

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.211 of 2025
[Confirmation Case No.10 of 2025]

Appellant	Azeem son of Arab @ Karo B/C Mallah through Mr. Dilawar Hussain, Advocate.
Complainant	Baradio son of Allah Dino through Mr. Ghulam Akbar Uqaili, Advocate.
Respondent	The State through Mr. Ali Haider Saleem, Additional Prosecutor General [Sindh].
Date of hearing	<u>21.09.2026</u>
Date of Judgment	<u>25.09.2026</u>

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JUDGMENT

Shamsuddin Abbasi.- J. Complainant Baradio is father of deceased Idrees, who was aged about 35 years. FIR No.11 of 2024 was lodged at Police Station Garho on 09.04.2024 at 7:00 pm stating therein that on 08.04.2024 at about 5:30 pm Azeem Mallah caused knife injuries to Idrees by inflicting sharp-edged blows on his chest as a result whereof Idrees sustained injuries who was immediately shifted to Var Hospital where after initial medical examination the doctors referred him to Civil Hospital, Makli, however, while Idrees was being taken to Civil Hospital, Makli, he succumbed to his injuries at about 7:00 pm. According to complainant, he is a truck driver whereas his deceased son Idrees was working as a Munshi for Mushtaque Ali son of Meera Dino Perozani, who was engaged in Marori business. On the day of occurrence, the complainant along with his nephew Muhammad Saleem was present at Bypass Garho and was waiting for conveyance, it was about 5:00 pm Idrees contacted complainant on his mobile phone and informed him that he is at his place of work and is busy in settling accounts/Khata transactions and further asked the complainant to come to his residence/place of work as he intended to accompany him to their village after completing his work. The complainant along with his nephew proceeded to the residence/shop of Idrees where they found Idrees present along with his Seth Mushtaque Ali. It was about 5:30 pm Azeem Mallah came there and demanded Eidi expenses from Idrees, who replied

that he had already borrowed money from his Seth despite he would request his Seth to provide him the amount for Eidi expenses. Upon this Azeem Mallah became annoyed, took out a steel knife from the right side pocket of his shirt and after exchanging hot words with Idrees caught hold of him and inflicted sharp-edged knife blows upon his chest with intention to kill him. The complainant party attempted to intervene but Azeem Mallah pointed the knife towards them and threatened them not to come near him. Thereafter, he fled from the place of occurrence towards the northern side through the street while extending threats to the complainant party. The complainant and others found Idrees lying on the ground with blood oozing from his injuries. They arranged a vehicle and immediately shifted Idrees to Var Hospital from where the doctors referred him to Civil Hospital, Makli, however, while they were taking him to Civil Hospital, Makli, Idrees succumbed to his injuries at about 7:00 pm. The complainant informed Police Station Garho about the occurrence through cell phone and brought the dead body of Idrees to Civil Hospital, Makli, where the doctors carried out the requisite medico-legal formalities including post-mortem examination. The police also reached the hospital and after completing the necessary formalities under Section 174, Cr.P.C. handed over the dead body to complainant and after performing the funeral rites he went to Police Station Garho and lodged FIR.

2. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

3. Upon indictment, the appellant pleaded not guilty to the charged offence and claimed trial. At trial, the prosecution has examined as many as 11 witnesses namely, complainant Baradio as PW.1 at Ex.3, Mushtaque Ali (eye-witness) as PW.2 at Ex.4, Muhammad Saleem (eye-witness) as PW.3 at Ex.5, Asadullah as PW.4 at Ex.6, ASI Rab Nawaz as PW.5 at Ex.7, WHC Ameer Bux as PW.6 at Ex.8, Karim Dad as PW.7 at Ex.9, Sikandar Ali (Tapedar) as PW.8 at Ex.10, HC Khuda Bux as PW.9 at Ex.11, I.O. Inspector Sain Dino as PW.10 at Ex.12 and Dr. Sunil Kumar as PW.11 at Ex.14. All of them have exhibited relevant documents in their evidence and were subjected to detailed cross-examination by the defence. Thereafter, the prosecution has closed its side vide statement at Ex.15. The appellant was examined under Section 342, Cr.P.C. at Ex.16. He has denied the allegations imputed upon him by the prosecution, professed his innocence and claimed false implication at the hands of complainant and eye-witnesses

whom he described as interested and related witnesses. He, however, opted not to appear on oath under Section 340(2), Cr.P.C. nor examined any witness in his defence.

