IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

PRESENT:-
Mr. Justice Naimatullah Phulpoto
Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.D-148 of 2019
Criminal Confirmation Case No.D-32 of 2019

Appellant	Muhammad Yousif son of Tindu Faqeer Mallah through Mr. Hameedullah Dahri, Advocate.
Respondent	The State through Mr. Shahzado Saleem, Additional Prosecutor General.
Date of hearing	**02.02.2022**
Date of Judgment	**01.03.2022**

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JUDGMENT

SHAMSUDDIN ABBASI, J. Muhammad Yousuf, appellant, alongwith co-accused Ali Bux @ Allah Obhayo, was tried by Additional Sessions Judge-I (Model Criminal Trial Court)[MCTC], Shaheed Benazirabad, in Sessions Case No.205 of 2012, arising out of FIR No.09 of 2012 registered at Police Station Ali Abad, District Shaheed Benazirabad, for offences punishable under Sections 302 and 34, PPC. Through a judgment dated 06.08.2019 the appellant was convicted under Section 302(b) PPC for commission of murder of Mevo Khan Mallah and sentenced to death, subject to confirmation by High Court of Sindh in terms of Section 374, Cr.P.C. He was also ordered to pay a sum of Rs.400,000/- as compensation to the legal heirs of deceased and in default thereof to undergo simple imprisonment for one year more while co-accused was acquitted of the charge on the principle of benefit of doubt.

2. Mevo Khan is the deceased alleged to be killed by Muhammad Yousif (appellant) inflicting gunshot injuries, accompanied by his accomplice Allah Obhayo @ Ali Bux armed with lathi, over a dispute on domestic affairs to which they became annoyed and extended threats to settle old account with Mevo Khan. Rasheed Ahmed is the complainant, who is stated to be the son of Mevo Khan while Allah Obhayo (eye-witness) is said to be his maternal

cousin. Muhammad Yousif (appellant) is the brother of co-accused Ali Bux @ Allah Obhayo.

3. Short but relevant of the case are that on 03.05.2012 Rasheed Ahmed (complainant) alongwith Mevo Khan (father) and Allah Obhayo (maternal uncle) was returning to home on camel cart. It was about 1200 noon when reached at katcha path adjacent to land of Haji Mallah, they were intercepted by Muhammad Yousif Mallah (appellant) and Ali Bux @ Allah Obhayo (acquitted accused), armed with DBBL gun and lathi respectively. Mevo Khan alighted from camel cart and went towards Muhammad Yousif, who fired from his DBBL gun hitting the face of Mevo Khan. Mevo Khan fell down on the ground and died at spot within sight of complainant. The complainant party raised cries which attracted Punhal and Ghulam Rasool (maternal cousin and maternal uncle) as well as other villagers, who arrived at the scene of occurrence and on their reaching the two accused decamped towards western side. Mevo Khan sustained gunshot injury on his right eye. The dead body was shifted to Kazi Ahmed Hospital and after postmortem handed over to the legal heirs and was buried accordingly. Thereafter, the complainant went to P.S. and lodged FIR. The duty officer SIP Amir Ali registered a case vide FIR No.09 of 2012 under Section 302 and 34, PPC on behalf of the State.

4. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under the above referred Sections, whereby the appellant and co-accused were sent up to face the trial.

5. A charge in respect of offences punishable under Sections 302 and 34, PPC, was framed against appellant and co-accused at Ex.2, to which they not guilty and opted to be tried.

