

IN THE HIGH COURT OF SINDH, KARACHI

Before:

**Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Zulfiqar Ali Sangi**

**Criminal Jail Appeal No.107 of 2017
Confirmation Case No.02 of 2017**

Appellant No.1 : Farman Ali S/o Saif-ur-Rehman
Through Mr. Farhan Ahmed Mangi,
Advocate

Appellant No.2 : Jahangir S/o Muhammad Shamsheer
Through Mr. Farhan Ahmed Mangi,
Advocate

Respondent : The State
Through Mr. Khadim Hussain
Addl. Prosecutor General, Sindh

Complainant : Abdul Barr S/o Hafiz Abdullah Hussain
Through Mr. Muhammad Farooq, Advocate

Date of Hearing : 12.11.2019

Date of Judgment : 03.12.2019

J U D G M E N T

ZULFIQAR ALI SANGI---J., Appellants filed the instant Criminal Jail Appeal on being aggrieved and dissatisfied with the impugned judgment dated 21.02.2017 passed by learned Vth-Additional Sessions Judge, Karachi East in Sessions Case No.922/2011 under FIR No.500/2011 for the offences under sections 302 & 34 PPC registered at PS Gulshan-e-Iqbal, Karachi; whereby appellants were convicted under section 302(b) PPC and awarded death sentence with direction to hang both the accused till their death for committing Qatal-e-Amad of deceased Abul Aala S/o Hafiz Abdullah Hussain. They were directed to pay Rs.200,000/- each as compensation to the legal heirs of deceased Abul Aala in view of section 544-A Cr.P.C. In case of default of payment of compensation amount, they shall suffer S.I. for (06) months more. Both the

appellants were also convicted under section 392 PPC and sentenced to undergo R.I. for (05) years for committing robbery from deceased Abul Aala and to pay fine of Rs.10,000/- each. In case of default of payment of fine, they shall further suffer S.I. for two months more. However, benefit of section 382-B Cr.P.C. was extended to the appellants.

2. Brief facts of the prosecution case are that statement of the complainant namely Abdul Barr son of Hafiz Abdullah Hussain was recorded under section 154 Cr.P.C. on 08.07.2011 at about 2150 hours stating therein that he is a resident of M-53 Lane No.18, Phase-VII, DHA Karachi and runs his private business. On 06.07.2011, his elder brother namely Hafiz Abul Aala son of Abdullah Hussain had gone to Gulshan-e-Iqbal, Block # 6 near Dhaka Sweets at about 0800 pm for purchasing fish alongwith his wife, children and maternal uncle (mamoo) namely Abdul Basit in vehicle No.ARR-194 and when Abdul Aala was coming back towards his vehicle after purchasing fish suddenly two persons, who could be identified by wife and maternal uncle (mamoo) Abdul Basit of deceased, came on motorcycle with unknown number. Both the persons were armed with firearms and they started firing upon the brother of the complainant with intention to murder him. The complainant's brother namely Abul Aala received several bullets in his abdomen and head and died at the spot due to injuries. The complainant further stated that after funeral ceremony, he would come to police station for lodging report and alleged that two unknown accused persons riding on motorcycle due to unknown reasons committed murder of his brother by causing firearm shots. Such statement of complainant u/s 154 Cr.P.C. was incorporated

into FIR No.500/2011 under section 302/34 PPC by SIP Shabbir Hussain Gopang at PS Gulshan-e-Iqbal, Karachi.

3. After completing usual investigation, charge sheet in this case was submitted against accused (1) Farman Ali s/o Saif-ur-Rehman and (2) Jahangir s/o Muhammad Shamsheer before the concerned Judicial Magistrate for the offences punishable u/s 302 read with section 34 PPC and 396 read with section 34 PPC, who after cognizance sent the R&Ps of this case to the District & Sessions Judge, Karachi East as the case was exclusively triable by the court of Sessions, where from case was transferred to the Court of learned VI-Additional Sessions Judge, Karachi East, where the copies were supplied to the accused at Ex.1. Formal charge was framed against the accused persons on 25.11.2011 at Ex.2, to which both the appellants pleaded not guilty and claimed for trial.