4. The learned trial Court after examining and appraising the entire evidence brought on record and hearing the learned counsel for the respective parties found the appellant guilty of the offences charged with and thus convicted him Section 302, PPC and sentenced to death with a direction that he be hanged by his neck until dead vide judgment dated 10.03.2025. He was further directed to pay compensation of Rs.200,000/- under Section 544, Cr.P.C. to the legal heirs of deceased and in default thereof to suffer simple imprisonment for six months more. The appellant was further convicted under Section 506(2), PPC and sentenced to rigorous imprisonment for seven years with a fine of Rs.50,000/- and in default of payment of fine to suffer simple imprisonment for a further period of six months and the benefit in terms of Section 382-B, Cr.P.C. was, however, extended to him. The convictions and sentences so recorded by the learned trial Court have been called into question through the instant appeal.

5. It is contended on behalf of the appellant that the impugned judgment is contrary to the evidence available on record and the learned trial Court has failed to appreciate the prosecution evidence in its true perspective and has wrongly convicted the appellant. It is next submitted that the complainant and the eye-witnesses are closely related to the deceased and therefore are interested witnesses whose testimony requires independent corroboration. It is also submitted that material discrepancies and omissions exist in their statements regarding the manner of occurrence, presence of the witnesses and the role attributed to the appellant, which create serious doubt about the veracity of the ocular account. He maintained that the alleged recovery of knife is highly doubtful and in any event is merely a corroborative piece of evidence and cannot by itself connect the appellant with the commission of murder. It is argued that the appellant's alleged arrest and recovery were manipulated during investigation and the prosecution has failed to establish an unimpeachable chain connecting the recovered knife with the fatal injury caused to the deceased. Learned counsel has also questioned the evidentiary value of the forensic material and submitted that the medical evidence merely establishes the factum and nature of death and does not by itself identify the assailant. He argued that the prosecution was required to prove the charge beyond reasonable doubt whereas the evidence on record

falls short of the required standard. Any reasonable doubt must necessarily be resolved in favour of the accused. He, therefore, prayed that the convictions and sentences recorded by the learned trial Court may be set aside and the appellant may be acquitted of the charges.

6. Conversely, the learned Additional Prosecutor General appearing for the State, assisted by the learned counsel for the complainant, has opposed the appeal and supported the impugned judgment. It is submitted that the prosecution has produced a natural, consistent and confidence inspiring ocular account furnished by the complainant and eye-witnesses, who were present at the place of occurrence for a duly explained and natural reason and their presence cannot be discarded merely because of their relationship with the deceased particularly when their testimony remained consistent on all material particulars and no material contradiction could be elicited during lengthy cross-examination. It is next submitted that the occurrence was promptly reported thereby excluding the possibility of deliberation or fabrication and the ocular account is fully corroborated by the medical evidence, which confirms the seat, nature and fatal character of the injury caused by a sharp-edged weapon. It is also submitted that the appellant was arrested shortly after the occurrence on the pointation of the complainant and the crime weapon i.e. the steel knife bearing blood marks was recovered from his possession. The recovery was duly witnessed by the mashirs and the recovered articles were thereafter transmitted through the prescribed channel with the relevant entries in Register No.XIX and the Roznamcha supporting their safe custody and transmission to the forensic laboratories. The forensic and chemical reports coupled with the medical evidence provide further corroboration to the prosecution case. He maintained that the defence has failed to identify any material infirmity in the investigation or any circumstance sufficient to discredit the prosecution witnesses. He argued that bare denial under Section 342, Cr.P.C. unsupported by any plausible explanation or defence evidence does not create a reasonable doubt in an otherwise confidence inspiring prosecution case. He submitted that the learned trial Court has properly appraised the entire evidence and reached a conclusion supported by the record and for dismissal of appeal.

7. We have given our anxious consideration to the submissions advanced by learned counsel for the respective parties and have carefully examined the entire evidence available on record with their able assistance.

8. The prosecution case primarily rests upon the ocular account furnished by complainant Baradio (PW.1) and the two eye-witnesses, namely Mushtaque Ali (PW.2) and Muhammad Saleem (PW.3). All three witnesses have consistently attributed the commission of the fatal assault to the appellant. According to their consistent account, the appellant came to the place of occurrence, demanded Eidi expenses from deceased Idrees, became annoyed over the response of the deceased and in the course of ensuing exchange took out a steel knife and inflicted sharp-edged blows upon his chest. Their testimony is not only consistent on the material particulars of the occurrence, but also remains coherent with regard to the identity of the assailant, the weapon used, the manner in which the assault was made and the particular part of the body upon which the fatal injuries were inflicted. These are the essential features of the prosecution case and on all such material aspects the witnesses have remained firm and consistent.

