

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Jail Appeal No. S-53 of 2021

Appellant Mir Hazar son of Haque Dad Brohi	:	Through Mr. Inayatullah G. Morio, Advocate
State	:	Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh
Complainant Mst. Dur Bibi wife of Faqeer Muhammad Brohi	:	Through Mr. Mumtaz Ali Brohi, Advocate
Dates of hearing	:	07.04.2025 & 15.08.2025
Date of Judgment	:	29.08.2025

JUDGMENT

MUHAMMAD SALEEM JESSAR. J- By means of instant Cr Jail Appeal, the appellant has challenged his conviction and sentences awarded vide impugned judgment dated 28.10.2021 passed by learned Ist Additional Sessions Judge/MCTC, Kambar in Sessions Case No 119 of 2021 arising out of F.I.R No.61/2020 under Sections 302, 114, 148, 149 PPC, registered at P.S 'B' Section, Shahdadkot, whereby he convicted the accused / appellant and sentenced him to undergo life imprisonment as Tazir for committing an offence punishable under Section 302(b) PPC read with Section 149 PPC and to pay compensation of Rs.20,00,000/- (Rupees Twenty Lac only) to legal heirs of deceased Muhammad Jan as provided under Section 544-A Cr. P.C. and in case of failure, to undergo SI for six months more. The convict/appellant was also sentenced to pay fine of Rs.5000/- for committing offence punishable under Section 148 PPC read with Section 149 PPC. The case against proclaimed offenders namely accused Zaman S/o Ali Gohar, Zafar S/o Wali Jan, Khamiso S/o Nokar and Ali Jan S/o Gulsher was ordered to be kept on dormant file till their arrest or otherwise as per law.

2. Brief facts of prosecution case, as disclosed by the complainant Mst. Dur Bibi in her FIR lodged on 16.09.2020 at 11:30 pm, are; that on fateful date i.e. 16-09-2020 five persons namely, Zaman S/O Ali Gohar, Mir Hazar S/O Haque Dad, Zafar S/O Wali Jan, Khamiso S/O Nokar and Ali Jan S/O Gulsher, all by caste Brohi, being duly armed with pistols intercepted the complainant and her sons namely, Jan Mohammad (since deceased), Abdullah and Safiullah, while riding on a donkey-cart near 'Shahedan jo muqam' Link Road at 7.45 am and in prosecution of common object thereof and at the abetment of accused Ali Jan Brohi present accused Mir Hazar, Zaman, Khamiso and Zaffar by making one by one firing shot-dead complainant's son Muhammad Jan Brohi and then they all escaped from the place of incident.

3. Initially concerned S.H.O. submitted Final Report in the Court of Civil Judge & Judicial Magistrate-II, Shahdadtown showing all the accused including present appellant as absconders but thereafter accused / appellant Mir Hazar Brohi was produced for remand, thereafter learned Civil Judge & Judicial Magistrate-II Shahdadtown, having declared all other accused as proclaimed offenders, sent-up present accused/appellant along with R&Ps to the Court of Sessions for facing trial.

4. On 21-4-2021 a formal charge was framed against present convict/accused vide Ex-05 to which he pleaded not guilty and claimed to be tried vide his plea Ex-05/A.

5. In order to prove its case, prosecution examined P.W.1, Complainant Mst. Dur Bibi Brohi at Exh-6 who produced FIR No.61/2020 as Ex-6/A. P.W.2, alleged eye-witness, Abdullah Brohi was examined at Ex-7, whereas another alleged eye-witness Safiullah Brohi, P.W.3 was examined at Ex-8. P.W. 4, ASI Abdul Sattar Brohi viz. author- cum-I.O. was examined at Ex-9, who produced Departure Entry No.6 recorded on 16.9.2020 at 0845 hours, Arrival Entry No.8 recorded at 1300 hours on the same date, original memo of inspection of dead body of the deceased, Lash chakas Form, Danishtnama of the deceased, FIR related entries No.30 & 31 recorded at 2330 & 2355 hours on 16-9-2020, original memo of site inspection and collection of the bloodstained earth material and four empties of 30 bore, positive bloodstained earth report dated 05-10-2020, attested P.S. copy of memo of arrest of accused Mir Hazar and recovery of crime weapon viz. un-licensed Pistol of 30 bore and Ballistic

Examination Report dated 29-3-2021 as Ex-9/A to 9/I. P.W. 5, mashir Ahmed Hussain Brohi was examined at Ex-10, whereas P.W. 6, mashir of arrest and recovery namely, PC Mukhtiar Ali was examined at Ex-11. P.W. 6, Tapedar Ghulam Yaseen was examined at Ex-12, who produced original site sketch as Ex-12/A. P.W. 8, Dr. Raj Kumar was examined at Ex-13, who produced Lash chakas Form and postmortem report dated 22-9-2020 as Ex-14/A & 14/B. P.W. 9, Corpse-bearer PC Sajid Ali was examined at Ex-14, who produced original receipt in respect of receiving the dead-body of deceased from the doctor as Ex-16/A.

