

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

**Cr. Jail Appeal No. D- 51 of 2016,
Cr. Appeal No. D- 52 of 2016
Confirmation Case No.05 of 2016**

Before:

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

Appellants : Mansoor Ahmed and others through
Syed Zeeshan Shah, Advocate

Respondent : The State through
Ms. Sana Memon, A.P.G Sindh

Complainant : Muhammad Asif through
Mr. Ayatullah Khowaja, Advocate

Date of hearing. 10.06.2021.

Date of judgment. 24.06.2021.

J U D G M E N T

ZULFIQAR ALI SANGI, J.- The captioned Criminal jail Appeal as well as Cr. Appeal are moved by appellants Mansoor Ahmed and others against the Judgment dated 28.4.2016, whereby appellant Mansoor Ahmed was convicted and sentenced to death subject to confirmation by this Court. He was also directed to pay Rs.2,00,000/- as fine to the legal heirs of deceased Pervaiz Ahmed in terms of Section 544-A Cr.P.C. and in default whereof to suffer six months more R.I. While accused Aijaz Ahmed and Muhammad Munsha were convicted under Section 302(b) PPC and sentenced to suffer Rigorous imprisonment for life with benefit of Section 382-B. Cr.P.C. They were also directed to pay Rs.1,00,000/- each to the legal heirs of deceased Pervaiz Ahmed. Hence both the appeals and the Confirmation Case are decided by this common Judgment.

2. The brief facts of the prosecution case as per F.I.R, registered by complainant Muhammad Asif are that he is zamindar and residing in

village Munawarabad, Taluka Chamber. Appellant Muhammad Mansha Rajput and his sons were stealing their irrigation water on their rotation. On 18.5.2011 at night time, Complainant on his rotation of water along with Pervaiz Ahmed, Javed Ahmed both sons of Lal Khan Kalyar and Akram son of Shakoor Kalyar went to their lands for preparing the water course, while he was at home. After some time he heard firearm shots upon which he along with Muhammad Atif and Shakoor came out together and saw that appellant Manzoor Ahmed son of Mansha Rajput had repeater in his hand, Aijaz Ahmed son of Muhammad Mansha was armed with pistol and Muhammad Mansha son of Charaguddin was armed with double barrel gun and they were firing. The complainant raised hakals upon which accused Mansoor Ahmed made straight fires from his repeater upon Pervaiz Ahmed who fell down; accused Aijaz Ahmed made straight fire from his pistol upon Akram and Muhammad Mansha made straight fire from his gun upon Javed Ahmed who also became injured and fell down; thereafter the accused persons went away and the complainant saw that Pervaiz Ahmed had sustained firearm injuries and died. Javed Ahmed sustained firearm injury on upper part of his left leg and blood was oozing. Akram had sustained firearm injury on his left thigh from back side and blood was oozing. The complainant party informed the police and took the injured to hospital and the FIR of the incident was registered.

3. After registration of FIR, police arrested the appellants Mansoor Ahmed and Aijaz Ahmed while accused Muhammad Mansha was absconder; such challan was submitted before concerned Magistrate who forwarded the case to Sessions Court for trial. Accused Muhammad Mansha was declared proclaimed offender and proceedings under Section 87 & 88 Cr.P.C. were completed. Accused Aijaz Ahmed was minor hence his case was bifurcated vide order dated 19.01.2012. After completing necessary formalities the trial Court framed charge against appellant Mansoor Ahmed,

to which he pleaded not guilty and claimed trial. Subsequently appellant Muhammad Mansha was arrested and produced before the court to face trial. During proceedings of the case appellant Aijaz was declared adult and proceedings of his case were added with other accused persons and amended charge against the appellants was framed.

