IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Jail Appeal No.S-27 of 2022
Criminal Jail Appeal No.S-28 of 2022

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Appellant	Ghulam Hyder @ Bano son of Gul Hassan Lashari through Mr. Irfan Badar Abbasi, Advocate.
Respondent	The State through Mr. Sardar Ali Solangi, Deputy Prosecutor General {Sindh}.
Date of hearing	**12-09-2025**
Date of Judgment	**25-09-2025**

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J U D G M E N T

Shamsuddin Abbasi, J. Through captioned appeals, Ghulam Hyder @ Bano son of Gul Hassan Lashari, appellant, has challenged the validity of the two judgments, delivered on 30.07.2022, penned down by the learned Additional Sessions Judge-VI, Larkana, in Sessions Case No.865 of 2020 {FIR No.77 of 2020} registered at Police Station Allahabad, District Larkana, for offences under Section 302 and 34, PPC, and Sessions Case No.866 of 2020 {FIR No.84 of 2020} registered at Police Station Allahabad, District Larkana, for offence under Section 25 of Sindh Arms Act, 2013, through which he was convicted under Section 302{b} read with Section 34, PPC, for committing Qatl-i-Amd of Mst. Saima and sentenced to life imprisonment and to pay a sum of Rs.100,000/- as compensation in terms of Section 544-A, Cr.P.C. payable to the legal heirs of the deceased and to suffer six months' simple imprisonment more in lieu of compensation. He was also convicted under Section 25 of Sindh Arms Act, 2013, for recovery of an unlicensed pistol of 30 bore loaded with magazine containing two live bullets, alleged to be used in the commission of murder of Mst. Saima, and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/- and to suffer simple imprisonment for a further period of six months in lieu of fine. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended to appellant in each case.

2. FIR in this case has been lodged on 06.11.2020 at 8:30 am whereas the incident is shown to have taken place on 04.11.2020 at 4:00 am. Complainant SIP Imdad Ali Hulio has stated that on the

fateful day {04.11.2020} while he was present at P.S. Allahabad, one Mashooq Ali son of Allah Warrayo by caste Lashari appeared and informed him that about 10 /15 days prior to the incident Mst. Saima daughter of Ghulam Hyder got married with his son Zahid Hussain and on 03.11.2020 he alongwith his son Zahid Hussain and daughter-in-law Mst. Saima had gone to the house of Saima's father namely, Ghulam Hyder, who was constantly compelling Saima to accompany him to Karachi, but she refused upon which Ghulam Hyder became annoyed and left the house while they after taking dinner with other family members went to sleep and on 04.11.2020 at 4:00 am they woke up on hearing noise of opening main door and saw in the light of solar bulb Ghulam Hyder, accompanied by two unidentified persons, all armed with pistols, dragging Saima to accompany him to Karachi and on her refusal made a direct fire from his pistol, which hit to her head {temple} and she fell down on the ground and blood started oozing. The inmates of the house raised cries and in the meantime all three of them made their escape good while Saima expired on spot due to injuries and on information police visited the place of incident and shifted the dead body to hospital and after post-mortem handed over the dead body to Mashooq Ali, who promised to come back after funeral rites but did not turn up for registration of FIR so he himself became complainant and lodged FIR on behalf of the State on 06.11.2020.

3. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under Sections 302 and 34, PPC, whereby the appellant was sent up to face the trial whereas separate charge sheet in respect of recovery of unlicensed pistol, used in commission of murder of Mst. Saima, was also submitted for trial against appellant.

4. The appellant was indicted for commission of murder of Mst. Saima under Section 302 and 34, PPC. He pleaded not guilty to the charged offence and claimed a trial. A separate charge was also framed against him for recovery of an unlicensed pistol of 30 bore falling under Section 23(i)(a) of Sindh Arms Act, 2013, which too was denied by him and claimed to be tried.

