IN THE HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

Criminal Appeal No.S-53 of 2023
(Waqar and Abdul Sattar v The State)

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1. For hearing of MA No.795/2023 (in Crl. Appeal No.S-53 of 2023).
2. For hearing of MA No.792/2023 (in Crl. Appeal No.S-54 of 2023).
3. For hearing of main case.

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Mr. Afzal Karim Virk, Advocate for the Appellants.
Complainant in person.
Mr. Ghulam Abbas Dalwani, D.P.G (Sindh).

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Date of hearing: **11.11.2025**

Date of Judgment: **26.11.2025**

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JUDGMENT

Shamsuddin Abbasi, J. Through Criminal Appeal No.53 of 2023, Waqar son of Ibrahim Khaskheli and Abdul Sattar son of Mehro Khaskheli, appellants, have challenged the validity of the judgment dated 08.12.2023, penned down by the learned Additional Sessions Judge-I (Model Criminal Trial Court), Mirpurkhas (**"trial Court")**, in Sessions Case No.564 of 2023 (FIR No.51 of 2023) registered at Police Station Tando Jan Muhammad, District Mirpurkhas, for offences under Sections 302, 109 and 34, PPC, through which they were convicted and sentenced as under:-

> *"In view of the discussion and findings on points No.1 & 2, it is established that prosecution has proved its case against both the accused persons, beyond any shadow of doubt.*
>
> *Therefore, by finding accused Waqar son of Ibrahim Khaskheli guilty for committing Qatl-i-amd of deceased Daim Ali son of Niaz Muhammad Khaskheli, I convict him U/S 265-H(2) Cr.P.C. for committing the offence punishable U/S 302(b) PPC. But considering his young age and that he acted on abetment of co-accused Abdul Sattar, due to his annoyance on love marriage of his sister with deceased; as mitigating circumstances for warding lesser punishment to him; he is sentenced to imprisonment for life (R.I.) as Ta'zir. Accused Waqar son of Ibrahim Khaskheli, shall also pay Rs.500,000/- (Rupees Five Hundred Thousand) as compensation to the legal heirs of the deceased Daim Ali son of Niaz Muhammad Khaskheli as provided U/S 544-A Cr.P.C. and in case of default, he would further suffer simple imprisonment (S.I.) for one year.*

Since convict Waqar son of Ibrahim Khaskheli is in jail since 18.07.2023, as per record, so the benefit U/S 382-B Cr.P.C. is extended to him and the period already passed by him in jail as UTP is deducted from his substantive sentence of imprisonment.

Since convict Waqar son of Ibrahim Khaskheli, is produced in custody by the Jail Authorities of Central Prison, Mirpurkhas, so he is remanded back to Central Prison, Mirpurkhas alongwith conviction warrant to serve out the above sentence as per this judgment according to law.

Moreover, by finding co-accused Abdul Sattar son of Mehro Khaskheli guilty for committing offence of on-spot abetment for Qatl-i-amd of deceased Daim Ali son of Niaz Muhammad Khaskheli, I convict him U/S 265-H(2) Cr.P.C. for committing the offence punishable U/S 114 read with section 302(b) PPC. But considering that co-accused made on spot abetment, due to his annoyance on love marriage of Mst. Suhana (sister of accused Waqar) with deceased Daim and he did not act himself to cause any physical harm to deceased, as mitigating circumstances for awarding lesser punishment to him, he is sentenced to imprisonment for life (R.I.) as Ta'zir. Accused Abdul Sattar son of Mehro Khaskheli, shall also pay Rs.200,000/- (Rupees Two Hundred Thousand) as compensation to the legal heirs of the deceased Daim Ali son of Niaz Muhammad Khaskheli as provided U/S 544-A Cr.P.C. and in case of default, he would further suffer simple imprisonment (S.I.) for six months.

Since convict Abdul Sattar son of Mehro Khaskheli is present on bail, so he be taken in custody and remanded to Central Prison, Mirpurkhas, alongwith conviction warrant to serve out the above sentence as per this judgment according to law. Bail bond of accused Abdul Sattar stands cancelled and surety discharged.

Let the copy of this judgment be delivered to the both accused persons free of costs and such receipt be obtained from him".