4. In order to prove its case the prosecution examined complainant Muhammad Asif at Ex.11, who produced FIR at Ex.11/A, P.W-2 Jawaid at Ex.12, P.W-3 Muhammad Akram at Ex.13, P.W-4 Muhammad Usman Tapedar at Ex.14 who produced four copies of sketch as Ex.14/A to Ex/14/D. P.W-5 Muhammad Ismail was examined as Ex. 15 who produced mashirnama of injuries as Ex.15/A, mashirnama of dead body of deceased Pervaiz Ahmed as Ex.15/B, Lash Chakas Form as Ex.15/C Danishnama as Ex.15/D, mashirnama of clothes of deceased as Ex. 15/E, mashirnama of place of incident as Ex.15/F and mashirnama of arrest and recovery as Ex.15/G to Ex.15/I. P.W-6 ASI Saleem Raza was examined at Ex.16. P.W-7 Dr. Harko was examined at Ex.17, who produced letter of police as Ex.17/A, Lash Chakas Form as Ex.17/B, postmortem report as Ex.17/c, receipt of handing over dead body to police as Ex.17/D, letter of police for examining the injured as Ex.17/E, Provisional Medicolegal Certificates and final Medico Legal Certificates as Ex.17/F to Ex. 17/I. P.W-8 Muhammad Bux I.O/SHO was examined as Ex.18, who produced entries No.11 and 12 of P.S as Ex.18/A, entries No.13, 14 and 15 as Ex.18/B, receipt of handing over the dead body as Ex.18/C. letter to SDO Irrigation as Ex.18/D, share list as Ex.18/E, letter sent to SDO as Ex.18/D, letter sent to Mukhtiarkar for preparing sketch as Ex.18/F, letter sent to FSL as Ex.18/G and report of FSL as Ex.18/H. P.Ws P.C. Ghulam Ali, Atta Ilahi were given up by learned DDPP vide statement as Ex.19. Thereafter learned DDPP closed the prosecution side vide statement at Ex.20.

5. The statements of accused under Section 342 Cr.P.C. were recorded at Ex.21 to Ex.23. They have not examined themselves on oath nor lead any evidence in their defence. Learned trial Court after hearing the parties and examining the evidence available on record convicted and sentenced the appellants as stated above.

6. Learned trial court in the impugned judgment has already discussed the evidence in detail and there is no need to repeat the same here, so as to avoid duplication and unnecessary repetition

7. Mian Taj Muhammad Keerio, learned advocate for appellants has contended that the case registered against the appellants is false and has been registered due to enmity on matrimonial dispute; that prosecution case is highly doubtful; that the evidence so brought on record is contradictory on material particulars of the case; therefore, the same cannot be safely relied upon for maintaining conviction. He further contended that learned trial Court has passed the impugned judgment which is based upon surmises, conjectures, same is perverse and against the natural norms of justice so also against the principles of criminal justice; that learned trial court while passing impugned judgment has failed to apply judicial and prudent mind; that impugned judgment is against the law, facts and as such cannot be upheld; that it was a case of acquittal but learned trial court wrongly discussed the points for determination and convicted the appellants; that material points and issues involved in the case were not discussed by learned trial court; that all the PWs are interested and false implication of the appellant cannot be ruled out; that learned trial court has misread and non-read the evidence of witnesses and as such has not appreciated the same and passed impugned judgment in hasty manner; that prosecution evidence is not reliable and trustworthy; that learned trial Court while passing the impugned judgment has ignored the material contradictions in the prosecution evidence which have made entire case as

doubtful. He further submitted that there is delay of about 24 hours in registration of FIR and the same has not been explained by the complainant as such the consultation and deliberation cannot be ruled out. He prayed that the appeals may be allowed and appellants may be acquitted by extending them the benefit of the doubt. He relied upon the cases of Muhammad Rafique alias Feeqa v. The State (2019 SCMR 1068), Zahir Shah v. The State (2019 MLD 1562), Abdul Jabbar v. The State (2019 YLR 1073), Bilal v. The State (2019 P.Cr.L.J 401), Muhammad Asif v. The State (2019 MLD 1197), Mst. Sughra Begum and another v. Qaiser Pervez and others (2015 SCMR 1142), Mehr Ali and others v. The State (1968 SCMR 161), Akhtar Saleem and another v. The State (2019 MLD 1107), Murad Ali Bangalani and 5 others v. The State (2019 P.Cr.L.J 95), Noor Alam v. Abdul Wahab (2018 YLR 1571), Malik Aamir Sultan and 2 others v. The State and another (2018 MLD 1635), Muhammad Tariq v. The State (2017 YLR 1999), Abdul Haleem v. The State (2016 YLR 1418), Shahid alias Waris v. The State (2016 YLR Note 97), Muhammad Ishaque v. The State (2007 SCMR 108), Liaquat Ali v. The State (2008 SCMR 95), Muhammad Mushtaq v. The State and others (2019 MLD 1002), Notice to Police Constable Khizar Hayat in Cr. Misc. Appl. No.200 of 2019 (PLD 2019 SC 527), Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652), Muhammad Mansha v. The State (2018 SCMR 772), Muhammad Rafique v. The State (2014 SCMR 1698), Shahzad Tanveer v. The State (2012 SCMR 172) and Nadeem alias Nanha alias Billa Sher v. The State (2010 SCMR 949).