4. In order to prove its case, prosecution examined as many as 14 witnesses. The complainant Abdul Barr was examined as PW-1 at Ex.3, who produced statement u/s 154 Cr.P.C. at Ex.3/A, memo of inspection of place of incident at Ex.3/B. (PW-2) Mst. Nayer Abul Aala was examined at Ex.4. (PW-3) Abdul Basit at Ex.5. (PW-4) Shoaib Abdullah at Ex.6, who produced memo of inspection of dead body at Ex.6/A, inquest report at Ex.6/B, memo of receipt of dead body at Ex.6/C. The learned DDPP for the state gave up PW Abdul Qadeer vide statement dated 14.07.2012 at Ex.7, Mrs. Zahida Parveen the then learned Judicial Magistrate VITH Karachi East as (PW-5) at Ex.8, who produced memos of identification parade at Ex.8/A & Ex.8/B and two letters dated 06.08.2011 at Ex.8/C and Ex.8/C-1 respectively. (PW-6) Muhammad Shahid at Ex.9, who produced notice under section 160 Cr.P.C. at Ex.9/A. (PW-7) HC

Syed Younus Ali at Ex.10, who produced memo of arrest and recovery at Ex.10/A, memo of recovery/seizure at Ex.10/B, memo of pointing of place of incident and arrest of accused at Ex.10/C. (PW-8) Muhammad Shabir at Ex.11. Thereafter the case in hand was transferred to the court of Vth Additional Session Judge East for its disposal according to law. Prosecution examined (PW-9) SIP M. Aslam Baloch at Ex.12, who produced FIR at Ex.12/A, sketch of place of incident at Ex.12/B, letter dated 09.07.2011 to SSP at Ex.12/C, letter dated 12.07.2011 to CPLC at Ex.12/D, request letter dated 19.07.2011 to Incharge FSL for calling cell data record of mobile phone of deceased at Ex.12/E, transfer of investigation order at Ex.12/F. (PW-10) SIP Muhammad Akram Warraich at Ex.13, who produced entry No.26 dated 06.07.2011 at Ex.13/A, memo of seizure of motorcycle, empties and bloodstained soil at Ex.13/B, request letter dated 06.07.2011 to MLO at Ex.13/C, roznamcha entry No.37 dated 07.07.2011 at Ex.13/D. (PW-11) SIP Shabbir Hussain at Ex.14. (PW-12) ASI Muhammad Ali at Ex.15. (PW-13) Dr. Afzal Ahmed at Ex.16, who produced postmortem report at Ex.16/A, cause of death certificate at Ex.16/B, medico legal certificate at Ex.16/C dated 06.07.2011 of accused Jahangir Emergency Slip at Ex.16/D. (PW-14) SIP Muhammad Shoaib Investigating Officer at Ex.17, who produced order dated 22.07.2011 of SSP AEC CID Karachi at Ex.17/A, roznamcha entries No.38 and 42 at Ex.17/B & 17/C respectively, application dated 25.07.2011 at Ex.17/D, application to learned Magistrate dated 06.08.2011 at Ex.17/E, notices at Ex.17/F to 17/J, request letter dated 08.08.2011 at Ex.17/K, application for approval dated 24.07.2011 at Ex.17/L, request letter dated 01-08-2011 to FSL at Ex.17/M, FSL report dated 20.08.2011 at Ex.17/N, application for

approval to SSP CID dated 30.07.2011 at Ex.17/P, request letter dated 08.08.2011 to chemical examiner at Ex.17/Q, chemical examiner report at Ex.17/R, request letter to MLO at Ex.17/S, application dated 30.07.2011 for obtaining post mortem report at Ex. 17/T and order dated 04-08-2011 passed by learned IIIRD Adl. Sessions Judge Karachi East in Crl. Revision Application No.62/2011 at Ex.17/U respectively. The learned DDPP for the State gave up evidence of PW HC Naeem Jamali vide statement dated 26.08.2015 at Ex.19 and then closed the side of prosecution vide statement submitted at Ex.20.