2. Through Criminal Appeal No.S-54 of 2023, the appellant Waqar has also challenged the conviction recorded against him in the connected case relating to the recovery of an illicit weapon, wherein he was sentenced to seven years' rigorous imprisonment with the benefit of Section 382-B, Cr.P.C., the sentence having been ordered to run concurrently with the conviction awarded in the main case.

3. Complainant Mst. Asia wife of Niaz Muhammad is the mother of the deceased Daim Ali, aged about 20 years. Daim Ali is said to have contracted love marriage with Suhana, sister of the appellant, Waqar, which allegedly provoked resentment within Suhana's family and a few days prior the dispute between Waqar and Daim Ali had been amicably settled by the elders. On 13.07.2023 the complainant alongwith her relative Allah Bachayo, Mehmood, Daim (son) and daughter-in-law Suhana went to the house Waqar, situated at Ward No.3, Tando Jan Muhammad, where she came to know that Waqar at the behest of Abdul Sattar planned to murder her son Daim and she

therefore asked Daim to leave the house of Waqar, however, Waqar assured them that he would take responsibility and that no untoward incident would occur and relying on his assurance they went to sleep on the roof of the house. It was about 5:00 am they awoke upon hearing a fire shot and saw Waqar holding a pistol in his hand, who fired at Daim and caused a firearm injury to his head, which was crossed and blood started oozing. Waqar further inflicted blows on the head of Daim with the butt of the pistol and upon seeing this they raised cries whereupon Waqar fled from the scene of offence. They first brought the injured Daim to Police Station Tando Jan Muhammad and then to RHC Tando Jan Muhammad from where he was referred to Civil Hospital, Hyderabad and got admitted. Thereafter, the complainant visited Police Station Tando Jan Muhammad and lodged FIR on 16.07.2023 under Section 324, 337-A(i) and 109, PPC.

4. Following the registration of FIR, the investigation ensued, however, during the course of investigation, Daim finally succumbed to his injuries on 27.07.2023 upon which Section 302, PPC was incorporated and the challan was placed before the competent Court, whereby the appellants were sent up to face the trial. A separate challan under Section 25 of the Sindh Arms Act, 2013 was also submitted against appellant Waqar enabling commencement of his separate trial.

5. A charge in respect of offences under Section 302, 109 and l34, PPC was framed. The appellants pleaded not guilty to the charged offence and opted to be tried. Appellant Waqar was also indicted in the connected case for recovery of an illicit arm, which allegation he also denied.

6. At trial, the prosecution has examined as many as nine witnesses in the main case namely, complainant Mst. Asia appeared as witness No.1 Ex.4, Mehmood (eye-witness) as witness No.2 Ex.5, Allah Bachayo (eye-witness) as witness No.3 Ex.6, Wazeer Ali (Tapedar) as witness No.4 Ex.7, HC Muhammad Afzal as witness No.5 Ex.8, HC Aijaz Ahmed as witness No.6 Ex.9, Dr. Khurram Nawab as witness No.7 Ex.10, ASI Ahmed Khan as witness No.8 Ex.11 and SIP /SHO Junaid Qamar (investigating officer) as witness No.9 Ex.12 and five witnesses namely, Allah Bachayo as witness No.1 Ex.3, HC Muhammad Afzal as witness No.2 ex.4, HC Aijaz Ahmed as witness No.3 Ex.5, ASI Ghulam Farooque (complainant) as witness No.4 Ex.6 and ASI Ahmed Khan (investigating officer) as witness No.5 Ex.7 in the case of recovery of unlicensed pistol and closed its side. All the

witnesses have exhibited certain documents in their respective evidence and were subjected to cross-examination by the defence in each case.

7. Statements under Section 342, Cr.P.C. of appellants Waqar and Abdul Sattar were recorded in the main case at Ex.14 and Ex.15 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication. Abdul Sattar, however, set up a plea of *alibi* stating that on the day of incident he was in Karachi and was not present at the place of occurrence and opted not to make a statement on Oath under Section 340(2), Cr.P.C. and did not produce any witness in his defence. However, Waqar examined a witness in his defence but did not step into the witness box on Oath. Likewise appellant Waqar was examined under Section 342, Cr.P.C. in the weapon recovery case. He refuted the allegations, claimed innocence and alleged false implication, but chose not to record his statement on Oath under Section 340(2), Cr.P.C. nor to examine any witness in his defence.

