

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT AT
HYDERABAD**

Before:-
Mr. Justice Miran Muhammad Shah

Criminal Jail Appeal No. 256 of 2017

Ghulam Nabi S/o Muhammad Haroon : Mr. Wazir Hussain Khoso
Solangi & Farooque S/o Karim Bux Advocate
Solangi, Appellants, through

Maqbool Ahmed, Complainant through : Mr. Samiullah Rind
Advocate
The State, through : Mr. Siraj Ahmed Bijarani
Asstt. PG

Criminal Jail Appeal No. 257 of 2017

Ghulam Nabi S/o Muhammad Haroon : Mr. Wazir Hussain Khoso
Solangi, Appellant, through Advocate

Maqbool Ahmed, Complainant through : Mr. Samiullah Rind
Advocate
The State, through : Mr. Siraj Ahmed Bijarani
Asstt. PG

Criminal Jail Appeal No. 263 of 2017

Farooque S/o Karim Bux Solangi : Mr. Wazir Hussain Khoso
Appellant, through Advocate

Maqbool Ahmed, Complainant through : Mr. Samiullah Rind
Advocate
The State, through : Mr. Siraj Ahmed Bijarani
Asstt. PG

Date of Hearing : 08.05.2025

Date of Judgment : 23.06.2025

J U D G M E N T

MIRAN MUHAMMAD SHAH---J., This common judgment will dispose of all three Criminal Jail Appeals ("**cited supra**"), whereby the Appellants Ghulam Nabi S/o Muhammad Haroon Solangi and Farooque S/o Karim Bux Solangi have called-in-question the judgment dated 12.10.2017 passed by the learned Additional Session Judge (Sehwan) in Sessions Case No. 338 of 2013 arising out of Crime No. 08 of 2013, registered under Section 302(b) PPC, Crime No. 10 of 2013 registered under Section 25 Sindh Arms Act, 2013 and Crime No. 11 of 2013 registered under

Section 25 Sindh Arms Act, 2013 at Police Station Mahi Otho Karampur; whereby both the appellants have been convicted and sentenced to suffer imprisonment for life as is contemplated under Section 265-(H)(II) Criminal Procedure Code and with the fine of Rs. 200,000/= each as compensation to legal heirs of deceased as provided under Section 544-A Cr.P.C.

2. Briefly, the facts as is envisaged in the prosecution story are that complainant Maqbool Ahmed lodged his FIR alleging therein that he is residing at village Karampur, his brother Ayaz Ali aged about 32 years used to run a unit of diesel oil at village Karampur and the deceased had an old dispute over the land with accused Ghulam Nabi and Ghulam Ali and both parties were not on talking terms with each other and deceased Ayaz Ali had received life threats from accused party. On 22.09.2013 at 2115 hours, complainant and his brother deceased namely Ayaz Ali and relatives namely Muhammad Ismail and Abdul Hakeem were sitting at diesel agency of deceased Ayaz Ali and were chitchatting with each other where bulbs were on by generator when they saw five accused namely Ghulam Ali, Ghulam Nabi, Farooque and two unknown accused riding on two bikes arrived there. Accused Ghulam Ali was holding Kalashankov, accused Ghulam Nabi was holding DBBL gun, accused Farooque was holding pistol. The accused persons alighted from the motorcycles and accused Ghulam Ali by using abusive language, said that today we will not leave you and will be killed today. By saying this accused Ghulam Ali issued straight fire from his Kalashankov upon accused Ayaz Ali which hit below the knee and accused Ghulam Nabi made fires from his gun to deceased Ayaz Ali, which hit on his right side below the knee and accused Farooq fired straight fire shot from his pistol which hit the deceased on his right hand and left foot of thigh and the deceased Ayaz Ali fell down by crying on cot and blood was oozing out from his injuries where the

complainant and his witnesses gave name of Almighty Allah to accused persons, the accused persons by making aerial firing went away on their motorcycles towards southern side. The deceased Ayaz Ali was brought at police station and after obtaining letter taken to Taluka Hospital Sehwan, from where he was referred to LUMHS Hospital Jamshoro where he succumbed to the injuries and died. After post mortem and funeral ceremony, the complainant appeared at Police Station and lodged the F.I.R.

