

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No. D- 73 of 2022
Confirmation Case No. 12 of 2022.
Criminal Appeal No. S-70 of 2022.

Present:

Mr. Justice Khadim Hussain Tunio.
Justice Mrs.Tasneem Sultana.

Appellant : Parvaiz through Mr. Saad Saeed Qureshi,
Advocate in Cr. Jail Appeal No.D-73 of 2022.

Appellants : Abbas and Mumtaz through Mr. Imtiaz Ali Channa,
Advocate in Cr. Appeal No.S-70 of 2022.

Complainant : Raza Sarfraz through Mr. Muhammad Asad,
advocate holding brief on behalf of Mr. Sajid Ali
gorar, Advocate for the complainant.

Respondent : The State through Mr. Shawak Rathore, Deputy
Prosecutor General.

Date of Hearing: 30.9.2025.

Date of Judgment: _____

J U D G M E N T

TASNEEM SULTANA J: - By this common judgment, we intend to decide aforementioned Criminal Jail Appeals and Confirmation case \death reference No. 12 of 2022 sent by the learned Additional Sessions Judge-I/MCTC, Dadu (Trial Court) in terms of section 374 Cr.P.C., as the same being arisen out of common judgment ,have been heard by us together. Through the listed criminal jail appeals, Appellants Pervaiz Kalhoro, Abbas Kalhoro and Mumtaz Kalhoro respectively, have assailed the judgment dated 28.05.2022 passed by the Trial Court in Sessions Case No.285 of 2021 arising out of Crime No.205/2012, registered at Police Station A-Section Dadu under Sections 302, 324, 148, 149, 504 P.P.C., whereby the appellants were convicted and sentenced as under:—

- i. For offence under Section 302(b) P.P.C R/w 149 P.P.C, Accused Parvaiz Kalhoro was sentence to death, hanging by neck until he is dead. Accused Abbas Kalhoro and Mumtaz Kalhoro were sentenced to imprisonment for life. All these accused were further directed to pay compensation in the sum of Rs.200,000/- (Two Lac) each to the legal heirs of deceased as required u/s 544-A Cr.P.C., in case of failure the same be recovered as per procedure provided u/s 544-A(2) Cr.P.C., and accused will also suffer S.I for six months more for such default.

- ii. For offence under Section 324 P.P.C. R/W 149 P.P.C, 1) Accused Parvaiz Kalhoro 2) Abbas Kalhoro and 3) Mumtaz Kalhoro were sentenced to suffer R.I for seven (07) years and to pay fine Rs.50,000/- (fifty thousand) each, in case of default in payment of fine, they will serve S.I for six months more.
- iii. For offence under Section 504 P.P.C R/W 149 P.P.C, 1)Accused Parvaiz Kalhoro, 2) Abbas Kalhoro and 3) Mumtaz Kalhoro were sentenced to suffer S.I for one (01) year and to pay fine Rs.20,000/- (twenty thousand) each, in default whereof they are liable to suffer S.I for three months more.
- iv. For offence under Section 148 P.P.C R/W 149 P.P.C, Accused Parvaiz , 2. Abbas and 3. Mumtaz were sentenced to suffer R.I for two (02) years and to pay fine Rs.30,000/- (thirty thousand) each, in default whereof they will suffer S.I for four months more.

All the sentences awarded to accused shall run concurrently. However, benefit of section 382-B Cr.P.C is extended to them.

