

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeals No. 197, 198 & 199 of 2019

Confirmation Case No. 08 of 2019

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Irshad Ali Shah

Appellants	Muhammad Jamil Ahmed through Mr. Munsif Jan and Mr. Umar Khan advocates Muneer Ahmed through Javaid Chatari and Ms. Saima Shahreen Abbasi, Advocates
Respondent	The State through Mr. Mohammad Iqbal Awan, Additional Prosecutor General
Date of hearing	25.08.2021
Date of announcement	31.08.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J- Muhammad Jamil Ahmed and Muneer Ahmed appellants were tried by learned Anti-Terrorism Court No. VI, Karachi in Special Cases Nos. 220 to 222 of 2011, arising out of FIR No. 765/2011 for offences punishable under Sections 302/324/353/34 PPC read with Section 7 of Anti-Terrorism Act, 1999, FIR No. 766 and 767 of 2011 for offence punishable under Section 13(D) Arms Ordinance 1965 lodged at P.S Gulshan-e-Iqbal, Karachi. After full-dressed trial, the appellants were convicted and sentenced as under::

1. Accused Muhammad Jameel Ahmed is convicted in Crime No. 765/2011 u/s 302(b) PPC and he is sentenced to death with compensation of Rs. 200,000/- (Two Lacs) to be paid to the LR of the victim.
2. Accused Muneer Ahmed is convicted in Crime No. 765/2011 u/s 302(b) PPC and he is sentenced to death with compensation of Rs. 200,000/- (Two Lacs) to be paid to the LR of the victim.
3. Accused Muhammad Jameel Ahmed is also convicted in Crime No. 765/2011 u/s 324 PPC and sentenced to Rigorous Imprisonment for ten (10) years and fine of Rs. 50,000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 6 months.

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4. Accused Muneer Ahmed is also convicted in Crime No. 765/2011 u/s 324 PPC and sentenced to Rigorous Imprisonment for ten (10) years and fine of Rs.50,000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 6 months.
5. Accused Muhammad Jameel Ahmed is also convicted in Crime No. 765/2011 u/s 353 PPC and sentenced to Rigorous Imprisonment for five (05) years and fine of Rs.20,000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 4 months.
6. Accused Muneer Ahmed is also convicted in Crime No.765/2011 u/s 353 PPC and sentenced to Rigorous Imprisonment for five (05) years and fine of Rs.20,000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 4 months.
7. Accused Muhammad Jameel Ahmed is also convicted in Crime No. 765/2011 u/s 7(1)(a) ATA 1997 and he is sentenced to death.
8. Accused Muneer Ahmed is also convicted in Crime No.765/2011 u/s 7(1) (a) ATA and he is sentenced to death.
9. Accused Muhammad Jameel Ahmed is guilty of an offence u/s 7(1)(c) of Anti-Terrorism Act 1997 in Crime No.765/2011 and he is convicted and sentenced to R.I for ten (10) years and fine of Rs.50,000/- in case of default in payment of the fine then he shall suffer Simple Imprisonment of another 6 months.
10. Accused Muneer Ahmed is guilty of an offence u/s 7(1) (c) of Anti-Terrorism Act, 1997 in Crime No. 765/2011 and he is convicted and sentenced R.I for ten (10) years and fine of Rs.50,000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 6 months.
11. Accused Muhammad Jameel Ahmed is guilty of an offence u/s 6(2) (n) punishable u/s 7(1) (h) of Anti-Terrorism Act 1997 in Crime No. 765/2011 and he is convicted and sentenced to R.I for five (5) years and fine of Rs.20, 000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 4 months.
12. Accused Muneer Ahmed is guilty of an offence u/s 6(2) (n) punishable u/s 7(1) (h) of Anti-Terrorism Act 1997 in Crime No. 765/2011 and he is convicted and sentenced to R.I for five (5) years and fine of Rs.20, 000/- in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 4 months.
13. Accused Muhammad Jameel Ahmed is also convicted in Crime No.766/2011 u/s 13-D Arms Ordinance 1965 and he is

sentenced to undergo R.I 07 years and with fine of Rs.10,000/- and in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 6 months.