8. Mr. Fayaz Hussain Saabki, learned A.P.G Sindh, after going through the entire evidence of prosecution witnesses as well as other record of the case has supported the impugned judgment and submitted that the prosecution proved its case against the appellants beyond a reasonable doubt; that the evidence produced by the prosecution is reliable, trustworthy and confidence-inspiring; that the ocular evidence is supported

by the medical evidence; that no major contradiction has been pointed out by the defence counsel; that injured eye witnesses fully supported the case; that all the witnesses are though related to each other but are natural and further their presence was established from the fact that they also received injuries at the scene. Lastly, he submitted that the appeals of the appellants may be dismissed and the conviction and sentences handed down by the trial court may be maintained.

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

10. The prosecution in order to proved the case against the appellants produced ocular evidence in shape of complainant Muhammad Asif as PW-1 who deposed that on 18.05.2011 he along with his cousin Atif and relative Abdul Shakoor were present in his house. His relatives Jawaid, Pervaiz and Akram Kalyar went to the land for opening the water flow and about 1800 hours he heard the commotion on which he, Atif and Abdul Shakoor came out from his house and saw that Mohammad Manchha duly armed with Double Barrel Gun, Mansoor duly armed with Repeater and Aijaz duly armed with T.T. Pistol were present on the spot which is S.No.158/3 near Munawarabad Goth and were making straight firing upon Jawaid, Akram and Pervaiz. Mansoor made straight fire on Pervaiz due to which Pervaiz fell down and immediately died. Mohammad Manchha made straight fire upon Jawaid and Jawaid received injury on the left thigh and fell down. Aijaz made straight fire upon Akram which hit him on his buttock, due to which Akram also fell down and then accused ran away towards their village. When he reached near to deceased Parvaiz he saw that he received firearm injury on his left eye which was crossing from head. Pervaiz also received fire arm injury on his forehead which was also crossing from back side. Pervaiz has also received firearm injury on the left shoulder which was also crossing from back side. The blood was oozing

from the bodies of Pervaiz, Jawaid and Akram. He further deposed that he informed the Police of P.S Chambar about the incident and with the help of Atif took away Jawaid and Akram at Chambar Hospital in his car. He deposed that his relative Abdul Shakoor remained present at the place of incident where the dead body of Pervaiz was lying. The police officials of P.S Chambar were already present at the hospital. The Doctors of Chambar Hospital provided first aid to the injured and referred them to Civil Hospital, Hyderabad. He sent the injured persons to Civil Hospital, Hyderabad in private taxi and then went to the place of incident where police officials were already present. The police officials prepared mashirnama and other formalities, thereafter he and police officials went to Chambar Hospital, with the dead body of Pervaiz. The doctors conducted post mortem of deceased Pervaiz. After post mortem they received the dead body and brought the same at their village and on the second day they buried the dead body of deceased Pervaiz in the noon time. At about 2.30 P.M he went to P.S where he lodged the FIR. Complainant was cross-examined at length but his evidence was not shattered. However during cross-examination enmity was suggested to be only with the complainant to which he denied.

11. To support the version of complainant prosecution examined **injured eye witness** Jawaid who deposed that on 18.05.2011 he along with his brother Parvaiz and maternal nephew Akram were present on the land and were opening the water flow and at about 1800 hours Mohammad Manchha duly armed with double barrel gun came near to them and started firing and then they started running towards eastern side to save their lives. Aijaz Ahmed duly armed with pistol also started straight firing and then they started running towards southern side where Mansoor duly armed with Repeater started straight firing upon them. Mansoor fired upon Pervaiz due to which Pervaiz fell down and died at the spot. Muncha fired which hit him on left thigh and he fell down. Aijaz made straight fire upon Akram

