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Before Sh. Riaz Ahmad and Raja Afrasiab Khan, JJ

AHMAD NAWAZ--Appellant

versus

THE STATE--Respondent

Criminal Appeal No.754 of 1988, heard on 26th February, 1992.

Penal Code (XLV of 1860)--

---- Ss. 302, 353 & 307 --- Appreciation of evidence --- Ocular account had been materially corroborated by medical evidence---Empties collected from the spot were found to have been fired from the rifle recovered from the accused-- Overwhelming evidence was available on record to connect accused with the commission of the offence --- Prosecution had established its case against accused on the basis of reliable and trustworthy evidence --- Convictions and sentences of accused were maintained in circumstances.

Ch. Muhammad Arshad for Appellant.

Date of hearing: 26th February, 1992.

JUDGMENT

RAJA AFRASIAB KHAN, J.---Ahmad Nawaz (25) son of Noor. Hussain and Ahmad Gul (14) s/o Ghulam Muhammad were tried by the learned Punjab Special Court for Speedy Trial No.VIII, Sargodha under section 302/307/353/34, P.P.C. Vide judgment dated 21-9-1988 Ahmad Nawaz was convicted and sentenced to death plus a fine of Rs.30,000 and in default thereof to undergo five years' R.I. under section 302, P.P.C. In case of recovery of fine, it was ordered that a sum of Rs.20,000 shall be paid to the legal heirs of the deceased as compensation under section 544-A, Cr.P.C. He was also convicted and sentenced to two years' R.I. plus a fine of Rs.5,000 or in default to undergo further three months' R.I. under section 353, P.P.C. Similarly, he was convicted and sentenced to four years' R.I. plus a fine of Rs.10,000 or in default thereof to suffer further one year's R.I. under section 307, P.P.C. The co-accused Ahmad Gul was acquitted by the learned trial Judge by giving him the benefit of doubt vide the same Judgment. The convict has challenged his conviction and sentence by riling this appeal through Jail which shall be disposed of by this judgment.

. 2. Shortly stated the facts are that a dacoity took place at Unarwali Bus Stand and in this connection the police party was chasing Ahmad Nawaz and Ahmad Gut accused and encircled them near Basti Oadanwali at about 11-30 a.m. Ahmad Nawaz was armed with a .303 Rifle while his co-accused Ahmad Gut was armed with a .12 bore

gun. The complainant Zulfiqar, Saff Ullah,, Ghulam Abbas, Allah Bakhsh, Fateh Sher and Abdur Rehman had come to village Umarwali to attend a marriage ceremony there. On the request of the Police party, the aforesaid persons also joined them in order to apprehend the accused. The co-accused Ahmad Gut crossed a local canal and succeeded in running away while the appellant indulged in firing at the Police party. The fire made by the appellant hit Abdul Rehman and on receipt of injury he fell down and died at the spot. The appellant ran away from the spot. The occurrence was witnessed by the aforementioned witnesses.

3. Muhammad Mumtaz Akber S.I. P.W.11 recorded the statement of Zulfiqar vide Exh-PB and Noor Muhammad, A.S.I. P.W.2 registered formal F.I.R. Exh.PB/1 on the basis of Exh.PB.

4. Muhammad Mumtaz Akber S.I. P.W.11 investigated the case. He deposed that the appellant and his co-accused made an attempt to rob a bus. In consequence, an encounter took place between the police and the accused near village Bathowa Basti Oadanwali on 15-12-1987 at about 11- . 00 a.m. Ahmad Nawaz appellant fired at the Police party which hit Abdul Rehman on. his left side. He further stated that Allah Bakhsh, Zulfiqar, Saif Ullah, Ghulani Abbas and Abdul Rehman deceased Were present with the. Police' Party when the Police encounter took place. It is mentioned that the. appellant was armed with a .303 Rifle. On receipt of the injury, Abdul Reh" died on the spot. Blood stained earth was taken into possession vide memo. Exh.PF. The injury. statement Exh.PH and Inquest Report Exh.PJ of the dead body were prepared by the investigating officer. The dead body was sent to mortuary for post mortem examination through Muhammad Anwar, FC. Five empties P6/1-5 were collected from the place of occurrence. These articles were taken into possession vide memo. Exh.PG. Site-plan Exh.PD and its duplicate Exh.PD/1 were got prepared by the Police Officer from the local Patwari. The appellant Ahmad Nawaz was arrested by the investigating officer on 15-12-1987. A rifle Pi and 9 live-cartridges P2/1-9 were recovered from the appellant which were taken into possession vide recovery memo. Exh.PC.