14. Accused Muneer Ahmed is also convicted in bearing Crime No.767/2011 u/s 13-D Arms Ordinance 1965 and he is sentenced to undergo R.I for 07 years and with fine of Rs.10,000/- and in case of default in payment of the fine then he shall suffer a Simple Imprisonment of another 6 months.

All the sentences were ordered to run concurrently. Benefit of section 382-B Cr.P.C was also extended to the appellants. The sentences of death awarded to the appellants were subject to confirmation by this court.

2. The brief facts of the prosecution case are that on 04.11.2011 at 1230 hours complainant Faisal Mehmood S/o Ayoub Khan lodged FIR No. 765 of 2011 u/s 302/324/353/34 PPC r/w section 7 of ATA 1997 of PS Gulshan-e-Iqbal Karachi. FIR No.766 of 2011 u/s 13-D of Arms Ordinance and FIR No.767 of 2011 u/s 13-D of Arms Ordinance were lodged by complainant SIP Muhammad Sarfraz of PS Gulshan-e-Iqbal Karachi. Complainant Faisal Mehmood narrated the episode of the incident by stating that on 04.11.2011 at 1230 hours, he and his cousin Ghulam Zain-ul-Abdin left their home to meet Sarfraz son of Justice (R) Zawar Hussain Jafferi, at his residence because it was Friday and they had planned to offer the Jumma prayer together. On arriving, they rang the doorbell of the house of Sarfraz in the meanwhile a silver colour Cultus car bearing Registration No. AUT-209 came in front of the Bungalows No.B-158 & B-163 from which four persons alighted and fired at them, indiscriminately. In order to save his life, he laid down on the ground, however, his cousin Ghulam Zain-ul-Abidin sustained multiple fire arm injuries fell down. The police guard Hassan Ali Chandio posted at the house of Justice (R) Zawar Hussain Jafferi on seeing the incident fired upon the culprits and in the meanwhile, a police mobile of PS Gulshan-e-Iqbal also arrived at the place of incident and he apprised the police regarding the incident. The police chased the accused persons and after exchange of fire succeeded to arrest two accused persons with their car at certain distance whereas their companions fled away from the scene. On enquiry the apprehended accused disclosed their names as Muhammad Jameel and Muneer. During personal search from accused Muhammad Jameel, SIP Sarfraz recovered

one 30 bore Sten gun without license loaded with four live rounds in its magazine and one in chamber. One bag was also found hung on shoulder of accused Muhammad Jameel from which SIP found ten live bullets and two scarfs like Mask, one ladies shalwar, one pair of ladies sock, one bottle of spirit and one Samsung Mobile phone, whereas from the possession of accused Muneer Ahmed, SIP recovered one 30 bore pistol loaded with five live rounds in the magazine. Six empties of 30 bore pistol and seven empties of SMG were also recovered from the place of incident. The case properties were sealed at the spot and SIP Sarfraz seized the vehicle of the accused persons from the place of incident. SIP Sarfraz recorded the statement of complainant Faisal u/s 154 Cr.P.C at the spot. SIP Sarfraz brought the apprehended accused persons along with case property at PS Gulshan-e-Iqbal, where he incorporated the statement u/s 154 Cr.P.C of complainant Faisal Mehmood in 154 Cr.P.C. Book and registered FIR No.765 of 2011 for the offence punishable u/s 302/353/324/34 PPC r/w section 7 ATA 1997. He also registered FIR No.766 of 2011 and FIR No.767 of 2011 and FIR No.768 of 2011 for offence punishable u/s 13-D Arms Ordinance against the apprehended accused persons as well as against the absconding accused, who made their escape good after throwing away unlicensed arms and ammunition.

