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IN THE FEDERAL SHARIAT COURT
(Appellate/Revisional Jurisdiction)

PRESENT

MR. JUSTICE MUHAMMAD NOOR MESKANZAI, CHIEF JUSTICE
MR. JUSTICE DR. SYED MUHAMMAD ANWER

1. JAIL CRIMINAL APPEAL NO.11//2019

Mian Bux S/o Haji Sohbat Malokhani Appellant.

Versus

The State Respondent.

2. JAIL CRIMINAL APPEAL NO.12//2019

Asghar S/o Mohammad Siddique Mallah Appellant.

Versus

The State Respondent

3. JAIL CRIMINAL APPEAL NO.13//2019

Mohammad Hassan S/o Rustam Shahahni Appellant.

Versus

The State Respondent.

For the Appellants ... Mr.Raja Muhammad Anwar,
Mrs. Aftab Bano and Ms.
Saleha Naeem Ghazala
Advocates.

For the State ... Mr. Zahoor Shah, Additional
Prosecutor General Sindh

FIR NO., date & Police Station ... 37/2012 dated 26.03.2012
Police Station Bhit Shah.

Date of the Judgment of Trial Court ... 19.11.2016, Additional Sessions
Judge, Matiari.

Date of Institution ... 10.06.2019

Date of Hearing ... 14.12.2020

Date of Decision ... 16.12.2020

JUDGMENT

JUSTICE MUHAMMAD NOOR MESKANZAI, C. J :- The above Jail Criminal Appeals are directed against common judgment dated 19.11.2016 passed in Sessions Case No. 352/2012 FIR No.37/2012, registered at PS Bhitshah, Hyderabad, whereby Appellants Mian Bux S/o Haji Sohbat Malokhani, Asghar S/o Muhammad Siddique Mallah and Muhammad Hassan S/o Rustam Shahani were convicted and sentenced by the learned Additional Sessions Judge, Matiari as Under:

"Accordingly accused Muhammad Hassan, Asghar and Mian Bux are hereby sentenced to suffer life imprisonment u/s 302 (b) PPC. The accused are further directed to pay Rs.400,000/- each to the legal heirs of deceased Punhal Malookhani as compensation u/s 544-A Cr.P.C. In default of payment of the compensation, the accused shall further suffer imprisonment for period of six months while said amount of compensation shall be recoverable as arrears of land revenue. The prosecution has also proved the charge u/s 324 PPC against all the accused beyond the shadow of reasonable doubt hence I convict them u/s 265-H(ii) Cr.P.C. for offence u/s 324 PPC and sentence them to suffer R.I. for five years, and further sentence them to pay fine Rs.10,000/- each. In case of default in payment of fine, the defaulting accused shall further suffer S.I. for two months. They are further convicted u/s 265-H(ii) Cr.P.C. for offence u/s 337-F(iii) PPC for causing firearm injuries to PW Majano, sentenced them to pay Daman Rs.50,000/- each to PW Majano. The accused are further convicted u/s 265-H(ii) Cr.P.C. for offence u/s 392 PPC, and sentenced to suffer R.I. for five years, and further sentenced to pay fine Rs.10,000/- each. In case of default in payment of fine, the defaulting accused shall further suffer S.I. for two months. The accused are further directed to pay Rs.30,000/- each to PW Jai Ram as compensation u/s 544-A Cr.P.C. for the robbed articles. In default of payment of the compensation, the accused shall further suffer imprisonment for period of six months while said amount of compensation shall be recoverable as arrears of land revenue. All the sentences of imprisonment against the accused shall run concurrently. The accused Muhammad Hassan and Asghar are behind the bar since 26.03.2012 till to date, while accused Mian Bux is behind

the bar since 09.12.2013 till to date, hence benefit of section 382-B Cr.P.C. is extended to them. The accused Muhammad Hassan, Asghar and Mian Bux are present in custody, hence they are remanded back to C.P. Hyderabad with conviction warrant/slip to serve out their sentences"

2. The prosecution story in brief as narrated by complainant Kamal Khan S/o Lal Muhammad Malokhan in the FIR (Exh.8/A) is that during night of 26.03.2012 at 01:30 a.m. present accused / appellants alongwith absconding accused Ali Hyder, Ghulam Qadir, Nangar Khan and 3/4 unknown persons, duly armed with deadly weapons in furtherance of common object entered into the house of PW Jai Ram situated in village Sher Khan Malookhani and robbed gold ornaments weighing 1-1/2 tola and cash of Rs.10,000/- Thereafter, the villagers chased all the accused, and at about 02:00 a.m (night) in village Sher Khan Malookhani in wheat crop the villagers encircled them where encounter took place and in the result of their firing, brother of complainant namely Punhal and co-accused Mohammad Yaqoob died while PW. Majano received injuries.

