

CERTIFICATE OF THE COURT IN REGARD TO REPORTING

CRIMINAL APPEAL NO. D-48 OF 2013
CONFIRMATION CASE NO. D-12 OF 2013

RUSTAM ALI V/S THE STATE

CRIMINAL APPEAL NO. D-54 OF 2016

SHEERAZ V/S THE STATE

SINDH HIGH COURT CIRCUIT COURT HYDERABAD

Composition of Bench

HON'BLE MR. JUSTICE MOHAMMAD KARIM KHAN AGHA
HON'BLE MR. JUSTICE RASHEED AHMED SOOMRO

(D.B)

Date of last hearing (heard/reserved): 01-07-2020

Decided on: 03-07-2020

(a) Judgment approved for reporting YES

C E R T I F I C A T E

Certificate that the Judgment/Order is based upon or enunciates a principle of law/decide a question of law which is of first impression/distinguishes over-rules/explains a previous decision.

Strike-out whichever is not applicable.

- NOTE: -
- (i) This slip is only to be used when some action is to be taken.
 - (ii) If the slip is used, the Reader must attach it to the top of the first page of the Judgment.
 - (iii) Court Associate must ask the Judge written the judgment whether the judgment is approved for reporting.
 - (iv) Those directions which are not to be used should be deleted.

3198
13/7/13

PRESENTED ON

13/7/13

Additional Magistrate

IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT,
HYDERABAD.

Cr. Appeal No: - D- 48 of 2013

RUSTAM ALI S/o Muhammad Mithal @ Mitho
by caste Khaskheli Adult, muslim,
R/o Jurial Shah Colony,
Tando Agha Hyderabad.,
At present confined in Central Jail
Hyderabad.....Appellant.

V E R S U S

THE STATE.....Respondent.

ORDER SHEET
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Appeal No.D-48 of 2013

[Confirmation Case No.12 of 2013]

Cr. Appeal No.D-54 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

01.07.2020

Mr. Sajjad Ahmed Chandio, advocate for appellants

Mr. Mehmood Alam Abbasi, advocate for complainant

Ms. Safa Hisbani, Assistant Prosecutor General Sindh

We have heard the learned counsel for appellants. He has read out the evidence in its entirety and has made his submissions. Learned counsel for the State as made her submissions and learned counsel for complainant has also made his submissions.

Reserved for judgement.


JUDGE


JUDGE

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Before:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Rasheed Ahmed Soomro

1. Cr. Appeal No.D- 48 of 2013
[Confirmation Case No. 12 of 2013]

Rustam Ali

Versus

The State

2. Cr. Appeal No.D- 54 of 2016

Sheeraz

Versus

The State

Appellants : Rustam Ali in Cr. Appeal No.D- 48 of 2013 (Confirmation Case No. 12 of 2013) and Sheeraz in Cr. Appeal No.D- 54 of 2016	Through Mr. Sajjad Ahmed Chandio Advocate assisted by Taj Muhammed Kerio Advocate
Respondent : The State	Through Ms Safa Hisbani APG
Complainant : Muhammad Hayat in both appeals i.e. Cr. Appeal No.D-48 of 2013 and Cr. Appeal No.D-54 of 2016	Through Mr. Mehmood Alam Abbasi Advocate.
Date of hearing	01.07.2020
Date of judgment	03.07.2020

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- By this single judgment we intend to dispose of both aforementioned Criminal Appeals together as the same relate to one and same incident as well as F.I.R. and have been filed against same judgment passed by the trial court.

2. By means of aforementioned Appeals, appellants Rustam Ali and Sheeraz have assailed the Judgment dated 09.07.2013, passed by learned IIInd Additional Sessions Judge, Hyderabad, in Sessions Case No.341 of 2009 (Re: State V Sheeraz and others), emanating from Crime No.51 of 2009, registered at Police Station Phuleli, Hyderabad, under sections 302, 324 r/w 337-F(v)/34 PPC; whereby they have been convicted and sentenced in the terms, as mentioned in concluding paras No.40 to 42 of the impugned judgment, which are as under:-

"40. Therefore, both accused Sheeraz and Rustam are convicted and sentenced, in exercise of powers conferred by section 265-H(2) Cr.P.C. as under:

1. U/s 302(b) r/w section 34 PPC.

As the fatal shot fired by accused Rustam caused death of deceased Zulfiqar Ali, he deserves no leniency and sentenced to death, as Ta'zir, subject to confirmation by the High Court. Accused Sheeraz was also with him in furtherance of common intention and had also made firing at that time, but his fire did not hit the deceased, therefore, he is sentenced to suffer rigorous imprisonment for life, as Ta'zir.