5. At trial, the prosecution has examined as many as 10 witnesses in main case namely, SIP Imdad Ali {complainant} as PW.1 Ex.4, Zahid Ali {eye-witness} as PW.2 Ex.5, Mashooque Ali {eye-witness} as PW.3 Ex.6, Javed {eye-witness} as PW.4 Ex.7, Dr. Aneesa {WMO} as PW.5 Ex.8, PC Sabir Hussain as PW.6 at Ex.9, Hussain Bux {Tapedar} as PW.7 Ex.10, SIP Khalid Hussain {Investigating Officer} as PW.8 Ex.11, Ajeeb Khan as PW.9 Ex.12 & PC Ahmed Ali as PW.10 Ex.13 and four witnesses namely, PC Sabir Hussain as PW.1 Ex.4, SIP Khalid Hussain {Investigating Officer} as PW.2 Ex.5, Ajeeb Khan as PW.3 Ex.6 and PC Ahmed Ali as PW.4 Ex.7 in case of recovery of unlicensed arm and closed its side. All of them have exhibited certain documents in their respective evidence and were subjected to cross-examination by the defence in each case.

6. Appellant was examined under Section 342, Cr.P.C. in each case. He has denied commission of offences, professed his innocence and stated his false implication with malafide intention. He opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in his defence.

7. Upon culmination of the trial, the learned trial Court found the appellant guilty of the offences charged with and, thus, convicted and sentenced him in each case as detailed in para-1 (supra) and aggrieved of such convictions and sentences, the appellant has preferred the listed appeals, which are being decided together through this common judgment.

8. It is contented on behalf of the appellant that he is innocent and has falsely been implicated in this case by the witnesses who are interested and inimical to the appellant, hence they have falsely deposed against him. Next contends that none from the husband, father-in-law and brother, who alleged to be the eye-witnesses of the incident, have come forward to lodge FIR, which has been lodged by SIP Imdad Hussain on behalf of the State after two days of the incident and that too without furnishing any plausible explanation. Also contends that appellant is father of the deceased and it is beyond imagination that a father could commit murder of his real daughter and that too for simple reason of refusing to go to Karachi. Per learned counsel, the ocular account has been furnished by related

and interested witnesses without support of independent corroboration, which too is not in line with the medical evidence, hence the same has been wrongly relied upon. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant. Also contends that PW. Javed, who is brother of deceased and one of the eye-witnesses of the incident has not supported the prosecution case and declared hostile. Per learned counsel, the learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused. Next contends that the learned trial Court also did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant merely on assumptions and presumptions. The prosecution has failed to place on record any evidence to prove motive set-forth in the FIR. Nothing incriminating has been recovered from the possession of appellant and the positive reports of Forensic Division and Chemical Examiner lost their evidentiary value on account of delay in sending the same to the concerned offices for examination and report. The prosecution has also failed to prove the safe custody of case property and its safe transit to the concerned offices for analysis. The learned counsel further argued that the impugned judgments are devoid of reasoning without specifying the incriminating evidence against appellant. Per learned counsel, the appellant has not done any offence and in his Section 342, Cr.P.C. statement too he has denied the whole allegations leveled against him by the prosecution. The learned trial Court did not consider the plea taken by the appellant and recorded conviction ignoring the neutral appreciation of whole evidence. Lastly submits that the impugned judgments are the result of misreading and non-reading of evidence and without application of a conscious judicial mind, hence the same are bad in law and facts and the convictions and sentences awarded to the appellant through the said judgments merit reversal. In support of his submissions, the learned counsel for the appellant has placed reliance on the cases of *Khial Muhammad v The State* {2024 SCMR 1490}, *Ghulam Abbas and another v The State and another* {2021 SCMR 23}, *Tajamal Hussain Shah v The State and another* {2022 SCMR 1567} and *Amin Ali and another v The State* {2011 SCMR 323}.

9. On the other hand, the learned DPG for the State while controverting the submissions of learned counsel for the appellant has submitted that the incident was reported to police with promptitude, but the FIR has been lodged on behalf of the State after two days of the incident, hence such a delay is not helpful to the appellant. Next contends that the ocular account furnished by the prosecution has been supported by medical evidence, duly corroborated by circumstantial evidence like recovery of crime weapon and positive report of Forensic Division that single empty secured from the place of occurrence was matched with the pistol, recovered from the pointation of appellant. Also contends that the prosecution in support of its case has produced ocular as well as medical evidence coupled with circumstantial evidence, which was rightly relied upon by learned trial Court. Per him, the findings recorded by the learned trial Court in the impugned judgments are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken and the plea taken by the appellant that he has no nexus with the occurrence does not carry weight vis-à-vis providing help to the defence. The prosecution has successfully proved the charges against the appellant beyond shadow of any doubt, thus, the appeals, filed by the appellant warrant dismissal and the convictions and sentences recorded by the learned trial Court are liable to be up-held.

