IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE YAHYA AFRIDI
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI
MR. JUSTICE MUHAMMAD ALI MAZHAR

CRIMINAL APPEAL NO. 446 OF 2020
(On appeal against the judgment dated 20.12.2016 passed by the Lahore High Court, Lahore in Murder Reference No. 201/2013 and Criminal Appeal No. 789/2013)

Abdul Wahid

...Appellant(s)

VERSUS

The State

...Respondent(s)

For the Appellant(s): Mr. Sagheer Ahmed Qadri, ASC

For the State: Mr. Irfan Zia, DPG

For the Complainant: Nemo

Date of Hearing: 06.06.2023

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Appellant Abdul Wahid was tried by the learned Additional Sessions Judge, Lahore pursuant to a case registered vide FIR No. 78/2010 dated 14.03.2010 under Section 302 PPC at Police Station Muslim Town, District Lahore for committing murder of Muhammad Yousaf, son of the complainant. The learned Trial Court vide its judgment dated 04.06.2013 convicted the appellant under Section 302(b) PPC and sentenced him to death. He was also directed to pay compensation amounting to Rs.200,000/- to the legal heirs the deceased. In case of non-payment of the compensation, the amount was ordered to be realized as arrears of land revenue. In case of non-payment or non-realization as aforesaid, the appellant was directed to further undergo six months SI. In appeal the learned High Court while maintaining the conviction of the appellant, altered the sentence of death into imprisonment for life. The

amount of compensation and the sentence in default whereof was maintained. Benefit of Section 382-B Cr.P.C. was also extended in his favour.

2. The prosecution story as given in the impugned judgment reads as under:-

> "2. Prosecution story, as set out in the FIR (EX.PG) registered on the statement (Ex.PA) of Ghulam Mustafa, complainant (PW.1) is that he was resident of Mauza Khairpur Tehsil and District Nankana Sahib. Muhammad Yousaf son of complainant was driver of wagon No.1327/K plied on Peshawar Route No.131. On the night of occurrence i.e. 13.03.2010 the complainant came to Lahore to see his son and was going to Chung Multan Road Hanjarwal while riding on the wagon of his son. Usman grandson (*pota*) of complainant aged about 12 years was conductor of the wagon. Wahid (appellant) who was employee of Bigman Security Services (Pvt.) Ltd. boarded on the wagon as he oftenly used to travel in the wagon. Grandson of the complainant demanded fare from the appellant, whereupon a quarrel took place as he (appellant) refused to pay the same. When the wagon stopped in front of Postal Colony Wahdat Road at about 10.45 p.m. Muhammad Yousaf leaving the driving seat came behind and told the appellant not to quarrel with the child and pay the fare of Rs.10/-, upon which Wahid Shah (appellant) Security Guard flared up and fired with his pump action gun which landed on the chest of Muhammad Yousaf who became unconscious, smeared with blood. Wahid Shah (appellant) Security Guard decamped from the spot. The occurrence was witnessed by Khalid Hussain and Muhammad Ashraf Qadri along with other passengers. Meanwhile 1122 vehicle arrived and took Muhammad Yousaf to Jinnah Hospital."

3. After completion of the investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. The prosecution in order to prove its case produced ten witnesses. In his statement recorded under Section 342 Cr.P.C, the appellant pleaded his innocence and refuted all the allegations leveled against him. However, he did not appear as his own witness on oath as provided under Section 340(2) Cr.P.C. in disproof of the allegations leveled against him. He also did not produce any evidence in his defence.

4. At the very outset, learned counsel for the appellant contends that there are glaring contradictions and dishonest improvements in the statements of the eye-witnesses, which have escaped the notice of the learned courts below. Contends that the medical evidence contradicts the ocular account. Contends that the prosecution has not been able to prove

motive as alleged, which causes serious dent in the prosecution case. Contends that the reasons given by the learned High Court to sustain conviction of the appellant are speculative and artificial in nature, therefore, the impugned judgment may be set at naught. In the alternative, learned counsel contended that the occurrence took place at the spur of the moment, therefore, the conviction of the appellant may be converted into Section 302(c) PPC and his sentence may be reduced.

5. On the other hand, learned Law Officer assisted by the complainant in person submitted that to sustain conviction of an accused, un-rebutted ocular evidence alone is sufficient. Contends that the ocular account is supported by the medical evidence, therefore, the appellant does not deserve any leniency by this Court.

6. We have heard learned counsel for the parties at some length and have perused the evidence available on the record with their able assistance.