2. U/S 324/337-F(v) r/w section 34 PPC.

As actually the shot fired by accused Sheeraz in a manner if committed Qatal-i-amd, hit/injured PW.2 Muhammad Hayat, therefore, he is sentenced to suffer R.I for ten years plus R.I for five years and also to pay Daman to the tune of Rs.25,000/- for actual injury caused to injured PW.2 Muhammad Hayat. Accused Rustam had also fired at that time in furtherance of common intention, therefore, he is sentenced to suffer R.I. for five years plus R.I for three years and to pay Daman to the tune of Rs.25,000/- to injured PW.2 Muhammad Hayat.

41) U/S 544-A Cr.P.C r/w the judgment of Hon'ble Supreme Court, reported as 1995 SCMR 1776, both the accused are directed to pay compensation of Rs.2,00,000/ (Rupees Two Lac) jointly to the heirs of the deceased. In default thereof, the accused shall suffer simple imprisonment for six months.

42) The sentences of imprisonment shall run concurrently. Both the accused shall be entitled to benefit under section 382-B Cr.P.C, if any.

3. Through said judgment, the case against absconding accused Wali Muhammad and Sikandar was ordered to be kept on dormant file till their arrest and production in court.

4. The prosecution story in brief as stated in the F.I.R. lodged by complainant Muhammad Hayat on 22.04.2009 at about 2320 hours is that on the fateful day at 1930 hours, accused Wali Muhammad with iron rod, his son Sheeraz with pistol, Rustam with Kalashnikov and Sikandar with pistol arrived at the place of incident. On the abetment of aforesaid Wali Muhammad, accused Sheeraz and Rustam fired at Muhammad Hayat. The shot fired by accused Sheeraz hit Muhammad Hayat and as such, he fell down injured. The shot fired by accused Rustam and Sikandar hit Zulfiqar, who also fell down injured. On hearing firing, Imtiaz Ali, Mir Muhammad and Allah Jurio sons of Muhammad Hayat came out of the house and they were threatened and also fired at by accused persons. After which, aforesaid accused fled away. Both the aforesaid injured persons were taken to Civil Hospital Hyderabad, by Mir Muhammad, Allah Jurio and Imtiaz Ali. There, injured Zulfiqar Ali succumbed to the injuries, whereas Muhammad Hayat was admitted for treatment. On receiving information in regard to the availability of dead body of deceased and injured Muhammad Hayat, ASI Rao Shahid of said police station arrived at the hospital, completed necessary formalities and also recorded statement of injured Muhammad Hayat under section 154 Cr.P.C, which was subsequently incorporated as FIR.

5. After registration of F.I.R, police arrested accused (present appellants), conducted usual investigation and submitted challan before the concerned court. Then after completing necessary formalities, learned trial court framed the charge against both accused, to which they pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case examined 10 PWs and exhibited numerous documents and other items. The statements of the accused were recorded under section 342 Cr.P.C whereby they claimed false

implication. They did not examine themselves on oath or call any witness in support of their defence case.

7. Learned trial court after hearing the learned counsel for the parties and assessing the evidence available on record convicted and sentenced the appellants as stated earlier in this judgment.

8. The complete facts of the case as well as evidence have been produced before the trial court and find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellants has contended that they are completely innocent and have been falsely implicated in this case, that there is only one eye witness whose evidence is completely unreliable and should be ignored, that the FIR is defective as it should have been recorded at the PS and not at the hospital, that the PW's were related to each other and as such could not be relied upon, that the medical evidence contradicts the oral evidence, that the availability of the deceased Zulfiqar at the house is doubtful as he did not live there and that he was murdered some where else by some body else, there are major contradictions in the evidence of the PWs and as such they could not be safely relied upon, that no empties were recovered from the scene and for any one of the above reasons the appellants should be acquitted of the charge by extending them the benefit of the doubt. In support of his contentions he placed reliance on the cases of **Ata Muhammad and another V The State** (1995 SCMR 599), **Muhammad Nawaz V The State** (PLD 1979 Karachi 286), **Muhammad Ali V The State** (2017 SCMR 1468), **Azeem Khan and another V Mujahid Khan and others** (2016 SCMR 274), **Allah Bachaya and another V The State** (PLD 2008 Supreme Court 349), **Khalid @ Khalidi and 2 others V The State** (2012 SCMR 327), **Sheral alias Sher Muhammad V The State** (1999 SCMR 697), **Tariq Pervez V The State** (1995 SCMR 1345), **Criminal Appeal No. 43 of 1962 [Sikandar V The State]** and **Criminal Appeal No. 70 of 1962 [Ranjha V Abdul Aziz and others]** (PLD 1963 Supreme Court 17), **Yousif V The State** (PLD 1988 Karachi 521), **Muhammad Ali V The State** (2017 SCMR 1468), **Wajahat Ahmed and others V The State and others** (2016 SCMR 2073), **Asad Khan V The State**