6. At trial, the prosecution has examined as many as nine witnesses. The gist of the evidence, adduced by the prosecution, is as under:-

7. Rasheed Ahmed (complainant) appeared as witness No.1 Ex.5, Allah Obhayo (eye-witness) as witness No.2 Ex.6, Ghulam Rasool as witness No.3 Ex.7, Dr. Muhammad Hashim as witness No.4 Ex.8. An

application under Section 540-A, Cr.P.C. was filed, which was allowed, whereby Rasheed Ahmed (complainant), PW Ghulam Rasool and Allah Obhayo were recalled and reexamined at Ex.9, Ex.11 and 12 respectively. Muhammad Punhal appeared as witness No.5 Ex.10, PC Abdul Malik as witness No.6 Ex.13, Sikandar Ali (Tapedar) as witness No.7 Ex.14, SIP Amir Ali (investigating officer) as witness No.8 Ex.15 and Nasrullah as witness No.9 Ex.16. All of them were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.17.

8. Muhammad Yousif (appellant) and Ali Bux @ Allah Obhayo (co-accused) were examined under Section 342, Cr.P.C. at Ex.18 and Ex.19 respectively. They have denied the allegations imputed upon them by the prosecution, professed their innocence and stated their false implication in this case by the witnesses at the instance of complainant party who is inimical to them. They opted not to make a statement on Oath under Section 340(2), Cr.P.C. and did not produce any witness in their defence.

9. The trial culminated in conviction and sentence of the appellant, acquitting co-accused Ali Bux @ Allah Obhayo, as stated in para-1 {supra}, which led to filing of a Murder Reference for confirmation of death sentence, and necessitated filing of the listed appeal, which are being disposed of together through this single judgment.

10. It is contented on behalf of the appellant that he is innocent and has been falsely implicated in this case by the complainant party on account of previous enmity after joining hands with police as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is next submitted that prosecution has failed to establish presence of complainant and eye-witness on the day of incident at the scene of offence. It is also submitted that ocular account has been furnished by related and interested witnesses, whose testimony is unsafe to rely upon. The medical evidence is meager enough to explain the real cause of death. The prosecution has failed to discharge its legal obligation of proving the guilt of the appellant as per settled law and the appellant was not liable to prove his innocence. Per learned counsel, the learned trial Court, on same set of evidence acquitted one accused and recorded

conviction to another one, without assigning any valid and cogent reason. The witnesses being interested and inimical to the appellant have falsely deposed against him. They were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant. The learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused. The learned trial Court also did not appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant. The investigating officer had joined hands with complainant party and conducted dishonest investigation and involved the appellant in a case with which he had no nexus. The impugned judgment is devoid of reasoning without specifying the incriminating evidence against appellant. The learned trial Court totally ignored the plea taken by the appellant in his defence. Per learned counsel, the appellant has not done any offence and in his Sections 342 and 342(2) Cr.P.C. statement too he has denied the whole allegations leveled against him by the prosecution. The learned trial Court did not consider the pleas taken by the appellant in his defence and recorded conviction ignoring the neutral appreciation of whole evidence. The material available on record does not justify the conviction and sentence awarded to the appellant and the same is not sustainable in the eyes of the law. The learned counsel while summing up his submissions has emphasized that the impugned judgment is the result of misreading and non-reading of evidence and without application of a judicial mind, hence the same is bad in law and facts and the conviction and sentence awarded to the appellant, based on such findings, is not sustainable in law and liable to be set-aside and the appellant deserve to be acquitted from the charge and prayed accordingly.

11. The learned APG while controverting the submissions of learned counsel for the appellant has submitted that the FIR has been lodged nominating the appellant with direct role and the delay has been well explained. The witnessed 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 which can provide any help to the appellant. The medical evidence in this case is in line with the ocular account, duly supported by the

circumstantial evidence, which fully corroborates the story narrated in the FIR. The role of the appellant is borne out from the medical evidence adduced by the prosecution. The recoveries have also been proved through reliable evidence adduced by the recovery witnesses. The appellant has brutally committed murder of deceased by inflicting gunshot injuries as such he deserves no leniency. The prosecution in support of its case produced oral as well as medical evidence coupled with circumstantial evidence, which was rightly relied upon by learned trial Court. The findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken. The plea taken by the defence that appellant has no nexus with the occurrence and the witnesses being interested and inimical to him have falsely deposed against him does not carry weight vis-à-vis providing help to the defence. The prosecution has successfully proved its case against the appellant beyond shadow of any reasonable doubt, thus, the appeal filed by the appellant warrants dismissal and his conviction and sentence recorded by the learned trial Court is liable to be maintained.