10. I have given my anxious consideration to the submissions of both the sides and perused the entire available material minutely with their able assistance.

11. Occurrence took place inside house of appellant, situated at Mumtaz Colony, Larkana. The parties are known to each other previously. The appellant is real father of deceased Mst. Saima, who was in the Nikah of Zahid Ali, one of the eye-witnesses of the incident. The deceased went to the house of appellant alongwith her husband Zahid Ali and father-in-law Mashooque Ali and stayed there for a night where a quarrel took place between appellant and deceased as she refused to accept the appellant's demands to accompany him to Karachi and for this reason the appellant became annoyed and committed murder of his daughter by firing with pistol. Record further reveals that the incident was reported to police promptly on the same day. The promptitude posed by Mashooque Ali, one of the eye-witnesses of the incident, in

informing the police turned down the stance taken by the appellant for his false with malafide intention. The incident has taken place on 04.11.2020 at 4:00 am and on the same day the SIP Khalid Hussain, on receipt of information, visited the place of incident under entry No.25 dated 04.11.2020 at 7:15 am, accompanied by Mashooque Ali, and reached there at 8:00 am, inspected the dead body, prepared lash chakas and Danishnama and also secured blood-stained mud and an empty shell of 30 bore pistol, sealed the same at spot vide mashirnama (Ex.11/B) in presence of mashirs Ajeeb Khan and Karam Ali and thereafter he removed the dead body to hospital for autopsy. The record is also suggestive of the fact that on 20.11.2020 the police arrested the appellant on spy information and recovered an unlicensed 30 bore pistol, loaded with magazine containing two live rounds, disclosed to be used in the commission of murder of Mst. Saima. The police took custody of the pistol and sealed it at spot vide mashirnama (Ex.11/H) in presence of same mashirs. The recovered pistol and the empty shell that was secured from the place of incident were sent to the office of Forensic Division, Larkana, which issued a report, available at Ex.11/K, testifying that the empty shell was fired from the 30 bore pistol, received by the office. The prosecution has also placed on record Chemical Report, available at Ex.11-J, issued by the Chemical Laboratory Sukkur @ Rohri analyzing that received parcels containing earth material and last wearing clothes of the deceased were stained with human blood.

12. The ocular account in this case has been furnished by Zahid Ali (PW.2 Ex.5) and Mashooque Ali (PW.3 Ex.6), who are husband and father-in-law of deceased Mst. Saima. Both of them while appearing before the learned trial Court have fully supported the case of the prosecution and specifically involved the appellant in the commission of offence charged with by deposing that the appellant was compelling deceased to accompany him to Karachi and since she refused to do so, he became annoyed and committed murder of Mst. Saima by putting pistol on left side of her forehead and shot fire resulting her death. Both of them have further deposed that the time they woke up on the noise of door, saw the appellant, accompanied by two persons, dragging Mst. Saima, raised cries but could not resist and intervene due to threats of appellant, who pointed pistol towards them and asked not to interfere, otherwise they would be killed,

therefore, they remained silent. PW.3 Mashooque Ali has further deposed that soon after the incident he went to P.S. and informed the incident to police. The police visited the place of incident and shifted the dead body to hospital and after post-mortem handed over the dead body to him for funeral.

13. Both eye-witnesses Zahid Ali and Mashooque Ali while recording their evidence have established their presence at the place of occurrence, which has not been shattered by the defence during cross-examination. Both of them have deposed same facts in their evidence, which are in line to that of their earlier statements recorded by the Investigating Officer during investigation. They have supported the case of the prosecution and deposed full account of the incident and also implicated the appellant in the commission of offence charged with. No doubt they are related to deceased, despite they cannot be considered as interested witnesses rather they are natural witnesses because they have explained their presence at the scene of occurrence by deposing that on 03.11.2020 they alongwith deceased went to the house of appellant and stayed there for a night and it was 4:00 am they woke up on the noise of door, saw the appellant dragging Mst. Saima and the time they raised cries the appellant made a straight fire putting his pistol on left side of Saima's temple and shot her dead, hence their presence on the scene of occurrence is natural and their testimony cannot be disbelieved because the Court has to see the truthfulness and credibility of such witnesses. The learned counsel for the appellant has vehemently argued that the story mentioned in the FIR has been supported by the interested witnesses and no independent corroboration has been provided by any independent witness. This submission of learned counsel for the appellant cannot be appreciated because the law has now well settled on the point that the fact of relationship of the witnesses with the complainant or with the deceased would not be sufficient to smash the evidence adduced by such witnesses or to disbelieve their credibility as well as legal sanctity. Even otherwise the rule requiring independent corroboration of testimony of related or interested witnesses is a rule of prudence which is not to be applied rigidly in each case especially when the Courts of law do not feel its necessity. Mere relation of a witness with any of the parties would not dub him as an interested witness because interested witness is one who has, of his own, a motive to falsely implicate the accused, is