7. The unfortunate incident took place on 13.03.2010 at 10:45 pm whereas the crime report was lodged after one hour and fifty five minutes. Keeping in view the fact that the deceased was firstly taken to hospital, which was situated at a distance of more than five kilometers from the place of occurrence where he succumbed to the injuries and the matter was reported from the hospital, it would be considered a promptly lodged FIR. Promptness of FIR *prima facie* shows truthfulness of the prosecution case and it excludes possibility of deliberation and consultation. There was hardly any time with the complainant or other witnesses to fabricate a false story. The appellant is a single accused. He used to travel in the wagon of deceased for going to his work place and back, therefore, he was known to Muhammad Usman (PW-2), being conductor of the wagon and son of the deceased, as such, there is no chance of misidentification. The ocular account in this case has been furnished by Ghulam Mustafa, complainant (PW-1) and Muhammad Usman (PW-2). Although Ghulam Mustafa, complainant (PW-1) was resident of Nankana sahib but he has reasonably explained his presence at the place of occurrence at the relevant time. He had come to meet his son on that day

and was going in his wagon. It is not strange for a father to visit his son nor can any restriction be imposed in this regard. Muhammad Usman (PW-2) was son of the deceased and was conductor of the said wagon, therefore, his presence was also not unnatural. These prosecution witnesses were subjected to lengthy cross-examination by the defence but nothing favourable to the appellant or adverse to the prosecution could be produced on record. These witnesses have given all necessary details of occurrence qua the date, time, place, name of accused, name of witnesses, manner of occurrence, kind of weapon used in the occurrence, the locale of injuries and the motive of occurrence. These PWs remained consistent on each and every material point inasmuch as they made deposition exactly according to the circumstances happened in this case, therefore, it can safely be concluded that the ocular account furnished by the prosecution is reliable, straightforward and confidence inspiring. They had no enmity or ill-will against the appellant to falsely involve him in the case. It is now well settled that if the presence of the related witnesses at the time of occurrence is natural and their evidence is straightforward and confidence inspiring then the same can be safely relied upon to sustain conviction of an accused. Learned counsel for the appellant could not point out any reason as to why the complainant has falsely involved the appellant in the present case and let off the real culprit, who has murdered his real son. Substitution in such like cases is a rare phenomenon. He also could not point out any major contradiction or discrepancy in the statement of the witnesses, which could shatter the case of the prosecution in its entirety. The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the persons of the deceased is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. Reliance is placed on Muhammad Iqbal Vs. The State (1996 SCMR 908), Naeem Akhtar Vs. The State (PLD 2003 SC 396), Faisal Mehmood Vs. The State (2010 SCMR 1025) and Muhammad Ilyas Vs. The State (2011 SCMR 460). It is settled principle of law that the value and status of medical evidence and recovery is always corroborative in its nature, which alone is

not sufficient to sustain conviction. So far as motive part of the prosecution story is concerned, the learned High Court has given a finding which ultimately does not imprint any impression regarding the final fate of adjudication of the instant *lis*. As the empty of cartridge and the weapon of offence i.e. 12 bore pump action gun were sent together to the Forensic Science Agency, therefore, the recovery is inconsequential. The appellant in his statement under Section 342 Cr.P.C. had taken a defence plea that the companion of the deceased snatched his gun and the same went off mistakenly. However, the learned High Court has rightly observed that the appellant did not opt to appear as his own witness in disproof of the allegations leveled against him in terms of Section 340(2) Cr.P.C. nor did he produce any evidence in his defence, therefore, rightly discarded the same. When the appellant took a specific plea and he was a best witness for the same then his non-appearance is to be taken as withholding of the best evidence. Even otherwise, a bare perusal of the record suggests that the learned Courts below while convicting the appellant did not solely rely on the statement of the appellant recorded under Section 342 Cr.P.C. and the same was based on the appreciation of evidence led by the prosecution in the shape of unimpeachable ocular account, which was supported by the medical evidence and other corroborative evidence to establish guilt of the appellant.

8. In the alternative, learned counsel contended that the occurrence took place at the spur of the moment, without any premeditation on the part of the appellant, therefore, the said aspect may be considered as a mitigating circumstance to reduce the sentence of the appellant. However, we are not convinced with the argument of the learned counsel because of the reason that being a security guard does not mean that the appellant is permitted to carry on official weapon given to him by the Security Agency. The Punjab Private Security Companies (Regulation and Control) Ordinance, 2002 and the Rules framed thereunder, specifically provide a scheme to regulate the private security companies and security guards. A bare perusal of Ordinance and the Rules framed thereunder would show that no guard shall be allowed to carry the weapon licensed in company's name and same shall have to be handed over when he finishes his duty. It would be in fitness

of things to reproduce Section 8(11) of the Punjab Private Security Companies (Regulation and Control) Rules, 2003, which reads as under:-

> "A register shall be maintained at the place of duty indicating the handing over and taking over of the weapon when a new guard starts duty at the same place. This register shall be the property of the Security Company to be issued by the officer not less than the rank of Security Manager of the Company. The register shall be stamped and authenticated by the Company and the pages shall be numbered."

9. Had the appellant followed the law, he would not have carried gun with him and the unfortunate incident wherein one innocent young lad lost his life could have been avoided. The learned courts below have already taken a lenient view while awarding the sentence of imprisonment for life to the appellant, which in our view leaves no room to further deliberate on this point. The learned High Court has correctly appreciated the material aspects of the case and the conclusions drawn are in line with the guidelines enunciated by this Court on the subject. Learned counsel for the appellant has not been able to point out any legal or factual error in the impugned judgment, which could be made basis to take a different view from that of the learned High Court.

10. For what has been discussed above, we do not find any merit in this appeal, which is dismissed. The above are the detailed reasons of our short order of even date.

JUDGE

JUDGE

JUDGE

Islamabad, the
6th of June, 2023
Approved For Reporting
Khurram