3. That after completing the usual investigation and arrest of the accused persons and after recovery of crime weapons from them, the challan was submitted in the Court of competent jurisdiction. A formal charge was framed against the accused persons to which both of them pleaded not guilty and claimed for trial thereafter trial was commenced. Statement under Section 342 Cr.PC was recorded by appellants/accused failed to produce any defence evidence in disprove of the charge as is provided under Section 340 Cr.PC.

4. It would be better for reappraisal of the evidence to reproduce herein below the evidence of PW-1 Maqbool Ahmed S/o Haji Muhammad Umar at Ex.05, (Complainant) of the case, which reads as follows:-

"I am complainant in this case. This incident took place on 22.09.20213 at 9:15 pm. Deceased my brother Ayaz Ali used to run unit of diesel oil outside village Karampur Taluka Sehwan. My brother deceased aged about 32 years had dispute over agricultural land with Ghulam Nabi and Ghulam Ali, therefore we were not on visiting terms with each other, who used to threaten that one day they will murder Ayaz Ali. On 22.09.2013 I along with Ayaz Ali, relatives Muhammad Ismail and Abdul Hakeem were sitting on the wood cots lying diesel unit of deceased, where electricity bulb on Generator was on. We were having Kachehry with each other. From southern side two motorcycles came, on which five persons were sitting, who came and alighted down from the motorcycles, whom we identified to be Ghulam Ali armed with Kalashankov, Ghulam Nabi with DBBL gun, Farooque with pistol and two persons who were riding

the motorcycles, their faces were properly seen and will be identified, if they are seen again while coming accused Ghulam Ali abusing said to deceased Ayaz Ali that today he will not be spared and murdered and before our eyes accused Ghulam Ali directly fired from Kalashankove upon Ayaz Ali with no intention to cause his murder which hit him below the knee. Accused Ghulam Nabi directly fired from DBBL gun which hit him in right foot heel and another fire shot hit him in left side of leg below knee. Accused Farooque directly fires from the pistol upon Ayaz Ali, which hit him two fire shots in his right arm and third in left side of thigh. We gave names of Holy Quran and Almighty Allah, who raising fires in the air ran away in southern side. We at once arranged for the vehicle and injured was brought at P.S Mahi Otho, where SHO in presence of mashirs Muhammad Azeem and Kabeer Ali saw the injuries of injured in their presence and prepared such memo and also gave letter to us for treatment and report and such entry was also kept by police. We brought injured on Taluka Hospital, Sehwan, as his condition was very critical, but M.O referred him to Hyderabad for treatment, where he succumbed to his injuries at Lal Bati Hospital, Hyderabad. From Hyderabad I informed to SHO and my relatives about death of Ayaz Ali, thereafter, I brought dead body to Taluka Hosital, Sehwan, where SHO and my relatives were present and SHO examined the dead body of Ayaz Ali and in presence of same mashirs and prepared mashirnama and inquest report of deceased and dead body was handed over to M.O through P.C Mumtaz for postmortem report. After postmortem dead body was handed over to me and such receipt was obtained from me by P.C Mumtaz, where I produce at Ex.5/A, that is same, correct and bears my signature. After burial formalities on 23.09.2023 at 2:30 pm/noon time, I came at P.S Mahi Otho, where I lodged FIR which I produce at Ex.5/B, that is same, correct and bears my signature. After FIR, I had shown place of occurrence to police situated in western side of village Karampur at the distance of one K.M from village Karampur and two K.Ms from P.S Mahi Otho. SHO saw one blood staibned "Filly" and one pillow and below the cot blood stained earth in huge quantity was lying and same was secured and sealed on the spot and obtained signatures of mashirs. SHO also secured 15 empties of Kalshankov and six empties of DBBL gun of red colour and seven empties of pistol, same were also sealed in presence of mashirs and their signatures were obtained. Tire marks also seen by SHO. From the cot at the distance of 4/5 steps foot print marks of 4/5 persons were available and SHO prepared such memo in their presence. Accused Ghulam Ali and SHO prepared such memo in their presence. Accused Ghulam Nabi and Farooque present in court were same so also case property, while remaining accused are absconders

XX TO MR. SHAH NAWAZ SHAIKH ADOCATO FOR
ACCUSED

At this stage learned counsel for accused requested that the court time is over, hence cross may be reserved, request allowed and cross examination is reserved.

Note:- Typed under my dictation in open court.