2. Brief facts of the prosecution case are that on 11.08.2012 complainant Raja Sarfraz visited Police Station A-Section Dadu and reported that his brother Ali Akbar Panhwar had sustained injuries at the hand of Parvaiz Kalhoro during robbery such case was registered against him on which he was issuing threats for withdrawal of said case. On 10.08.2012, the complainant and his brothers Sajid Ali, Ali Anwar and other house inmates were present in the house, when at about 10.00 p.m. the door was knocked, on which they opened the door and saw accused Parvaiz Kalhoro, Abbas Kalhoro, Mumtaz Kalhoro and two unidentified persons duly armed with pistols were present. Accused Parvaiz Kalhoro abused and challenged that "since you have not withdrawn from the case, so they will kill complainant party. Saying so, accused Parvaiz made straight fires from his pistol upon complainant party in order to commit their murder but they sat down and fires hit to Mst.Arbab Khatoon (wife of complainant's brother) who was sitting on cot just opposite the door, she fell down on cot by raising screams. Complainant party closed the door then all accused made fires which hit to the door, thereafter, accused went away by making fires. After departure of accused, complainant party found that Mst. Arbab Khatoon had sustained injuries on right hand and left thigh and was bleeding. Injured was brought at civil hospital Dadu and letter was obtained from P.S, later injured was referred to Hyderabad and then she was referred to Karachi for treatment. The complainant registered FIR to the above effect, subsequently on 16.08.2012, the injured died due to firearm injuries.

3. After usual investigation, police submitted charge- sheet under section 173 Cr.P.C. against accused Parvaiz Kalhoro, Abbas Kalhoro, Mumtaz Kalhoro, and Abdul Waheed in absentia showing them absconders under Section 512 Cr.P.C. Thereafter appellants Abbas Kalhoro and Mumtaz Kalhoro after

seeking interim pre-arrest bail joined the trial while accused Parvaiz Kalhoro and Abdul Waheed Kalhoro were declared as proclaimed offenders. After completing proceedings against absconding accused learned Magistrate sent up the case to the Court of learned Sessions Judge, Dadu, wherefrom the case was transferred to the Court of learned Additional Sessions Judge-II Dadu.

4. The Trial Court framed a formal charge against the appellants Abbas Kalhoro and Mumtaz Kalhoro to which they pleaded not guilty and claimed to be tried. Thereafter accused Parvaiz Kalhoro and Abdul Waheed Kalhoro were arrested and sent up to stand trial. Thereafter case was transferred to the court of learned Additional Sessions Judge-III, Dadu.

5. An amended charge was framed against all three accused/appellants to which they pleaded not guilty and claimed to be tried.

6. After that the case of accused Parvaiz Kalhoro was notified for inside jail trial and case was transferred to the court of Vth Additional Sessions Judge, Hyderabad. During proceedings of the case accused Abdul Waheed expired and proceedings against him were abated. Thereafter case was transferred to Additional Sessions Judge-I/MCTC, Dadu.

7. To prove its case, prosecution examined seven witnesses. **PW1** complainant, Raja Sarfraz examined at Ex.06, he produced certified true copy of FIR crime No.188/2012 PS A-Section Dadu, certified true copy of judgment dated.23.05.2017 and FIR Crime No.205/2012 at Ex.A to Ex.6-C, **PW-2** Sajid Ali at Ex.7, **PW-3** Mashir Zahid Husain at Ex.08, he produced memo of injuries and memo of place of wardhat at Ex.8-A and EX.8-B, **PW-4** ASI Muhammad Ameen at Ex.09, he produced letter referring the injured for medical treatment, Roznamcha entry No.20,entry No.45 dated.17.08.2012, attested copy of death certificate of Mst. Arbab Khatoon, photographs (four in number) of the door of complainant at Ex.9-A to Ex.9-E respectively and **PW-5** Dr.Fayaz Hussain at Ex.10, who produced death certificate of deceased at Ex.10-A. Learned ADPP for the State gave up PW Ali Anwar vide statement at Ex.11. **PW-6** Tapedar Irshad Ali examined at Ex.12, produced sketch of wardhat at Ex.12-A. **PW-7** Dr.Tabassum at Ex.113, produced original provisional medical certificate at Ex.13-A.

8. Statement of the appellants under section 342 Cr.P.C was recorded at Ex.15 to Ex.17 wherein they denied the allegations levelled against them and claimed to be innocent and PWs are interested, hostile and inimical towards them. Appellants further claimed that they have been falsely implicated in this case due to previous dispute. They however neither examined themselves on oath under section 340(2) Cr.P.C. To disprove the prosecution s' allegations nor did they produce any witness in their defence.

