

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. S-25 of 2020

Appellants	:	Through Mr. Ashique Hussain
1. Nadir Ali son of Adam Laar		Kalhor, Advocate.
2. Ali Nawaz son of Muhammad Haseeb @ Shoukat Ali Laar		
3. Yar Muhammad son of Abdullah @ Punhal Laar		
 The State	:	 Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
 Complainant Dilbar Ali Laar	:	 Through Mr. Ghulam Shabir Jatui, Advocate along with Complainant.
 Date of hearing	:	 26.05.2025
 Date of Judgment	:	 26.05.2025

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- By means of instant Cr. Jail Appeal, the appellants have challenged their conviction and sentences awarded to them vide impugned judgment dated 19.02.2020 passed by Learned Ist Additional Sessions Judge/MCTC, Kamber (trial Court) vide Sessions Case No 366 of 2018 arising out of F.I.R No.37/2018 under Sections 302, 148, 149, 337-A(i) F(i) PPC, registered at P.S Gaji Khuhawar, District Kamber-Shahdadkot, whereby the trial Court convicted all the three accused / appellants and sentenced them to undergo for life imprisonment as Tazir for committing an offence punishable U/S 302(b) PPC & to pay compensation to the legal heirs of the deceased as provided U/s 544-A Cr. P.C. The appellants were also convicted for offence punishable U/s 148 PPC and were punished to pay fine of Rs. 60000/- (Rs.20000/- each convict) and in case of default each of them was ordered to undergo S.I for six months more. They were also convicted for offence punishable U/s 337-A(i) PPC and were punished to pay Daman of Rs.

60000/- (Rs.20000/- each convict) for causing two injuries (Shajjah-i-Khafifah) to Mst. Farzana to be paid to her.

2. Brief facts of prosecution case are; that complainant Dilbar Ali Laar lodged above FIR on 11-9-2018 at 7.00 am, stating therein that on the fateful date i.e. 11-9-2018 at 1.30 am (night) five accused namely; Nadir armed with K.K, Moar armed with Pistol, both sons of Adam, Ali Nawaz S/O Muhammad Haseeb armed with a Repeater, Muhammad Hassan S/O Mazan armed with a gun, Yar Muhammad S/O Abdullah armed with a pistol, all by caste Laar and an unknown accused armed with a gun, entered the house of the complainant and accused Nadir Ali made a straight fire with his K.K at complainant's brother Ali Khan with intention to commit his Qatl-e-amd which hit him at his right side of belly, whereas accused Moar also made a straight fire with his Pistol at him intending to commit his murder which hit him at his left armpit and he, having raised cries fell down, whereupon his sister Mst. Farzana raised cries on which accused Ali Nawaz caused her butt blows with his Repeater at her head and back. Thereafter, all the inmates raised cries, whereupon all the accused fled away leaving behind complainant's brother Ali Khan in dead condition and injured sister Mst. Farzana. The motive for alleged incident was stated to be the grudge arising due to domestic / matrimonial differences between the parties.

3. Diary Sheet dated 25-10-2018 shows that I.O/SHO Abdul Rasheed Korkani, of P.S. Gaji Khuhawar submitted final report under section 173 Cr. P.C. against all nominated accused showing accused Nadir in custody, while rest of the accused as absconders. Learned Civil Judge & Judicial Magistrate-I Warrah, after having declared said absconding accused as proclaimed offenders, sent up R&Ps to the Court of Sessions vide Diary dated 15-11-2018.

4. As per Diary dated 11-12-2018, police papers were supplied to accused Nadir vide receipt Ex. 04. A formal charge was framed against him on 29-12-2018 vide Ex-05 to which he pleaded not guilty and claimed trial vide plea Ex-5/A.

5. Thereafter, consequent upon arrest of accused Ali Nawaz, police papers were supplied to him vide receipt Ex-06 and accordingly, an amended charge was framed against two accused on 12-02-2019 vide Ex-07 to which they

pleaded not guilty and claimed to be tried vide their respective pleas Ex-7/A and 7/B.