8. After completion of the trial, the learned Trial Court returned a verdict of guilt against the appellants for the offences with which they stood charged and consequently awarded them the sentences as reflected in para-1 (supra). The appellants, having assailed such convictions and sentences, have preferred the instant appeals, which are being decided together through this single judgment.

9. It is contented on behalf of the appellants that they have been falsely implicated in this case by the complainant on account of previous enmity; that the entire story as narrated in the FIR is managed one and the appellants have no nexus with the offence and were not present at the scene of offence; that the FIR has been lodged after two days of the incident and that too without furnishing any plausible explanation. Learned counsel has taken a specific plea of *alibi* contending that appellant Abdul Sattar was not present at the crime scene at the time of the occurrence and that he was in fact in Karachi. It is argued that none of the prosecution witnesses assigned him any role either of abetment, facilitation to co-accused Waqar or causing any injury to the deceased, therefore, his conviction is wholly unwarranted. It is further submitted that although the FIR was registered under Section 109, PPC and the charge was framed accordingly, the conviction has been recorded under Section 114, PPC, solely on the basis of the statements of witnesses who allegedly made material improvements by, for the first time, asserting that

Abdul Sattar was present at the place of occurrence and had abetted co-accused Waqar in the commission of the murder; that no independent witness has been produced by the prosecution in support of its case and the witnesses who have been examined are interested and related to complainant as well deceased, hence their testimony cannot be termed as trustworthy and confidence inspiring; that they were inconsistent with each other rather contradicted on crucial points; that the ocular account furnished by the prosecution is not in consonance with the medical evidence; that nothing incriminating has been recovered from the possession of appellant Waqar and the alleged recovery of pistol is foisted one, moreover this alleged recovery does not advance the prosecution's case as both mashirs are related to complainant and no independent witness has attested the arrest and recovery proceedings; that the learned trial Court did not appreciate the evidence adduced by the prosecution and defence taken by the appellants in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and awarded conviction without application of a conscious judicial mind, hence the convictions and sentences awarded to the appellants, based on such findings, are not sustainable in law and liable to be set-aside and the appellants deserves to be acquitted of the charge and prayed accordingly.

10. On the other hand, the learned Deputy Prosecutor General (Sindh), assisted by the complainant, while controverting the arguments advanced by learned counsel for the appellants has supported the impugned judgment asserting that it is founded upon a fair appraisal of the evidence and material brought on record; that the witnesses while appearing before the learned trial Court remained consistent on each and every material point; they were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted; that the medical evidence is in line with the ocular account which fully corroborates the version of complainant as set-forth in the FIR; that the prosecution in support of its case has produced ocular evidence supported by the medical and circumstantial evidence, which has rightly been relied upon by the learned trial Court; that the prosecution has successfully proved its case against the appellants beyond shadow of reasonable doubt, thus, the appeals filed by the appellants warrant dismissal and their convictions and sentences recorded by the learned trial Court in each case is liable to be upheld and prayed for dismissal of the appeals.

11. I have given my anxious consideration to the submissions of respective parties and perused the entire available material minutely with their able assistance.

12. The occurrence is reported to have taken place in the house of appellant Waqar situated at Qazi Colony, Tando Jan Muhammad. The parties are previously known to each other. Waqar is the brother of Mst. Suhana, who had contracted a love marriage with the deceased Daim Ali and for this reason Waqar and his family members were annoyed and a few days prior the dispute between Waqar and Daim had been amicably settled by the elders. On 13.07.2023 Daim Ali alongwith his mother Mst. Asia (complainant), wife Mst. Suhana and relatives Allah Bachayo and Mehmood went to the house Waqar and stayed for a night. It was about 5:00 am they awoke upon hearing a fire shot and saw Waqar holding a pistol in his hand, fired at Daim and caused a firearm injury to his head, which was crossed and blood started oozing. Waqar further inflicted blows on the head of Daim with the butt of the pistol and upon seeing this complainant and others raised cries whereupon Waqar fled from the scene of offence. The injured Daim was first brought at Police Station Tando Jan Muhammad where proceedings under Section 174, Cr.P.C. were completed. The police sent him to RHC Tando Jan Muhammad alongwith letter for treatment from where he was referred to Civil Hospital, Hyderabad, where he got admitted. Thereafter, the complainant visited Police Station Tando Jan Muhammad where she lodged the FIR on 16.07.2023 under Section 324, 337-A(i) and 109, PPC. Record further reveals that on the same day ASI Ahmed Khan visited the place of incident and conducted site inspection. During inspection he secured one empty of 30 bore and a piece of cotton, stained with blood, and sealed the same at spot in presence of mashirs Allah Bachayo and Riaz Ali. The record is also suggestive of the fact that on 18.07.2023 the said ASI arrested appellant Waqar on spy information and recovered an unlicensed 30 bore pistol, loaded with magazine containing two live rounds. The police took custody of the pistol and sealed it at spot under a mashirnama prepared 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 Science Laboratory, Forensic Division, Hyderabad, which issued reports testifying that the pistol was in working condition and the empty shell was fired from the 30 bore pistol, received by the said office. The prosecution has also placed on record Chemical Report, available at Ex.12/C, issued by the Sindh Forensic DNA and Serology Laboratory, University of Karachi, analyzing that received parcels containing cotton