swayed away by a cause against the accused, is biased, partisan, or inimical towards the accused, hence any witness who has deposed against the accused on account of the occurrence, by no stretch of imagination can be regarded as an "interested witness". There can be cases like the present one where implicit reliance can be placed on the testimony of related witness if it otherwise inspiring confidence of the Court. It is noteworthy that witnesses having some relation with deceased some time, particularly in murder cases, may be found more reliable, because they, on account of their relationship with the deceased, would not let go the real culprit or substitute an innocent person for him. Both the eye-witnesses have deposed full account of the incident and fully involved the appellant in the commission of offence. I am, thus, of the view that both the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manners. They while appearing before the learned trial Court provided full support to the case of the prosecution. They were subjected to lengthy cross-examination by the defence but could not extract anything from them as they remained stick to their stance and amply proved the identification of appellant. Thus, the evidence discussed by me in this paragraph evaporate all other possibilities for murder of deceased except stated by the prosecution witnesses before the learned trial Court. It is a settled principle that any eye-witness's version cannot be discarded by the Court merely on the ground that such eye-witness happened to be a relative or friend of the deceased. Reliance in this behalf may well be made to the case of *Muhammad Aslam v The State* (2012 SCMR 593), *wherein the ocular version had been furnished by PW-6, who was real son of deceased and PW-7, the other eyewitness, who was cousin of the complainant and their statements were not discarded on the ground that they made consistent statement against the accused and specific role of firing was attributed.* In another case of *Mirza Zahir Ahmed v The State 2003 (SCMR 1164), two eye-witnesses PW Muhammad Zaheer and Muhammad Shafiq were closely related to deceased, but they had furnished trustworthy evidence to support the prosecution case. It was held by the Hon'ble Supreme Court that "the statements of both the witnesses get corroboration from each other. As far as the medical evidence is concerned, it being in the nature of conformity has also substantiated their version, therefore, the evidence of these prosecution witnesses cannot be discarded merely for the reason that they were*

closely related to Tariq Javed deceased". I am, therefore, of the firm view that evidence of the eye-witnesses cannot be discarded merely on account of their relationship with deceased.

14. The ocular evidence adduced by the prosecution, referred herein above, has further been corroborated by the medical evidence adduced by PW.5 Dr. Aneesa (Ex.8), who conducted post-mortem of deceased and issued a post-mortem report (Ex.8/B) testifying firearm injuries by means of bullet which resulted death of deceased. According to her, on 04.11.2020 the police referred the dead body of Mst. Saima with police letter and inquest report, duly identified by Mashooque Lashari (father-in-law) and Rabna wife of Mashooque Lashari (mother-in-law). She examined the dead body and noted as below:-

> *"01. A lacerated punctured wound measuring about 1 cm x 1 cm at left parietal region of skull with no blackening and charring (entry wound).*
> *02. Lacerated punctured wound of about 1 ½ cm x 1 ½ cm at right parietal region of skull.*

The ocular account, thus, furnished by the prosecution has further been corroborated by the medical evidence adduced by the Medical Officer. No element of doubt is available as to the presence of eye-witnesses at the place of incident at the relevant time. They have furnished graphic details of the occurrence without being trapped into any serious narrative conflict and deposed same facts in their evidence, which are in line to that of their earlier statements recorded by investigating officer during investigation under Section 161, Cr.P.C. and plausibly explained their presence at the crime scene.