6. Thereafter. Accused Yar Mohammad was also arrested and accordingly as per Diary dated 05-3-2019, police papers were supplied to accused Yar Muhammad vide receipt Ex-08 and another amended charge was framed against all three accused / appellants on 13-3-2019 vide Ex-09 to which they pleaded not guilty and claimed trial through their respective pleas recorded vide Ex-09/A to 09/C.

7. After receiving R&Ps on 18-02-2020 by way of transfer from the court of Additional Sessions Judge-II, Kamber, the trial Court proceeded with the case.

8. The prosecution in order to prove its case, examined P.W.1 Complainant Dilbar Ali Laar at Ex-10, who produced FIR No.37/2018 U/S 302,148,149 PPC as Ex-10/A. P.W.2, alleged eye-witness Pasand Khan Laar, was examined at Ex-11. P.W.3 Injured alleged eye-witness, Mst. Farzana was examined at Ex-12. P.W.4, Dr. Jalaluddin Magsi, was examined at Ex-13, who produced two original Lash chakas forms and original postmortem reports of the deceased as Ex-13/A and 13/B. P.W.5, Dr. Samina Shah, was examined at Ex-14, who produced original Medical Referral Letter, original provisional and final MLC of injured Mst. Farzana as Ex-14/A & 14/B. P.W.6, Tapedar Muhammad Talib Khushik, was examined at Ex-15, who produced original site sketch as Ex-15/A. P.W. 7, Corpse-bearer P.C. Muhammad Younis, was examined at Ex-16, who produced original receipt as Ex-16/A. P.W.8, Mashir Muhammad Saleh Laar, was examined at Ex-17, who produced original memo of inspection of place of incident, dead-body of deceased and collection of bloodstained earth and crime empties, original Danishtnama of deceased and original memo of Inspection of injuries of injured PW Mst. Farzana as Ex-17/A to 17/E. P.W.9, author-cum-I.O. SIP Abdul Rasheed was examined at Ex-18, who produced FIR related Entries No.24 and 25 dated 11-9-2018, Medical referral letter of injured Mst. Farzana, letter addressed to Mukhtiarkar, Revenue Warah, Road Certificates, positive chemical report bearing No.3055 dated 03-10-2018 showing that bloodstained earth and piece of Relhi were stained with Human blood, Examination Report bearing No.FSL / FD / LRK / OR / FA / 1087 dated 25-9-2018, showing that one 30m bore crime empty marked as "C-1" which, per prosecution was

secured during site inspection, was found matched with crime weapon viz. unlicensed TT pistol recovered from accused Nadir and Photostat copy of memo of arrest of accused Ali Nawaz and Yar Muhammad as Ex-18/A to 18/H.

9. Thereafter, the DDPP appearing for the State, closed prosecution side vide statement Ex-19.

10. Statements of accused were recorded on the same date vide Ex-20 to 22 in terms of section 342 Cr. P.C. wherein they denied prosecution allegations and stated that the evidence of prosecution witnesses is false and that they are innocent; however, neither they examined themselves on oath in terms of section 340 (2) Cr. P.C. nor opted to produce any defense witness.

11. After formulating the points for determination, recording evidence of the prosecution witnesses and hearing counsel for the parties, trial Court vide impugned judgments convicted the accused / appellants, as stated above. The appellants have challenged their conviction by preferring instant jail appeal.

12. I have heard the arguments advanced by learned counsel for the appellants, learned counsel for the complainant and learned Additional P.G. appearing for the State and perused the material made available before me on the record.