6. Thereafter, learned DDPP, appearing for the State, closed prosecution side vide statement Ex-17. Thereafter, statement of accused / appellant was recorded under Section 342 Cr. P.C. at Ex-18 in which he denied prosecution allegations; however, he did not opt to depose on oath in terms of Section 340 (2) Cr. P.C. However, he produced witnesses namely, Ali Muhammad Brohi and Muhammad Bux Brohi in his defence, whose evidence was recorded vide Ex-19 and 20 and then defense side was closed vide Statement Ex-21.

7. After formulating the points for determination, recording evidence of the prosecution witnesses, and that of defense witnesses and hearing counsel for the parties, trial Court vide impugned judgment convicted the accused / appellant, as stated above, whereas the case against the aforesaid proclaimed offenders was ordered to be kept on dormant file till their arrest or otherwise as per law. The appellant has challenged his conviction by preferring instant jail appeal.

8. I have heard arguments advanced by learned counsel for the appellant, 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.

9. Learned Counsel for the appellant submitted that there are major contradictions in the statements of PWs and their evidence is not in consonance with the version of the FIR. He argued that although the offensive weapon was recovered from the accused; however, he has been acquitted of said charge. He further submitted that as per contents of FIR, the complainant party was riding on donkey-cart at the time of alleged incident and after the incident they had shifted the deceased to hospital on auto rickshaw, but have not deposed about the availability of donkey-cart. He further submitted that

the appellant is a person of advanced age and at the time of his arrest he was aged 70 years, therefore, he could not be presumed to have committed the crime at such advanced age. He further submitted that the alleged three eye-witnesses, are the mother and real brothers of the deceased respectively; besides, one of the mashirs is also son of the complainant, while other mashir is her son-in-law, therefore, they being interested witnesses, their testimony cannot be relied upon to maintain conviction against the appellant. He further submitted that in view of above, the prosecution has failed to establish its charge against the appellant beyond reasonable doubt. He, therefore, prayed that by allowing instant jail appeal, the appellant may be acquitted of the charge. In support of his contentions, he placed his reliance upon the cases of KHALID MEHMOOD alias KHALOO Versus The STATE (2022 SCMR 1148), MUHAMMAD ASHRAF alias NIKKA Versus The STATE (2022 SCMR 1328), TAJAMAL HUSSAIN SHAH Versus The STATE and another (2022 SCMR 1567), MUHAMMAD BILAL and another Versus The STATE and others (2021 SCMR 1039), MUHAMMAD IMRAN Versus The STATE (2020 SCMR 857) and GHULAM AKBAR and another Versus The STATE (2008 SCMR 1064). Lastly, while referring to page-117 of the paper book, learned Counsel submitted that per memo of recovery 04 empties were shown to have been recovered from the place of incident, whereas the report submitted by the Forensic Laboratory shows 08 empties of different bore.

10. Learned Additional P.G., appearing for the State, while opposing the appeal submitted that the appellant as well as absconding co-accused had specifically caused fire shot injuries to the deceased and all the accused have been assigned specific role in causing such injuries, besides; the injuries allegedly sustained by the deceased were through and through; hence, the accused had intentionally committed brutal murder of the deceased, as is evident from the medical evidence. He, therefore, submitted that medical evidence is also in consonance with the ocular version and has not been shattered by the defence despite conducting lengthy cross-examination. He, therefore, submitted that by dismissing this appeal, the impugned judgment may be maintained. In support of his contentions, he placed his reliance on the cases of MUHAMMAD YASEEN & another v. The STATE & others (2024 SCMR 128) and GHAFFAR MAHESSAR v. The STATE through P.G. SINDH & others (2022 SCMR 1280).