SRO & AC
(ASHOK KUMAR DODEJA)
ADDL. SESSIONS JUDGE SEHWAN

Recalled and reaffirmed today i.e. 05.07.2014

XX TO MR. SHAH NAWAZ SHAIKH ADVOCATE FOR
ACCUSED

"Deceased Ayaz Ali was my real brother. It is correct to suggest that my and deceased businesses were different and separate. There is no ancestral dispute on land with accused persons. It is incorrect to suggest that I had dispute over land with accused persons. Vol: says deceased had dispute with accused over agricultural land. It is correct to suggest that I had no concern with Diesel Agency and business of deceased. It is correct to suggest that accused had never fought with or cannot tell at what distance in front of me deceased sitting, but it was very short distance. Again says deceased was at the distance of 4/5 feet away from me. It is correct to suggest that deceased alone was sitting on the cot. Agency had two ways and they came from southern side. Both motorcycles of all accused stood at the distance of 12 feet from deceased. The distance between me and other PWs and accused was same. All accused came from southern side and we and deceased were sitting to opposite direction. It is correct to suggest that we did not resist. Vol. says as all accused were armed with weapons, but we gave them names of Allah. It is correct to suggest that accused were firing upon my brother and we could not do anything. First burst fire of Kalashankove of accused Ghulam Ali hit deceased below both knees on back side. Due to firing both legs were not separated from the knees. I do not know that in bullet of gun there was cartridges inside it. I do not know the contents and effect of bullet and cartridges. Two injuries were caused from DBBL. The fires of accused Farooque hit first on wrist near right thumb, second is arm muscles and third in left thigh. After firing within 02 to 04 minutes accused ran away. I and PWs were giving names of Prophet (PBUH) and Almighty Allah. I do not remember what colour of clothe accused were put on/wearing. Injured was taken on motorcycles from place of occurrence to P.S. Injured was semi-conscious. It is correct to suggest that in police letter there is no mention of my name. Distance between P.S and hospital is about five K.ms. I alongwith Abdul Hakeem on motorcycles brought injured/deceased Ayaz from P.S to hospital within 20/25 minutes. It is incorrect to suggest that I was not

available in the Ambulance when injured/deceased was referred from Taluka Hospital, Sehwan to Hyderabad. I, Abdul Hakeem and Mohammad Ismail were in the Ambulance driven by its driver and injured Ayaz. Injured was handed over in Civil Hospital, Hyderabad to Doctors, who succumbed to his injuries within five minutes. The postmortem of deceased was not got conducted in Civil Hospital, Hyderabad. Dead body was handed over to me in Civil Hospital, Hyderabad, but I do not know whether such receipt was obtained from me in Hyderabad or not. Whatever documents were given to me in Hyderabad that I handed over to Doctor in Sehwan hospital. It is incorrect to suggest that I had not got admitted deceased in civil hospital, Hyderabad and it is also incorrect to suggest that no such certificate is available in file. Dead body was brought from Civil Hospital, Hyderabad to Taluka Hospital, Sehwan, as I had to get conduct postmortem. Police did not accompany with injured from Sehwan to Hyderabad. It is incorrect to suggest that no one can die on account of sustaining fire shot injures in legs and hands. No one said me to get postmortem conducted from Sehwan and not from Civil Hospital, Hyderabad, as deceased had injured in Sehwan jurisdiction. It is incorrect to suggest that I am deposing falsely and malafidely just to settle the dispute of land with accused persons. It is correct to suggest that no other person is associated as witness in the case. It is incorrect to suggest that no such incident had taken place and we had introduced a false story and I am deposing falsely just to implicate the accused in the case.

No. Re-Ex.

Note:- Typed under my dictation in open court.

SRO & AC
(ASHOK KUMAR DODEJA)
ADDL. SESSIONS JUDGE SEHWAN

5. To threshold medical evidence, in this perspective prosecution has examined PW-04 Dr. Allah Dino S/o Punhoon Khan, Medical Officer, Taluka Hospital Sehwan at Ex.08 deposed as follows:-

"On 23.09.2014 I was posted as M.O at Taluka Hospital, Sehwan. On the same day, I received police letter bearing No. 561, which I produce at Ex.8/A for postmortem of deceased Ayaz Ali son of Mohammad Umer Solani. I started postmortem on the same day at 7:00 am and same was finished on the same day at 8:00 am. The dead body was identified by Abdul Latif (brother of deceased) and same was brought by police. Deceased Ayaz Ali was a young man age about 31/32 years with average built wearing light blue Kameez shalwar with white banyan and Nara clothes are blood stained hands are open eyes are closed.