13. Learned counsel for the appellants submitted that appellant Nadir Ali had allegedly caused K.K firearm injury to deceased Ali Khan which landed on his belly; however, during investigation, the police had recovered pistol from him instead of K.K. The allegation against appellant Ali Nawaz that he caused repeater butt blows to injured PW Mst. Farzana and the injury sustained by her was declared by Medico Legal Officer as *Shajjah i-Khafifah* punishable under section 337-A(i), PPC carrying punishment of two years only. As far as appellant Yar Muhammad is concerned, though he was nominated in the FIR and was shown armed with Pistol, yet he did not use it nor, any overt act was attributed to him. It was also submitted on behalf of the accused that the complainant being brother and other two eye witness, Mst. Farzana and Passand Khan, being sister and brother-in-law of the deceased respectively, are interested witnesses and no independent witness has been examined. Lastly, he submitted that allegedly recovered firearm weapons

were sent to FSL with a delay of ten days. In support of his contentions, he placed reliance upon the case-law reported as Babar alias Jani v The State (2025 P.Cr.L.J 22), Nasir and others v. The State and others (2025 P. C.L.J 168) and Kashif Jamal Vs. The State (2025 P. Cr. L.J 109).

14. Learned Addl. P.G. opposed the appeal on the ground that all the appellants are nominated in the FIR, therefore, they are not entitled to the relief sought for. He; however, could not controvert the fact that the appellant Nadir was shown armed with K.K. but during investigation, he allegedly produced Pistol; however, he submitted that it could be malice on the part of police and shall not be harmful to the prosecution case or the complainant, as one innocent person had lost his life at the hands of appellant Nadir. He also admitted that appellant Ali Nawaz allegedly caused Repeater butt blows to injured PW Mst. Farzana; however, he was arrested on 29.12.2018 and that no role has been assigned to appellant Yar Muhammad. However, according to him, both appellants are vicariously liable and have rightly been convicted and sentenced to by the trial Court.

15. Mr. Ghulam Shabir Jatoi, counsel for the complainant adopted the arguments advanced by learned Addl. P.G. and opposed the appeal and submitted that the appeal merits no consideration, which may be dismissed.

16. In instant case, ocular testimony is consisting of Complainant Dilbar Ali, P.W. Passand Khan and injured P.W. Mst. Farzana. Their evidence is almost common. As per their evidence, P.W. Mst Farzana was married to Nadir Ali Laar and Nadir's sister Mst Husna was married to complainant's brother Ali Khan, since deceased. Due to domestic differences, Nadir Ali had driven away complainant's sister Mst. Farzana out of his house, after having given her beatings and thereafter she started residing with the complainant and others. On 10-09-2018 complainant along with his brother Ali Khan, his brother-in-law Pasand Khan and sister Mst. Farzana together with other family members went to sleep after taking dinner and electricity bulbs were switched on. All of a sudden at about 01:30 a.m. of night on 11-09-2018 they all woke up on hearing noise inside the house and saw that six persons were standing in the house, out of whom they identified five accused as 01. Nadir Ali son of Aadam armed with KK, 02. Moar son of Aadam armed with pistol, 03. Ali Nawaz son of Heesab armed with repeater, 04.Yar Muhammad son of

Abdullah armed with a pistol and 05. Muhammad Hassan son of Mazan armed with a gun, all by caste Laar. Accused Nadir Ali, having raised '*hakal*' to Ali Khan made a straight fire with his KK at him with intention to commit his murder which hit him at right side of his belly (kukh) and accused Moar also made fire with his pistol straightly at Ali Khan which also hit him at his left armpit, whereupon he raised cries and fell down on the ground and started bleeding. Other inmates, including Mst. Farzana, raised hue and cry whereupon accused Ali Nawaz inflicted butt blows with his repeater at her head and back, thus she was bleeding. Thereafter, all the accused having weapons fled away. Complainant party noticed that Ali Khan had succumbed to his injuries and Mst. Farzana had also sustained injuries.