(PLD 2017 Supreme Court 681), **Bagh Ali V Muhammad Anwar and another** (1983 SCMR 1292), **Liaqat Ali V The State** (2011 SCMR 910), **Muhammad Nawaz V The State** (PLD 1979 Karachi 286), **Arman Ahmed V Muhammad Inayat and others** (2007 SCMR 1825), **Bakhshal and others V The State** (1990 PCr.LJ 1).

10. On the other hand learned APG appearing for the State as well as learned counsel for the complainant fully supported the impugned judgment and in particular contended that the eye witness were reliable, trust worthy and confidence inspiring who had correctly identified the appellants as committing the murder of Zulfiqar and injuring him by firearm, that the medical evidence supported the ocular evidence, that all the PW's were in unison in their evidence without any major contradictions, that pistol had been recovered from appellant Sheeraz on his pointation and that the appellants had a motive to kill the deceased and injure the complainant arising out of the garbage dispute and as such the appeals against conviction should be dismissed and that the impugned judgment should be upheld. In support of their contentions the learned APG and learned counsel for the complainant placed reliance on the cases of **Mst. Shamim Akhtar V Fiaz Akhtar and two others** (PLD 1992 Supreme Court 211), **Saleem Zada and others V The State and others** (2019 SCMR 1309), **Allah Bakhsh V Shammi and others** (PLD 1980 Supreme Court 225), **The State V Khan Muhammad alias Khanan and others** (2005 PCr.LJ 811), **Mukhtar Ahmad and others V The State** (PLD 2004 Supreme Court 563), **Akhmat Sher and others V The State** (2019 SCMR 1365), **Muhammad Akbar and another V The State** (PLD 2004 Supreme Court 44), **Mst. Nazakat V Hazrat Jamal and another** (PLD 2007 Supreme Court 453) and **Zahoor Ahmed V The State** (2007 SCMR 1519).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellants and the impugned judgment with their able assistance and have considered the relevant law including that cited at the bar.

12. In our view after our reassessment of the evidence based on the evidence of the PW eye witness, PW MLO and post mortem report and other medical evidence, PW police witnesses and IO and other PW's and positive

chemical report of earth recovered from the spot we are satisfied that the prosecution has proved beyond a reasonable doubt that on 22.04.2009 at about 1930 hours at the house of complainant at Juriyal Shah Colony Zulfiqar and Muhammed Hayat were fired upon by firearms which caused them firearm injuries which lead to the murder of Zulfiqar and the injury of Muhammed Hayat.

13. The only issue therefore, in our view, left before us is whether the appellants were persons out of a part of a group of people who fired upon Zulfiqar and Muhammed Hayat which lead to the murder of Zulfiqar by firearm (the deceased) and injured Muhammed Hayat by firearm.

14. In our view after our reassessment of the evidence we find that the prosecution has proved its case against the appellants (Rustam Ali and Sheeraz) for murdering the deceased by firearm and injuring Muhammed Hayat by firearm respectively beyond a reasonable doubt and hereby uphold the convictions in the impugned judgment against the appellants for the following reasons;

(a) The FIR was registered with relative promptitude within 3.30 hours of the incident. Any delay has been adequately explained by the complainant and other PW's who initially went to the PS who when finding No SHO present were directed to go to the hospital for medical treatment as the complainant Muhammed Hayat had been injured by firearm. After being medically treated at hospital the complainant gave his statement to PW1 ASI Rao Shahid at the hospital. We do not find it fatal to the prosecution case that the FIR was lodged via a statement which the complainant made at the hospital rather than the PS as it would only have consumed more time him going to the PS to record his FIR after leaving the hospital. The appellants have been named and given specific roles in the FIR and as such there was no time for the police to consult and concoct a false case with the complainant. Furthermore no enmity existed between either the complainant or the police against the appellants and thus the complainant and the police had no reason to implicate the appellants in a false case.