and last wearing clothes of the deceased viz qameez, shalwar and azarband were stained with human blood. It is noteworthy that during the course of investigation injured Daim finally succumbed to his injuries on 27.07.2023 upon which Section 302, PPC was incorporated and the challan was submitted before the competent Court. In a separate challan, the prosecution also placed appellant Waqar on trial under Section 25 of the Sindh Arms Act, 2013 with regard to recovery of an unlicensed pistol, used in the commission of offence.

13. The ocular account in this case has been furnished by complainant Mst. Asia (PW.1 Ex.4), Mehmood (PW.2 Ex.5) and Allah Bachayo (PW.3 Ex.6). All three witnesses, while appearing before the learned Trial Court, have fully supported the prosecution case and specifically implicated Waqar in the commission of the alleged offence. They deposed that on the day of incident upon waking up, they saw Waqar holding a pistol in his hand, with which he fired at Daim Ali, hitting him on the left side of the head, the bullet existed from the opposite side. They further stated that Abdul Sattar was standing there on stair-case. The complainant has further deposed that soon after the incident, she with the help of her relatives brought her injured son at P.S. and after completion of proceedings under Section 174, Cr.P.C. took her son to hospital alongwith police letter.

14. Both eye-witnesses Mehmood and Allah Bachayo 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 story narrated in the FIR and deposed full account of the incident and also implicated Waqar in the commission of offence charged with. They have not attributed any specific role to Abdul Sattar, merely alleging his presence at the place of incident. No doubt they are related to complainant as well as to the deceased nevertheless such relationship by itself does not render them interested witnesses. They have convincingly explained their presence at the scene of offence by testifying that on 13.07.2023 they along with the complainant Mst. Asia, the deceased Daim Ali and Mst. Suhana had gone to the house of accused Waqar and stayed there overnight. At about 5:00 am they awakened on hearing a fire shot and witnessed Waqar firing at the head of Daim Ali from pistol. They have merely shown the presence of

accused Abdul Sattar at the spot and have not attributed him any kind of role in the commission of the offence. Their natural presence and consistent account of the occurrence exclude the possibility of their testimony being rejected merely due to their relationship with the complainant and deceased because the Court has to see the truthfulness and credibility of such witnesses. The learned counsel 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 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 fully supported the complainant and deposed full account of the incident and fully involved accused Waqar 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.

15. The ocular evidence adduced by the prosecution, as discussed hereinabove, stands further corroborated by the medical evidence furnished by PW.7 Dr. Khurram Nawab (Ex.10), who initially examined the injured Daim Ali and noted the following injuries:-

1. *One round shaped firearm entry wound with inverted margins on mid occipital area of head size 0.5cm in length and 0.5cm in width, bone exposed.*

2. *One oval shaped firearm exit wound with everted margins on left temporo parietal area of head size 3cm in length and 1.5cm in width, bone exposed.*

3. *One incised wound on left parieto occipital area of head size 1.5cm in length and 0.5cm in width, bone not exposed.*

4. *One incised wound on med parieto occipital area of head size 2.5cm in length and 0.5 cm in width, bone not exposed.*

5. *One incised wound on right parietal area of head size 1cm in length and 0.3cm to width, bone not exposed.*

He has issued a Provisional Medico Legal Certificate, available at Ex.10/B, and concluded that the first two injuries (Nos.1 and 2) are firearm inflicted whereas the remaining three injuries (Nos. 3, 4 and 5) are consistent with those caused by a sharp-cutting weapon. After the death of injured Daim Ali,

he conducted the post-mortem examination and issued a Provisional Post-Mortem Report, available at Ex.10/D and thereafter upon receipt of the Chemical Examiner's report confirming that no poison was detected, he issued Final Post-Mortem Report, available at Ex.10/G, opining that the death occurred due to brain damage resulting from head injuries caused by a firearm. 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 complainant and 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 and plausibly explained their presence at the crime scene.