3. After registration of the cases, the investigation was assigned to Inspector Chowdhry Manzoor Ahmed, who received the custody of accused Muhammad Jameel and Muneer Ahmed at SIC District East. On 06.11.2011 he called the owner namely Ammad Sher Khan of vehicle bearing registration No.AGB-663. Maker Cultus Suzuki of 2004 who informed him that he had rented out the car to one Shafi on 28.10.2011 for which he produced receipt. I.O. has seized the same and prepared the memo of seizure of the receipt in presence of Ammad Sher Khan. On 10.11.2011, he sent two letters to his SSP for obtaining permission to send the case property for FSL and chemical analyzer. On 14.12.2011, he got identified both the accused persons by eyewitnesses through Judicial Magistrate Karachi, East. On 15.11.2011, he deposited the Perchajat of the deceased in the office of Chemical Examiner along with letter. After receiving the FSL report, the I.O submitted the report u/s 173 Cr.P.C. before the competent Court of Law.

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4. The trial court framed charge against the accused to which they pleaded not guilty and claimed their trial.
5. At trial, the prosecution in order to prove its case examined 12 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.
6. 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 above.
7. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition.
8. Learned counsel for the appellants have contended that the appellants are completely innocent and have been falsely implicated in this case; that the eye witnesses evidence regarding the incident of murder is false as this was an unwitnessed incident; that the police departure entry at P.89 A does not mention one of the PW's as being part of the patrolling party which shows the falseness of the police case; that there are major contradictions in the evidence of the PW's and as such their evidence cannot be safely relied upon; that the recovered pistols were foisted on the appellants by the police; that the identification of the appellants cannot be safely relied upon as it was conducted 10 days after the incident and the rules for conducting identification parades have not been followed; that there was a delay in sending the recovered empties for FSL report and as such the FSL report cannot be relied upon and as such for any or all the above reasons the appellants by extending them the benefit of the doubt should be acquitted of the charge. In support of their contentions, they have relied upon the cases of **Sarwar Gul vs. The State and 2 others** (2002 P.Cr.L.J 163), **Muhammad Hafeez alias Babu vs. The State** (2005 P.Cr.L.J 1335), **Muhammad Imran vs. The State** (2009 P.Cr.L.J 997), **Fida Hussain vs. The State** (2013 P.Cr.L.J 1237), **Ziarat Gul vs. The State** (2017 P.Cr.L.J Note 86), **Shah Izzat alias Shahzad vs. Adnan, Constable No.5355 and another** (2017 P.Cr.L.J 25), **Ali Sher and others vs.**

The State (2008 SCMR 707), **Mst. Sughra Begum and another vs. Qaiser Pervez and others** (2015 SCMR 1142), **Hakeem and others vs. The State** (2017 SCMR 1546), **Azhar Mehmood and others vs. The State** (2017 SCMR 135), **Raes Khan vs. The State** (2018 MLD 835) and **Makhan vs. Allahdino and 4 others** (2019 MLD 1383).

9. On the other hand learned Additional Prosecutor General Sindh on behalf of the State has fully supported the impugned judgment. In particular he has contended that the evidence of the police eye witness and other eye witnesses are trust worthy reliable and confidence inspiring and can be safely relied upon, that the appellants were arrested on the spot and their pistols recovered from them; that the medical evidence supports the prosecution case, that the empties recovered from the scene led to a positive FSL report when matched with the above pistols and as such the prosecution had proved its case beyond a reasonable doubt against the appellants and their appeals be dismissed and confirmation reference answered in the affirmative. In support of his contentions, he placed reliance upon the cases of **Maji vs. The State** (1970 SCMR 331), **Muhammad Din vs. The State** (1985 SCMR 1046), **Noor Muhammad vs. The State** (1999 SCMR 2722), **Muhammad Ehsan vs. The State** (2006 SCMR 1857), **Khadim Hussain vs. The State** (PLD 2010 S.C 669), **Muhammad Ilyas and others vs. The State** (2011 SCMR 460), **Muhammad Ashraf vs. The State** (2011 SCMR 1046) and **Dadullah and another vs. The State** (2015 SCMR 856).