15. PW.8 SIP Khalid Hussain {Ex.11} has conducted investigation in each case and deposed that on 04.11.2020 while he was present at P.S. Allahabad, one Mashooque Ali appeared at P.S. and informed him about the murder of Mst. Saima by her father Ghulam Hyder inflicting injuries with 30 bore pistol. He immediately rushed to the place of incident, inspected the dead body, prepared lash chakas and Danishnama and also secured blood-stained mud and an empty shell of 30 bore pistol, sealed the same at spot vide mashirnama (Ex.11/B) in presence of mashirs Ajeeb Khan and Karam Ali and thereafter removed the dead body to hospital for autopsy through PC Ahmed Ali, who returned back to P.S. and handed over him last wearing

clothes of the deceased and also informed him that after post-mortem the dead body was handed over to the legal heirs of deceased. He waited for the legal heirs of deceased and since none appeared till 06.11.2020 and therefore, S.I.P Imdad Ali Hulio, S.H.O P.S. Allahabad became complainant and lodged FIR on behalf of the State and investigation was entrusted to him on the same day visited the place of incident and conducted site inspection in presence of same mashirs. He arrested the appellant on 20.11.2020 and got recovered an unlicensed pistol of 30 bore loaded with magazine containing two live rounds from his possession, disclosed to be used in the commission of murder of Mst. Saima and also registered a separate case for recovery of illicit arm. He has recorded the statements of witnesses under Section 161, Cr.P.C. and after completing usual investigation submitted challan in Court.

16. The Investigating Officer SIP Khalid Hussain has been supported by Ajeeb Khan , who appeared as witness No.9 Ex.12 and testified that all memos viz inspection of dead body, securing blood-stained mud and an empty shell from the place of incident, site inspection and arrest of accused and recovery of crime weapon were prepared in his presence and also affirmed his signatures thereon. The Investigating Officer has further been supported by PW.10 PC Ahmed Ali (Ex.13), who while appearing before the trial Court has affirmed that on 04.11.2020 SIP Khalid Hussain handed over him dead body of deceased Mst. Saima for conducting post-mortem. He took the dead body to CMCH Larkana and after conducting the post-mortem handed over the dead body to Mashooque Ali and after return at P.S. handed over the last wearing clothes of the deceased to SIP Khalid Hussain.

17. The direct evidence, as detailed above, is in shape of evidence of PW.2 Zahid Ali and PW.3 Mashooque Ali, who have supported the case of the prosecution and finds corroboration from the other witnesses coupled with medical evidence, duly supported by the circumstantial evidence. While adducing evidence before the learned trial Court the witnesses have proved the story narrated in the FIR. They have unambiguously stated that it was the appellant who fired a direct fire at deceased at left side of Saima’s temple and shot her dead, which

creates a flagrant impression into the mind of this Court with regard to involvement of appellant in the commission of murder of his daughter.

18. The another link of this case is the crime weapon viz 30 bore pistol through which the appellant committed murder of deceased Mst. Saima making direct fire on her. Per evidence of SIP Khalid Hussain he has arrested the appellant on 20.11.2020 on spy information and got recovered a pistol of 30 bore loaded with magazine containing to live bullets, sealed the same at spot in presence of mashirs private Ajeeb Khan and Karam Ali. The arrest of the appellant and recovery of crime weapon from his possession has further by supported by mashir Ajeeb Khan, who appeared as PW.9 (Ex.12) and affirmed his signature on memo of arrest and recovery (Ex.11/H). The record is also suggestive of the fact that while visiting the place of incident SIP Khalid Hussain secured an empty shell of 30 bore pistol blood-stained mud, sealed the same at spot, and prepared memo of site inspection in presence of same mashirs. Both pistol and empty were sent to ballistic expert and the report received from the office of Forensic Division, Larkana is to the effect that the empty was fired from the same pistol which lends corroboration to the prosecution evidence. The prosecution has also exhibited Chemical Report at Ex.11/J, which shows that earth material and last wearing clothes of deceased were stained with human blood. The positive reports of offices of Forensic Division and Chemical Examiner further strengthen the case of prosecution, which are strong circumstantial evidence.

19. The argument of the learned counsel for the appellant that incriminating articles viz blood-stained mud and clothes of the deceased as well crime weapon and empty shell were sent to the concerned offices with inordinate delay of nine and four days respectively, therefore, both reports lost their admissibility, is not tenable. The delay, in my humble view, is not fatal to the prosecution case in presence of a positive report qua the crime weapon, recovered from the possession of appellant, matched with the empty, secured from the place of incident and more so when the ocular account in shape of direct evidence coupled with the medical evidence has already been believed as trustworthy and confidence inspiring. The record is suggestive of the fact that appellant while recording his Section 342, Cr.P.C. statement did not discredit such confidence inspiring evidence.