16. The contention that the witnesses did not attribute any injury caused by a hard and blunt substance, as noted by the Medical Officer, and, therefore, the medical evidence contradicts the ocular account, is without merit. The complainant and eye-witnesses while appearing before the learned Trial Court unequivocally deposed that after discharging the firearm accused Waqar inflicted blows upon Daim with the butt of the pistol, hence the injuries so noted by the Medical Officer are, thus, in line with the ocular account furnished by the prosecution. In view of this explicit account, the argument advanced by learned counsel for the appellants is misconceived. Even otherwise, where any inconsistency arises between the ocular account and the medical evidence, the ocular version is to be accorded preference and no benefit can be extended to the accused merely on the basis of such discrepancy. Guidance in this behalf may be taken from the case of *Nasir Ahmed v The State* (2023 SCMR 478), wherein it has been held as follows:-

> *"The medical evidence available on the record corroborates the ocular account so far as the nature, time, locale and impact of the injuries on the person of the deceased is concerned. Even otherwise, it is settled law that where ocular evidence is found trustworthy and confidence inspiring, the same is given preference over medical evidence and the same alone is sufficient to sustain conviction of an accused. In Muhammad Iqbal v. The State (1996 SCMR 908) this Court candidly held that "ocular testimony being wholly reliable, conviction could even be safely based on the same without further corroboration." In Naeem Akhtar v. The State (PLD 2003 SC 396) this Court observed that "eye-witness who was a doctor and victim of the occurrence had narrated the incident in each detail without any omission and addition and his evidence being of unimpeachable character is alone sufficient to the charge." In Faisal Mehmood v. The State (2010 SCMR 1025) it was held that "reliable ocular testimony did not need any corroboration to lose conviction". Same was the view of this Court in Muhammad Ilyas v.*

> *The State (2011 SCMR 460) wherein it was held that "it is not medical evidence to determine question of guilt or innocence but it is ocular version which is required to be taken into consideration at first instance". The value and status of medical evidence and recovery is always corroborative in its nature, which alone is not sufficient to sustain the conviction. Casual discrepancies and conflicts appearing in medical evidence and the ocular version are quite possible for variety of reasons. During occurrence when live shots are being fired, witnesses in a momentary glance make only tentative assessment of the distance between the deceased and the assailant and the points where such fire shots appeared to have landed and it becomes highly improbable to correctly mention the location of the fire shots with exactitude. Minor discrepancies, if any, in medical evidence relating to nature of injuries do not negate the direct evidence as witnesses are not supposed to give photo picture of ocular account. Even otherwise, conflict of ocular account with medical evidence being not material imprinting any dent in prosecution version would have no adverse affect on prosecution case. Requirement of corroborative evidence is not of much significance and same is not a rule of law but is that of prudence".*

17. PW.8 ASI Ahmed Khan has conducted the initial investigation and held proceedings under Section 174, Cr.P.C. registered the FIR on the complaint of Mst. Asia, carried out the inspection of the crime scene, arrested appellant Waqar and recovered the crime weapon from his possession, which led to the filing of a separate case under the Sindh Arms Act. Thereafter, he handed over the investigation to PW.9 SHO/SIP Junaid Qamar (Ex.12), who forwarded the case property to the concerned offices for examination and reports and also had the place of incident inspected by the Tapedar, who, after conducting the inspection, issued his report, available at Ex.7/B. The witnesses of memos and the Tapedar upon their appearance before the learned Trial Court affirmed these proceedings and acknowledged their signatures on the respective documents.

18. The direct evidence, as detailed above, is in shape of evidence of complainant Mst. Asia and eye-witnesses Mehmood and Allah Bachayo, 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. During their evidence before the learned Trial Court, the prosecution witnesses have substantiated the narrative set-forth in the FIR. They explicitly stated that it was Waqar, who fired directly at the head of Daim Ali, who sustained critical injuries and later died during treatment, which creates a flagrant impression into the mind of this Court with regard to involvement of accused Waqar in the commission of murder of Daim Ali.