10. We have heard the arguments of the learned counsel for the parties and 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.

11. We find after our reassessment of the evidence based on the evidence of the eye witness police guard, other PW witnesses including police witnesses, PW MLO and post mortem report, recovery of empties from the spot and the dead body being moved from the place of incident to hospital that the prosecution has proved beyond a reasonable doubt that on 04.11.2011 at 12.30pm Zain-ul-Abdin (the deceased) was shot by

firearm and succumbed to his injuries (murdered) before reaching hospital in front of Bungalow No.B-158 and B-163 Block 5 Gulshan-e-Iqbal Karachi.

12. The only issue therefore, in our view, left before us is whether it was the appellants (Jameel and Muneer) who were a part of the group of assailants who fired at the deceased and injured him with their firearm shots which lead to his murder and had an encounter with the police and had unlicensed pistols recovered from them at the aforesaid time, date and location.

13. After our reassessment of the evidence we find that the prosecution has proved its case against the appellants (Jameel and Muneer) for murdering the deceased by firearm, engaging in an encounter with the police and for carrying unlicensed firearms beyond a reasonable doubt and hereby uphold the convictions and some of the sentences in the impugned judgment against the appellants for the following reasons;

(a) that the FIR was registered with promptitude within an hour and 30 minutes of the incident in which the appellants have been named and given specific roles of firing at the deceased and being involved in an encounter with the police where unlicensed pistols were recovered from them on their arrest 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) that both the accused were caught red handed each with an unlicensed pistol and were arrested almost on the spot by the police after an exchange of fire between them and the police so once again there is no chance of false implication or even misidentification.

(c) The key witnesses in this case in our view are eye witnesses PW 7 Hasan Ali, PW 10 Fasial Mahmood, PW 5 Amad Sher Khan and PW 6 Muhammed Qureshi, PW 1 Muhammed Sarfraz and PW 2 Ghulam Mustafa's as this prosecution case mainly revolves around the correct identification of the accused who shot the deceased and were involved in the encounter with the police. We shall consider the evidence of these eye witnesses in turn below;

(i) **Eye witness PW 7 Hasan Ali.** He was a security guard performing his duties outside the house of Justice (Rtd) Zawar Hussain Jaffery. According to his evidence the deceased and PW 10 Fasial came to the house at about 12.30pm on 4.11.2011

and he went inside to inform Justice (Rtd) Jaffery when he heard firearm reports. He went outside and saw 4 persons in a silver cultus car 3 of whom had got out of the car who fired on the deceased who sustained bullet injury to his head. He returned fire but the culprits escaped in the cultus car which was chased by a police mobile whereupon the culprits in the cultus car exchanged fire with the police in the mobile where after the police managed to apprehend two of the culprits at a certain distance in another street. He was called before an identification parade 10 days later where he picked out the appellants as the persons who had fired on and murdered the deceased. Such delay in our view will not hinder his correct identification as there is no hard and fast rule as to when an identification parade should be held although the sooner the better even if it was required which was not necessarily the case based on the particular facts and circumstances of this case as discussed below. The law has also moved on in giving the role of the accused during an identification parade as discussed below as each case must be judged on its own particular facts and circumstances and not in a mechanical manner. Even otherwise we have not been alerted to so grave a breach of the rules governing identification parades which would render the current identification parade unreliable as minor irregularities are permissible under the law.

This eye witness was a natural witness and not a chance witness as he was one of the police guards to the retired Judge stationed in a tent outside his house. He did not know the appellants before the incident and had no enmity with them and had no reason to implicate them in a false case. His presence at the scene was not challenged during cross examination. It was a day light incident and since three of the accused had dismounted from the car he would have got a good look at them. He is named in the FIR along with his role at the scene which accords with his evidence and since the FIR was lodged within 1 hour and 30 minutes of the incident he would not have had time to cook up a false case against the appellants with the complainant or the police especially as he had no reason to do so. He recorded his S.161 Cr.PC eye witness statement immediately after the incident as such once again there was no time for him to cook up a false case against the appellants. We find that he has correctly identified the two appellants as a part of the group which fired upon the deceased which lead to the death of the deceased. This is more so since both of the appellants were caught red handed almost on the spot only a few minutes after the incident following an encounter with the police. His evidence was not dented during a lengthy cross examination. As such we find his evidence to be reliable, trustworthy and confidence inspiring and we believe the same especially in respect of the correct identification of the appellants as firing upon and murdering the deceased.