9. The Trial Court, after hearing learned counsel for the appellants as well as ADPP for the state convicted the appellants and sentenced them as mentioned above, vide impugned judgment.

10. Learned counsel for the appellants, inter alia, contended that appellants have been falsely implicated in the case in the background of previous enmity which is also admitted in the FIR; that the eye witnesses and deceased are closely related inter se, hence they are interested, partisan and inimical to the appellants and their testimony unreliable unless corroborated by independent evidence which is lacking in this case; that there exist material contradictions in prosecution evidence which create reasonable doubt, that Ocular account is not corroborated by medical evidence as the postmortem was not conducted; that motive was not established for commission of alleged offense; that no recovery of crime weapon was effected in this case hence the corroboration by forensic report with regard to matching of empties recovered from crime scene with any crime weapon is missing in the case; that delay in lodging FIR is not satisfactorily explained; that Blood-stained earth was not collected from spot and prosecution gave up evidence of one eyewitness (PW Ali Anwar) creating adverse inference. On all these scores, learned counsel for the appellants urged that the prosecution case against the appellants is highly doubtful, therefore, impugned judgment is not sustainable under the law.

11. Learned Additional Prosecutor General Sindh supported impugned judgment and contended that prosecution successfully discharged burden of proof beyond reasonable doubt; that eyewitnesses are natural witnesses being family members present at time of incident, hence their relationship alone cannot be discarded if their testimony is confidence inspiring; both eye witnesses have given consistent account in their evidence on all material aspects of the case and medical evidence fully corroborates ocular account regarding injuries, timing and cause of death, therefore, absence of postmortem report is not mandatory in the circumstances of the case; that motive has clearly been established as admittedly there existed enmity over previous criminal case between the parties

12. Learned counsel for the complainant also supported the impugned judgment and contended that the PWs have supported the version of prosecution; there is no inconsistency between the medical evidence and ocular testimony; that there is no illegality which may warrant interference of this Court; that appeal merits no consideration, which may be dismissed. In support of his contentions, he placed reliance upon the judgments reported in **Nasir Ahmed vs. the state (2023 SCMR 478)** and **Imran Mehmood V. The State and another (2023 SCMR 795)**.

13. We have heard learned counsel for the appellants, learned additional prosecutor general for the state and counsel for the complainant. Perused the material brought on record.

14. A thorough examination of the record indicates that the prosecution case rests exclusively upon the ocular testimony of complainant P.W. Raja Sarfaraz and eyewitness P.W. Sajid Ali. Their accounts provide the primary backbone of the incident narrative, upon which the prosecution structure firmly rests. The complainant Raja Sarfaraz explained that on the night of 10.08.2012, at about 10:00 p.m., he was inside his house with his brothers Sajid Ali and Ali Anwar and other family members when a knock at the outer door interrupted, and upon opening the door, he encountered appellants Pervaiz, Abbas, and Mumtaz accompanied by two unidentified persons, all visibly armed with pistols and standing in a manner that immediately conveyed hostility. The appellant Pervaiz expressed resentment over the complainant party's refusal to withdraw the robbery case lodged by his brother Ali Akbar, and shortly accused Pervaiz raised his pistol and fired directly towards him and his brothers. The complainant and his two brothers instinctively lowered themselves to avoid the shots, which instead struck Mst. Arbab Khatoon, who was seated on a cot inside the house, entirely unaware of the imminent danger. In panic and fear, the family closed the door, upon which the accused fired again, leaving distinct marks on the iron door indicative of the intensity of the assault. When the complainant and others turned their attention to Mst. Arbab Khatoon, she was found injured and bleeding from firearm wounds to her right hand and left thigh. She was immediately shifted to Civil Hospital Dadu, subsequently referred to Hyderabad and then Karachi, but despite medical intervention she succumbed to her injuries on 16.08.2012.