11. Mr. Mumtaz Ali Brohi, learned counsel for the complainant, while adopting arguments advanced by learned Additional P.G., opposed the appeal and submitted that the convict was assigned specific role and the injury allegedly attributed to him had been proved to be through and through as per medical evidence. As far as contradictions pointed out by learned defence counsel are concerned, Mr. Brohi submitted that said contradictions are minor in nature and cannot be termed to be material; besides, despite such contradictions and minor discrepancies, they have supported the case of prosecution and have deposed in consonance with the contents of FIR, which has also been corroborated by the medical evidence. Mr. Brohi lastly submitted that absconding co-accused who had also been assigned specific role of causing injuries to deceased are close relatives to the appellant and are waiting and watching for the outcome of the appeal in hand. He, therefore, submitted that by dismissing this appeal, the impugned judgment may be maintained.

12. In instant case, ocular testimony is consisting of Complainant Mst. Dur Bibi, P.W. Abdullah and P.W. Safiullah. Their evidence is almost common. Complainant Mst. Dur Bibi, who is mother of the deceased, in her examination in chief, deposed that five years ago a person from the accused side was murdered, whereupon the accused party used to claim that complainant party in instant case was supporting rivals of accused party, as such they were annoyed for this reason. Complainant further stated that on 16-9-2020 she along with her sons namely, Muhammad Jan aged about 26 years (since deceased), Abdullah and Safiullah were going to Shahdadkot City on donkey-cart. At about 07:45 am when they reached at the link road leading towards village Ameer Bux near graveyard 'Shahedan Jo Muqam', they saw that five armed persons were coming from front side who were identified as Zaman S/o Ali Gohar Brohi, who was riding motorbike and Mir Hazar S/o Haqdad was sitting behind him, while Zafar S/O Ali Jan was riding another motorbike, while two armed persons namely, Khamiso S/o Nokar Brohi and Ali Jan S/o Gulsher, were sitting behind him. All the accused were Brohi by caste and were residents of Village Nokar Khan Brohi, Taluka Shahdadkot. When they reached near complainant party, they stopped their motorbikes and alighted therefrom. All accused had taken out pistols from folder of their shalwars and pointed towards the complainant party and asked them to stop, whereupon they stopped. Then the accused forcibly got alighted them from

donkey-cart. They also asked the complainant party to remain silent and due to fear they did so. Thereafter, accused Ali Jan said to deceased Muhammad Jan that he was supporting their rivals, therefore, he will not be spared. Saying so, he instigated other accused persons to kill complainant's son, Muhammad Jan whereupon accused / appellant Mir Hazar Khan made straight fire with his pistol at Muhammad Jan which hit him at his right back side of neck, while accused Zaman made straight fire at Muhammad Jan which hit him at his left side of his head, whereupon Mohammad Jan fell down on the ground. Thereafter, accused Khamiso also made straight fire at Muhammad Jan with his pistol which hit him at the left side of his shoulder, while accused Zafar made straight fire at Muhammad Jan with his pistol which hit him at his left side of shoulder. Later, all the accused fled away from the scene of offence on their motorbikes. Then the complainant party noted that Mohammad Jan had succumbed to his injuries and he was also bleeding. Then they shifted his dead body to Taluka Hospital Shahdadkot where police also arrived and completed legal formalities. After burial on the same date viz. 16-9-2020 the complainant went to P.S "B" Section Shahdadkot and lodged FIR at 11:30 p.m.

13. The evidence of other alleged two eye-witnesses namely, Abdullah and Safiullah, who are sons and brothers of the complainant and deceased respectively, is almost on the same line.

14. From perusal of 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 so also specific role assigned to each accused, names of the accused persons and regarding motive. There seems to be no loophole / flexibility in their evidence. Even otherwise it does not appeal to a prudent mind 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. This seems to be quite illogical and unnatural.

15. Although there are certain contradictions in evidence of these three eye-witnesses; however, the same cannot be said to be material in nature so as to put any dent in the prosecution case and the same do not adversely affect the strong ocular version given by these eye-witnesses in their respective

evidence. Needless to emphasize that in case there is a strong and unimpeachable ocular version of the incident given by the eye witnesses and if their statements are confidence inspiring and are consistent with each other on all material aspects of the case, then such minor contradictions, inconsistencies and even discrepancies / lacunas in the investigation are to be ignored and preference should be given to strong and convincing ocular version. Of course, had there been a case of weak, impeachable and untrustworthy ocular testimony, such contradictions and / or discrepancies and lacunas could surely have weakened the prosecution case and the accused would have been entitled to be extended benefit thereof; however, in view of unimpeachable, trustworthy and confidence inspiring ocular testimony of the three eye witnesses corroborated by medical and circumstantial evidence, yet to be discussed, such contradictions, discrepancies and lacunas are to be ignored.