No suggestion was put during cross-examination either the reports have been tampered or manipulated. I am, thus, of the view that the recoveries in this case provide full corroboration to the ocular account. The Hon'ble Supreme Court in the case of *Muhammad Mushtaq v The State* (PLD 2001 SC 107), observed as under:-

> *"Learned counsel for appellant objected on the delay of sending the incriminating articles i.e. empties and shotgun for expert opinion without offering plausible explanation. A perusal of record revealed that no such objection was raised either before trial Court or the learned Appellate Court. As per settled law the delay in sending the incriminating articles to the concerned quarter for expert opinion cannot be fatal in absence of objection of tampering or manipulating the articles as held in the case of Muhammad Iqbal v. Muhammad Tahir and others (PLD 1985 SC 361)".*

20. The contention that one of the eye-witnesses namely, Javed, who appeared as PW.4 Ex.7, has not supported the prosecution case and did not involve appellant in the commission of murder of deceased and he was declared hostile, benefit whereof must go to the appellant, but the learned trial Court did not appreciate this aspect of the matter and recorded conviction ignoring the evidence adduced by eye-witness Javed. A careful watch to his evidence reveals that on the day of incident his father Ghulam Hyder was in Karachi whereas he was sleeping in the house of his sister, situated besides Dargah Mashori Shareef, and woke up on hearing fire shot and saw his brother-in-law Zahid running towards the door having pistol in his hand. He immediately rushed to the house of Mashooque, father of Zahid, and informed him that Zahid has fired at his sister and ran away. He further deposed that due to pressure of Mashooque, he has given statement against his father. He was declared hostile and was cross-examined by the prosecution. The incident alleged to have taken place at the house of Ghulam Hyder, situated at Mumtaz Colony Larkana City, District Larkana, within territorial limits of P.S. Allahabad, which is far away from the place disclosed by Javed in village Allah Wadhayo Lashari, Taluka Bakrnai, District Larkana. The prosecution has placed on record memo of place of incident, available at Ex.11/F, which is supported by neighbourers Ajeeb Khan and Karam Ali, who are independent persons, hence in view of the background of the matter when the place of incident has been affirmed by independent witnesses, the testimony of PW. Javed seems to be untrustworthy and unsafe to rely upon more particularly when the

ocular account furnished by two witnesses namely, Zahid Ali and Mashooque Ali, husband and father-in-law of deceased, has been corroborated by material particular medical evidence coupled with the circumstantial evidence viz recovery of crime weapon as well as empty shell, secured from the place of incident, reported to be fired from the pistol recovered from the possession of appellant leads me to the conclusion that the learned trial Court has rightly held evidence of PW Javed as not credible. Admittedly, PW Javed is real son of appellant and there is every possibility that just to save his father from punishment he has changed his earlier statement given to police during investigation and deposed falsely before the learned trial Court.

21. In like cases every circumstance should be linked with each other and it should form such a continuous chain that it should start right from the toe of the deceased on one hand and the same should encircle a dense grip around the neck of the accused on the other hand. The learned counsel while arguing the case has pointed out some discrepancies and contradictions in the statements of prosecution witnesses, which are not of worth consideration and can be ignored when prosecution has proved its case through direct evidence, duly supported by the medical as well as circumstantial evidence. Reliance in this behalf may well be made to the case of *Said Akbar and another v Sardar Ghulam Hussain Khan through legal heirs and another* (2017 P.Cr.L.J 731). Guidance is also taken from the case of *Muhammad Ashraf v Tahir alias Billoo and another* [2005 SCMR 383], wherein it has been held as under:-

> *"It is well-settled principle of law that the criminal Courts are supposed to take into consideration the overall effect of the prosecution case in order to ascertain as to whether crime has been committed or not and unless the discrepancies, contradictions etc. have impaired the intrinsic value of the prosecution evidence, the same is not liable to be discarded merely for technical reasons. Similarly if some delay has occasioned in lodging the F.I.R. that would also not be fatal in the circumstances because a young man had been killed in brutal manner and his dead body was found lying in the house to which the complainant party had no access".*