19. Insofar as the plea taken by the defence that accused Waqar was not present at the scene of offence at the relevant time is concerned, appellant Waqar examined Gul Hassan as a defence witness, who deposed that on the day of the incident Waqar was with him at the hotel from 4:00 am to 10:00 am, where they worked together. This plea, on the face of it, appears to be afterthoughts aiming to avoid punishment. Even otherwise, a plea of *alibi* serves as a defensive mechanism whereby an accused contends that he was at a location other than the crime at the material time. It is, however, well established that such a plea does not constitute a primary defence but rather requires independent corroboration through unimpeachable and cogent evidence. In the case in hand, the defence witness produced by the appellant Waqar is his own son-in-law and owing to such close relationship his testimony does not inspire confidence and is unsafe to rely upon for establishing the plea of *alibi.* In the case *Abdul Rashid v The State* (1989 SCMR 144), it was explicitly held that "an accused invoking the plea of *alibi* bears the onus of substantiating it with evidence of unquestionable credibility. The burden is stringent, as the plea must be established conclusively, eliminating any reasonable doubt as to its veracity. The presence of accused at scene of offence and his participation in the incident, held, could not be doubted in circumstances. It is also a well settled that a weak plea of *alibi* devoid of cogent and convincing corroboration is liable to be discarded as it does not satisfy the evidentiary threshold required for exoneration. This principle has been reiterated in the case of *Muhammad Ayub v. The* State (PLD 1964 (W.P.) Peshawar 288), wherein it was emphasized that the burden of proving an *alibi* rests squarely upon the accused and such a plea must be substantiated by solid and reliable evidence rather than mere assertions. It is a well settled that when a specific plea is taken by an accused, then the same should be put to the witnesses at the time of cross-examination and while recording statement under Section 342, Cr.P.C. In the case in hand, no specific question suggesting the appellant's absence from the crime scene was put to the prosecution witnesses during cross-examination nor was any such stance taken by the appellants at the time of recording their statements under Section 342, Cr.P.C. Since the complainant and eye-witnesses have directly implicated accused Waqar in the commission of the offence, his plea of *alibi*, in the absence of any unimpeachable and confidence inspiring evidence, cannot be accepted. This is particularly so when the plea is unsupported by any independent testimony and the sole defence witness produced in this regard is the accused's own son-in-law, whose statement cannot be treated as trustworthy due to his close relationship with appellant Waqar.

20. Another important link in the chain of prosecution evidence is the recovery of the crime weapon, a 30 bore pistol, which the appellant allegedly used to commit the murder of deceased Daim Ali by inflicting a firearm shot to his head. As per the deposition of PW-8, ASI Ahmed Khan (Ex.11), the appellant Waqar was arrested on 18.07.2023 on spy information, and during the course of such arrest, a 30 bore pistol, loaded with a magazine containing two live bullets, was recovered from his possession. The weapon was sealed at the spot in the presence of private mashirs Riaz Ali and Allah Bachayo. The arrest of the appellant and the recovery of the crime weapon stand further corroborated by mashir Allah Bachayo, who appeared as PW-3 (Ex.16) and affirmed his signature on the memo of arrest and recovery available at Ex.6/C. The record further reflects that during the inspection of the place of incident, the ASI Ahmed Khan secured one empty of a 30 bore pistol and a piece of cotton stained with blood, sealed the same at the spot, and prepared the memo of site inspection in the presence of the same mashirs. Both pistol and recovered empty were thereafter sent to the Ballistics Expert, and the reports received from the Forensic Division, available at Exs.11/G and 11/H confirms that the pistol was in working condition and the empty had been fired from the very pistol, recovered from the possession of the appellant, thereby lending strong corroboration to the prosecution case. The prosecution has also produced the Chemical Examiner's Report at Ex.12/C, which indicates that the parcel containing the piece of cotton and the last-worn clothes of the deceased were stained with human blood. These positive reports of the Forensic Division and the Chemical Examiner further strengthened the case of the prosecution and constitute strong circumstantial evidence supporting the charges against the appellant in each case.