16. The ocular evidence is further corroborated by the medical evidence. Medical Officer, Dr. Raj Kumar in his Examination-in-chief deposed that on external examination he found (i) a lacerated punctured wound on left parital region of skull which was described as 'wound of entry' (ii) a lacerated punctured wound on right parital region of skull which was described as 'wound of exit', (iii) a lacerated punctured wound on right side of neck, (iv) a lacerated punctured wound on left side of neck which was described as 'wound of exit', (v) a lacerated punctured wound on left shoulder joint laterally which was described as 'wound of Exit', (vi) a lacerated punctured wound at root of neck on left side which was described as 'wound of exit', (vii) a lacerated punctured wound on left shoulder joint latterly near injury No.(v) which was described as 'wound of entry' and (viii) a lacerated punctured wound at root of neck on left side near injury No. (vi) which was described as 'wound of exit'.

17. He opined that aforesaid injuries were caused by discharge from fire arm such as pistol. According to him, the time between injuries and death was instantaneous, whereas the time between death and post-mortem was about 02 hours.

18. From perusal of medical evidence it seems that the same is consistent and in consonance with ocular account of the incident on all material aspects i.e. the number of injuries, location thereof, kind of weapon used in causing

such injuries, the date and time of causing said injuries as well as date and time of conducting postmortem examination. Although in the opening lines of his evidence, Dr. Raj Kumar deposed, "On **22-9-2020** I was posted as a MO at Taluka Hospital Shahdadkot. **On the same date**, the SHO of P.S "B" Section Shahdadkot sent the dead body of the deceased Muhammad Jan S/o Faqeer Muhammad Brohi to me for conducting the post mortem examination.", whereas as per ocular evidence the dead body of the deceased was brought at the hospital on **16.9.2020** and not on **22.9.2020**; however, on the face of the record, apparently it seems to be a typographical mistake or a mistake committed inadvertently due to oversight, for the simple reason that in the postmortem report against the Column No.2(a) "Exact time its receipt", "09:30 AM - 16-09-2020" and against Column No.2(b), "Exact time beginning PM Examination", "09:45 AM - 16-09-2020" have been mentioned. Besides, PW PC Sajid Ali, corpse-bearer, in his evidence deposed that on **16.09.2020**, ASI Abdul Sattar Brohi, IO of the case, handed over dead body of the deceased along with Lash Chakas Form to him for postmortem examination and accordingly he handed over the dead body on the same date to the doctor and after conducting postmortem the doctor returned dead body of the deceased as well as his blood stained cloths to him. He then handed over the dead body to the brother of deceased namely Abdullah. He also produced such receipt dated **16.09.2020**, Ex. 16/A.

19. The ocular testimony is further corroborated by circumstantial evidence. The IO of the case ASI Abdul Sattar Brohi deposed that on 16-9-2020 he received a telephonic call of the complainant that her son Muhammad Jan was murdered by accused Zaman and others, therefore he reached Taluka Hospital Shahdadkot where he observed all legal formalities. He then handed over the dead body of deceased to P.C Sajid Ali Barach for the purpose of postmortem. He also deposed that on 04-3-2021, he on receiving information that proclaimed offender Mir Hazar is standing at the pointed place, he went to arrest him along with police party. However, when he reached at pointed place along with alleged eye witness Abdullah, on seeing the police party, the convict / appellant made straight firing upon them and in retaliation police also made firing which hit on both legs of accused and he fell down while crying in injured condition, thereafter he arrested the accused and fulfilled legal formalities.

20. As stated above, PC Sajid Ali deposed that on **16.09.2020**, ASI Abdul Sattar Brohi, IO of the case, handed over dead body of the deceased along with Lash Chakas Form to him for postmortem examination and accordingly he handed over the dead body on the same date to the doctor and after conducting postmortem the doctor returned the dead body of the deceased as well as his bloodstained cloths to him. He then handed over the dead body to brother of deceased namely Abdullah. Besides the blood stained earth and crime empties were also secured from the place of incident which were sent by the IO to Chemical Examiner and ballistic expert respectively who in turn submitted positive reports.