Even otherwise based on the particular facts and circumstances of this case which was a day light incident and the eye witness

simple

got a good look at the appellants who were arrested a few minutes after the incident a few streets away it was not even strictly necessary to hold an identification parade. In this respect reliance is placed on **Muhammed Siddique and others V State** dated 02-01-2020 (unreported) in Crim. Jail Appeal No's 24,69,215,486 of 2016 and 682 of 2017 which held as under at Para 5 which is set out below;

"5. Castigating severely the evidence of test identification parade, the learned counsel relied upon the guidelines laid down in the case of Kanwar Anwar Ali (PLD 2019 Supreme Court 488) to urge exclusion thereof. The supra case indeed a fine piece of juridical literature, nonetheless, does **not** extend much help to the convicts; it mainly addressed laconic approach adopted by a Magistrate in holding the test identification parade in the said case while highlighting general principles of law on the subject.

Test identification parade is a method of proof contemplated by Article 22 of the Qanun-i-Shahadat Order, 1984, reproduced below for the convenience of reference:-

"Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue or relevant fact happened, or which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose".

The above framework provides enough space to admit evidence in prosecution of offenders previously unacquainted with the victims or the witnesses; appraisal of such evidence is subject to same principles as are universally applicable to any piece of evidence, under consideration in a criminal trial; there are no additional barricades as is evident from the plain reading of the Article *ibid*; without prejudice to the safeguards available to an accused at each stage of trial, essentially fair as guaranteed under the Constitution, nonetheless, it does **not** cast an artificially heavier onus on the prosecution to meet standards of proof beyond human capacity. Each criminal case is to be decided having regard to its own peculiar facts and circumstances. A test to be essentially applied is one case may absolutely be irrelevant in another, as the crimes are seldom committed in identical situations; there may be cases wherein prosecution must assign distinct roles played during the occurrence by the culprits for determination of their guilt as well as consequences

thereof, however, there are cases in which totality of transaction may not warrant reparability for such determination, like the one in hand. Cases involving abductions, dacoities and sudden assaults, more often than not, constitute episodes wherein different roles played by the culprits merge into integral totality of the crime, thus, it would be too harsh as well as unrealistic to demand exact reenactment of roles by the witnesses. Capacities even intellectually most sharp dwindle drastically in calamitous situations, therefore, the administration of criminal justice, in such peculiar situations, has to be dynamically balanced upon fair trial without prejudice to the accused as well as due weightage to the prosecution evidence without being swayed by illusory notions, subjectively structured upon hypothetical beliefs

Having found the witnesses with no axe to grind, in a comfortable unison on all the salient features of the prosecution case as well as events collateral therewith, we do not feel persuaded by the arguments, couched on hyper technical premise. Petitions fail. Dismissed."(bold added)

The appeal which we are currently deciding attracts the above dicta as it is a case of sudden assault.