5. On 21.01.2017, statement of accused Farman Ali was recorded u/s 342 Cr.P.C. vide Ex.21, wherein he denied the prosecution allegation and stated that in the year 2011 on 17th of the month he came out from his house due to load shedding of electricity and was sitting with some boys. A few persons came and put clothes on him, took him in vehicle and brought him to CID where police demanded amount of Rs.500,000/-for his release which he could not pay, therefore, he was involved in this false case. However, he claimed to be innocent. Whereas, statement u/s 342 Cr.P.C. of accused Jahangir was recorded at Ex.22, wherein he also denied prosecution allegations and stated that on 06.07.2011 he was going from Saddar to his house near Baloch colony his motorcycle was robbed and the dacoits made firing upon him. Due to which, he sustained injuries. Such matter was reported by his father at PS Tipu Sultan on 07.07.2011 and police officer of PS Tipu Sultan also recorded his brother's statement u/s 154 Cr.P.C. under roznamcha entry No.4 copy whereof he produced at Ex.22/A, thereafter he was discharged from Jinnah Hospital. He produced

his discharge card at Ex.22/B. The accused further stated that he was then taken to his house in Chippa Ambulance and on 16.07.2011 he went to JMPC hospital for getting his stitches removed. He produced receipts of Chippa Ambulance at Ex.22/C and OPD slip at Ex.22/D. The accused further stated that on 17.11.2011 some persons took him from his house to CID centre where the police officers talked to his father on phone and demanded amount of Rs.500,000/- but his father did not pay such amount to police and filed an application against them. Therefore, police falsely involved him in this case. The accused produced such application at Ex.22/F. He claimed to be innocent.

6. Mr. Farhan Ahmed Mangi, Advocate, learned counsel for the appellants mainly contended that there is delay of about 50 hours in registration of FIR which has not been explained by the prosecution; that name of the appellants neither transpired in the FIR nor any descriptions were mentioned in the FIR; that the identification parade was defective and was not reliable but trial court convicted the appellants on the basis of defective identification parade; that injury was received by the appellant when some dacoits snatched motorcycle from him and also caused him firearm injury such report was made by the appellant party at police station; that entire case was set up by the police against the appellants as police arrested the appellants and demanded from them an amount as illegal gratification for their release and on refusal they were booked in the present case; that there are material contradictions in the evidence of witnesses which are sufficient to hold that prosecution has not proved case against appellants beyond reasonable doubt; that the witnesses are chance

witnesses and their presence at place of incident is doubtful; that the weapons were foisted upon the appellants by the police otherwise nothing was recovered from them; He lastly prayed that on these grounds among others the appellants may be acquitted after extending them the benefit of doubt. He relied upon the cases of (1). Zafar Hayat V. The State { 1995 SCMR 896 }, (2). State through Advocate General, Sindh V. Bashir and others { PLD 1997 SC 408 }, (3). Abdul Sattar and another V. The State { 1981 SCMR 678 }, (4). Muhammad Anwar V. The State { 2017 SCMR 630 }, (5). Tariq Pervaiz V. The State { 1995 SCMR 1345 }, (6). Muhammad Zubair V. The State { 2007 SCMR 437 }, (7). Salamat Masih and another V. The State { 1995P.Cr.L.J 811 }, (8). Muhammad Ashraf and others V. The State { 2010 SCMR 407 } and Kashif Khan and others V. The State and others { 2018P.Cr.L.J Note 109 }.

7. Mr. Khadim Hussain Addl. Prosecutor General, Sindh, contended that delay of 50 hours was explained by prosecution properly in evidence; that no enmity or ill-will was suggested against the witnesses for false implication and appellants were not named in the FIR which suggest no mala fide on the part of prosecution; that independent witnesses also supported the case of prosecution specially the shopkeeper from whom deceased purchased fish at the time of offence; that minor defects in the identification parade are not sufficient to discard other direct evidence and identification parade is not a requirement of law to be held in each and every case; that natural witnesses deposed against appellants who were not chance witnesses and were available with the deceased being his family members; that medical evidence is in line with oral and direct evidence; he contended that prosecution

has proved the case beyond reasonable doubt and therefore requested that conviction awarded by the trial court to the appellants may be maintained and Appeal may be dismissed. He relied upon the cases of (1). Muslim Khan and others V. The State { 2002 YLR 2813}, (2). Muhammad Akbar V. The State { 1998 SCMR 2538 } and (3). Mumraiz V. The State { 2011 SCMR 1153 }.