15. PW-2 Sajid Ali, an eyewitness and real brother of the complainant, narrated the incident in the same clear and consistent line as P.W-1. His account fully corroborates the complainant's version on all material particulars, including the presence of the accused at the outer door, their armed condition, the demand to withdraw the earlier robbery case, and the straight firing made by accused Pervaiz Kalhoro, which struck Mst. Arbab Khatoon inside the house. His testimony reflects natural coherence and bears the qualities of a witness who observed the occurrence from close quarters. No material contradiction was elicited during cross-examination, and his evidence, read together with that of P.W-1, fortifies the prosecution's narrative and provides a consistent ocular account of the event. There seems to be no loopholes and flexibility in their evidence. Even otherwise, it does not appeal to the prudent mind that as to why aforesaid two eyewitnesses, who have close relation with the deceased, would spare the real culprits and instead shall involve innocent

persons, as alleged on behalf of the appellants. This seems to be quite illogical and unnatural.

16. The cross-examination of both P.W-1 Raja Sarfaraz and P.W-2 Sajid Ali, does not weaken but instead reinforces the prosecution's ocular account. Both witnesses remained consistent on the central aspect that the armed appellants arrived at the complainant's house. The defence did not challenge the occurrence, its time or place, or the presence of the accused; it focused only on peripheral details such as distances within the house, movements during the firing, and how the injured was shifted. These inquiries themselves proceed on an implied admission that the firing took place inside the house and that firearm injuries were caused. Far from impeaching the witnesses, the defence questioning indirectly supports the prosecution narrative. In cumulative effect, the cross-examination strengthens the credibility and probative value of the ocular account.

17. The ocular evidence is further corroborated by the medical evidence. The medical evidence and ocular testimony are consistent with each other almost on all relevant aspects i.e. date and time of reaching the hospital by complainant party. P.W-7 Dr. Tabassum, WMLO at Civil Hospital Dadu examined the injured shortly after the incident, issued provisional Medico Legal Certificate (Ex:13-A) and documented fresh firearm injuries on right hand and left thigh consistent with the account of PW-1 and PW-3; she noted excessive bleeding and stated that the injured was in serious condition, requiring referral.

18. PW-5 Dr. Fayaz Hussain of Civil Hospital Karachi further confirmed that she remained in surgical ICU. He received her from Surgical Ward-VI and she was in a condition of sepsis and peritonea's and was serious. The consistency of medical findings from Dadu to Karachi leaves no doubt that the injuries were received during the incident narrated by the eyewitnesses. The subsequent medical record, including the death certificate (Ex.10-A), further confirms that the deceased ultimately succumbed to complications arising directly from these firearm injuries while under treatment. The nature, location, and severity of the injuries described by the medical witnesses correspond precisely with the way the incident has been narrated by the eyewitnesses' shots fired in the direction of the complainant party, which, after they dropped to the ground, travelled onward and struck the deceased seated on a cot behind them.

19. The ocular version is also corroborated by circumstantial evidence gathered from the place of occurrence further reinforces the prosecution narrative. The Investigating Officer noted numerous bullets impacts approximately 8 to 9 in the iron door of the house, entirely in line with the claim that the accused continued firing after the door was closed. He also recovered five spent pistol casings from just outside the entrance, confirming that multiple

shots were discharged from the threshold of the house. The physical layout, as described in the site inspection and as depicted in photographs, shows the cot inside the courtyard positioned behind the complainant party, affirming the prosecution's explanation that when the accused fired toward the complainant and his brothers, who threw themselves to the ground, the bullets continued forward and struck Mst. Arbab Khatoon seated behind them.