22. It is a well settled that onus to prove its case always rests on the shoulder of the prosecution and once the prosecution succeeded in discharging such burden with cogent evidence then the accused become heavily burdened to disprove the allegations levelled against him and prove his innocence through cogent and reliable evidence. It is

noteworthy that place of incident is inside house belongs to appellant. The defence has failed to shatter the case of the prosecution rather admitted that the dead body of the deceased was found inside the house of appellant. The appellant neither taken a divulge plea in his Section 342, Cr.P.C. statement nor furnished any plausible explanation as to what happened on the day of incident and as to how his daughter died and why her dead body was found in his house. He has simply denied the prosecution case and failed to speak a single word as to his false implication by the witnesses. Mere statement of appellant is not sufficient to disbelieve the trustworthy and confidence inspiring evidence adduced by the prosecution. He has also failed to speak a single word as to why the witnesses have deposed against him, which gives rise to a presumption that the plea taken by them in his defence is not a gospel truth, therefore, he avoided to appear and depose on Oath under Section 340(2), Cr.P.C. I am also conscious of the fact that law requires that if accused had a defence plea the same should be put to the witnesses in cross-examination and then put forward the same while recording statement under Section 342, Cr.P.C. which is lacking in the instant case. In the circumstances, since the specific defence plea has not been taken by the appellant either at trial or while recording his statements under Section 342, Cr.P.C. the learned trial Court has rightly discarded the same to be of untrustworthy. If both the versions, one put forward by the appellant and the other put forward by the prosecution, are considered in a juxtaposition, then the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellant seems to be doubtful.

23. A motive has been alleged, which became cause of murder of Mst. Saima. The prosecution has claimed that deceased was done to death as she refused to accept the demands of appellant to accompany him to Karachi. The eye-witnesses in their respective evidence though supported the motive but failed to produce any strong evidence or any other material to substantiate such a motive. Mere words of the prosecution witnesses are not sufficient to prove the motive. Thus, the motive set-forth by the prosecution remained far from being proved. It is, however, noted that failure of prosecution to prove the motive took the change through the pronouncements of the superior Courts with the passage of time. Now-a-days, lack, absence,

inadequacy, weakness, or the motive, if any, set up by the prosecution and failure to prove it or the motive is shrouded in mystery, are not the grounds to withhold penalty, if the prosecution has succeeded to prove its case beyond any doubt or suspicion with regard to the commission of the offence. As to the contention that one cannot be convicted and awarded sentence without proving the motive, this contention, on the face of it, is misconceived. There is no bar or hindrance to award sentence to a killer when the chain of guilt is found not to be broken and irresistible conclusion of the guilt is surfacing from the evidence, which is connecting the accused with the commission of that offence without any doubt or suspicion. It is, however, a well settled that if at any stage both the sentences of death and the imprisonment for life could possibly be awarded, the better option for the Court is to give preference to the lesser sentence, as a matter of caution. I am, thus, of the view that the learned trial Court has rightly awarded sentence of life imprisonment instead of death.

24. I am convinced that the learned trial Court has appreciated the evidence and scrutinized the material available on record in complete adherence to the principles settled by the Hon'ble apex Courts in various pronouncements and has reached a just conclusion. There is no denial to the fact that the learned trial Court had taken into account all the aspects of the matter as well as the defence taken by the appellant at trial minutely and found the appellant guilty of the offence with which he has been charged. Similarly, no mala-fide, ill-will, previous enmity or personal grudge could be brought on record showing that evidence furnished by the prosecution is based on malice or ill-will. A keen look of the record reveals that the eye-witnesses had no motive or reason to falsely involve the appellant in the commission of murder of Mst. Saima. I am conscious of the fact a young girl, aged about 18 years, was done to death in a shocking and brutal manner, which disentitles the appellant from any leniency or mercy. No one could be granted license to take the law of the land in his own hands, which is un-Islamic, illegal and against the constitution.

25. Insofar as the case law cited by the learned counsel for the appellant, in support of his submissions, in my humble view, the facts and circumstances of the said cases are distinct and different from the

present case, therefore, none of the precedents cited by the learned counsel are helpful to the appellant.

26. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, I am of the considered view that the prosecution has successfully proved its case against the appellant beyond shadow of reasonably doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgments, which in my humble view are based on fair evaluation of evidence and documents brought on record, hence call for no interference by this Court. In view thereof, the conviction and sentences awarded to the appellant in both cases warrant no interference. Consequently, the Criminal Jail Appeals S-27 and 28 of 2022 are bereft of merit stand dismissed.

JUDGE

NAK/PA