8. Mr. Muhammad Farooq, advocate for the complainant while adopting the arguments of learned Addl. PG contended that initially FIR was registered against unknown persons and if complainant party had any ill-will or enmity against the appellants they would have nominated them in the FIR; that all the witnesses fully supported the case of prosecution; that medical evidence also supports the ocular evidence coupled with recovery of crime weapons and FSL reports in support; that empties recovered from place of incident matched with recovered crime weapon from the appellants; that appellant Jahangir also received the firearm injury from the hands of deceased which was proved through medical evidence; that pistol of deceased which was robbed was recovered from possession of appellants; that on the basis of minor defects in identification parade direct evidence cannot be discarded; that police officials also supported the case of complainant; that only on minor contradictions which otherwise remain available in each and every case acquittal judgment cannot be passed; that trial court has properly appreciated the entire evidence in accordance with law; Lastly, he contended that prosecution proved its case beyond reasonable doubt and prayed that the conviction awarded to the appellants by the trial court may be maintained and Appeal may be dismissed. He relied upon the cases of (1). Sikandar V. The State {

2006 SCMR 1786 }, (2). Muhammad Ashraf V. The State { 2011SCMR 1046 }, (3). Murad Baloch alias Michael V. The State { PLD 2004 Karachi 283 }, (4). Sadam Hussain V. The State { 2018 YLR 86 }, (5). Zahid Hussain and others V. The State { 2007 YLR 2355 }, (6). Rizwan Ashiq V. The State { 2018 P.CR.L.J Note 41 }, (7). Muhammad Hayat and 2 others V. The State { 2015 YLR 1326 }, (8). Muhammad Amin V. The State { 2002 SCMR 1017 }, (9). Amjad Ali and others V. The State { PLD 2017 SC 66 },(10). Dadullah and another V. The State { 856 } and Muhammad Bux V. The State { 2015 YLR 519 }.

9. We have heard the arguments of learned counsel for the parties and perused the material available on record with their able assistance and have considered the relevant law.

10. The Main PW's gave evidence as under:

The prosecution examined PW-1 namely Abdul Barr, who is the brother of deceased and lodged the FIR. He deposed that this incident took place on 6th July 2011 when he was at Dubai. He received phone call of his elder brother Abdul Wasi who informed him about the incident, in the morning of next day he reached Karachi at 5:30 am, his elder brother and maternal uncle Abdul Basit told him that they had gone to purchase fish from Gulshan along with sister-in-law (Bhabhi) wife of deceased and children, when after purchasing the fish, two persons came and tried to snatch stuff from him and his brother Abdul Aala resisted and the persons made fire shots and his brother died at the spot. He deposed that he attended the funeral ceremony and went to police station where his statement under section 154 Cr.P.C was recorded, which he exhibited in his evidence. The police visited the

place of wardat in his presence on the pointation of Abdul Basit and memo was prepared which he produced in the evidence. He was cross examined but was not shattered.

11. PW-2 namely Nayer Aala, who is wife of the deceased and is **eye witness** of the incident, was examined. deposed that on 6th July 2011, she alongwith her husband and maternal uncle Abdul Basit as well as her children had gone to fetch fish near Dhaka Sweets Gulshan-e-Iqbal and her husband alighted from the vehicle to purchase the fish and when he was returning after buying the fish, two persons came on two motorcycles and snatched something from her husband and one of the accused made fire shot upon her husband and her husband also made fire shot upon them and then both the accused made fire shots upon her husband. She alighted from the vehicle while the accused ran away on one motorcycle by leaving other motorcycle there while taking pistol and mobile of her husband. She further deposed that police also reached there and her husband was taken to hospital. She made call to her brother in law namely Sohail who also reached there and then she went to their house. On 9th August, 2011 she was called for identification of accused persons before Magistrate and she identified them and signed the memo of identification parade.