The external examination I have found following injuries:-

- a. Firearm wound measuring 1.5 cm x 1.2 cm at middle and back of right lower leg calf muscles with nerves, vessels missing and damage.
- b. Crush firearm wound measuring 10 cm x 5 cm at right hand.
- c. Crush fire arm wound measuring 1.2 cm x 3.0 cm with deformity with bone exposed broken, muscles, nerves, vessels missing at back of middle of left lower leg.
- d. Firearm wound measuring 8 cm x 3 cm bone exposed at back of right hand.
- e. Firearm wound measuring 5 cm x 3 cm with muscle deep at anterior side of left lower leg.
- f. Firearm wound measuring 5 cm x 3 cm with muscle deep at back of right hand upper arm.

On internal examination I have found following damages:

D A M A G E S:-

1. Head & Neck NAD.
2. Chest:- MAD
3. Abdomen: Stomach and small intestine contains semi digested food large intestine contains fecal material. Liver, Kidneys, spleen: NAD.
4. Genitals; NAD
5. Limbs:-

- (a). Due to firearm injuries of right lower leg muscles, nerves, vessels are missing. Mid of tibia fibula broken in multiple places.
- (b). Due to firearm injuries of right hand enhance of firearm and bullet exit from left side with bone broken.
- (c). Muscles, vessels, nerves are missing with bone exposed of right hand and bullet exist from outside.
- (d). Muscles, vessels, nerves are missing with bone exposed of right hand and bullet exist from outside.
- (e). Firearm injuries damage vessels, nerves, muscles of right upper arm and bullet exist from back.

OPINION

After internal and external examination of above deceased I am of the opinion that death had occurred due to shock hemorrhage caused by injuries No.(a), to (e) by firearm injuries on both legs with right upper arm. Probable duration between injuries and death was about 2-3 hours while duration between death and postmortem was about 6-7 hours. Thereafter, I issued such postmortem report which I produce at Ex.8/B, that is same, correct and bears my signature. After postmortem I handed over dead body to P.C Mumtaz Ali under receipt. I produce such receipt at Ex.8/C, that is same.

XX TO MR. SHAH NAWAZ SHAIKH ADOCAATE FOR
ACCUSED

At this stage learned counsel for accused requested that the court time is over, hence cross may be reserved, request allowed and cross examination is reserved.

Note:- Typed under my dictation in open court.

SRO & AC
(ASHOK KUMAR DODEJA)
ADDL.SESIONS JUDGE SEHWAN

Recalled and reaffirmed today i.e. 09.04.2015 (Dr.Allah
Dino)

XX TO MR. SHAH NAWAZ SHAIKH ADVOCATE FOR
ACCUSED

I did not refer injured Ayaz Ali, but he was referred by Dr. Ghulam Rasool Dawoodpoto. It is correct to suggest that injured can be referred by only M.O and such reference slip should bear M.O signature. It is correct to suggest that injured X-Ray should be done. Vol: says in critical conditions same are not done. It is correct to suggest that I did not get Ayaz Hussain conducted his X-Rays. Injury is 05 to 06 c.ms. It is correct to suggest that I did not receive death certificate issued from Civil Hospital, Hyderabad and road certificate I am not authorized to conduct postmortem. Vol: says whenever we receive police letters we conduct examination and postmortem. I alone conducted postmortem duly assisted by my sweeper. I did not know in case a person dies in Sahwan and his postmortem can be conducted in Jamshoro. 2/3 Police Constables were with dead body when brought in hospital. It is incorrect to suggest that I was not competent to conduct postmortem of deceased. Letter to M.O was addressed by police station Mahi Otho &@ Karampur. It is incorrect to suggest that under influence and presence I issued false certificate.

No. Re-Ex.

Note:- Typed under my dictation in open court.