which hit upon the left side of buttock on his body due to which Akram also fell down. Asif, Abdul Shakoor and Atif came on the spot but accused persons made their escape good. Complainant informed the police of P.S. Chambar about the incident and took him and Akram at Chambar Hospital in his car. He deposed that his relative Abdul Shakoor was remained present on the place of incident where dead body of Pervaiz was lying. The police officials of P.S. Chambar came at hospital and prepared mashirnama of injuries. The doctors of Chambar Hospital provided first aid to them and referred to civil hospital, Hyderabad. Atif took them to civil hospital, Hyderabad in private taxi where they were admitted in civil hospital, Hyderabad. This witness was also cross-examined by the defence counsel, during the cross-examination this witness stated that Muhammad Muncha was about 5/6 feet from them when he started firing, Aijaz was about 5/6 paces away from him and Mansoor was about 4/5 paces away from them. This witness was available at the close distance from the accused and having good look on them therefore there is no chance of mistaken identity especially as he knew them all.

12. Another **injured eye witness** was also examined by the prosecution namely Mohammad Akram who deposed that on 18.05.2011 he along with Parvaiz and Jawaid were present on their land and were opening the water flow when at about 1800 hours Muhammad Manchha duly armed with double barrel gun came near to them and started firing upon them, they started running towards eastern side to save the lives. Aijaz Ahmed duly armed with pistol also started straight firing upon them with intention to kill and then they started running towards southern side where Mansoor duly armed with Repeater started straight firing upon them with intention to kill. Mansoor fired upon the left side of eye of Pervaiz due to which Pervaiz fell down and blood was oozing from his body. Muncha fired upon Jawaid Ahmed which hit him on his left thigh and he fell down. Aijaz made

straight fire upon him which hit him on the left side of buttock due to which he fell down. Asif, Abdul Shakoor and Atif reached there after hakking the accused persons, therefore, accused persons made their escape good. Asif checked Pervaiz and found that Pervaiz had already died. He further deposed that he received one fire arm injury. Complainant informed the police of P.S. Chambar about the incident and took him and Jawaid at Chambar Hospital in his car. The police officials of P.S. Chambar came at hospital and prepared some documents. The doctors of Chambar Hospital provided first aid to them and referred them to civil hospital, Hyderabad. He was cross-examined **and during cross-examination on a question put by defence counsel he stated that he himself saw that Aijaz fired upon him which hit him on his buttock, he himself saw that Parvaiz received the injuries on his eye by the firing of Mansoor.** He further stated during his cross-examination that Mancha was about 2/3 paces away from him, he Parvaiz and Jawaid were about five paces away from each other when accused person started firing. No material contradiction was brought on record on behalf of the appellants.

13. The prosecution in order to corroborate / support the ocular evidence produced **medical evidence in shape of Dr. Harkho**, who conducted the postmortem of the deceased and examined the other two injured eye witnesses who deposed that on 18.05.2011 he was posted at Rural Health Center, Chambar as Senior Medical Officer and on the same day police gave him letter for post-mortem of deceased Pervaiz Ahmed. He conducted the post-mortem of deceased. The deceased was wearing blue colour shalwar Qamees with white nara embuded in blood. The rigor mortis were developed and postmortem lividity appeared a dead body of young man lying on the mortuary table and eyes were open, mouth was open, marched and black hair on the head. From the external examination he found the following injuries:-

1. Pease shaped entrance wound of firearm at the left eye near nose eye ball ruptured. Blackening present at surrounding the injury.
2. Exit wound of firearm injury No.1 at left parietal region measuring 2 cm x 2 cm x piece of bone and brain matter coming out.
3. Pease shaped entrance wound of fire arm at left forehead 2 cm above left eyebrow blackening present at surrounding the injury.
4. A wound of injury No.3 at head on left side 7 cm away from injury No.3 measuring 2 cm x 2 cm.
5. Pease shaped entrance wound of firearm at left upper arm on lateral side.
6. Pease shaped exit wound of injury No.5, 3 cm away from injury No.5 at left upper arm on lateral side upwards.

As per the opinion of the doctor deceased Pervaiz Ahmed son of Lal Khan died in ordinary course of cardio respiratory failure which caused by gunshot firearm damage to the brain matter and excess loss of blood.