5. Dr. Abdul Aziz Khan P.W.1 performed the post-mortem examination upon the dead body of Abdul Rehman on 16-12-1987 at 9-00 a.m. He found the following injuries on his person:--

- (1) A circular fire-arm wound of entrance, 0.75 c.m. in diameter, margins inverted on the front of chest, left side, 12 c.m. below from left. nipple and 13 c.m. above and lateral to umblicus. No blackening or tatoo marks were present.
- (2) A fire-arm wound of exit, oval in shape 1.4 c.m. x 1.2 c.m. on the back of chest right side, 29 c.m. below right shoulder joint and 16 c.m. above, the right iliac crest. Margins everted. (Corresponding cuts' present on the front as well as on the back of the clothes).

In the opinion of the doctor, the death occurred due to shock and haemorage as a result of injuries Nos.1 and 2, which were sufficient to cause death in the ordinary course of nature. Both the injuries were caused by fire-arm and were ante-mortem. The probable

time between the injuries and death was immediate while the time between death and post-mortem examination was within 24 hours.

6. Report of the Chemical Examiner Exh.PL dated 30-12-1987 and that of the Serologist Exh.PM dated 10-1-1988 showed that the earth was stained with human blood. The report of the fire-arm Expert Exh.PN dated 25-1-1988 showed that:--

"The crime empties of .303 bore marked as C1 to C5 were examined and compared with the test empties prepared from the rifle of .303 bore in question and it was found that the crime empties of .303 bore marked as C1 to C5 were fired from the rifle of .303 bore alleged to have been recovered from the accused Ahmad Nawaz."

7. An eye-witness account in the case was furnished by Zulfiqar P.W.9 and Allah Bakhsh P.W.10. The appellant denied the allegations levelled against him in his statement under section 342, Cr.P.C. He stated that he had falsely been implicated in the case and that he was innocent. However, no evidence was led by the appellant in his defence.

8. The learned trial Judge convicted and sentenced the appellant as stated above by believing the ocular account and the recovery of crime weapon from him.

9. Learned counsel contends that there is no evidence to connect the appellant with the commission of the crime. We have ourselves thoroughly perused the whole evidence available on record. We find that the prosecution was able to prove its case against the appellant beyond reasonable doubt. The eye-witnesses Zulfiqar P.W.9 and Allah Bakhsh P.W.10 were the members of the Police Party along with Abdul Rehman (deceased) and were chasing the appellant Ahmad Nawaz and acquitted co-accused Ahmad Gut to effect their arrest. Zulfiqar, P.W.9 deposed that he joined the Police Party along with other P.Ws. in order to arrest the accused. According to him, the Police party was fired at. The Rifle fire of the appellant hit the deceased on his chest and as a result thereof, he died on the spot. Similar is the statement of Allah Bakhsh P.W.10. The evidence of P.W.9 was materially corroborated by the evidence of P.W.10. The witnesses were subjected to lengthy cross-examination but their evidence remained consistent and favourable to the prosecution case throughout. According to Allah Bakhsh P.W.10 the appellant started indiscriminate firing at the police party and resultantly one of the bullets hit Abdul Rehman deceased on left side of his chest. On receipt of the injury, Abdul Rehman fell down and died on the spot. According to the medical evidence the fatal injury was on the chest of the deceased. In other words, the ocular account of the eye-witnesses has been materially corroborated by the medical evidence. Similarly, the report of the Fire-arms Expert -shows that the empties recovered from the spot were as a matter of fact fired from the Rifle .303 recovered from the appellant. It is in the evidence that the appellant, was caught soon after the occurrence along with his weapon on 15-12-1987. when he had hardly covered a distance of 4/5 miles away from the place of occurrence. In cross-examination, no suggestion of enmity was given to the prosecution witnesses. We are of the view that the eye-witnesses and the deceased joined the police party to arrest the appellant and his co-accused in response to call of duty as responsible citizens. Abdul Rehman died as a result of the fire-arm injuries. This being so, there is overwhelming evidence

available on record to connect the appellant with commission of the offence. The prosecution case has been established beyond doubt against the appellant on the basis of reliable and trustworthy evidence.

10. Result of the above discussion is that there is no substance in the appeal which is hereby dismissed. The conviction and sentence of the appellant i is hereby upheld.

N.H.Q./A-94/L

Appeal dismissed.

