to remain absconder; his father and brothers were arrested and on the charge of conspiracy to commit murder, they faced the trial and subsequently were acquitted. During this period the appellant remained fugitive from law and no explanation in this regard has been furnished by the appellant. Though absconson itself is not sufficient to convict an accused but it is a strong piece of corroborative evidence of the other direct substantive evidences of the case. Reliance in this regard is being placed upon the case titled as Qaisar Khan v. The State

15, the relevant excerpt is reproduced:

"11. No doubt abscondence by itself is not sufficient to convict an accused person but is strong piece of corroborative evidence of the other direct and circumstantial evidence in the case. When an accused persons remains fugitive from the law for long time without any plausible and reasonable explanation, then his conduct after the occurrence becomes indicative of his guilt when it is considered in conjunction with the ocular and circumstantial evidence, as held by this Court in Mst. Roheeda v. Khan Bahadur and another 1992 SCMR 1036".

DENOUEMENT:

15. The nomination of the appellant immediately after the incident, the statements of the eye-witnesses which remained unshaken, no possibility of wrong nomination or identification of the appellant as he alone was saddled with attribution of killing the deceased, no justification provided to replace the actual murderer by the appellant by the complainant party and Medico Legal Certificate of deceased completely supporting the ocular account of the witnesses; all these factors take us to one conclusion that the prosecution successfully brought home the charge against the appellant beyond any shadow of doubt. In the wake of above deliberation, after thorough reappraisal of the prosecution evidence, we are not convinced by the defense counsel to interfere in the impugned judgment. The case laws referred by the defense counsel are distinguishable to the facts and circumstances of this case. Appeal stands dismissed. JK/195/Bal. Appeal dismissed.