(b) The **key** witness in this case in our view is injured eye witnesses PW 2 Muhammed Hayat who is also the complainant whose evidence we consider below:

Eye witness PW 2 Muhammed Hayat is also the complainant in this case. According to his evidence on 22.04.2009 he was at Tando Muhammed Khan when his son Imtiaz at noon informed him over the telephone that he had had a quarrel with Sheeraz,

Wali Muhammed and Mashooque about leaving garbage outside their house. He returned home at 5.30 and registered a written complainant with the police in respect of this incident. He returned home and was in his house with his son Allah Jurio, Mir Muhammed and Zulfiqar. According to his evidence at 7.30pm the door of his house was knocked and he went outside and saw Wali Muhammed with an Iron Rod, Sheeraz armed with a pistol, Rustam armed with a KK and Sikander armed with a pistol. Wali Muhammed asked him why he had complained to the police about him and asked the others not to spare him. He saw Sheeraz and Rustam make straight fire on him. Sheeraz's shot hit him on his right shoulder. His nephew Zulfiqar was standing behind him who received firearm injuries from Rustam and Sikander on his neck. Both he and Zulfiqar fell down. Upon the firing he saw his son Imtiaz, Mir Muhammed and Allah Jurio arrive who the culprits abused and threatened to fire on them before they escaped by making aerial firing. Imtiaz took him to the PS whereas Mir Muhammed and Allah Jurio took Zulfiqar to the PS by Suzuki where the police told them to go to the hospital. Zulfiqar died on reaching hospital and he became unconscious. At 11pm he made his statement whilst in hospital which formed the basis of the FIR. He identified Rustam and Sheeraz in Court. He knew the appellants as they lived in the same locality and he had even reported them to the police earlier in the day concerning a dispute which they had with one of his sons. The incident occurred at 7.30pm in April at which time it would have been day light. He was standing close to the appellants and as such he would have been able to get a good look at them as their faces were not muffled and as such he could easily identify them which he did in court and as such there was no need for an identification parade. He is not a chance witness as the incident happened just outside his house where he had been watching the T.V with his family before the appellants knocked on his door on account of his earlier lodged complaint against them which lead to him going outside the house. As he was injured on the spot, which injuries are supported by the medical evidence, we do not doubt his presence at the scene of the incident. Likewise Zulfiqar was his nephew and had good reason to be in his house watching the TV with him and his other sons and we do not consider him to be a chance witness especially as he lived locally. He had already lodged a complaint against the appellants over the disputed incident and thus there was no need for him to involve them in any false case and no enmity has come on record between him and the appellants. He was not shattered despite lengthy cross examination and remained consistent in his evidence. His evidence accords with his FIR which was lodged promptly after the incident keeping in view the need to attend to his injuries and that of Zulfiqar at Hospital as discussed earlier in this Judgment. His evidence is also corroborated by PW 3 Imtiaz Ali and PW 4 Mir Muhammed who were natural witnesses who were his sons who were living with him and

were both present in his house in all material respects except that they did not actually witness the shooting but saw the injured PW 2 Muhammed Hayat and Zulfiqar immediately after they had been shot and saw the culprits escape with their weapons. We find no reason to disbelieve his evidence which we find reliable, trust worthy and confidence inspiring and find that he has correctly identified the appellants as two of the persons who murdered the deceased by firearm and injured him by firearm.