12. PW-3 namely Abdul Basit who was the **eye witness** of the incident was examined, who deposed that on 6th July, 2011 he had come to the house of deceased as he used to visit deceased being nephew, they went for purchasing fish and reached near Dhaka Sweets where fish shop is situated. Abul Aala went for purchasing fish and on his return two boys came on motorcycles and snatched from him something. He took out pistol and made fire shot upon

them the second boy had made severe firing upon Abul Aala, who had fallen down and one of the boys had taken away the articles including gun fallen on the ground by Abul Aala and injured boy and other fled away on the single motorcycle towards Nipa round about and they had left the motorcycle there. Police also reached there and immediately rushed Abul Aala at Nadeem Hospital where Abul Aala was declared as dead. His statement was recorded, he along with police went to place of wardat. Police inspected the same prepared memo of inspection and obtained his signature. He further deposed that on 9th August 2011 he identified both the accused during identification parade before the Magistrate where he also signed the memo of identification. He was cross examined at length but we could not find any major contradiction.

13. PW-5 namely Mrs. Zahida Parveen the then Judicial Magistrate who held the identification Parade on 09-08-2011. She further deposed that identification was held on the direction of IIIrd Additional Sessions Judge, Karachi East as earlier she refused for the same and on Revision order was passed. She deposed the procedure of identification parade which she applied at the time of identification parade and exhibited the memo of identification. She was also cross examined only on the point that earlier she refused application for police identification. No such illegality or irregularity in the identification proceedings was pointed out to her during cross examination.

14. PW-6 namely Mohammad Shahid who was **independent person** and was driving a rickshaw available there on 06.07.2011 and waiting for passengers where he saw that suddenly one person was coming towards his vehicle after purchasing fish in the

meantime two accused came on motorcycle and started fighting with said person, who has purchased fish in the meantime something fallen on the ground, which was taken by the accused and went away. He deposed that he heard fire shots, he further deposed that accused come on two motorcycles, while they were leaving the place of incident. They left one motorcycle. He further deposed that he was called for identification parade and during identification parade he identified both the accused persons. He was cross examined but except some minor contradictions defense could not succeed to shatter the evidence of this witness.

15. PW-7, namely Syed Younus Ali, who was posted as HC at AVCC deposed that on 22-7-2011 at 8:30 PM Inspector Mohammad Shoib Qureshi arrested accused Farman Ali and Jahangir in his presence from Malir Nadi Shah Faisal Colony and recovered unlicensed pistols and an amount, prepared such mashirnama in his presence accused confessed that on 6-7-11 they on two motorcycles near Dhaka Sweet House tried to commit robbery from Abul Aala and on his resistance, they committed murder and also took away pistol and mobile phone. He deposed that they led police party towards place of incident, which was visited on their pointation and such mashirnama was prepared. He further deposed that during interrogation accused Farman led the police party to his godown (Kabarkhana) situated at Cant Bazar Yousufzai House and produced pistol, which was robbed from deceased, such mashirnama was also prepared in his presence which he signed and he produced certain documents in his evidence. This witness was also cross examined he was not shattered except for some

minor contradictions which are not sufficient to acquit any accused.

16. PW-8 namely Mohammad Shabir who was an **independent witness** and shopkeeper where from deceased purchased the fish was examined. He deposed that on the day of incident he was present on his shop one person came for purchasing fish suddenly firing was started. He saved himself while sitting on the ground, after firing he saw one person who came for purchasing fish was lying dead.

17. PW-9 namely, M Aslam Baloch was examined who deposed that he was first investigation officer of the case. On 07-08-2011 he was posted as SIP at PS Gulshan-e-Iqbal, investigation branch on the same day at about 2210 hours he received FIR No: 500/2011 U/S 302, 392, 34 PPC of PS Gulshan-e-Iqbal along with statement U/S 154 Cr.P.C of complainant, memo of seizure of motorcycle and bullet empties, memo of inspection of dead body of deceased and death certificate of deceased along with case properties for investigation.