12. We have heard the learned counsel for the parties at length, given our anxious consideration to their submissions, and have also scanned the record carefully with their able assistance.

13. PW.4 Dr. Muhammad Hashim (Ex.8) has conducted postmortem examination on the dead body of Mevo Khan (deceased) and noted the following injuries.

> 1. *A lacerated punctured fire arm wound of entry with inverted margins measuring 10 cm x 8 cm present over right side of face around right eye ball with blackening and charring present around the wound of entry.*
>
> 2. *A lacerated fire arm wound of exit with everted margins measuring about 14 cm x 12 cm with oozing of brain matter present over right occipital region of skull.*

The injuries were ante mortem in nature. The probable duration between injury and death was few minutes and time between death and postmortem was about 3 to 4 hours. He produced Post Mortem Examination Report No.91 dated 03.05.2012 declaring cause of death as a result of hemorrhage shock due to firearm injury, which was sufficient to cause death in an ordinary course of nature. We, therefore, are in

agreement with the learned trial Court that Mevo Khan (deceased) died his unnatural death as a result of injuries caused with firearm as described by the Medical Officer.

14. The case of the prosecution is primarily structured upon ocular account furnished by Rasheed Ahmed (complainant/eye-witness) Ex.9 and Allah Obhayo (eye-witness) Ex.12, who were accompanying the deceased on camel card on 03.05.2012. It was about 12:00 pm they after finishing their labour work were returning to their home and when reached infront of Haji Mallah land, the appellant, armed with DBBL gun, alongwith his companion, armed with lathi, intercepted them and made firing from his DBBL gun at Mevo Khan which hit at his right eye, who fell down on the ground and died at spot. They raised cries which attracted their relatives Muhammad Punhal and Ghulam Rasool as well as other villagers, who arrived at the scene of offence. PWs Muhammad Punhal (Ex.10) and Ghulam Rasool (Ex.11) in their respective evidence have supported the version of complainant Rasheed Ahmed and eye-witness Allah Obhayo by stating that on the day of incident they were present in their house when they heard sound of fire shot and cries coming from the land of Haji Mallah. They went there and saw Muhammad Yousif, armed with DBBL gun and Ali Bux, armed with lathi, running towards western side and Mevo Khan was lying dead having firearm injury on his right eye. They have also supported the complainant and eye-witness Allah Obhayo and stated that with their help they shifted the dead body of Mevo Khan to RHC Kazi Ahmed for postmortem and after he was buried the FIR was lodged. No doubt FIR has been lodged on 03.05.2012 at 11:00 pm i.e. after 11 hours of the incident, but is not fatal to the prosecution case in view of plausible explanation furnished. It has been brought on record that dead body was brought at RHC Kazi Ahmed for post-mortem, which was completed at 4:15 pm and after funeral and burial ceremony of deceased and finalizing condolence rituals the FIR was lodged. In this respect, the delay so caused has been explained plausibly and same is not helpful to the appellant. We may add that each case has its own merits and circumstances, therefore, delay in every criminal case cannot be presumed to be fatal for the prosecution more particularly when the accused is facing charges of capital punishment.