17. Complainant Dilbar Ali further stated that thereafter he went to P.S. Gaji Khuhawar and intimated police officer Abdul Rasheed Korkani about the incident, who along with him and 02/03 police officials came at his house where he inspected the dead body of deceased and injuries sustained by the deceased at the pointation of complainant in presence of mashirs namely, Muhammad Saleh Laar and Abdul Jabbar Laar. Later, he inspected place of incident viz. complainant's house, collected bloodstained earth as well as a crime empty of KK and a single empty of 30 bore TT pistol. He also cut a small piece of bloodstained quilt (Rilhi) and sealed the recovered property separately. He also inspected the injuries sustained by Mst. Farzana. Finally, he prepared such documents including memos on the spot, read over contents thereof to both mashirs namely, Muhammad Saleh and Abdul Jabbar and also obtained their signature and LTI respectively. After completing such exercise, I.O. Abdul Rasheed Korkani handed over dead body of the deceased to P.C. Muhammad Yousif Lashari along with a lash chakas form for the purpose of getting postmortem from Civil Hospital Warrah, hence the complainant along with him and others took dead body of the deceased to Civil Hospital Warrah where postmortem was conducted and thereafter the same P.C. returned the dead body of his brother to him under a receipt. Injured alleged eye witness Mst. Farzana was also referred to Civil Hospital Warrah, where she was given medical treatment. After burial of his brother, complainant went to P.S. Gaji Khuhawar at about 07:00 p.m. where his FIR was registered vide crime No.37/2018 under Sections 302, 148, 149, 337-A(i) F(i) PPC. During investigation I.O. recorded statements of alleged eye witnesses, Mst. Farzana and Pasand Khan u/s 161 Cr. P.C.

18. From ocular testimony of aforesaid three alleged eye-witnesses, it is evident that their evidence is consistent with each other. They are consistent on all material aspects of the incident i.e. place of incident, date and time of incident, number and locations of injuries allegedly sustained by the deceased and so also regarding motive. There seems to be no loophole / flexibility in their evidence. Even otherwise it does not appeal to the mind of a prudent man that as to why the complainant and other two alleged eyewitnesses, who are closely related to the deceased, would spare the real culprits and instead shall involve innocent persons, as alleged on behalf of accused persons. This seems to be quite illogical and unnatural.

19. The ocular evidence is further corroborated by the medical evidence. Medical Officer, Dr. Jalaluddin Magsi in his Examination-in-Chief deposed that on 11.09.2018, while posted as a Medical Officer Taluka Hospital Warrah, received dead body of deceased Ali Khan S/o Khasho Khan Laar along with lash chakas form for examination and postmortem, which he started at 04:15 am and finished at 06:00 am on the same date viz. 11.09.2018 and he found following external and internal injuries:-

“One lacerated punctured wound about 0.5 cm x 0.5 cm on the left armpit through and through (wound of entrance).

One lacerated punctured wound about 01 cm x 01 cm just below the mid of left clavicle (wound of exit).

One laceration about 01 cm x 1.5 cm on the right groin region which extends upto right iliac-fossa.

On internal examination, he found that second left rib was fractured and left pleurae were ruptured and second right rib was also fractured. The cause of death shown by him was the injuries having been caused by the firearm.”

20. From perusal of the evidence of M.O., Dr. Jalaluddin Magsi, it seems the medical evidence in respect of deceased Ali Khan is consistent with the ocular account of the incident. The eye-witnesses had deposed that the deceased had sustained two firearm injuries; i.e. one at the right side of his belly and the second at his left armpit. Such assertion of the eye-witnesses is confirmed by the medical evidence which also shows aforesaid two injuries plus two exit wounds as a result of these injuries. The ocular as well as medical evidence, are also consistent on the point that all the injuries have

been caused by firearm weapon. Likewise, as per evidence of three alleged eye-witnesses, the deceased died immediately at the spot after sustaining injuries which fact is also confirmed by medical evidence which shows that the death of the deceased was instantaneous. Similarly, the duration between the death and the postmortem examination as per ocular testimony and the medical evidence is also almost same.