SRO & AC
(ASHOK KUMAR DODEJA)
ADDL.SESIONS JUDGE SEHWAN

6. I have heard learned counsel for the Appellants, Learned Assistant Prosecutor General duly supported by learned counsel for the Complainant.
7. Learned counsel for the Appellants/accused contended that appellants/accused are innocent and have been falsely implicated in this

case by the complainant due to enmity over piece of an agricultural land. He further contended that there are material contradictions and legal infirmities in the prosecution case. He also contends that, the appellants/accused and the complainant party are close relatives and deceased Ayaz Ali was the maternal nephew of accused Ghulam Nabi and is impossible to commit murder of his own nephew. Per learned counsel the enmity over agricultural land has been denied in the cross examination by the complainant. There is clear conflict between the medical and ocular evidence. He further contends that the delay of seventeen hours in lodgment of FIR for which no plausible explanation has been given. He also contends that there is un-natural presence of prosecution witnesses at the place of incident. Learned counsel for the appellants/accused further contends that no source of light was available at the time of preparing the mashirnama; hence the managed mashirnama was prepared before the date mentioned in the FIR. Learned counsel states that the firearm injuries caused to the deceased were allegedly on non-vital part of the body; per learned counsel the appellants/accused were not present at the place of incident and have been falsely implicated in the present case, however learned counsel urged for acquittal of both the appellants. Lastly, learned counsel for the appellants/accused has placed his reliance in the case law reported as 2017 SCMR page 2002, 2022 SCMR page 393, 2018 SCMR page 336, 2023 YLR page 1768, 2019 YULR page 2037 and 2021 PCrLJ 373

8. Learned APG was duly assisted by learned counsel for the complainant. Learned counsel for the complainant has argued that the accused are named in the FIR and specific role has been attributed to the Appellants and Appellants/accused have confessed their guilt and recoveries of crime weapon were made on their pointation. The PWs have

fully supported the prosecution case and such evidence has been corroborated by the medical evidence. He further argued that appellants/accused have committed heinous offence of committing murder by attacking the complainant party in the shape of a mob therefore he has prayed for upholding the sentence awarded to the Appellants/Accused.

9. Learned APG on the other hand has also supported the arguments of learned counsel for the complainant that the prosecution evidence has remained unshattered despite lengthy cross examination by learned counsel for the Appellants/Accused. Learned APG further states that defence counsel has failed to bring on record any material contradiction in the depositions. Learned counsel for the complainant has placed his reliance upon the case law reported as PLD 2017 SC 661, 2011 SCMR 893, 2008 SCMR 1106, 2011 SCMR 1133 and 2020 YLR 1311.

10. I have perused the material available on record and have gone through the entire record available. In my considered view prosecution to a greater extent has been successful in proving charge framed against the present appellants. For the reasons that presence of both the accused at place of incident has not been denied at all by the Appellants. Even during the statement of accused recorded as required under Section 342, CrPC such denial was not brought on record by either of the accused party. No motive of false implication has been attributed by the Appellants. Even no suggestion was made by the defence counsel during recording of the evidence was done so. Recovery has been affected from both the accused for which separate cases were put up for trial with this case. Such recovery was matched through Forensic Science Laboratory report which is/was positive in nature. The empty shells recovered from the place of incident also matched with the recovered weapons. Two eyewitnesses of the incident including the complainant (the real brother of deceased)

were cross examined at length. But the defence counsel was unable to shatter the evidence or bring on record any major contradictions. As per evidence, the enmity has not been suggested by the defence counsel but even otherwise any enmity is considered a double edge sword which can or go in favour or against, either of the party. Hence if at all the Appellants had the motive of committing the offence under Section 302, PPC it was due to enmity. The presence of close relatives of the deceased as well as of the same locality have not been challenged by the Appellants, during recording of evidence, which categorically indicate assurance about the presence of the Appellants at the place of incident. Hence the question of mistaken identification vanishes. The memo of injuries was made on the same day on 22.09.2013 and all six injuries are corroborated with medical evidence. The memo of cloths as was also prepared on the same day, when the post mortem took place which describes that the cloths consisted of human blood. The memo of place of incident is not denied from where 15 empty shells of kalashankove rifle, six empty shells of double barrel gun and seven empty shells of pistols were recovered. All such empties were sealed promptly and were sent for ballistic expert report. Such report was also positive hence stating that the empties recovered matched with the recovered weapons. The memo of arrest and recovery was also prepared together as the weapons were recovered from both the appellants at the time of their arrest, such recovery matched with the FSL expert report. The Medico Legal Officer also deposed in his evidence that the cause of death of the deceased was unnatural. However, such statement was not denied by the appellants counsel nor any suggestion was brought on record about the genuineness of the post mortem report, which confirms admission on the part of the appellants. The sketch report submitted by the Mukhtiarkar concerned also confirms the pointing place where the incident took place. The chemical