(ii) Eye witness PW 10 Faisal Mehmood is the complainant in this case. According to his evidence on 4.11.2011 he and the deceased left for Justice (Rtd) Jaffery's house with a view to offer Juma prayers with his son (Sarfraz). When they rang the bell of the house he saw a silver cultus car pull up in front of the house and 3 persons get out who made indiscriminate fire on the deceased and himself. The deceased received multiple firearm injuries. He was not injured as he took cover by laying on the ground. He saw the police guard at the house (eye witness PW 7 Hasan Ali) fire upon the cultus car which was then chased after his intervention by a passing police mobile and after an exchange of fire between the police and the culprits two of the culprits were arrested nearby. He was mashir to the arrest and recovery of the appellants and thus having seen them there was no need for him to attend an identification parade as he was present at the time of the arrest and he would have got a clear view of them firing at the deceased as this was a day light incident as also the police encounter. He also witnessed the encounter between the police and the appellants. He was not a chance witness as he had gone with the deceased to the house of the Retired Justice in order to collect his son (Sarfraz) for juma prayers. He had no ill will or enmity with the appellants and had no reason to falsely implicate them in a false case. He registered his FIR within 90 minutes of the incident and as such had no chance to concoct a false case against the appellants in league with the

police. His evidence accords with his FIR and corroborates the versions of eye witness PW 7 Hasan Ali and the other police witnesses who were present at the encounter (especially PW 1 Muhammed Sarfraz and PW 2 Ghulam Mustafa) and the time of the arrest and recovery of the fire arms from the appellants. He was not dented despite a lengthy cross examination and we have no reason to disbelieve his evidence which we find to be reliable, trust worthy and confidence inspiring and we believe the same. His evidence and that of PW 7 Hasan Ali who he states was on guard duty at his fathers house is also corroborated by PW 4 Sarfraz Haider (the son of the retired Judge) who states in his evidence that he had arranged to perform Juma prayers with the deceased.

(iii) **Eye witnesses PW 5 Amad Sher Khan and PW 6 Muhammed Qureshi** are not eye witnesses to the actual incident but are eye witnesses to hiring out the car which was used in the attack i.e the silver cultus. Both of these eye witnesses are in essence concerned with the business of renting out cars. Both witnesses gave evidence that on 03.11.2012 the silver cultus was given on rent to the appellant Jameel who they had seen before. They had no enmity with appellant Jameel and had no reason to falsely implicate him in this case. The renting of the car used in the assault also links appellant Jameel to the murder and encounter with the police which car was recovered after the encounter and produced in court. We have no reason to disbelieve their evidence which was not shattered despite a lengthy cross examination and the evidence suggests that they were both in the car business and as such we believe there evidence that the car used to transport the appellants during the murder and the encounter was rented out to appellant Jameel who was identified by PW 7 Hasan Ali. the guard as being one of the persons who fired upon the deceased and who was arrested almost on the spot along with the recovered vehicle.

(iv) **PW 1 Muhammed Sarfraz and PW 2 Ghulam Mustafa police officers are eye witnesses to the encounter with the persons in the silver cultus (which included the appellants).** In their evidence they state that whilst on patrol on 04.11.2011 about 12.30 they heard gun shots and reached the Judge's house whereby PW 10 Faisal Mahmood informed them of this incident. They then gave chase to the silver cultus and after an encounter with the persons in the vehicle they managed to arrest the two appellants from which they recovered from each unlicensed pistols and ammunition. They corroborate PW 10 Faisal Mahmood and PW 7 Hasan Ali concerning the events after the murder of the deceased. Both of these eye witnesses corroborate each other in all material respects and were not dented despite lengthy cross examination. They had no enmity with the accused and no reason to implicate them in a false case and

as such we have no reason to disbelieve their evidence which we do believe as we find it to be reliable trust worthy and confidence inspiring.

(d) 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). Furthermore, the supreme court in the 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."

In this case we find the evidence of the 6 eye witnesses mentioned above to be fully corroborative and 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 with their pistols and being involved thereafter with the police in an encounter whereby an attempt was made to murder the police and prevent them from carrying out their official duties. **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.**