21. The ocular testimony is further corroborated by circumstantial evidence. The I.O. SIP Abdul Rasheed Korkani, who is also author of the FIR, deposed that after recording FIR on 11.9.2018, he along with his subordinate staff and complainant proceeded towards place of incident viz. house of the complainant and inspected dead body of the deceased and found that he had sustained a through and through injury on his armpit which crossed from his shoulder and blood was oozing. He further noticed that another firearm injury was sustained by him at his left belly in gutter shape. He collected the bloodstained earth and cut a bloodstained piece of quilt and sealed the same separately. He also collected a single empty of KK and a single empty of 30 bore TT pistol which were also sealed. He prepared such memo, Danistnama as well as lash chakas form on the spot. The mashirnama was signed by mashhir Mohammad Saleh and LTI was imposed by second mashir, Abdul Jabbar. He also inspected the injuries alleged sustained by injured Mst Farzana which were found at her head, back and other parts of the body. He also sent bloodstained earth and bloodstained quilt to Chemico Lab Rohri at Sukkur for chemical examination. Thereafter, on 18-09-2018 in presence of the same mashirs he arrested accused Nadir and secured a TT pistol of 30 bore along with magazine from right side of fold of his shalwar/trouser containing two live bullets of 30 bore. He also got registered a separate FIR U/S 24 SAA, 2013 against accused Nadir Laar. On 22-09-2018 he sent the recovered pistol of 30 bore, one empty of pistol of 30 bore and one empty of KK to FSL Forensic Science Division Larkana and also received positive reports of bloodstained earth, bloodstained quilt and FSL report of crime weapon viz. a pistol. Thereafter, accused Yar Muhammad and Ali Nawaz were arrested by ASI Zameer Hussain Jatoti in presence of mashirs namely, HC Riaz Ahmed and PC Rashid Ali.

22. Prosecution case is further corroborated by the motive disclosed by the prosecution witnesses. All the alleged eye-witnesses have deposed in their

respective evidence that injured P.W. Mst. Farzana was married to accused Nadir Ali Laar and Nadir's sister Mst. Husna was married to complainant's brother Ali Khan, since deceased. Due to domestic differences, Nadir Ali had driven away complainant's sister Mst. Farzana out of his house, after having given beatings to her and thereafter she started residing with complainant and others. According to them, on account of such matrimonial / domestic dispute, on 10-09-2018 the accused had committed the alleged offences. Even otherwise, failure to prove motive could only affect the awarding of capital punishment. For this view, I am fortified by the judgment pronounced by Honourable Supreme Court in the case of *Muhammad Ismail* versus *The State*, reported in **2017 SCMR 713**, wherein it was held that **once prosecution sets up a particular motive but fails to prove the same, then ordinarily capital sentence of death is not awarded.**

23. Now, I would like to deal with the pleas raised on behalf of the convicts / appellants.

24. As regards the defence plea that the complainant and other two alleged eye-witnesses are closely related to the deceased, it may be observed that it has been held time and again by the Superior Courts that **mere relationship of the prosecution witnesses with the deceased cannot be a ground to discard the testimony of such witnesses if otherwise their testimony is confidence inspiring.** In this connection, reference may be made to the 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."

25. In the case of *Zakir Khan and others Vs. State*, reported in **1995 SCMR 1793**, Honourable Supreme Court held as under:

"However, mere relationship of a prosecution witness to the complainant or other prosecution witness cannot render his evidence unreliable unless it is established that he had motive to implicate the accused falsely in the case."

26. In another case reported as **Farooq Khan Vs. (State 2008 SCMR 917)**, wherein 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."

27. Reference may also be made to the decisions given in the cases reported as *Shamsher 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).