(c) It is settled law that we can convict if we find the direct oral evidence of one eye witness to be reliable, trust worthy and confidence inspiring. In this respect reliance is placed on **Muhammad Ehsan V The State** (2006 SCMR 1857) where it was held at P.1860 at Para 6 as under:

"6. It is true that there is only ocular testimony of P.W. 4 Mst. Khatun Bibi corroborated by medical evidence, P.W. 6 Dr. Muhammad Sarfraz Sial. **The fact that there is only ocular testimony of one P.W. which is unimpeachable and confidence-inspiring corroborated by medical evidence would be sufficient to base conviction. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence**".(bold added)

Likewise the supreme court in the later case of **Niaz-Ud-Din V The State** (2011 SCMR 725) held as under in respect of the ability of the court to uphold a conviction for murder even based on the evidence of one eye witness provided that it was reliable and confidence inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which matters at P.734 Para 11 as under;

"11. *The statement of Israeel (P.W.9) the eye-witness of the occurrence is confidence inspiring, which stands substantiated from the circumstances and other evidence. There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that "even in a murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable." The reason being that it is the quality of evidence and not the quantity which matter. Therefore, we are left with no doubt whatsoever that conviction of Niaz-ud-Din was fully justified and has rightly been maintained by the High Court.*"(bold added)

In this case as mentioned above we find the evidence of eye witness PW 2 Muhammed Hayat to be reliable, trust worthy and confidence inspiring especially in terms of correctly identifying the appellants as some of the persons who committed the murder of the deceased by shooting him and also injuring him with their firearms. **Never the less by way of abundant caution we will consider below whether any corroborative /supportive evidence is available in respect of the direct oral eye witness evidence.**

(d) PW 3 Imtiaz Ali (**named in FIR**) who is a son of the complainant. Apart from not seeing the actual shooting he corroborates his father in all material respects. In his evidence he discusses the dispute about the garbage, informing his father over the phone, his father coming home, he and his father lodging a complainant with the police about the dispute, being at home with his father, his brothers Allah Jurio, Mir Muhammed and his cousin Zulfiqar at 7.30pm when his father and Zulfiqar answered the knock on the door. **According to his evidence on hearing the shots he and his brothers Allah Jurio and Mir Muhammed went straight outside the house where he saw that his father had sustained a bullet injury to his chest and Zulfiqar a bullet injury to his neck both of whom were lying on at the front door. He saw appellant Rustam armed** The appellants fired at them but missed and then went away abusing them. He then went with his brother to the hospital via the PS. Zulfiqar died at the hospital and his father gave his statement. He also gave his S.161 Cr.PC statement with promptitude which excludes the chances of him falsely implicating any one and also gave his statement under S.164 Cr.PC . He identified the appellants in court. The same considerations apply to him as for PW 2 Muhammed Hayat. **The fact that he did not pretend to be an eye witness to the shooting which he could easily have done as he was in the house at the time of the shooting and came outside the house immediately after the shooting in our view gives greater reliability and credibility to his evidence.**

(e) PW 4 Mir Muhammed (**named in FIR**) who is also a son of the complainant who was also present in the house at the time of the shooting and on hearing the shooting like his brother PW 3 Imtiaz Ali he immediately went outside. His evidence corroborates PW 3 Imtiaz Ali in all material respects and the same considerations apply to him as to PW 2 Muhammed Hayat and PW 3 Imtiaz Ali.

It is well settled that simply because a witness is related does not make him an interested witness and unreliable unless he has reason to falsely implicate the accused, or he is biased, partisan or inimical to the accused which there is no evidence of in this case. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99). As such we also place reliance on the related PW's especially being PW 2 eye witness Muhammed Hayat, PW 3 Imtiaz Ali and PW 4 Mir Muhammed.

(f) The police PW's also support the prosecution case who have not been damaged despite lengthy cross examination and thus we believe

their evidence and place reliance on it. It is well settled by now that police witnesses are as reliable as any other witness unless any ill will or enmity has been attributed to them which has not been done in this case. In this respect reliance is placed on **Zafar V State** (2008 SCMR 1254), **Riaz Ahmed V State** (2004 SCMR 988) and **Muhammed Hanif V State** (SCMR 2003 1237).

(g) The S.161 Cr.PC statements of eye witness Muhammed Hayat, PW 3 Imtiaz Ali and PW 4 Mir Muhammed were all taken with promptitude which gave them no time for consultation or to cook up a false case against the appellants and their evidence was in line with their S.161 Cr.PC statements. Even otherwise they had no enmity with the appellants and no reason implicate them in a false case.