18. PW-10, namely, M. Akram Waraich was examined. He deposed that on 06-070-2011 he was posted as SI duty officer at PS Gulshan-e-Iqbal, on the same day at about 2000 hours HC Asif Mahmood informed him through telephone that one person was made injured by some unknown accused persons near Dhaka Sweets, Block-6 and he was taking him in his private vehicle to Nadeem Hospital, for medical treatment, he made such entry No: 26 at 2000 hours in Roznamcha. He thereafter along with SIP Manthar Ali went to Nadeem Hospital on his motorcycle. When he reached at Nadeem Hospital, the injured person brought by HC Asif Mahmood

had already expired who had sustained one bullet in his head and four bullets in his stomach. He recorded the statement U/S 154 of complainant and deposited the bullet empties, blood mixed soil, motorcycle and sealed parcel of cloths of deceased in Malkhana/kot of Police Station then he informed the higher authorities. His statement was recorded by Aslam Baloch, he saw the case properties produced before the court as same, he was also cross examined at length but except some minor contradictions no fruitful result was achieved by defense counsel.

19. PW-12 namely Muhammad Ali was examined. He deposed that on 06-07-2011 he was posted as ASI at police station Gulshan-e-Iqbal, on the same day he along with HC Asif Mehmood was on patrolling duty on his private car, when they were crossing from Dhaka Sweet they heard noise of firing, whereupon he directed HC Asif Mehmood to get off from the vehicle and go to the place from where the noise of firing was coming by crossing the road. He is coming after turning from U turn. He deposed that as soon as he reached there after turning U turn he saw HC Asif Mehmood was present there and one person had sustained bullets injuries and was lying in between footpath and car in front of one Machli wala and one lady and child were present in the car of injured, on inquiry he came to know the name of injured as Abdul Aala, maternal uncle of injured namely Abdul Basit was also present there. Thereafter injured was sent to Nadeem Hospital. At 2045 SIP Akram Waraich came from Nadeem Hospital secured 03 bullet empties of 30 bore, blood mixed soil from place of incident and sealed the same in separate parcels and obtained his signature thereon. He deposed that Akram Waraich also secured motorcycle

left by accused persons and prepared such memo of seizure and obtained signatures and then proceeded towards JPMC. He was also cross examined but we do not find any major contradiction which suggests that he is not a trustworthy witness.

20. PW-13 namely Dr. Afzal Ahmed he is very important witness of prosecution. He was examined and according to his evidence on 06.07.2011 he was posted as Medico Legal Officer at JPMC Medico Legal Section. The dead body of Abdul Aala son of Abdullah Hussain was brought to him for carrying out post mortem. He examined the dead body of deceased and found that he had sustained 7 separate firearm injuries which resulted in his death. **Significantly** he gave evidence that on same date i.e. 06.07.2011 injured Jehangir son of Jehanzaib Khan aged about 18 years, resident of House No. 21, AL-Haider Society, Drig Road came from NCR Institute, Baloch Colony to Emergency Department with the history of firearm injury. The said injured Jehangir was brought by his friend namely Rana Bilal. He examined injured Jehangir and found following injuries on his persons: -

1. Firearm wound over supra pubic region. Size 1 x cm in diameter, blackening negative, margins inverted, as wound of entry. I declared the weapon used, as firearm.

He made a control entry to the police control No.50 to HC Abdul Wahid, Belt No. 635 for PS Baloch Colony and issued MLC No. 6305, copy whereof he produced as Ex.16/C and says that it is same and bears his signature. He also produced copy of examination / ER Slip of accused Jehangir as Ex.16/D and says that it is same and bears his signature. He cannot identify the injured/accused Jehangir present in the court by face, but he can identify him through mark of identification, which is scar at left

arm, as mentioned in MLC produced as Ex.16/C. He sees scar on the left arm of accused Jehangir present in the court and he can identify him to be the same injured through said identification mark, but he cannot identify him by face. He sees sealed parcel of clothes of deceased Abdul Aala and says that it is same and bears his signature.