28. As regard the discrepancies and lacunas surfaced during the investigation of the case i.e. although appellant Nadir was alleged to have made straight fire at the deceased with a K.K; however, during the investigation the police had recovered pistol from him instead of K.K. and that allegedly recovered firearm weapons were sent to FSI with a delay of ten days. It may be observed that in case there is a strong and unimpeachable ocular version of the incident given by the eye witnesses to the extent of appellant Nadir Ali and their statements are confidence inspiring and are consistent with each other on all material aspects of the case, then such minor inconsistencies and discrepancies are to be ignored and preference should be given to the strong and convincing ocular version. Of course, had there been a case of weak, impeachable and untrustworthy ocular testimony, such discrepancies and lacunas could surely have weakened the prosecution case and the accused would have been entitled to be extended the benefit thereof; however, in view of unimpeachable, trustworthy and confidence inspiring ocular testimony of the three eye witnesses corroborated by medical and circumstantial evidence and proved motive, such discrepancies and lacunas are to be ignored. Even otherwise, any irregularity or illegality committed during the investigation in a case having unimpeachable and trustworthy evidence due to inefficiency of the police/Investigating Agency would not affect the trial.

29. In this connection, reference may be made to the case of *SHEHERYAR HUSSAIN and others Vs. The State* reported in 2021 P Cr. L J 647 [Gilgit-Baltistan Chief Court], wherein a Division Bench held as under:

“Even otherwise the site plan/inquest report are not substantive piece of evidence and any discrepancy therein will not effect on the outcome of the case. As far as the late recording of the statements of PWs is concerned, it is not denied by the defense counsel that all of the eye-witnesses are mentioned in the FIR which has promptly been lodged. If names of eye-witnesses are mentioned in the FIR, and their statements are late recorded, it could be termed as an inefficiency on the part of prosecuting agency and complainant cannot be penalized for any act/omission of the I.O. whether intentional or unintentional.”

30. In another case reported as *Mohammad Abideen Vs. State* (2021 P. Cr. L.J. 78) [Gilgit Biltistan] it was held that *any irregularity or illegality committed during the investigation does not vitiate trial.*

31. In the case reported as *Jaffer Ali Vs. State* (1998 SCMR 2669), 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 eye witnesses 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 for the reason that in most of the criminal cases the criminals get away without being punished on technicalities.”

32. It seems that so far as the case of appellant Nadir Ali is concerned, in the present case there is strong ocular evidence, supported by **medical evidence**, circumstantial evidence and recovery of the crime weapons so also motive also seems to be proved, hence, the aforesaid argument advanced by learned counsel for the appellants is also without any substance.

33. Although appellant Ali Nawaz is also alleged to have inflicted butt blows with his firearm weapon to Mst. Farzana; however, there is material contradiction and inconsistency between the ocular testimony and the medical evidence so far as the case of this accused is concerned.

34. Dr. Samina Shah, who examined injured P.W. Mst. Farzana, deposed that on 11.09.2018 the injured lady came to her at Taluka Hospital Warrah along with police letter for her medical treatment and report. After having examined the injured, she issued Provisional Medico legal certificate disclosing therein that Mst. Farzana had sustained an incised wound about 03 x ½ cm on left side of her head and swelling about 02 x 02 cm on her chin at the left side, hence she reserved her opinion and referred her for X-ray. After conduction of the X-ray, she issued final MLC wherein she disclosed that no fracture of skull was seen in the X-ray and she declared the nature of injuries as *Shajjah-i-Khafifah*.

35. Now putting the evidence of above named doctor in juxtaposition with the ocular testimony, it appears that as per ocular testimony, Mst. Farzana allegedly sustained two injuries due to inflicting butt blows to her by appellant Ali Nawaz; i.e. one at his head and the other **on her back**; however, the medical evidence disclose one injury on her head plus swelling on her chin at left side. There is, at all, no mention of the injury on her back as alleged by the three eye-witnesses. Besides, the alleged eye-witnesses did not say a single word about any injury or swelling on the left chin of Mst. Farzana, nor is there any mention of this fact in the memo of inspection of injuries allegedly sustained by her.

