JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

Criminal Appeal No. 171 of 2023
(Abdul Samad v. The State)
CC # 100107601435

J U D G M E N T

Date of hearing: 7th November, 2023 Announced on _____

Appellant by: Syed Ayaz Zahoor, Ms. Aster Mehak and Mehnaz Hameed, Advocates

State by: Mr. Abdul Karim Malghani, State Counsel

IQBAL AHMED KASI, J.- The instant Criminal Appeal under Section 410, Cr.P.C. has been preferred by the appellant Abdul Samad son of Ghulam Rasool, challenging the validity of the judgment dated 31.03.2023 ("**the impugned judgment**") passed by learned Sessions Judge, Khuzdar ("**the trial Court**"), whereby, he was convicted under Section 302(b) PPC and sentenced imprisonment for life. He was also directed to pay Rs.200,000/- (rupees two lac) as compensation to the legal heirs of deceased, in case of default to undergo SI for 06 (six) months with benefit of Section 382-B, Cr.P.C.

2. The facts arising out of FIR No. 11/2011, under Sections 302, 109, 34 PPC, registered with Levies Station, Khuzdar, on the report of complainant Abdul Majeed are that on 30.03.2011, at about 07:15 p.m. the complainant went to his shop near the shrine of Abdullah Shah to purchase diesel for his tubewell Machine and was present at the shop that meanwhile accused persons, namely, Abdul

Samad, Abdul Basit and Lal Bakhsh came there on motorcycle. The said three persons started altercation with Muhammad Usman and meanwhile, accused Abdul Samad took out a pistol and made 4/5 fire shots, which hit Muhammad Usman, who fell down on the ground and succumbed to his injuries, whereas, the accused persons escaped from the scene of occurrence. Hence the FIR was registered.

3. On the stated allegations, a formal charge was farmed and read over to the accused, to which he pleaded not guilty and claimed trial.

4. In order to prove the accusation, prosecution produced the following nine witnesses:

PW-1 Abdul Majeed, is the complainant of the case, who produced his *fard-e-bayan* Ex.P/1-A.

PW-2 Dr. Ghulam Sarwar, Medico Legal Officer, DHQ Hospital Khuzdar, is the Doctor, who examined the dead body of deceased and produced the Medico Legal Certificate as Ex.P/2-A.

PW-3 Gul Hassan, is the eyewitness of the incident.

PW-4 Amanullah, is also the eyewitness of the incident.

PW-5 Fazal Ullah, is the witness of recovery memo of bloodstained clothes of deceased and produced the same as Ex.P/5-A. He also produced the parcel No.2 as Art.P/1, clothes in shape of shirt, trouser and banyan as Art.P/2 to Art.P/4, seal

sample as Art.P/5, seal parcel of coin as Art.P/6 and Art.P/7.

PW-6 Mehmood, is witness of recovery memo of empties of TT pistol, CD-70 motorcycle and produced the same as Ex.P/6-A. He also identified signatures on Art.P/8, two empties as Art.P/9 and Art.P/10, motorcycle as Art.P/11.

PW-7 Naseer Ahmed, Assistant Commissioner (Rtd) is the first Investigating Officer of the case. He produced FIR as Ex.P/7-A, site map Ex.P/7-B, incomplete challan Ex.P/7-C, FSL report Ex.P/7-D, incomplete supplementary challan Ex.P/7-E.

PW-8 Muhammad Azam, Tehsildar, is the second Investigating Officer of the case, who produced the supplementary challan to the extent of accused Lal Muhammad as Ex.P/8-A.

PW-9 Hafeezullah, Risaldar, is the third Investigating Officer of the case and produced incomplete supplementary challan as Ex.P/9-A.

5. Thereafter, the appellant was examined under Section 342 Cr.P.C., wherein he denied the prosecution accusations and claimed to be innocent. He neither recorded his statement, as envisaged under Section 340(2) Cr.P.C. on oath, nor produced any witness in his defence.