20. The ocular account of P.W-1, complainant Raja Sarfaraz, and P.W-2, Sajid Ali, is natural, coherent and confidence-inspiring. Both were inmates of the house where the incident occurred at night, and their presence at the scene is not only natural but inevitable in the circumstances. Their relationship with the deceased does not by itself render their evidence untrustworthy, particularly when the law recognizes that related witnesses are often the most natural witnesses in such cases. Their depositions remained consistent on all material aspects. Their evidence is in complete harmony with the FIR, medical findings and physical circumstances of the case, and forms a reliable foundation for the prosecution narrative. Reliance is placed in case of **Zakir Khan v. The State (1995 SCMR 1793)** wherein Hon'ble Supreme Court of Pakistan has observed as under: -

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motian upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

21. As regards the plea raised on behalf of the accused that the prosecution witnesses are related to the complainant and the deceased as such their testimony cannot be relied upon without corroboration of evidence of independent witnesses, it may be observed that in instant case the evidence of eye witnesses seems to be trustworthy, confidence inspiring and of unimpeachable character, therefore, mere their relationship with the complainant and / or deceased, without any malice having been established on their part, is not a valid ground to discredit their evidence who otherwise appear to be truthful and natural witnesses. Reliance is placed in case reported as

Zulfiqar Ahmed and another vs. State (2011 SCMR 492), wherein it was held as under:

".....It is well settled by now that merely on the ground of interse relationship the statement of a witness cannot be brushed aside. The concept of 'interested witness' was discussed elaborately in case titles Iqbal alias Bala v. The State (1994 SCMR 1) and it was held that friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused."

Similarly in the case reported as **Farooq Khan Vs. The State (2008 SCMR 917)** it was held as under:

"11. P.W.8 complainant is real brother of the deceased who is a natural witness but not an interested witness. An interested witness is one, who has motive, falsely implicates an accused or has previous enmity with the person involved. There is a rule that the statement of an interested witness can be taken into consideration for corroboration and mere relationship with the deceased is not "sufficient" to discredit the witness particularly when there is no motive to falsely involve the accused. The principles for accepting the testimony of interested witness are set out in Nazir v. The State PLD 1962 SC 269 and Shehruddin v. Allhaj Rakhio 1989 SCMR 1461."

Additionally reference may also be made to the judgments pronounced in the cases reported as Talib Hussain Vs. The State reported in (2009 SCMR 825), Shamsheer Ahmed Vs. State (2022 SCMR1931), Azhar Hussain Vs. State (2022 SCMR 1907), Sajid Mahmood Vs. State (2022 SCMR 1882), Gul Zarin Vs. Kamaluddin (2022 SCMR 1085) and Mohammad Sadiq Vs. State (2022 SCMR 690).

22. As regards the contention of learned counsel that postmortem examination was conducted, we are not persuaded that such omission, in the facts and circumstances of this case, is fatal to the prosecution. The record reflects that the injured was first treated at Civil Hospital Dadu, then referred to Hyderabad and ultimately shifted to Civil Hospital Karachi, where she remained under medical care for six days and expired on 16.08.2012. When death occurs after a prolonged period of treatment at a distant medical facility, the non-conduct of postmortem does not by itself cast any doubt upon the cause of death, particularly where the medical history is continuous, documented, and unbroken. In the present case, the provisional medico-legal certificate issued at Dadu, the injury report, the treatment papers from Hyderabad and Karachi, and the death certificate (Ex.10-A) collectively establish, without ambiguity, that Mst. Arbab Khatoon died as a direct consequence of the firearm injuries sustained during the incident. The nature, locale, and severity of the wounds remained consistently documented throughout her medical treatment, and no material has been brought on record to suggest any intervening cause of death. Accordingly, the medical evidence leaves no room for doubt regarding the causation of

death, and the omission of postmortem in these particular circumstances does not weaken the prosecution case in any manner. Reliance is placed on the unreported judgment of a Division Bench of Peshawar High Court in case of **SIKANDAR Vs. The State** (Criminal Appeal No.215/2003), wherein, it has been observed that:-

“The contention of the learned counsel for the appellant that the cause of death, in the absence of the postmortem report, cannot be accepted/confirmed. The injury sheet and inquest report prepared by the Investigating Officer, the testimonies of eyewitnesses and recovery of empties from the spot and all other circumstantial evidence had established that the firearms injuries sustained by him on account of appellant’s firing directly caused the death of the deceased. Through postmortem examination only the cause of death could be ascertained but it could not identify the person who had actually killed the deceased and in the present case the postmortem examination of the deceased was totally irrelevant and immaterial because of the availability of direct evidence as to the cause of death of the deceased.”