(h) The medical evidence fully supports the eye witness version of events. PW 7 Dr. Hato Mall who examined PW 2 Muhammed Hayat's injury found that it had been caused by firearm and had hit him on the right shoulder and margins was surrounded by a smoking area (which according to him also meant blackening) which is consistent with the oral evidence of PW 2 Muhammed Hayat in that he was hit by one firearm shot to the shoulder at close range. PW 7 Dr. Hato Mall also carried out the post mortem on deceased Zulfiqar and found that he had been shot twice and one shot was to the neck which was surrounded by smoking (which according to him also meant blackening) which also supports the ocular evidence and as such the ocular evidence is fully corroborated/supported by the medical evidence. This firing from close range is also supported by PW 10 Hassan Ali who was the Mukhtikhar according to whom the firing was made on the deceased from about 4 feet by the appellants.

(i) The pistol used in the murder was recovered by Sheeraz from a hidden place on his pointation which only he and not the police could have known about which rules out the foisting of the pistol on him. Although there is no evidence that the pistol was in working order it would not appeal to logic, reason, common sense or natural human conduct for the appellant Sheeraz to hide a broken pistol and then lead the police to it. According to the evidence appellant Rustam disposed of his firearm in a canal which does appeal to logic, reason, common sense and natural human conduct as he would not want to have been caught with the murder weapon. The fact that the police did not foist a murder weapon on appellant Rustam (which they could easily have done if they had wanted to in order to strengthen the case against Rustam, just as they could have also easily recovered planted empties at the scene which they did not do) also gives further weight to the fact that the police did not foist the pistol on appellant Sheeraz.

(j) Positive chemical reports showed that the blood gathered at the scene was human blood as was the blood on injured Muhammed Hayat's and deceased Zulfiqar's clothes.

(k) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these

contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellants keeping in view the terrifying and traumatic events which unfolded before the some of the PW's some of whom were related to the injured and the deceased. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793) and **Muhammed Ilyas V State** (SCMR 2011). The evidence of the PW's provides a believable corroborated unbroken chain of events from the time that PW 3 Imtiaz argued with the appellants about them dumping garbage outside their house, to him telling his father (PW 2 Muhammed Hayat), his father (PW 2 Muhammed Hayat) reporting the matter to the police, to the appellants knocking on PW 2 Muhammed Hayat's front door to shooting him and Zulfiqar outside the front door to the transportation of Muhammed Hayat and Zulfiqar to hospital to the arrest of the appellants and the recovery of Sheeraz's pistol on his pointation.

(l) We also find that the appellants had a motive to murder Zulfiqar and PW 2 Muhammed Hayat in that PW 2 Muhammed Hayat had reported them to the police for dumping garbage outside his house and having an altercation with some of his family members which was likely to lead to criminal proceeding being brought against the appellants. It appears from the evidence that the primary target for the murder was PW 2 Muhammed Hayat who lived in the house and who had had registered the complainant against the appellants and that Zulfiqar was shot and murdered by the appellants because he was PW 2 Muhammed Hayat's cousin who came outside with him and was standing behind him (which was the natural place for him to be standing as the owner of the house (the complainant) would have opened his own front door) and as such was hit by the firearms shots.

(m) It is for the prosecution to prove its case beyond a reasonable doubt against the appellants which we find that it has done in this case however we have considered the defense case before reaching this conclusion. The appellants have taken the defense plea of false implication. Namely, they were at home when the police falsely implicated them in this case. However they have not given evidence under oath or called any defense witness in support of their defense case nor during cross examination have they suggested to any police or other PW that he had any enmity with them and therefore a reason to falsely implicate them in this case and as such we disbelieve the defense case of false implication which we consider to be a mere after thought in order to save the skin of the appellants especially in light of the overwhelming prosecution evidence against the appellants.

15. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellants beyond a reasonable doubt.

16. With regard to sentencing we note that the appellant Rustam shot dead Zulfiqar in cold blood in front of his brothers family home where young children were residing without provocation who was unarmed at the time and he had a motive for doing the same as discussed above and as such we do not consider that he is entitled to any leniency and as such all sentences passed against him in the impugned judgment are upheld including the confirmation reference which is answered in the affirmative. Appellant Sheeraz shot and injured the complainant and as such we note that leniency has already been shown to him by the trial court by awarding the alternate sentence of life imprisonment and as such we maintain the same along with any other sentences handed down against him in the impugned judgment

17. Thus, for the reasons discussed above the appeals against conviction are dismissed, the impugned judgment and its sentences imposed therein are upheld and the confirmation reference is answered in the affirmative with respect to appellant Rustam Ali.

18. The appeals and confirmation reference are disposed of in the above terms.