21. So far as motive is concerned, the complainant in her evidence deposed that prior to this incident five years ago, a person of accused side was murdered whereupon the accused persons claimed that the complainant party in instant case was supporting their enemies and for this reason the accused persons were annoyed with complainant party and consequently they committed murder of complaint's son Muhammad Jan. The accused have denied this fact in his statement recorded U/s 342 Cr. P.C. and even the trial court has also not believed the motive set-forth by the prosecution and has observed that the motive is shrouded in mystery.

22. Even otherwise, failure to prove motive could only affect 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**. It may be pointed out that in instant case too, the trial court has not awarded death penalty and has sentenced the appellant to undergo imprisonment for life.

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

24. As regards defence plea that there are major contradiction in evidence of the prosecution witnesses particularly in evidence of alleged three eye-witnesses, it may be observed that on minute scrutiny of the evidence, as stated above, it appears that there are only a few contradictions in the statements of three eye-witnesses which too are of minor nature, thus the

same do not put any dent or create doubt in the prosecution evidence. Now it is a well settled principle of law that minor contradictions in the evidence are to be ignored and only material contradictions should be taken into consideration.

25. In the case reported as *AIJAZ NAWAZ alias BABA Vs. The State* (2019 P.Cr.L.J. 1775 [Sindh]) a Division Bench of this Court held as under:

“By and large, the people cannot accurately recall the consequences of events which took place in a short span. They can only remember the main purport of the incident. It is unrealistic to expect from a witness to be a human tape-recorder or a video camera. It is not expected from the witness to have a photographic memory and to recall the minute details of the incident. It cannot be expected from a witness to narrate the incident on the mathematical niceties in criminal cases. Thus, the discrepancy pointed out by the learned defence counsel in prosecution evidence with regard to the time of arrival of the police at the place of occurrence could not obliterate, an otherwise acceptable evidence. From the perusal of entire evidence, the manner of incident and the genesis of the incident have not been disputed. We, therefore, do not find any force in the contention of the learned defence counsel.”

26. In another case of *ROSHAN ALI Vs. The State*, reported in 2019 MLD 1542 (Sindh Sukkur Bench), another Division Bench of this Court held as under:

“No doubt some minor contradictions have come on record which do creep due to passage of time but the same can be ignored, because settled principle of law is that minor contradictions or improvements in the statements of the witnesses are to be overlooked and only material contradictions are to be considered. In this regard reliance can be placed on case of Zulfiqar Ahmed and another v. The State (2011 SCMR 492).”

27. In the case reported as *Jaffer Ali Vs. State* (1998 SCMR 2669), Honourable Supreme Court, while dealing with this point, held as under:

“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.”

28. Learned counsel for the appellant also contended that as the accused / appellant has been acquitted from the charge of off-shoot case under the provisions of the Sindh Arms Act, 2013, therefore, he may also be acquitted

from the charge of instant case. In this context, suffice it to observe that the Superior Courts in some cases have held that if the accused is acquitted in the main case, then he should also be acquitted in the offshoot case under the Arms Act; however, there is no such case-law that if an accused has been acquitted in the offshoot case under the Arms Act, then he is also entitled to be acquitted from the charge of main case. The main case is to be decided on its own merits and more particularly in instant case where there is strong, confidence inspiring and unimpeachable ocular testimony of three eye-witnesses, the same cannot be ignored and accused cannot be acquitted merely on the basis that he has been acquitted from the charge of offshoot case. Even otherwise, now it is settled principle of law that recovery of crime weapon is only a corroborative piece of evidence and not substantive piece of evidence. If no recovery of alleged crime weapon is effected from the accused, even then it does not adversely affect the strong ocular version of the eye-witnesses adduced by them in main case.

29. In this connection, reference may be made to the case of *ABDUL RASHID alias SHEDA MOTA and another Vs. The State*, wherein Honourable Supreme Court held as under:

"There can be no departure to the rule that if the direct evidence is credible, truthful and trustworthy and it is deemed sufficient to establish the charge, the corroboration from any other source is not I required. The rule of corroboration in the criminal administration of justice is not a mandatory rule to be observed in each case rather it being a rule of abundant caution, is applied to satisfy the mind and ensure the truthfulness of the direct evidence."