The above unreported judgment of Peshawar High Court was maintained by the Apex Court in case of (**Sikandar vs. The State** and another (**2006 SCMR 1786**) wherein it is held that:-

“The medical evidence is not substitute of direct evidence rather is only a source of corroboration in respect of nature and seat of injury, kind of weapon used, the duration between the injury and death and may confirm the ocular account to a limited extent but cannot establish the identity of the accused or connect him with the commission of offence, therefore, if the charge of murder is otherwise proved through the direct evidence, the absence of medical evidence may not be fatal.”

23. So far as non-recovery of crime weapon is concerned, suffice it to observe that recovery is only corroborative piece of evidence and in case there is strong and unimpeachable ocular version available in the case, then non-recovery of crime weapon shall not be fatal to the prosecution case. In the present case P.W-4 **SIP Muhammad Ameen** recovered five spent pistol cartridges lying near the entrance of the house and sealed them through memo (Ex.8/B). In addition, the photographs produced at Ex.9/E clearly depict eight to nine bullet holes in the iron door of the house. This physical evidence strongly supports the prosecution narrative that multiple shots were indiscriminately fired by the accused at the time of the incident. The pattern, number, and location of bullet marks provide an objective reconstruction of the manner of assault and affirm the direction and trajectory of firing described by P.W-1 and P.W-2. In these circumstances, the non-recovery of the crime weapon does not, by itself, weaken the prosecution case. When there is direct, confidence-inspiring ocular testimony duly supported by medical evidence and further reinforced by physical indicators at the scene, the absence of recovery of crime weapon is not fatal. Reliance is placed on the case of **Sikander Teghani alias Muhammad Bux Teghani v. The State** (**2016 YL R 1098**). Similarly, in the

case of **Bashir Ahmed Leghari v. The State (2020 SCMR 595)**, the Honourable Supreme Court of Pakistan has observed as under:

“3. We have gone through the grounds taken by the convict in his petition and also the record with the assistance of the learned Law Officer to find that he absconded soon after the occurrence and remained away from law for a considerable span of time. In this backdrop, prosecution’s failure to recover the weapon, statedly used in the occurrence, fades into insignificance; he is certainly not expected to keep the gun for such a long period of time with him as a souvenir of his crime;”

Additionally, reliance can be placed on another case reported as **Muhammad Nadeem @ Deemi Vs. The State (2011 SCMR 872)**, wherein Hon’ble Supreme Court of Pakistan has observed as under:

“Even otherwise the recovery of crime weapon in a criminal case is not at all material. It can only be a piece of supporting evidence, if other evidence goes to prove the case independently, the recovery is not essential at all”.

24. The ocular version is also corroborated by the motive. It has been deposed by two eyewitnesses that there stood background of prior enmity between the parties. It is not disputed that accused Pervaiz Kalhoro was facing a criminal case instituted by Ali Akbar Panhwar, brother of complainant, for robbery and causing firearm injuries thereby supplying a direct and proximate motive for the commission of present assault. Appellant Parvaiz Kalhoro in his statement under section 342 Cr.P.C., produced a copy of FIR No.312/2011 (Ex.15-A), lodged by his real brother namely Abdul Waheed Kalhoro (accused of present crime since deceased), against complainant party thus acknowledging the existence of prior litigation. Motive, no doubt, is a double-edged factor which may cut both ways. While it may support the prosecution by revealing a reason for the occurrence, it can at the same time furnish the defence with a plea of false implication. Even, if no motive has been disclosed or the motive disclosed has not been proved, it shall not adversely affect the strong and impeachable ocular testimony. However, it could only affect the awarding of capital punishment. Reliance is placed in the case of **Muhammad Ismail v. The State (2017 SCMR7 13)**.