15. The ocular account furnished by the prosecution has not been shaken by the defence during cross-examination and it stood established that Mevo Khan (deceased) was done to death by appellant Muhammad Yousif by firing with his shotgun due to existing enmity. The overwhelming evidence of the prosecution witnesses, involving the appellant in the commission of offence, cannot be discarded merely on the ground that they are related to deceased Mevo Khan rather they are the natural witnesses because they have explained their presence at the scene of offence by stating that they were accompanied with the deceased when the incident occurred. The ocular evidence has further been corroborated by the medical evidence adduced by PW.4 Dr. Muhammad Hashim (Ex.8), who produced postmortem report (Ex.8/B) indicating firearm wound by means of bullet which was sufficient to cause death in an ordinary course of nature. The incident took place on 03.05.2012 at 12:00 noon while the deceased was examined by PW.4 at 3:30 pm. According to PW.4 the deceased was brought at hospital by PC Abdul Malik Rahu with police letter and was identified by Rasheed Ahmed (complainant). The ocular account, thus, furnished by the prosecution has further been corroborated by the medical evidence. No element of doubt is available as to the presence of complainant and eye-witness at the place of incident at the relevant time. They have furnished graphic details of the occurrence without being trapped into any serious narrative conflict and deposed same facts in their evidence, which are in line to that of their earlier statements recorded by the investigating officer during investigation as well as plausibly explained their presence at the crime scene.

16. PW Sikandar Ali (Ex.14) is the Tapedar, who prepared the sketch of wardat on 03.05.2012 on the pointation of complainant and produced the same in his evidence at Ex.14/A. In his cross-examination he denied the suggestion that he never visited the place of incident and prepared the sketch in his office.

17. The investigating officer SIP Amir Ali in his evidence, available at Ex.15, has deposed that on receipt of information from Rasheed Ahmed (complainant) he visited village Saeed Khando and inspected the dead body of Mevo Khan. On the same day (03.05.2012) Rasheed Ahmed appeared at P.S. and lodged FIR. On 04.05.2012 he visited the place of incident and conducted site inspection on the pointation of complainant and secured two

empty cartridges and blood stained earth, which were sealed at spot vide memo (Ex.15/C). The fact of blood stained earth has been affirmed by chemical report, available at Ex.15/I, indicating the earth material was stained with human blood. The prosecution has also claimed that the appellant was arrested on 04.05.2012 from village Saeed Khando near his house vide memo (Ex.15/D). He during interrogation agreed to recover the crime weapon on his pointation and voluntarily led investigating officer SIP Amir Ali to a cattle pane inside his house and produced a DBBL gun disclosing that the same was used by him in the commission of offence, which was sealed at spot under a mashirnama (Ex.15/G) in presence of mashirs Nasrullah and Muhammad Siddique. These aspects of the matter have been testified by PW Nasrullah (Ex.16) while appearing as mashir of memos of dead body, site inspection and arrest of appellant and recovery on his pointation. The crime weapon recovered on the pointation of appellant and the empties secured from the place of incident were sent to the office of Forensic Division Hyderabad. The said office after examination issued a report (Ex.15/J) concluding that the empties marked as "C-1 and C-2" were fired from right and left barrel of the DBBL gun respectively. The positive report of crime weapon recovered on the pointation of appellant and the empties secured from the place of incident matched with crime weapon further strengthen the case of prosecution, which is a strong circumstantial evidence. The argument of the learned counsel for the appellant that these incriminating articles were sent with inordinate delay, therefore, it has lost its admissibility, is not tenable. No doubt the incriminating articles were sent for examination on 18.05.2012 after 15 days of the incident and eight days of recovery. The delay in presence of truthful and reliable ocular evidence and positive report of FSL with regard to crime weapon recovered on the pointation of appellant and empties secured from the place of incident is not fatal to the prosecution case. Even otherwise, the appellant while recording his Section 342, Cr.P.C. statement did not discredit such confidence inspiring evidence. The FSL report was produced by PW.7 SIP Amir Ali, but during cross-examination no suggestion was put to him either the report (Ex.15/J) had been tampered or manipulated. The recoveries, thus, affected in this case provide full corroboration to the ocular account. The Hon'ble Supreme Court in the case of *Muhammad Mushtaq v The State* (PLD 2001 SC 107), observed as under:-