The doctor has also examined the injured Jawaid and deposed that he referred injured Jawaid to LUMCH, Hyderabad for further treatment. On the basis of report of doctors of LUMCH Hyderabad he issued final medico-legal certificate of injured Jawaid. He deposed that he found the injuries on injured Jawaid as **“Pease shaped eleven holes of firearm at the area of left buttock”**. After receiving opinion from LUMCH Hyderabad he had issued final medico-legal certificate in which the nature of injury declared as Mutalahimah.

Doctor further deposed that he also examined injured Akram and found only one **“Pease shaped of hole of firearm at left leg buttock on lateral side”**. Injured was also referred by him and after receiving opinion from expert he had issued final medico-legal certificate in which the nature of injury declared as Mutalahimah. He was cross-examined but nothing favourable to appellants was brought on record by the defence. His evidence is completely in line with the ocular evidence produced by the prosecution. Significantly he mentions blackening around the wounds which is

consistent with the evidence of the prosecution eye witnesses that some of the shots were made from between 3 to 6 paces.

14. After the ocular and medical evidence there is also supportive evidence in the shape of recoveries on the pointation of the appellants. The prosecution in order to prove the same has examined P.W-5 Mohammad Ismail, **mashir** who deposed that on 18.05.2011 he and Shafoor were present at Hospital Chambar where Jawaid and Akram were brought as injured. On the same day at about 1900 hours police prepared mashirnama of injuries and obtained his signature as well as signature of Shafoor Ahmed. On 18.05.2011 at 1910 hours police prepared mashirnama of dead body of deceased Pervaiz Ahmed and obtained his signature. He further deposed that police prepared Lash Chakas Form and Danishnama in his presence and in presence of Shafoor Ahmed. On 18.05.2011 at about 2215 hours doctor handed over the clothes of deceased and police prepared mashirnama. On 19.05.2011 at about 1700 hours police visited place of incident and prepared mashirnama. On 22.05.2011 at about 1900 hours police arrested Mansoor Ahmed and Aijaz Ahmed in his presence from Bashirabad road and prepared mashirnama. On 27.05.2011 at about 1100 hours accused Mansoor produced one Repeater gun and four live bullets from his house and police prepared mashirnama. On 27.05.2011 at 1400 hours accused Aijaz produced one pistol along with three live bullets from his house in his presence and in presence of mashirs Shafoor Ahmed and police prepared mashirnama. He also produced all the mashirnamas which he and co-mashir signed. He was cross-examined but nothing favourable to appellants was brought on record which creates doubt in the recoveries and other supportive evidence brought by the prosecution through this witness.

15. The prosecution in support of the evidence of PW-5 has produced the P.W-8 Mohammad Bux **investigation officer** of the case who deposed that on 18.05.2011 at about 1845 hours Asif Kalyar informed ASI

Saleem Raza on telephone that Munchha, Mansoor and Aijaz have fought with them and Pervaiz Ahmed has died at the spot and Jawaid and Akram have sustained injuries. ASI Saleem Raza informed to DSP and SHO about the incident and DSP Chambar directed him to reach at the spot. After receiving instructions he along with two constables proceeded towards the pointed place in private vehicle. He deposed that when they reached at adjacent to RHC Chambar where Asif and others also reached with the injured persons he gave letter to doctor for providing medical treatment to injured and prepared mashirnama of injuries of injured persons. Doctors provided first aid to Jawaid and Akram and thereafter referred them to Civil Hospital, Hyderabad. He and Asif went to place of incident where he prepared mashirnama of dead body and brought the dead body at RHC Chambar where doctor conducted post-mortem. Doctor handed over the clothes of deceased to him and he prepared mashirnama of clothes of dead body and sealed the clothes at the hospital. After post-mortem he handed over the dead body to Bashir for funeral ceremony. On 19.05.2011 Asif came at PS and lodged the FIR. The FIR was handed over to him by ASI Saleem Raza for further investigation. On the same day he along with complainant went to place of incident where he prepared mashirnama of site inspection. He wrote a letter to Mukhtiarkar for preparing site sketch. He also wrote a letter to SDO irrigation for providing share list. On 22.05.2011 he went to Civil Hospital Hyderabad for recording statement of injured witnesses namely Akram and Jawaid. On 22.05.2011 at 1900 hours he reached at village Bashirabad on information and arrested accused Mansoor Ahmed and Aijaz and prepared mashirnama. On 27.05.2011 accused persons became ready to produce the crime weapons and lead them towards their house and accused Mansoor, produced one repeater gun and four live cartridges and Aijaz produced one TT pistol of 30 bore along with three live bullets. He prepared two separate mashirnama of recovery from accused Mansoor and from accused Aijaz and separate FIRs were lodged under