25. With regard to the submission that the prosecution gave up P.W. Ali Anwar vide statement at Ex.11, it is a settled principle that mere non-production of one witness does not automatically result in any adverse inference against the prosecution, particularly when the remaining evidence is sufficient to establish the charge. In the instant case, the prosecution has produced two eyewitnesses whose evidence is natural, consistent, and confidence-inspiring, and is further corroborated by medical and circumstantial evidence.

26. As regards delay in lodging the FIR, the incident occurred on 10.08.2012 at about 10:00 p.m., whereas the FIR was registered on 11.08.2012. The complainant has satisfactorily explained that immediately after the incident the injured was rushed to Civil Hospital Dadu for urgent medical treatment and thereafter referred onward to Hyderabad and then to Karachi. The complainant party was understandably occupied with attending to the critical condition of the injured woman. Such conduct on the part of close relatives of an injured person is natural and plausible, and the delay is therefore reasonably explained. In these circumstances, the delay in lodging the FIR is neither unusual nor fatal to the prosecution case. Reliance is placed in the case of *Muhammad Mushtaque v. The State* (PLJ 2001 S.C 76). In present case the evidence of both the eyewitnesses appears to be trustworthy. There is nothing on record that eyewitnesses have motive to falsely implicate the appellants.

27. As regards certain minor contradictions in the evidence of prosecution witnesses as well as certain discrepancies / defects committed by the investigating agency / police, it may be observed that in a case of unimpeachable and strong ocular version, such contradictions and discrepancies are to be ignored. Reliance is placed in the case of **Mohammad Abideen Vs. State (2021 P. Cr. L.J. 78) [Gilgit Biltistan]** wherein it was held that any irregularity or illegality committed during the investigation does not vitiate trial. Reliance is placed in the case of **Jaffer Ali Vs. State (1998 SCMR 2669)**, wherein Honourable Supreme Court, while dealing with this point, held as under:

“I may further observe that in criminal cases though the Courts are supposed to follow the well-settled principles of Criminal Jurisprudence, namely, that an accused person is presumed to be innocent, that the prosecution is to prove a criminal case against an accused person beyond reasonable doubt and in case two views are possible, the view which favours the accused person, should be preferred; and that all benefits of doubts should be extended to the accused, but at the same time, the Courts should also take notice of the changing circumstances of the present days. Even in cases where eyewitnesses are available, they refuse to appear as witnesses in support of the prosecution case; either because of fear or on account of being won over by the accused party. The Court's approach, while appraising the evidence, should be dynamic and not static. It should keep in view all the facts and circumstances of the case and if it is satisfied that factually the person charged with the offence has committed the same, it should record the conviction though there might have been some technical lapses on the part of the Investigating Agency /prosecution, provided the same have not prejudiced the accused in the fair trial. The people are losing faith in the criminal judicial system because in most of the criminal cases the criminals get away without being punished on technicalities.”

28. The up shot of the above discussion is, the prosecution has succeeded in proving its case against the appellants. However from the scrutiny of the material available on record including the evidence of prosecution witnesses, it seems that there are certain mitigating circumstances which warrant reduction

of sentence from death penalty to life in imprisonment. Such mitigating circumstances could be summaries in the following manner:

- i. The third alleged eyewitness namely Anwen Ali was not examined before Trial Court although he, allegedly being an eyewitness of incident, was an essential and important witness.
- ii. No crime weapon was recovered from the possession of appellant from his pointation.
- iii. There are certain discrepancies/defects in the investigation of the case, including the fact that I.O has not secured blood stained earth and clothes of deceased and postmortem was not conducted.

On account of aforesaid factors, we are of the considered view that in instant case death sentence is not warranted, rather the sentence of life imprisonment shall meet the ends of justice, therefore we are inclined to reduce the sentence of death penalty to that of life imprisonment. For this view we are fortified by certain judgments delivered by Superior Courts. Reliance is placed in the case of **SARWAR and another Vs. The State and others (2020 SCMR 1250)**, in which a Full Bench of Honourable Supreme Court held as under:

“Now we take up Criminal Petition No.1143-L of 2015, filed by the complainant. We have observed that there are certain circumstances in this case which persuaded the learned Lahore High Court for altering the sentence of death of Sarwar respondent No.1 to imprisonment for life inasmuch as recovery of .12 bore double barrel gun was not believed by both the learned courts below; motive behind the occurrence could not be proved and single fire shot on the person of deceased is attributed to the petitioner. In these circumstances, the alteration of the sentence of death to imprisonment for life by the learned appellate court is fully justified.”