examination of cloths of the deceased made on 30.09.2013 is also positive and suggests the presence of human blood on the cloths. The statement of accused under Section 342, CrPC remains silent about production of any defence witnesses despite ample opportunities provided to them during the lapse of six months. That all the prosecution witnesses at length were crossed by the learned counsel for the appellants however all depositions remained un-shattered and unbridled. The evidence of the prosecution witnesses was confidence inspiring and matched in line with the evidence of the complainant as no material contradictions were dug out. The medical evidence, circumstantial evidence and ocular evidence all corroborated with each other. The reports of the chemical examiner and the Baltic expert are also positive in nature. The appellant / accused persons did not take any plea in their statements to show that they were not present at the place of incident nor they took any defence plea for their false implication. The motive of the murder as transpired to be the piece of an agricultural land such facts have not been denied by the accused party. One of the accused appellant Ghulam Nabi is admittedly the maternal uncle of deceased Ayaz Ali and complainant Maqbool. The appellant/accused Faroque is also admittedly close relative of complainant party, hence there is least chance of their false implication by the complainant in this heinous offence of murder. Since both the accused though provided an ample opportunity to prove their innocence till the final stage but they have failed to bring any evidence with regard to the false implication in the offence of murder of their near close relative. The nominated defence witnesses namely Ghulam Shabbir and Riaz were never brought in the witness box by both the appellants/accused. The question as to the injuries were pleaded as on non-vital part of the body but as per post mortem report the cause of death were same firearm injuries and death is occurred due to over bleeding and sudden trauma

from such injuries. Once cause is based on firearm injuries the question of vital and non-vital part vanishes.

11. In support of my observations/view I placed reliance upon the case law reported in PLD 2017 Supreme Court 661 (Re.AMJAD ALI and others v. The STATE), it has been held as under:-

(a) Penal Code (XLV of 1860)---

---Ss. 302(b) & 34---Qatl-i-amd common intention--- Reappraisal of evidence---Death sentence, confirmation of---Three persons had been done to death during the occurrence---FIR in respect of the said incident had been lodged with sufficient promptitude inasmuch the matter had been reported to the police within two hours of the occurrence---Both the accused persons had been nominated in the FIR and specific roles had been attributed to them therein---Eye-witnesses produced by the prosecution, were natural witnesses because they were inmates of the house wherein one part of the occurrence had taken place---Said eye-witnesses made consistent statements before the Trial Court fully incriminating the accused persons in the offences alleged against them and the medical evidence had provided sufficient support to them---Motive set up by the prosecution was based upon a dispute between the parties over some landed property and the suggestions made by the defence to the eye-witnesses produced by the prosecution went a long way in accepting the motive set up by the prosecution---Some crime-empties secured from the place of occurrence had matched with the firearms recovered from the accused persons and such aspect of the case had provided corroboration in the ocular account---Guilt of the accused persons had been established beyond reasonable doubt---Accused persons had demonstrated extreme highhandedness and brutality inasmuch they started firing in a mosque chased the victims in a street and then followed them inside the complainant party's house and throughout they kept on firing and murdered three innocent persons and injured another---Such kind of conduct displayed by the accused persons surely detracted from any sympathy to be extended to them in the matter of their sentences of death---Death sentence awarded to accused persons was maintained accordingly.

12. I am fortified with the case law reported in 2011 SCMR 1133 (Re.MUHAMMAD IKRAM and others v. The STATE), it has been held as under:-