21. The argument that the incriminating articles viz blood-stained clothes of the deceased, the piece of cotton, the crime weapon, and the empty shell were forwarded to the concerned offices with inordinate delays of 16 days and 02 days respectively, and that such delay renders the forensic reports inadmissible, is devoid of force. The delay, in my humble view, is not fatal to the prosecution case in the presence of a positive ballistic report confirming that the crime weapon, recovered from the possession of the appellant Waqar, matched the empty secured from the place of incident. This is further fortified by the ocular account, comprising direct evidence, duly supported by the medical evidence, both of which have already been found trustworthy and confidence inspiring. Moreover, the delay in sending

the case property to the office of the Chemical Examiner does not adversely affect the prosecution case, as the report merely establishes the presence of human blood and relates to the factum of an unnatural death. When the defence has neither denied nor disputed the unnatural death of the deceased such a delay is irrelevant and not helpful to the appellant. The record further reflects that the appellant while recording his statement under Section 342, Cr.P.C. did not discredit such confidence inspiring evidence. No suggestion was put during cross-examination either the reports have been tampered with or manipulated in any manner. I am, therefore, of the considered view that the recoveries effected in this case provide full and reliable 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)".*

22. 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 cases of *Zakir Khan and others v The State* (1995 SCMR 1793) and *Said Akbar and another v Sardar Ghulam Hussain Khan through legal heirs and another* (2017 P.Cr.L.J 731). Guidance may also be 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".*

Likewise, in the case of *Nasir Ahmed v The State* (2023 SCMR 478), the Hon'ble Supreme Court held as under:-

> *"During the course of proceedings, the learned counsel contended that there are material discrepancies and contradictions in the statements of the eye-witnesses but on our specific query he could not point out any major contradiction, which could shatter the case of the prosecution. It is a well settled proposition of law that as long as the material aspects of the evidence have a ring of truth, courts should ignore minor discrepancies in the evidence. The test is whether the evidence of a witness inspires confidence. If an omission or discrepancy goes to the root of the matter, the defence can take advantage of the same. While appreciating the evidence of a witness, the approach must be whether the evidence read as a whole appears to have a ring of truth. Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored".*

23. It is well settled that the onus to prove its case squarely rests upon the prosecution and once such burden is discharged through cogent and confidence inspiring evidence, the responsibility then shifts to the accused to rebut the allegations and establish his innocence through reliable material. In the present case, it is noteworthy that the place of occurrence is situated inside the house of appellant Waqar. The defence has not been able to shatter the prosecution case rather it stands admitted that the dead body of the deceased was recovered from within the house of Waqar. He in his statement under Section 342, Cr.P.C. neither took any exculpatory plea nor offered a plausible explanation regarding the events of the day of occurrence, the manner in which deceased Daim met his death or the reason why his dead body was found inside his house. He merely denied the prosecution case in a bald and mechanical manner and did not utter a single word suggesting his false implication. Such a bare denial is insufficient to discredit the trustworthy and confidence-inspiring evidence led by the prosecution. Furthermore, the appellant has failed to explain why the prosecution witnesses, who are natural witnesses in the circumstances, would depose against them. This silence gives rise to a presumption that the defence plea is not based on truth. The appellant also avoided entering the witness box or making a statement on Oath under Section 340(2), Cr.P.C. which further weakens his defence.

24. A specific motive has been alleged by the prosecution, which is stated to have become the cause of the murder of Daim Ali. It is the prosecution's stance that the deceased was killed for having contracted a love marriage with Mst. Suhana, the sister of appellant Waqar. The witnesses, while appearing before the learned trial Court, have fully supported the alleged motive and deposed in a clear and consistent manner in line with what was set-forth in the FIR. The defence, on the other hand, has neither denied nor disputed the fact of love marriage. In such eventuality, I am of the considered view that the motive mentioned in the FIR stands duly proved. The Hon'ble Supreme Court in the case of Nasir Ahmed v The State (2023 SCMR 478) held as follows:-

> *"To prove the motive part of the prosecution story, the witnesses of the ocular account appeared in the witness box and deposed against the petitioner. The perusal of the record reflects that neither the defence seriously disputed the motive part of the prosecution story nor the PWs were cross-examined on this aspect of the matter. On our specific query, learned counsel admitted that although the petitioner was represented by a counsel and an opportunity was given to cross-examine the witnesses but despite that the witnesses were not cross-examined on the issue of motive. In this view of the matter, we are constrained to hold that the prosecution has successfully proved the motive against the petitioner".*

Even otherwise, failure of the 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.