3. After completion of investigation, final report under Section 173 Cr.P.C. was submitted before the Court. The Trial Court framed the Amended Charge (Exh-7) against the convict /appellants under Section 17 (3) Offences Against Property (Enforcement of Hudood) Ordinance, 1979 & Sections 302,324,396 PPC to which they pleaded not guilty and claimed for trial.

4. At the trial, prosecution examined as many as ten prosecution witnesses and thereafter learned prosecutor closed the prosecution side vide statement (Exh-19). On completion of prosecution evidence, statements of the accused were recorded under Section 342 Cr.P.C. (Exh-20 to 22). In their statements, the appellants denied the allegations leveled against them and submitted that they have falsely been implicated in this case.

5. To substantiate its case, the prosecution examined PW-1 complainant Kamal Khan as Exh-8, who produced FIR (Exh-8/A) and receipt regarding

receiving of dead body of deceased Punhal (Exh:8/B). PW-2 Darya Khan as Exh-9, who produced his 164 Cr.P.C. statement (Exh-9/A). PW-3 Mumtaz as Exh:10, who produced his 164 Cr.P.C. statement (Exh-10/A). PW-4 Jai Ram (Exh-11). PW-5 Majano as Exh-12. PW-6 Ghulam Rasool as Exh-14, who produced Mushirnama of arrest and recovery (Exh-14-A), Mushirnama of place of incident i.e. wheat crop and dead body as (Exh-14/B), Danistnama of deceased Punhal as Exh-14/C, Danistnama of deceased Muhammad Yaqoob (Exh-14-D), Mushirnama of injuries of PW Majno (Exh-14/E), Mushirnama of place of incident i.e. house of PW Jai Ram (Exh-14/F), Mushirnama of clothes of deceased Punhal and accused Muhammad Yaqoob (Exh-14/G) and Mushirnama of injuries of accused Muhammad Hassan and Asghar as (Exh-14/H). PW-7 ASI Allah Jurio as Exh-15), who produced Roznamcha Entry No.42 regarding departure from P.S. (Exh-15/A), letter issued to M.O. regarding medical examination of injured Majano as Exh-15/B, letter issued to M.O. regarding conducting postmortem of both deceased including Punhal and accused Muhammad Yaqoob (Exh-15/C) and letter issued to Mukhtiarkar for preparation of sketch of Wardat (Exh-15/D). PW.8 Dr. Ghulam Abbas (Exh-16), who produced postmortem report of deceased Punhal and his Lash Chakas Form (Exh-16/A & 16/B), Lash Chakas Form of deceased accused Muhammad Yaqoob and his postmortem report as Exh-16/C & 16/D, Provisional and Final Medical Certificates of injured Majno as Exh-16/E and 16/F respectively. PW-9 WPC Mehdi Hassan as Exh-17, who produced letter issued by SIP Khadim Hussain to M.O. for medical treatment of accused Muhammad Hassan and Asghar as Exh-17/A and letter issued by SIP Khadim Hussain to M.O. regarding Final Medical Certificate of injured Majno as Exh-17/B. PW-10 SIP Ishtiaq Ali as Exh-18, who produced letters issued to AIG Forensic Division Sindh for chemical examination of clothes and opinion regarding weapons as Exh-18/A and 18/B, and reports of chemical examiner Karachi and Incharge FSL Hyderabad as Exh-18/C and 18/D respectively.

6. The learned counsel for the appellants submitted that the F.I.R. does not appear to have been lodged at the time, as incorporated in the FIR. It is not possible to lodge F.I.R. within such short span of time, particularly, after postmortem and funeral of dead body. It was next contended that the F.I.R. should have been lodged by Jai Ram where the alleged robbery is said to have been committed. It was maintained that in fact the brother of convict Muhammad Hassan was murdered by police in a fake encounter and the appellant went to lodge F.I.R. They were falsely booked in this frivolous case. However, after going through the evidence, the learned counsel for the appellants requested that since the appellants have already served a greater portion of sentence, therefore, the appeal may be accepted by reducing the sentence to that already undergone. The learned Additional Deputy Prosecutor General, Sindh, vehemently opposed the appeal as well as the request of reduction of sentence by maintaining that the prosecution has proved its case to the hilt by producing trustworthy, truthful, and confidence inspiring evidence.