30. So far as the contentions of appellant's counsel regarding advanced age of the accused / appellant is concerned, it may be observed that on the basis of such fact conviction of the accused cannot be set aside; however, such fact could be taken into consideration while determining the quantum of sentence. In this context, reference may be made to the case of *BASHIR AHMED vs. THE STATE*, reported in 2016 P Cr. L J 1682 [Sindh], wherein a Division Bench of this Court held as under:

"Learned defence counsel stressed that it is not clear what happened immediately before incident and that motive has not been proved having remained shrouded in mystery. He argued that accused in his statement recorded under section 342, Cr.P.C. on 05.05.2011, has mentioned his age about 77 years now aged about 81 years. Lastly argued that appellant is suffering from various diseases. These submissions are not convincing enough to set aside the conviction of

the accused, more particularly in a double murder case, however the same could be taken into consideration while determining the quantum of sentence."

31. Needless to emphasize that although accused is considered to be a favourite child of law but at the same time the aggrieved party is also not to be treated as an alien as it is he who approaches the court for redress of his grievances against the aggression of the accused. If in a genuine case grievance of the victim is not redressed the people get frustrated from the judicial system and turn wild for lynching, which situation becomes more hazardous. Though the benefit of doubt is to be extended to the accused but that doubt should be of such a nature which may inherently affect the prosecution case and pricks the judicial mind about genuineness of the allegations. However, mere artificial or any hypothetical doubt should not be followed for acquittal of the accused. The Penal laws impel multi-dimensional impact at the society, First & foremost is to pacify the victim by punishing the culprit, the punishment so inflicted acts as a deterrent to the criminals and consequently it brings out peace and tranquility and thereby transfers a society into a civilized one. Moreover, the concept of criminal administration of justice is based on the assumption that a criminal act is injurious not only to an individual but also to society as a whole and justice is not only to be done but should be seen to have been done and leniency is not to be shown at the cost of justice.

32. In the case reported as *MUHAMMAD ILYAS Vs. THE STATE and another* (2011 P Cr. L J 966 [Peshawar]) it was held:

"No doubt, under the law an accused is a favourite child of law and benefit of even a single doubt has to be extended to him but the doubt must be reasonably entertained by a person of common prudence on justified grounds. The benefit of doubt should not be stretched to the extent of self created, imaginary and hypothetical in favour of accused at the cost of widows, orphans who had fallen victim to the acts of brutality, who too, also require equal treatment with the accused. Thus, a balance and equilibrium must be maintained between accused and complainant party in this connection by treating them equal before a court of law during dispensation of justice."

33. As regards the defense plea that the complainant and other two alleged eye-witnesses are the mother and brothers of the deceased respectively, so also one of the mashirs is son of the complainant whereas other mashir is her son-in-law, 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."

34. 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."

35. 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."

36. Reference may also be made to the esteemed judgments rendered 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).

37. It may be noted that the accused / appellant in his statement recorded under Section 342 Cr. P.C. took 'plea of alibi' that on the date and time of alleged incident he was not in Shahdadt, where alleged incident took place, but he was present in Naseerabad Balochistan where he permanently resides. In support of this plea, he produced two witnesses namely, Ali Muhammad and Muhammad Bux. The crux of the evidence of both defense witnesses is that on the day of incident viz. 16.9.2020, the accused / appellant Mir Hazar

was with them in Nasirabad Baluchistan. They further stated that on said date in the evening hours accused Mir Hazar Brohi, who is their neighborer, was very upset and on their query he disclosed that a person has been murdered in which case he has also been nominated being *nek-mard* of the community. D.W. 1 Ali Mohammad further stated that he made efforts for private settlement between the parties and that he came to know that other side had injured the appellant/accused but police lodged cases against the appellant.

38. The story narrated by these two defence witnesses does not appeal to common sense for the simple reason that according to them in the evening hours the appellant informed them that he has been nominated in instant murder case, whereas the F.I.R. in this case was lodged by the complainant in the late hours of night i.e. at 11.30 p.m. When the FIR was lodged at 11.30 p.m., then as to how the accused came to know about his nomination in the case which fact was allegedly narrated by him to the defence witnesses in the evening hours, i.e. even prior to registration of FIR.

39. The upshot of above discussion is that prosecution has proved its case against the convict / appellant beyond reasonable doubt. Consequently, instant Criminal Jail Appeal is dismissed and impugned judgment of conviction dated 28.10.2021 passed by learned Ist Additional Sessions Judge/MCTC, Kambar in Sessions Case No 119 of 2021 arising out of F.I.R No.61/2020 under Sections 302, 114,148,149, PPC, registered at P.S 'B' Section, Shahdadkot, is hereby maintained.

JUDGE

Larkana

Dated. 29.08.2025

Approved for Reporting