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

18. The contention that Rasheed Ahmed (complainant) and Allah Obhayo (eye-witness) are closely related to deceased, therefore, in absence of independent corroboration, conviction of the appellant cannot be sustained is also not tenable. We, however, remained unable to appreciate this submission of the learned counsel for the appellant. If such a wide proposition is to be accepted, the evidence of witnesses, who were relatives of the victim/deceased of a heinous crime, would be rendered unacceptable merely because they happened to be the relatives of deceased. 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. 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. Even otherwise, the 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. The complainant and eye-witness remained consistent on each and every aspect of the matter, which has further been corroborated by the medical evidence, recovery of crime

weapon coupled with positive report matching the crime empties with the shotgun recovered on the pointation of the appellant. In such circumstances, these witnesses are natural and seem to be possible eye-witnesses in the circumstances of the case. It is 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 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".* We are, therefore, of the firm view that evidence of the complainant and eye-witness cannot be discarded merely on account of their relationship with deceased. They 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 and fully involved the appellant in the commission of offence. 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. This contention, thus, is irrelevant and unsafe to rely upon.

19. The prosecution has produced medical evidence, which is in line with the ocular account furnished by the prosecution, duly supported by the circumstantial evidence, which in our considered view, is sufficient to prove the charges leveled against the appellant beyond shadow of reasonable doubt. It is a well settled that onus to prove its case always rests on the shoulder of the prosecution and once the prosecution succeeded in

discharging such burden with cogent evidence then the accused become heavily burdened to disprove the allegations levelled against him and prove his innocence through cogent and reliable evidence. The appellant though denied the commission of offence in his Sections 342 and 340(2), Cr.P.C. statement and stated his false implication in this case by the complainant party on account of enmity, but failed to produce any evidence or material to substantiate his plea. Even otherwise, he has not appeared on Oath under Section 340{2}, Cr.P.C. which give rise to a presumption that the plea taken by him in his defence was not a gospel truth, therefore, he avoided to appear and depose on Oath under Section 340{2}, Cr.P.C. Law requires that if accused had a defence plea the same should be put to the witnesses in cross-examination and then put forward the same while recording statement under Section 342, Cr.P.C. which is lacking in the instant case. Thus, the plea taken by the appellant in his defence seems to be afterthought and unsafe to rely upon and the learned trial Court has rightly discarded the same to be of untrustworthy. If both the versions, one put forward by the appellant and the other put forward by the prosecution, arc considered in a juxtaposition, then the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellant seems to be doubtful.

20. The contention that co-accused Ali Bux @ Allah Obhayo, on the same set of evidence, was acquitted by the learned trial Court, the appellant should had been given the same treatment. A keen look of the record reveals that co-accused Ali Bux @ Allah Obhayo was charged for committing the offence in furtherance of common intention. In order to bring home the charge of common intention, the prosecution has to establish through evidence whether direct or circumstantial that there was a plan or meeting of mind of the two accused persons to commit the offence and it was pre-arranged or in spur of moment, but it must necessarily be before the commission of the crime. The true concept of Section 34, P.P.C. is that, if two or more persons intentionally done an act jointly, the position in law is just the same as if each of them had done it individually by himself. The existence of common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that act of all participants in an offence must be the same or identically similar. The act may be different in character, but must have been actuated by one and

the same common intention. The existence of common intention is a state of mind to get or procure direct proof of common intention. It is to be gathered from the act or conduct of the accused or other relevant circumstances of the case. This criminal liability can arise only when such inference can be drawn with a certain degree of assurance. In the case in hand, complainant and eye-witness though stated the presence of co-accused at the scene of occurrence, armed with lathi, but did not ascribe any role either direct or overt in the commission of offence. Had he any intention, he would have played a role in the commission of offence or rendered help to main accused. In absence of any overt act, it is difficult to believe that he had shared common intention during said episode. There is no proof of some overt act done on his part in furtherance of common intention. From the evidence brought on record it has only been proved that he was present at the scene of incident, armed with lathi, but there is no evidence indicating any assault, intention to cause murder of deceased or grievous hurt to anybody and facilitation to main accused. Mere presence at the scene of offence, armed with lathi, without assigning any overt act, does not attract provision of Section 34, P.P.C. The Hon'ble Supreme Court in the case of *Hasan Din v Muhammad Mushtaq and 2 others* (1978 SCMR 49) observed as under:-