Penal Code (XLV of 1860)---

---S. 302(b)---Constitution of Pakistan, Art. 185(3)---Qatl-e-amd---Reappraisal of evidence---Interested witness---Scope---Relationship with deceased---Crime empty, recovery from spot---Sentence, reduction in---Extenuating circumstances---Accused was convicted under S. 302(b), P.P.C. and was sentenced to imprisonment for life---Plea raised by accused that eye-witnesses were relatives of deceased, therefore, they were interested witnesses---Validity---Complainant and his sister were natural witnesses as the occurrence took place inside the house where they were residing---Both eye-witnesses were put to the test of cross-examination but their testimony remained un-shattered---Close relationship of prosecution witnesses with deceased did not make them "interested witnesses"---Ocular testimony furnished by both the eye-witnesses who were son and daughter of deceased was confidence inspiring and the same was consistent with medical evidence---Two crime empties were recovered from the spot on the day of occurrence while crime weapon was recovered on the pointation of accused who was arrested few days after the occurrence and report of Forensic Science Laboratory was positive---High Court was justified in maintaining the conviction of accused---Contents of F.I.R lodged by complainant suggested that accused and deceased exchanged her words, before the accused fired at the deceased and such circumstances could be held to be extenuating circumstances, which called for commutation of sentence of accused---Supreme Court did not find any infirmity in the judgment passed by High Court and the same was maintained---Leave to appeal was refused"

13. I am also fortified with the case law reported in 2008 SCMR 1106 (Re.MUHAMMAD LATIF @ TIFA v. The STATE), it has been held as under:-

(a) Penal Code (XLV of 1860)---

"---S. 302(b)---Reappraisal of evidence---Sentence, reduction in---Mitigating circumstances---Cross fire---Abscondence---Phenomenon of substitution---Accused having remained absconder for 4'h years was arrested and after trial convicted and sentenced to death by Trial Court, which was confirmed by High Court---Plea raised by accused was that eye-witnesses had substituted real culprit with just to take revenge---Validity---Testimony of

eye-witnesses could not be doubted because they being close relatives of deceased would not like to let go the real offender and substitute him with accused just to take revenge---Presence of witnesses at place of occurrence was also natural and evidence of both the eye-witnesses was corroborated by medical evidence in all material particulars---F.I.R, was promptly lodged, wherein not only names of accused persons were given but specific role were also attributed to each of them--- Incident was a broad day light and murder and accused persons were previously known to both the eye-witnesses hence possibility of mistaken identity had to be ruled out---Accused after the occurrence remained at large for about 4½ and his abscondence was taken as incriminating piece of evidence---No empty was recovered from place of occurrence and investigating officer at the trial opined that it was case of cross fire, therefore, Supreme Court converted death penalty into imprisonment for life.

(a) Penal Code (XLV of 1860)---

"---S. 302---Reappraisal of evidence---Motive not proved---Not a mitigating circumstance---Scope---Motive, proved or otherwise is immaterial in presence of ocular evidence---Murder may be committed even for no motive or on a minor pretext---What to speak of proving motive, in certain cases-where motive was shrouded in mystery or was not alleged, conviction was maintained and absence of motive was not taken even as a mitigating circumstance.

14. I am also fortified with the case law reported in PLD 2007 Lahore 495 (Re, FARMAN ALI and others v. The STATE and others), it has been held as under:-

(c) Penal Code (XLV of 1860)---

"Ss.302(b) & 34---Appreciation of evidence---Motive---Failure on the part of the prosecution to prove the motive set up by it does not adversely affect the overall strength of the prosecution case which has been found by the Court to have fully proved and established through the consistent ocular account supported by the medical evidence and corroborated by the recovery of crime weapon from the one accused and abscondence of the other."

15. In light of above observations and the case law cited herein-above, I hereby uphold the conviction of life imprisonment to both accused as well as compensation amount of Rs.200,000/= each to legal heirs of the

deceased passed through a judgment by the learned Additional Session Judge, Sehwan dated 12.10.2017. Hence I dismiss the Criminal Jail Appeal No. 256 of 2017.

16. At this juncture, it is made quite clear that, the Criminal Jail Appeal No. 257 of 2017 and Criminal Jail Appeal 263 of 2017 are arising out of main case being off-shoot of Criminal Jail Appeal No. 256 of 2017. Apart from the reasoning mentioned above, the entire evidence hinges upon recovery of crime weapons. The crime weapons used in the commission of committing murder of deceased Ayaz Ali being matched with the bullets fired from the crime weapon which is recovered at the spot from both accused; and the chemical ballistic expert report being positive is very much available in this aspect of the case, therefore, no further ambiguity remains to be adjudicated with a further opinion. Hence Criminal Jail Appeal No. 257 of 2017 and Criminal Jail Appeal 263 of 2017 also stands dismissed.

JUDGE