Section 13-E. A.O. On 28.05.2011 he sent the weapons to FSL, after completing the investigation submitted challan in the court. This witness was cross-examined but his evidence was not shattered. However on the suggestions put by defence counsel he stated that ***“It is correct that deceased was murdered due to dispute over rotation of irrigation water. It is correct that I called share list from SDO, Irrigation and from perusal of share list it came to in my knowledge that at the time of incident the turn of getting waster was of complainant party.”***

16. Prosecution examined P.W-6 Saleem Raza ASI of PS Chambar who deposed that on 19.05.2011 he was posted at P.S Chambar as duty officer and at about 1530 hours Complainant Mohammad Asif came at P.S and lodged FIR. P.W-4 Mohammad Usman Tapedar was also examined who produced the sketch of place of incident. Both the witnesses were cross-examined formally.

17. All the three eye witnesses deposed against the appellants with specific role of causing fire shots from their respective weapons upon the deceased. Two of the eye witnesses received firearm injuries at the scene and as such their presence has been established. We find the evidence of all three eye witnesses to be reliable, trustworthy and confidence inspiring. All the three eye witnesses were consistent on each and every point and were cross examined by the defence counsel but they were on one line and fully supported the case of prosecution. All three eye witnesses knew appellants and all the eye witnesses got a good look at the appellants from close range. We have no doubt that the eye witnesses have correctly identified the appellants especially as they had no reason to implicate them in a false case. In these circumstances no identification parade was required with respect to appellants who were named and given a specific role in the FIR. No material contradiction was pointed out by the learned counsel for the appellants. The ocular evidence furnished by the eye witnesses is further

corroborated by the medical evidence and other circumstantial evidence. In almost similar facts and the circumstances death sentence was maintained up to the Supreme Court of Pakistan in case of **Umar Hayat versus The State (2007 SCMR 1296)**.

18. The motive as asserted by the prosecution was properly investigated by the investigation officer who collected the share list of rotation of water from the irrigation department and the same was produced by him during the evidence. Further the investigation officer was cross-examined on this point who on suggestions of the defence counsel has stated that ***“It is correct that deceased was murdered due to dispute over rotation of irrigation water. It is correct that I called share list from SDO, Irrigation and from perusal of share list it came to in my knowledge that at the time of incident the turn of getting water was of complainant party.”*** From all these facts it is established that the prosecution has proved the motive for the murder by producing oral as well as documentary evidence.

19. Turning to the contentions raised by the learned counsel for the appellants that the witnesses are related to each other and are interested and therefore their evidence cannot be relied upon. This contention has no force as in the case in hand the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence. Two of three witnesses produced by the prosecution are injured eye witnesses and no substance has been brought on record by the appellants to justify their false implication in this case at the hands of the complainant party. Reliance is placed on the cases of **Lal Khan v. State (2006 SCMR 1846)**, **Zulfiqar Ahmed & another v. State (2011 SCMR 492)** and **Zahoor Ahmed v. The State (2007 SCMR 1519)**.

20. Another contention of learned counsel for the appellants is that there is delay of about 24 hours in registration of the FIR and the same has

not been explained by the complainant hence complainant party lodged the FIR with consultation and deliberations with the false facts against the appellants. Once again this contention has no force as the incident took place on 18-05-2011 at 1800 hours and the FIR was registered on 19-05-2011 at 1500 hours and the delay was explained by the complainant and the prosecution witness by deposing that after the incident complainant immediately informed the police on telephone and on the information police reached at the hospital where they first took the two injured persons who after getting first-aid were referred to Civil Hospital Hyderabad for better treatment. This fact has also been admitted by the investigation officer and the complainant. The doctor also deposed that injured were brought in hospital and they after the fist-aid referred to Civil Hospital Hyderabad. We find the delay if any in registration of the FIR was properly explained by the complainant. In these circumstances the delay if any occurred in the registration of FIR is not fatal to the case of prosecution in the particular fact and circumstance of the present case. In similar facts and circumstances in the case of **Abdul Khalique Versus The State (2020 S C M R 178)**, Supreme Court of Pakistan has held as under:-