9. We have carefully scrutinized testimony of the complainant and two eye-witnesses in the light of the cross-examination conducted on behalf of the appellant. Nothing substantial has been extracted from any of these witnesses which could demolish their account, render their presence at the place of occurrence doubtful or create a reasonable possibility that the appellant was falsely implicated. Their presence at the relevant time and place has been satisfactorily explained and their testimony does not suffer from any inherent improbability or material contradiction touching the core of the occurrence. Minor variations, if any, concerning details are natural and do not impair the intrinsic worth of an otherwise consistent ocular account. Significantly, there is no material discrepancy amongst these witnesses on the essential question as to who inflicted the fatal injury upon the deceased and with what weapon. Their evidence, therefore, cannot be discarded on account of inconsequential discrepancies. The fact that the complainant and the eye-witnesses were associated with or related to the deceased does not by itself render their testimony unreliable. Relationship is a circumstance requiring careful scrutiny of evidence, but it is not a legal disqualification from giving evidence. What is required is an examination of whether the testimony is confidence inspiring and whether any material circumstance exists which furnishes a reason for false implication. In the case in hand, the evidence of complainant PW.1 Baradio, PW.2 Mushtaque Ali and PW.3 Muhammad Saleem when tested on the touchstone of cross-examination and read as a whole inspires confidence. No convincing motive for their falsely implicating

the appellant has been brought on record nor has the defence succeeded in showing that these witnesses had any reason to substitute the real assailant with the appellant. Their evidence, therefore, constitutes the primary and substantive basis upon which the prosecution case rests.

10. The ocular account receives direct and substantial corroboration from the medical evidence. PW.11 Dr. Sunil Kumar, who conducted the post-mortem examination, found a sharp-cutting injury on the chest of the deceased which had ruptured the major blood vessels of the heart. The medical officer opined that the deceased had died as a result of cardio-respiratory failure consequent upon the said injury. The nature, seat and fatal effect of the injury are fully compatible with the account furnished by the complainant and the eye-witnesses regarding the use of a sharp-edged weapon and the infliction of blows upon the chest of the deceased. The medical evidence, therefore, does not contradict the ocular account at any material point rather it provides independent assurance to the version given by the eye-witnesses. The medical evidence confirms not only the existence of the fatal injury but also its nature and location, thereby lending further support to the prosecution version concerning the manner of assault.

11. The prosecution case is further strengthened by the recovery of the crime weapon at the instance of the appellant. The appellant was arrested on 10.04.2024 on the pointation of complainant whereafter a steel knife was recovered from the right side pocket of his shirt. The recovery was effected in presence of mashirs Asadullah and Abdul Razzaq, who witnessed the proceedings and the recovered knife was taken into possession and duly sealed. More importantly, the recovered knife was subsequently examined by the chemical examiner and was reported to be stained with human blood. The recovery, therefore, is not an isolated or self-standing circumstance rather it constitutes a corroborative link which gains considerable evidentiary significance when examined alongside the direct ocular account and the medical evidence. The forensic finding that the recovered knife was stained with human blood further enhances the probative value of the recovery. Although the recovery of a weapon by itself may not constitute the sole basis for recording a finding of guilt where direct evidence is otherwise available, in the present case it furnishes additional corroboration to the testimony of the eye-witnesses, who had specifically described the use of a steel knife in the assault upon the chest of the deceased. The recovery thus fits into the prosecution narrative in a manner which is consistent with and supportive of

the direct evidence already available on record. It is consequently not a circumstance which can be brushed aside as inconsequential.

12. The prosecution has also satisfactorily accounted for the custody and transmission of the recovered case property. The evidence of the police officials read with the relevant entries of Register No.XIX and the Roznamcha demonstrates that the sealed parcel containing the recovered knife remained in safe custody and was thereafter transmitted through the prescribed channel to the concerned forensic/chemical examination laboratory. No material contradiction has been identified in the evidence relating to its custody or transmission nor has the defence brought on record any circumstance suggesting that the seal was tampered with, the parcel was interfered with or the recovered property was substituted at any stage. In the absence of any such material, the chain of custody stands satisfactorily established.

13. The chemical examiner's report (Ex.12/H) confirming the presence of human blood on the knife recovered from the appellant provides material corroboration to the prosecution case. The medical evidence confirming a fatal sharp-edged injury on the chest of deceased Idrees is consistent with the ocular account regarding the manner of assault while the recovery of crime weapon at the instance of the appellant and the detection of human blood thereon further connect him with the occurrence.

14. The primary evidence against the appellant is the direct ocular testimony of complainant PW.1 Baradio and eye-witnesses PW.2 Mushtaque Ali and PW.3 Muhammad Saleem. Their presence at the place of occurrence has not been successfully challenged and their testimony has remained consistent on all material particulars and has withstood cross-examination. Their account is materially supported by the medical evidence and further corroborated by the recovery and forensic evidence. These circumstances are not being treated as a substitute for the ocular account but lend independent assurance to testimony which on its own merits inspires confidence.