> *"In our view the learned counsel has misconceived the correct application of section 34, P.P.C. The mere presence of a person on the spot does not necessarily attract section 34, P.P.C. This section is not to be applied lightly, particularly in acquittal cases. Vicariously liability cannot be visited unless there is some strong circumstance to show common intention. In view of the foregoing discussion, we think Bashir respondent has been rightly given the benefit of doubt."*

21. The learned trial Court acquitted co-accused observing that the prosecution had failed to place on record any evidence against him for sharing common intention, helping hand to the principal accused for facilitating him to achieve objective of the offence and chalking out plan for committing the offence and convicted the appellant holding that there was much more evidence against him and his case was totally on different footing to that of principal accused. The findings of the learned trial Court are based on fair evaluation of evidence and documents brought on record. Thus, acquittal of co-accused is of no benefit to the appellant. The fact that evidence of prosecution witnesses was not believed in respect of co-accused on certain aspects does not mean that the same cannot rely

upon in respect of appellant on other aspects if find to be trust worthy, reliable and confidence inspiring. We are 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 relying on the direct evidence coupled with the medical and circumstantial evidence. There is no denial to the fact that the learned trial Court had taken into account all the aspects of the matter as well as the submissions raised by the learned counsel for the appellant minutely and found the appellant guilty of the offence with which he has been charged.

22. Adverting to the quantum of sentence awarded to the appellant is concerned, suffice to observe that complainant in his FIR has disclosed that incident was the result of previous enmity between the parties on domestic affairs, but no evidence or any other material has been placed on record to substantiate the motive set-forth in the FIR. There is no cavil to the proposition that motive is not a conditional precedent to warrant a finding of guilt, however, it has been found to be relevant while considering the quantum of sentence. The Hon'ble Supreme Court in the case of *Muhammad Yaseen v The State* (2011 SCMR 905) while converting the sentence of death into life *inter alia* on the ground of failure of prosecution to prove the motive observed as under:-

> *"The occurrence took place in a broad-daylight on a thoroughfare when Pervaiz Iqbal was on his way back to his house after purchasing ice, therefore, the story of substitution propounded by learned counsel for the appellant cannot be accepted. In the absence of any corroboration, the Courts are expected to follow the rule of abundant care and caution in the matter of sentence. It is not denied that no resident of the lane in which the occurrence took place appeared and supported the prosecution story. The prosecution has failed to prove the motive for the offence. The appellant allegedly fired only one shot and decamped from the place of occurrence. The PWs. were at a considerable distance from the place where Pervaiz Iqbal was done to death. Thereafter, in the above circumstances, we consider it just and proper to convert the sentence of death into imprisonment for life"*

23. Having gone through the evidence brought on record, we are of the view that the prosecution has proved its case against the appellant beyond shadow of reasonable doubt. Learned counsel for the appellant has failed

to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence and documents brought on record, hence calls for no interference by this Court. In view thereof, the appeal, insofar as it impugns conviction, has no merit, however, keeping in view the motive in mystery and other extenuating circumstances in favour of appellant, we hereby alter and reduce the punishment of ***"death"*** to ***"imprisonment for life".*** The compensation awarded against appellant and sentence awarded in default thereof are maintained and upheld with slight modification in case of default in payment of compensation appellant shall suffer S.I for 06 months instead of one year, however, the benefit in terms of Section 382-B, Cr.P.C. is extended to the appellant.

24. The Criminal Jail Appeal No.D-148 of 2019 is modified in the foregoing terms while Criminal Confirmation Case No.D-32 of 2019 is answered in ***negative***.

JUDGE

JUDGE