(e) 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). Like wise 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 respect of PW 10 Faisal Mehmood who was related to the deceased. In this respect reliance is placed on **Ijaz Ahmad V The State** (2009 SCMR 99). Thus, we rely on the evidence of the remaining police PW's 1 Muhammed Sarfraz and PW 2 Ghulam Mustafa who arrested the appellants following the

chase of the silver cultus and encounter with the appellants who also recovered the unlicensed firearms of the appellants as per the memo of arrest and recovery, PW 3 Muhammed Akram, PW 11 Aijaz Ahmed the first IO and PW 12 Chaundhry Manzoor the second IO none of whom were dented let alone shattered during cross examination. In fact Ex 89 A clearly shows that PW 1 Muhammed Sarfraz was on patrol at the time of the incident. PW 8 Zahida Parveen who was the judicial magistrate who carried out the identification parade of the accused also as per her evidence carried out the identification parade in accordance with law and was not dented during cross examination and who also identified in court the two appellants who were picked out at the identification parade by the concerned PW identifiers. She is a judicial officer and we have no reason to doubt her evidence

(f) The medical evidence fully supports the eye witness version of events. PW 9 Dr. Zafar who carried out the post mortem of the deceased gave evidence that the deceased received 4 firearm injuries one to the front of his chest, one to the back of the chest, one to the abdomen and one to the left thigh which ties in with the prosecution evidence that the appellants opened indiscriminate firing on the deceased. The fact that there was blackening around each wound also ties in with the prosecution evidence that the car pulled up in front of the house, 3 appellants dismounted and opened fire on the deceased which was clearly at close range.

(g) On the arrest moments after the murder following an encounter with the police the appellants were almost arrested on the spot and at the time of their arrest an unlicensed pistol was recovered from each of them.

(h) That some of the empties which were recovered from the scene of the murder when compared with the recovered pistols lead to positive FSL reports. The fact that there was a delay in sending the pistols and empties for FSL will have no impact on the FSL report in this case as no allegation of tampering has been made. In this respect reliance is placed on the case of **Muhammed Ashraf** (Supra).

(i) The silver cultus motor vehicle which was used by the appellants at the time of the murder and attempting to make their escape was recovered from the appellants following their arrest after an encounter with the police which as mentioned above PW's 5 and 6 had rented to appellant Jameel the day before and as such clearly links them to the offence.

(j) All the most relevant and significant police entries were exhibited at trial in support of the prosecution version of events.

(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 keeping in view the terror and chaos which was then unfolding and not material and certainly not of such materiality so as to effect the prosecution case and the

conviction of the appellants. 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 the appellant Jameel rented the silver cultus car one day before the incident, the deceased and PW 10 Fasial Mehmood reaching Retired Judge Jaffery's house on the day of the incident, to the silver cultus car pulling up in front of the house and 3 persons dismounting and making indiscriminate fire on the deceased who died in hospital, to the appellants attempting to make their escape good to the encounter with the police and there arrest and recovery of their pistols close to the scene of the murder.

(I) Of course 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 by the police as they refused to pay a bribe of RS 50,000 having been arrested from the disco bakery a day before the incident. 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 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 and the fact that the appellants were correctly identified by the eye witness PW's and they were almost arrested on the spot within moments of the incident after an encounter with the police which would have left no time for them to be substituted with the real culprits by the police.

14. 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 with respect to all the charges against them.

15. With regard to sentencing all the sentences handed down in the impugned judgment are kept intact along with any fines and/or compensation however we have noticed that the prosecution has failed to assert and prove the motive for the murder which appears to be a target killing and it is not possible to ascertain which of the appellants fired the fatal shot at the deceased. Under these circumstances the superior courts have considered such factors as mitigating and justifying the reduction of the death sentence to that of life imprisonment. As such with regard to the conviction for the murder of the deceased under S.302 (b) PPC and the

ATA for each of the appellants the death sentences handed down to each of the appellants in respect of each of these offences are converted from death sentences to sentences of life imprisonment. The appellants shall have the benefit of S 382 (b) Cr.PC and any other lawful remissions which they are entitled to. All the sentences shall run concurrently.

16. Thus, for the reasons discussed above the appeals against all convictions are dismissed, the impugned judgment and its sentences imposed therein are all upheld except that the death sentences under S 302 (b) PPC and the ATA are converted from death to life imprisonment in respect of each appellant and as such the confirmation reference is answered in the negative.

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