15. The plea of false implication is likewise a bare assertion unsupported by any plausible motive or circumstance suggesting that the complainant and eye-witnesses would falsely substitute the appellant for the actual culprit in a case involving murder. We have carefully examined the contradictions and

omissions highlighted by learned defence counsel. None relates to a material aspect of the occurrence, the identity of the appellant, or the role attributed to him. The discrepancies pointed out are confined to matters of detail and narration and do not affect the substance of the prosecution case. It is well settled that minor variations, which are natural in human testimony cannot be made a ground for discarding otherwise reliable evidence unless they strike at its core or create a reasonable doubt regarding the occurrence or the accused's participation. No such material contradiction or substantive omission has been identified in the present case.

16. Upon a cumulative assessment, the ocular account is found to be natural, consistent and confidence inspiring, and is duly supported by the medical, recovery and forensic evidence. The prosecution has thus established through cogent and mutually corroborative evidence that the appellant inflicted the fatal knife injury upon deceased Idrees resulting in his death. The core of the prosecution case remains intact and the alleged discrepancies do not furnish any legally sustainable basis for extending the benefit of doubt to the appellant. We are, therefore, satisfied that the prosecution has proved the appellant's guilt beyond reasonable doubt. The learned trial Court has correctly appreciated the evidence and no misreading or non-reading of any material evidence has been demonstrated before us warranting interference with the impugned judgment. The finding of conviction is consequently well-founded and calls for no interference.

17. So far as the sentence awarded under Section 302, PPC is concerned, the appellant has been sentenced to death by the learned trial Court. We have given anxious consideration to the question of sentence. There is no cavil with the proposition that once the guilt of an accused for an offence punishable under Section 302, PPC is established beyond reasonable doubt, the question of sentence nevertheless remains a distinct and separate matter requiring independent consideration on the basis of the facts and circumstances of each case. The imposition of death penalty being the severest punishment known to law calls for the most careful scrutiny of the circumstances attending the commission of the offence. In the case in hand, although the prosecution has succeeded in establishing the appellant's guilt beyond reasonable doubt, the circumstances attending the occurrence do not disclose any compelling or aggravating feature warranting the extreme penalty. The occurrence appears to have taken place suddenly during an exchange arising out of a demand concerning Eidi expenses and the

prosecution has not brought on record any convincing material establishing that the appellant had planned or premeditated the murder. There is no proved circumstance on the record demonstrating a pre-planned design to commit the offence. The occurrence, therefore, appears to have developed in the course of a sudden altercation rather than pursuant to a pre-arranged plan. It is also a settled principle governing the exercise of sentencing discretion that where upon an overall appraisal of the circumstances, the case admits of two legally permissible punishments viz death and imprisonment for life, the Court is required to consider whether the circumstances are sufficiently exceptional to justify the extreme penalty. Where the prosecution fails to establish circumstances warranting the ultimate punishment and the case reasonably falls within the domain of imprisonment for life, the lesser sentence ought to be preferred. The object is not to dilute the gravity of the offence or to disregard the sanctity of human life, but to ensure that the punishment imposed remains proportionate to the proven circumstances of the crime and the degree of culpability established against the offender.

18. Viewed in this perspective, we are of the considered opinion that notwithstanding maintaining of the conviction under Section 302, PPC, the circumstances of the present case do not justify retention of the extreme penalty of death. The absence of established premeditation, the sudden manner in which the occurrence arose and the overall circumstances available on the record persuade us to extend the benefit of the lesser of the two permissible punishments. We are, therefore, of the view that the ends of justice would be adequately met by substituting the sentence of death with imprisonment for life. This alteration in sentence does not in any manner detract from the finding of guilt, which is maintained on its own merits. Accordingly, while maintaining the conviction of the appellant under Section 302, PPC, the sentence of death awarded to the appellant is converted into imprisonment for life. The compensation of Rs.200,000/- awarded under Section 544-A, Cr.P.C. recoverable from the appellant for payment to the legal heirs of the deceased along with the sentence prescribed in default of payment thereof shall remain intact. The conviction of the appellant under Section 506(2), PPC is also maintained. The sentence of rigorous imprisonment for seven years together with fine of Rs.50,000/- and the sentence of simple imprisonment for six months more in default of payment of fine as awarded by the learned trial Court shall likewise remain intact. Both

substantive sentences shall run concurrently and the appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C.

19. Subject to the modification in sentence as indicated above, this Criminal Jail Appeal No.211 of 2025 is dismissed on merits whereas Confirmation Case No.10 of 2025 is answered in Negative.

JUDGE

JUDGE

Naeem/PA