Similarly in the case of **Sajjan VS. The State (2023 YLR 461 [Sindh (Hyderabad Bench)]**, a Division Bench of this Court held as under:

“16. We have no hesitation to hold that the two sentences under section 302(b), P.P.C. are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. Therefore, looking to the circumstances of this case, as discussed above, extra degree of care and caution is observed by us while determining the quantum of sentence.

29. For the above stated reasons/ mitigating circumstances, while maintaining the death sentence would be unwarranted in the peculiar circumstances of this case and life imprisonment would be the appropriate imprisonment. Reliance is placed in the case of **Muhammad Usman Vs. the state (2025 YLR 857[Baluchistan]**, wherein learned Division Bench of Baluchistan High Court held as under:

"15. Now, coming to the sentence awarded to the appellant under section 302(b), P.P.C., on assessment of evidence, we also found that the motive has not been proved by the prosecution against the appellants; we have observed that the motive set up by the prosecution was quite vague as such the motive for the occurrence was not established from the record. The question of what happened immediately prior to the incident, or what prompted the appellant to take away the life of his father, i.e., the deceased Baz Muhammad and mother Mst. Zardana Bibi are the circumstances as mitigating circumstances.

30. It is a well-recognized principle by now that the question of the quantum of the sentence requires utmost attention and thoughtfulness on the part of the Courts. In this regard, we respectfully refer to the case of **Mir Muhammad alias Miro v. The State (2009 SCMR 1188)** wherein the August Supreme Court has held as under: --

"It will not be out of place to emphasize that in criminal cases, the question of quantum of sentence requires utmost care and caution on the parts of the Courts as such decisions restrict the life and liberties of the people. Indeed, the accused persons are also entitled to extenuating benefit of doubt to the extent of quantum of sentence."

31. For what has been discussed above, it appears that both eyewitnesses are natural witnesses whose presence at the scene stands fully established. Their testimony is consistent and confidence-inspiring on all material particulars and duly corroborated by medical and circumstantial evidence. The medical evidence fully supports the ocular account in respect of the nature of injuries, the body parts affected, and the ultimate cause of death. Likewise, the recovery of empties from the place of occurrence and the presence of multiple bullet holes on the iron door lend significant corroboration to the prosecution's narrative regarding the manner and direction of firing. The joint arrival of the accused in furtherance of their preconcert, their armed posture, and their coordinated conduct in making repeated fires unmistakably establish their common intention and common object to cause murder of deceased, rendering all of them equally responsible for the offence in which an innocent woman lost her life. Based on the foregoing discussion and comprehensive evaluation of the evidence, we are led to the conclusion that the prosecution has successfully proved its case against all three appellants beyond shadow of doubt.

32. In view of above facts and circumstances, the conviction and sentences awarded to the appellants Pervaiz son of Ghulam Sarwar, Abbas son of Ghulam Hyder Kalhoro and Mumtaz son of Arbab Ali Kalhoro by the trial court under impugned judgment dated 28.5.2022, are maintained except sentence of death awarded to the appellant Pervaiz for offence under section 302(b), P.P.C which is hereby altered/reduced to imprisonment for life; however, the sentence for payment of compensation of Rs.200,000/- (Rupees Two Lacs) each to the legal heirs of the deceased Mst. Arbab Khatoon shall remain intact. With the above modification in the sentence of death reducing it to life

imprisonment to the appellant Pervaiz, these Criminal Jail Appeals are dismissed.

As a result of the above findings, the confirmation case/death reference No. 12 of 2022 submitted by the learned Trial Court for confirmation of death sentence of the appellant Pervaiz Kalhoro is answered in **Negative**.

JUDGE

JUDGE