6. The trial Court after close of parties' evidence, vide impugned judgment, convicted and sentenced the appellant, as mentioned in *para supra*, hence this appeal.

7. Learned counsel for the appellant contended that the trial Court has failed to appreciate the evidence in its true perspective and passed the impugned conviction judgment, which is result of mis-reading and non-reading of evidence; that despite availability of private persons at the place of occurrence, the prosecution has failed to associate them as witnesses, which created dent in the prosecution version; that the medical report is not corroborated by the prosecution witnesses and there is contradiction in between the testimony of the witnesses produced by the prosecution and the medical report; that there is delay in recording the statements of the alleged eyewitnesses of the case, whereas, no such explanation in this regard has been brough forward; that the impugned conviction judgment passed by the trial Court is illegal and unlawful, thus, warrants interference by this Court.

8. On the other hand, learned State counsel, vehemently opposed the contention of the learned counsel for the appellant and contended that the prosecution has fully proved the case against the appellant; that the prosecution has successfully proved its case through oral as well as medical evidence, which strongly suggests that the appellant is responsible for murder of deceased, hence, prayed for dismissal of the instant appeal.

9. We have carefully considered the respective contentions put-forth by the parties' counsel in the light of evidence available on record. It appears that complainant Abdul Majeed (PW-1) submitted his written application, Ex.P/1-A, on the basis whereof FIR, Ex.P/7-A

was registered. The record transpires that the FIR Ex.P/7-A was registered on 30.03.2011, at about 09:00 p.m. and Lal Bakhsh son of Pir Bakhsh (acquitted accused) was arrested later on and after full-fledged trial, he was acquitted of the charge, vide judgment dated 18.09.2015 by the trial Court, where after, the appellant was arrested on 10.06.2021 and after full-dressed trial, the trial Court, convicted and sentenced him, vide impugned judgment.

10. The prosecution mainly relied upon the testimony of witnesses i.e. PW-1 Abdul Majeed, PW-3 Gul Hassan and PW-4 Amanullah. Statements of ocular witnesses and medical evidence Ex.P/2-A, are in complete line with each other. No conflict could be pointed out to create a dent in the prosecution case. The medical evidence of deceased was produced by PW-2, Dr. Ghulam Sarwar, Medical Officer, DHQ, Khuzdar. On 30.03.2011, he examined the dead body of deceased and found the following injuries:

> *"a. Bullet entered left side of back and not exit.*
> *b. Three bullets entered left side of chest an not exit.*
> *c. One bullet entered right sub costal region and not exit.*"

He issued medical certificate Ex.P/2-A, according to which the death of deceased Muhammad Usman was caused due to firearm injuries. The testimony of above witness has also been corroborated by the recovery of bloodstained clothes of the deceased and recovery of bullet empties of TT pistol. The said recoveries have duly been proved through recovery witnesses and nothing adverse could be achieved despite lengthy cross-examination. As stated earlier that the medical

evidence produced by the prosecution also supported and corroborated the testimony of eyewitnesses and no contradiction at all could be pointed out by the defence. The learned counsel for the appellant at the very outset contended that the statements of eyewitnesses under Section 161, Cr.P.C. were recorded after unexplained delay and their presence is also doubtful at the place of occurrence. It may be mention here that the FIR was lodged soon after occurrence without any delay. It is settled principle of law that the evidence of ocular account cannot be discarded merely on the ground of delay. It may be mention here that it is the discretion of Investigating Officer to record statements of witnesses under Section 161, Cr.P.C., but this discretion has not been exercised arbitrarily. Furthermore, the record reveals that the FIR was lodged on 30.03.2011, at about 09:00 p.m. The occurrence took place in District Khuzdar in the month of March, thus, it could easily be presumed that due to cold whether every individual/person go back to his home, for that reason may be the statements of the eyewitnesses were not recorded on the same day. The record transpires that the statements of eyewitnesses under Section 161, Cr.P.C. were recorded on the very next morning. It is now well settled that intentional or otherwise, any concession extended to accused being lapse on the part of Investigating Agency, shall not fatal the prosecution case. The statements of eyewitnesses could not be brushed aside on the ground that the Investigating Officer recorded their statements with some delay. In this regard reliance is placed to the titled "Muhammad Safar

v. The State", 2006 SCMR 1773, wherein, the Hon'ble Supreme Court of Pakistan has held as under:

> *"We have also gone through the evidence of P.Ws. Muhammad Safar, Ghulam Murtaza, Ali Dost Ghulam Muhammad, Jinsar Ali Tapeddr, Dr. Amjad Ali, medical certificates and post-mortem reports minutely. The above-said witnesses have admitted that their statements under section 161, Cr.P.C. were recorded after 2/3 days of the incident and have also sustained injuries in the same incident and further that incident has occurred in front of house of the respondents/accused and that hatchets were used from the blunt side. We find that the learned Single Judge of the High Court has also gone through the entire prosecution evidence and defence of the respondents/accused and has perused the same in accordance with the settled principle of law laid down by this Court. No exception could be taken to the finding with regard to appraisal of evidence arrived at by the learned Single Judge.*"

11. As far as the presence of eyewitnesses in the place of occurrence is concerned, we observed that the eyewitnesses are permanent residents of the same vicinity, as such, they could not be treated as chance witnesses. The eyewitnesses were cross-examined by the defence at length, but the defence failed to shake their credibility with regard to their presence at the place of occurrence. The learned counsel for the appellant next contended that at the venue of occurrence so many independent persons were available. All the witnesses are interrelated to each other. The rule of caution requires independent corroboration of interested witnesses. With due respect

we do not agree with the contention of learned counsel for the appellant. The relationship of PWs with the deceased *per-se* is no ground to discard their statements. The main thing to be seen is whether the presence of prosecution witnesses at relevant time was natural or not and whether the prosecution explained the presence of PWs at the place of occurrence at the relevant time? The principle of accepting the testimony of interested witnesses is set out in a case titled as "Nazir v. The State", PLD 1962 SC 269. The interested witnesses are one who had motive for false implicating the appellant for any act of enmity. In case of "Khalil Ahmed v. The State", 1976 SCMR 161, the testimony of deceased's son aged about 15 years was accepted. His statement was considered corroborated by injuries of his person. In case of "Allah Ditta v. The State", 1970 SCMR 734, the testimony of four prosecution witnesses, out of which, two had sustained injuries, was accepted although they were related with the deceased, because, they were natural witnesses.

12. Admittedly, the eyewitnesses were related to the deceased. The complainant, deceased and witnesses are *inter se* related to each other, but on this score their statements could not be discarded. The *inter se* relationship of prosecution witnesses who were present at relevant time on the test of lengthy cross-examination, cannot be discarded. In this regard reference can be placed on the case of "Munawar Ali v. The State", 2001 SCMR 614.

13. Now the question arises that whether the prosecution has produced sufficient evidence to connect the appellant Abdul Samad

rightly with the commission of the crime. In order to effectively address this issue, we would require to focus on the statement of PW-1 (complainant), PW-3 and PW-4. All the PWs corroborated each other on each and every point. Learned counsel for the appellant stressed on the point that there is no recovery of crime weapon from the possession of the appellant. We see no force in the argument of learned counsel for the appellant for the reason that the FIR was lodged on 30.03.2011 and the appellant was arrested on 10.06.2021, after lapse of more than 10 years and it is not appealable to a prudent mind that after committing murder, the accused retains the crime weapon in his possession, thus, the argument of learned counsel for the appellant to this extent is overruled. Moreover, the case laws/citations relied upon by the learned counsel for the appellant are distinguishable to that of the instant case, thus, are overlooked.

In view of what has been discussed hereinabove, we are of the considered opinion that the learned counsel for the appellant has been failed to make out a case of acquittal in favour of the appellant, thus, the instant petition being devoid of merit is hereby dismissed.

Announced in open Court. JUDGE
Dated Quetta the____ November, 2023

JUDGE