25. 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 has not 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 complainant and eye-witnesses had no motive or reason to falsely involve the appellant in the commission of murder of deceased. I am conscious of the fact a young man, aged about 20 years, was done to death in a shocking and brutal manner, which disentitles the appellant Waqar 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.

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 to the extent of appellant Waqar in the commission of murder of Daim Ali and recovery of crime weapon viz 30 bore pistol without license beyond shadow of reasonably doubt. His counsel 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 calls for no interference by this Court. Resultantly, the convictions and sentences, awarded to appellant Waqar through impugned judgments dated 08.12.2023, in each case, are upheld. His appeals are bereft of any merit stand dismissed.

27. Turning to the case of appellant Abdul Sattar, it is sufficient to observe that the complainant and the eye-witnesses either in FIR or in their depositions have not attributed any overt act or any injury to the deceased. In such eventuality, the conviction and sentence awarded to appellant Abdul Sattar is unjustified and cannot be sustained in the eyes of law. The question arises as to whether the evidence which has been adduced by the prosecution to the extent of this appellant can be used against him in line with the evidence brought on record against main accused Waqar. It

is by now a well settled that principle of *"falsus in uno falsus in omnibus"* is not applicable in our system designed for dispensation of justice in criminal cases and Courts are required to sift grain from the chaff in order to reach at a just and fair decision. If any evidence is believed against an accused nominated in the FIR with specific role, the same can be disbelieved to the extent of other co-accused nominated in the depositions without assigning any specific or overt act as to his involvement in the commission of crime. I am, therefore, of the view that case of Waqar (appellant) is distinguishable from the case appellant Abdul Sattar. The principle of *"falsus in uno falsus in omnibus"* has no universal application and it is by now well settled that the Courts have to *"sift the grains from the chaff"*. Reliance may well be made to the case of *Munir Ahmed & another v The State and others* (2019 SCMR 79). Even otherwise, to substantiate an offence of abetment or facilitation in a murder trial, there should be some valid and confidence inspiring evidence, which is manifestly lacking in the present case. As regards the applicability of Section 114, PPC and awarding conviction under Section 302(b) read with Section 114, PPC (on-spot abetment) to appellant Abdul Sattar, it is sufficient to observe that neither did he aid or abet the main accused Waqar in the commission of the murder nor have the witnesses deposed to any such role. He neither played any active part nor performed any act in furtherance of the offence. Even if the ocular account asserting that Abdul Sattar was present at the place of incident at the relevant time is accepted as true, mere presence, without any active participation or overt act in the commission of the offence, is insufficient to warrant conviction or to award the capital punishment of life imprisonment. At this stage, I find merit in the contention raised by learned counsel that the complainant and eye-witnesses, while deposing before the learned trial Court, introduced deliberate improvement by attributing the presence of Abdul Sattar at the crime scene, seemingly to justify his conviction under Section 114, PPC instead of Section 109, PPC. Such material improvement creates doubt, the benefit of which must necessarily be extended to the appellant Abdul Sattar.

28. A close scrutiny of the evidence has led me to an irresistible conclusion that all the pieces of evidence produced by the prosecution against appellant Abdul Sattar are not worthy of reliance to prove alleged offence against him and are sufficient to advance his case for acquittal rather than to maintain conviction because it is a cardinal principle of administration of criminal justice that if any reasonable doubt arises in the prosecution case, the benefit thereof must be extended to the accused not as a matter of

grace or concession but as a matter of right. Likewise, it is also well-embedded principle of criminal justice that there is no need of so many doubts in the prosecution case rather any reasonable doubt arising out from the prosecution evidence, pricking the judicious mind, is sufficient for acquittal of the accused. Rule for giving benefit of doubt to an accused has been laid down by the Hon'ble Supreme Court in the case of *Muhammad Mansha v. The State (2018 SCMR 772)* wherein it has been ruled as under:-

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made in the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)."*

29. The epitome of whole discussion gives rise to a situation that the appellant Abdul Sattar has been convicted without appreciating the evidence in its true perspective, therefore, a benefit of doubt is extended in favour of the appellant Abdul Sattar. Accordingly, the conviction and sentence awarded to appellant Abdul Sattar through judgment dated 08.12.2023, impugned herein, is set-aside and he is acquitted of the charge by extending him the benefit of doubt. The Criminal Appeal No.S-53 of 2023 stands allowed to the extent of appellant Abdul Sattar. He shall be released forthwith if not required to be detained in connection with any other case.

JUDGE