7. We have heard the learned counsel for the parties and have gone through the record minutely. The perusal of record reveals that on 26.03.2012 at 1.30 a.m. (night) the convicts along with one Muhammad Yaqoob and ¼ unknown persons duly armed with deadly weapons in furtherance of common object entered the house of one Jai Ram and committed robbery by taking away 1-1/2 tola Gold and Rs.10,000/-. On hue and cry or gun shot reports, the complainant along with other villagers came out of their houses and reached the house of Jai Ram where they were informed that the accused have committed robbery. The villagers followed and chased the culprits. After a short while encounter took place. The accused started firing so the villagers also fired in their defence in result of such encounter one of the villagers Punhal lost his life, one Majno sustained injuries and one of the accused sustained bullet injuries and expired. Both the convicts were captured by the villagers whereas one of the accused namely Mian Bux made his escape good and on arrival of police they were arrested with their respective weapons, as the police was informed

just after murder of Punhal. Prosecution produced as many as ten PWs to prove the charge. The Trial Court formulated following points for determination:-

1. *Whether deceased Punhal died his unnatural death as a result of receiving injuries with firearm.*
2. *Whether on 26.03.2012 at 1:30 a.m. (night) the above named accused alongwith absconding accused Ali Hyder, Ghulam Qadir, Nangar Khan and 3/4 unknown persons, duly armed with deadly weapons in furtherance of common object entered into the house of PW Jai Ram situated in village Sher Khan Malookani and robbed gold ornaments weighing 1-1/2 tola and cash Rs.10,000/-, thereafter, the villagers chased all the accused, and at about 0200 a.m. (night) in village Sher Khan Malookani in wheat crop the villagers encircled them where encounter took place, and in the result of their firing, brother of complainant named Punhal and co-accused Muhammad Yaqoob died while PW Majano received injuries.*
3. *Whether accused have committed the offences U/Ss 302,324,34 PPC R/W section 17(3) Property E.H.O.*

8. The perusal of the statements of prosecution witnesses reveal that the same are consistent, coherent and confidence inspiring. The PWs stuck to their gun and could not be shaken and shattered despite lengthy cross-examination. The learned counsel for the appellants failed to point out a single contradiction, omission or improvement. We for ourselves gave due attention and perused the evidence very minutely and carefully but nothing favourable to defence or fatal to prosecution could be noticed. There is no improvement, omission or contradiction. All the PWs have supported each other not only on material rather on minute points, despite the fact, that the statements were recorded after considerable delay. The Trial Court dealt with evidence very beautifully by strictly adhering to the principles governing the law on the subject. The material available on record were appreciated, assessed, analyzed and evaluated in golden scales. The formulated points were resolved with reasons by referring to relevant material / evidence leaving no room for any other conclusions,

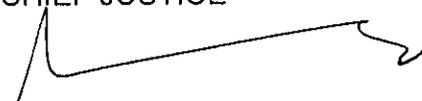
except the one i.e. the guilt which is natural, legal, logical and the only conclusion in the circumstances of this case.

9. We do not subscribe to learned counsel for appellants that there is delay or the report could not be lodged, as claimed. It has been established on record beyond shadow of doubt that police reached at venue and removed the dead bodies to hospital. Exhibit 15/B shows that injured Majano was referred to hospital by police and Exhibit 16/F M.L.C. issued in favour of Majano reveals that he was produced before Medical Officer by ASI at 2:00 a.m on 26.03.2012. So, for all intent and purposes, the law was set on motion. Secondly, so far as allegation of encounter by police is concerned, there is not an iota of evidence to support this concocted, frivolous, fictitious and after thought story as set up by defence. During the course of cross-examination, PWs were suggested that both the deceased committed murder of each other. So, the defence has been taking different stances, true, the accused is not bound to take specific plea or defence, but once takes a special plea / defence then must stuck to his gun. So this plea is of no help and avail to appellants. Adverting to the request for reduction of the sentence, suffice to observe, that there is no plausible reasonable and justifiable ground for reduction of sentence. The accused committed robbery, and when encircled, they committed cold blooded murder of an innocent person and also caused bullet injury to another innocent person. They deserved the normal penalty, as provided under law; however, the Trial Court was gracious enough to treat their long detention as an extenuating circumstance which has not been challenged either by State or by complainant. So, in our considered opinion, no case for reduction of sentence is made out, hence appeal lacking merits is dismissed.

File for reporting.



 JUSTICE MUHAMMAD NOOR MESKANZAI
 CHIEF JUSTICE


 JUSTICE DR. SYED MUHAMMAD ANWER

*Announced in open Court
 On 16th December 2020
 at Karachi
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