21. PW-14 namely Muhammad Shoaib the investigation officer was examined before the trial court. He deposed that on 22-07-2011 he was posted at police station CID AEC as PL, on the same day he apprehended two accused persons namely Farman Ali and Jahgangir in presence of ASI Nadeem Baig and HC Syed Younus from Malir Bund Reta Plot Shah Faisal Colony, Karachi and lodged FIR No: 320/2011 U/S 13-D of Arms Ordinance and FIR No: 321/2011 U/S 13-D of Arms Ordinance of PS CID against them respectively. During interrogation both the accused persons disclosed that on 06-07-2011 during commission of robbery near Dhaka Sweets they murdered one person offering resistance, who was returning after purchasing fish. They further disclosed that they had gone on separate motorcycles for commission of robbery. On offering resistance accused Jahangir made fire against the person who was being robbed. The said person also fired from his weapon, which hit accused Jahangir and thereafter they both fired on the victim and murdered him. They further disclosed that while escaping they took pistol of deceased and his mobile phone with them and left one of their motorcycles at place of incident. Thereafter they went to Jinnah Hospital and got medical treatment by mentioning wrong father's name of accused Jehangir son of Jehanzeb. They also disclosed that thereafter they escaped from

there due to fear of apprehension. They also showed their willingness to point out the place of incident of this case. Thereafter on such disclosure of accused persons he went to inspect place of incident along with accused persons. The accused persons pointed out the place of incident of this case and he accordingly arrested them in this case in presence of HC Syed Younus Ali and HC Nadeem Jamali and prepared such memo of site inspection with arrest. On the next day he produced the apprehended accused persons before the concerned Magistrate and obtained their physical remand and got conducted their CRO record. On 22-07-2011 the investigation of this case was entrusted to him, Accused Farman further disclosed during interrogation that he can get recovered the 9mm pistol of deceased, which was taken by them at the time of incident. Thereafter he along with accused Farman went to scrap shop Cantt, Bazar Drig Road near Yousufzai House at the pointing of accused Farman, HC Younus and HC Naeem Jamali were also along with him. Accused Farman voluntarily laid them to his scarp shop and produced one pistol of 9mm bore bearing No: E0900501 from scarp lying in the shop in presence of witnesses HC Younus and HC Naeem Jamali. He further deposed that such pistol was sealed by him at the spot as case property and prepared such memo of recovery and arrest and obtained signatures of mashirs. Both the accused also disclosed during interrogation that one motorcycle maker Unique, which was left by them at place of incident and one car maker Charade having registration No: E-2544, from which they were arrested were snatched vehicles and they had snatched motorcycle from Baloch colony and car from parking in the city area. He informed ACLC about both vehicles being snatched/ stolen. He further deposed that on 25-07-2011 he

submitted an application before the VIth Judicial Magistrate Karachi East for conducting identification test of accused persons, which application was dismissed by Magistrate, however permission was granted for getting recorded statements U/S 164 CrPC of witnesses. He filed Cr. Revision application against the refusal order of Magistrate which was allowed and he got identification parade of accused wherein witnesses clearly identified the accused with specific role. He deposed that after the permission from SSP he sent the property viz recovered weapons from accused persons and empties recovered from place of incident to FSL and after such he collected the report of FSL which favour the prosecution and crime empties matched with the pistols recovered from accused persons. He also sent the blood stained cloth for chemical examination and collected the same report. He collected the medical record of injured accused Jahangir from JPMC thereafter under the orders of VIth Judicial Magistrate Karachi East accused Jahangir was examined from Civil Hospital Karachi who endorsed that accused was admitted in JPMC Hospital. He recorded statements of witnesses and saw accused so also case property present in court and identified to be the same. This witness was cross examined at length but except some minor contradiction nothing brought by defense on record which suggests that he was not a truthful witness.

22. On our reassessment of the evidence the important part of which we have discussed above, we find that the prosecution has proved its case against the appellant for the offences charged beyond a reasonable doubt.