3. After hearing the learned counsel for the petitioner and learned Additional Prosecutor General at length and perusal of available record with their assistance, it has been observed by us that though there is delay of about sixteen hours in lodging the FIR but the fact remains that it has come on record that complainant side had sent Muhammad Umer, cousin of deceased Khalil Ahmed, whose name was also given in the FIR, to P.S. Bulri Shah Karim for issuance of letter for medical treatment of injured Khalil Ahmad (deceased) from the hospital and in this respect a Rapat was recorded by the police at 11.30 p.m. on the day of occurrence and a letter was also issued with the signatures of ASI to the Medical Officer, District Hospital, Tando Muhammad Khan for conducting medical examination of Khalil Ahmad (deceased) and for issuance of medico-legal certificate. Dr. Nizamuddin (PW6) who medically examined Khalil Ahmad in injured condition stated in his examination in chief that Khalil Ahmad was brought by his relatives on 18.07.2014, who informed him that their relative had gone to police station for obtaining the letter, whereupon he (PW6) started examination of Khalil Ahmad. He further stated that in the meantime the said relative brought the letter of police. The said letter has been exhibited as Ex.16/A. The doctor (PW6) further stated in his cross-examination that he referred Khalil Ahmad to LUMHS Hyderabad after giving him first aid at 11.05 p.m. on 18.07.2014. In this respect, referral letter has been exhibited as Exh.16/B. A glance at the postmortem

examination report of Khalil Ahmad issued by Dr. Salahuddin (PW7), MLO at LUH Hyderabad reveals that Khalil Ahmad was admitted in the said hospital on 19.07.2014 and he expired there on 21.07.2014. **In these circumstances, the delay in lodging the FIR has reasonably been explained by the prosecution. Even otherwise, the first priority of kith and kin of Khalil Ahmad (deceased) was to save his life and they tried to do so by first taking him to local hospital, wherefrom he was referred to a hospital at Hyderabad. Even in this process, they reported the matter to police and obtained official letter of police for medical examination of Khalil Ahmad (deceased).**

21. Learned counsel for the appellants pointed out some contradictions and discrepancies in the evidence of the witnesses which in our view are minor in nature and not sufficient to hold the case of the prosecution as doubtful. It is established principle of law that where in the evidence prosecution established its case beyond reasonable doubt then if there are some minor contradictions 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)**, wherein Supreme Court has held as under:-

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

22. We have carefully scanned the entire evidence produced by the prosecution and found that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing independent, trustworthy, reliable and confidence-inspiring evidence in the shape of oral

evidence as well as medical evidence coupled with other corroborating / supportive evidence.

23. As regards to the sentence a lenient view cannot be taken as the circumstances of this case indicate that the act of the appellants was gruesome and merciless. Further the particular facts and circumstances of this case keeping in view the brutality of the crime, where one innocent person was murdered and two were injured at their lands when they were taking water of their share to irrigate the land, the complete lack of mitigating circumstances and the presence of aggravating circumstances as mentioned above and the need to discourage such kind of offences which regrettably are most common 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)**.

24. The upshot of the above discussion is that the prosecution has successfully established its case against the appellants Mansoor Ahmed s/o Muhammad Munsha, Aijaz Ahmed s/o Muhammad Munsha and Muhammad Munsha s/o Chiraghuddin all by caste Rajput through ocular account furnished by injured eye-witnesses, which is corroborated by the medical evidence coupled with circumstantial evidence. Learned counsel for the appellants has failed to point out any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in our humble view is based on a correct appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction awarded to the present appellants by learned trial Court is hereby maintained and the instant appeals filed by the appellants merits no consideration, which are hereby **dismissed**, the death penalty handed down to the appellant Mansoor Ahmed s/o Muhammad Munsha is confirmed. Confirmation Reference sent by the trial court is answered in the **AFFIRMATIVE**.

25. The above appeals and the confirmation case is disposed of in the above terms.

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