36. From this it is crystal clear that there is material contradiction and inconsistency between the ocular version and medical evidence, so far as the case of appellant Ali Nawaz is concerned, which creates doubt in the prosecution case to the extent of said accused. In this connection, reference may be made to the cases of *Muhammad Ali Vs. The State* reported in 2015 SCMR 137 and *Nadeem alias Kala Vs. The State* reported in 2018 SCMR 153, decided by Honourable Supreme Court. The *ratio decidendi* of the above-cited cases is; *where contradiction between the ocular testimony and the medical evidence occurs, benefit thereof should be given to the accused*.

37. Apart from above, no recovery has been affected from accused / appellants Ali Nawaz and Yar Mohammad, although they were also alleged to be armed with firearm weapons. Likewise, although motive alleged against accused Nadir Ali is; domestic / matrimonial differences between him and the complainant party; however, no motive has been shown against appellants Ali Nawaz and Yar Mohammad, as from perusal of the evidence of the prosecution witnesses, it does not find any mention that these two accused / appellants have any blood relation with appellant Nadir Ali.

38. Besides, although there is allegation against accused Ali Nawaz to have inflicted butt blows with his firearm weapon to Mst. Farzana; however, there is no allegation against appellant Yar Mohammad to have used the weapon with which he was allegedly armed. The allegation against him is only to the extent of his mere presence at the spot at the time of alleged incident.

39. It appears that the appellants Ali Nawaz and Yar Muhammad have been convicted and awarded sentence for offence punishable under section 302 (b) PPC mainly on the basis of vicarious liability. It may be observed that the principle of vicarious liability could be invoked only when common intention and object is proved and for this purpose, strong circumstances must exist to establish common intention. For this view, I am fortified by a latest judgment passed by a Division Bench of Baluchistan High Court in the case of Muhammad Rafique Vs. The State, reported in 2025 YLR 169 [Balochistan], wherein it was held as under:

"12. The trial court convicted the accused/appellant merely on the basis of surmises, conjectures, and probabilities. To attract the provision of Section 34, P.P.C., there must be some proof of an overt act on the part of each accused in furtherance of the common intention. The mere presence of an accused without any overt act at the place of occurrence at the time of occurrence with the co-accused, who commits the offence, may not be sufficient to connect the former with vicarious liability. The principle of vicarious liability cannot be invoked unless and until common intention and object are proved. For this purpose, strong circumstances must exist to manufacturing a common intention, which is missing in the present case. The word intention is a state of mind which is not ordinarily ascertainable but is to be gathered or inferred only from external acts and for this purpose, it is very necessary to examine the act itself of the accused. There must be material to show some overt act done in furtherance of common intention, which is missing in the present case. The prosecution has miserably failed to establish the common intention and common object of the appellant for the commission of the crime, and no corroborative evidence was produced by the prosecution with the statement of PW-5-A"

40. For the foregoing reasons, vide order dated 26.5.2025, Cr. Jail Appeal No.S-25 of 2020 to the extent of appellants Nadir Ali and Ali Nawaz was dismissed; however, in view of above said lacuna in the medical evidence coupled with other factors, as stated above, the sentence and conviction awarded to appellant Ali Nawaz was modified to the period he has already remained under incarceration. As far as appellant Yar Muhammad is concerned, as no specific role was assigned to him except mere his presence for which no tangible evidence and concrete material was placed/adduced by the prosecution at the time of trial and also considering other aspects, as stated above, instant appeal to the extent of appellant Yar Muhammad was allowed. Consequently, the conviction and sentence awarded to him through impugned judgment were set aside to his extent only. He was acquitted of the charge. Consequently, appellants Ali Nawaz and Yar Mohammad were ordered to be released forthwith if their custody is no more required in any other custody case.

41. Accordingly, instant appeal is partly allowed and stands disposed of in the above terms.

JUDGE

Larkana

Dated. 26.05.2025

Approved for Reporting