23. Another important aspect of the case is motive which the prosecution has proved by producing trustworthy and confidence inspiring evidence. It is established from the PW eye witnesses who we consider to be reliable, trustworthy and confidence inspiring that accused were at the first instant trying to rob the deceased and on resistance by deceased they fired a single shot upon him and when deceased returned fire from his pistol upon accused which hit one of accused then both the accused made direct firing upon the deceased which supported by medical evidence proves that they murdered the deceased. There after accused robbed the pistol and mobile phone of deceased. The recovered pistol from the accused belonged to the deceased. Furthermore, the injury received by accused Jahangir certified by the doctor and even not denied by accused that he had not received fire arm injury proves that an exchange of fire took place during the robbery of the deceased which led to the death of the deceased and a firearm injury to accused Jahangir.

24. These two appellants were correctly identified by the eye witnesses, who were at a very close distance to the accused and were clearly seen by them who were available in the vehicle of deceased with accused being only a few feet away from them as such correct identification of the accused by the eye witnesses was confirmed through the identification parade held before the Magistrate. Although some irregularities are available in the identification parade however based on the particular facts and circumstances of the present case we do not find the same fatal to the prosecution case in presence of direct/oral and medical evidence so also recoveries from accused persons and other circumstantial evidence against the accused is available.

25. The offences of target killing, mobile snatching, other street crimes, extortion (Bhatta), Kidnapping for ransom and murders during robbery are increasing day to day especially in Karachi which is the heart of Pakistan and people are feeling insecure. Even people are avoiding to visit parks and shopping centers with their families due to danger of their lives and of theft of their property such as mobile phones from the hands of the criminals.

26. In our accusatorial system, there is a presumption of innocence in favour of the accused that the offence has not been committed by him and the presumption continues to be operative until the prosecution is able to prove its case through reliable, trustworthy and confidence inspiring evidence beyond a reasonable doubt. The life and liberty of the individual would be in jeopardy if the rule was otherwise. The principle is sometimes expressed by saying that to be on the safer side, the acquittal of ten guilty persons is to be preferred to the conviction of a single innocent person. A very high standard of proof is, therefore, required to establish the culpability of an accused person. Proof beyond reasonable doubt does not, however, imply that the prosecution must eliminate even fanciful doubts regarding the criminality of the accused person.

27. When the courts are deciding a criminal case they must keep in mind that they are also guardians of the citizens and that the complainant/victims' rights cannot be ignored and where in the evidence prosecution established its case beyond reasonable doubt then if there may some minor contradiction which always are available in each and every case as no one can give evidence like

photograph such may be ignored, Reliance is placed on the case of **Zakir Khan V. The State { 1995 SCMR 1793 }**.

28. Turning to the case in hand the eye witnesses fully supported the case of prosecution who are the natural witnesses, the evidence of witnesses is fully supported by medical evidence, recovery of robbed pistol of deceased from appellant Farman Ali and prosecution proved beyond reasonable doubt that the appellant Jahangir received fire arm injury during robbery from the hands of deceased, the recovered empties from the place of incident matched with the pistols recovered from the possession of both the appellants at the time of their arrest, the appellants were rightly identified in the identification parade held in presence of Judicial Magistrate and as such the prosecution has proved its case beyond a reasonable doubt against the appellants through trustworthy, reliable, cogent, oral as well as supportive evidence.

29. Thus, based on the particulars facts and circumstances of this case keeping in view the brutality of the crime where one innocent person was murdered in front of his family especially minor children when deceased was purchasing fish for them, the complete lack of mitigating circumstances and in fact the presence of aggravating circumstances as mentioned above whereby the deceased received 7 separate firearm injuries and the need to discourage such kind of offences in Karachi which regrettably were most common at the time when these offences were committed and remain so we are of the view that a deterrent sentence is the appropriate one. Reliance is placed on the case of **Dadullah V. State { 2015 SCMR 856 }**. We therefore uphold all the sentences for each offense in the impugned judgment and confirm the death

sentence handed down to the appellants whilst dismissing their appeal.

30. The confirmation reference made by the trial court is answered in the affirmative and the same is disposed of with the appeal in the above terms.

JUDGE

JUDGE