

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No. D- 68 of 2015
Confirmation case No. D- 08 of 2015.

Present:

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

Appellant: Muhammad Ashraf s/o Imam Bux Siyal,
Through Mr. Salahuddin Khan Gandapur,
Advocate.

Complainant: Khair Muhammad through Mr. Shaukat Ali Kaka,
Advocate.

Respondent: The State, through Ms. Safa Hisbani A.P.G. Sindh.

Dates of hearing: 23.06.2021.
Date of Judgment: 01 .07.2021.

JUDGMENT

ZULFIQAR ALI SANGI, J: This criminal appeal is directed against the judgment dated 27.07.2015, passed by learned Sessions Judge, Matiari, in Session Case No. 08 of 2013 (Re: The State v. Muhammad Ashraf), emanating from Crime No. 207 of 2012, registered at Police Station Hala, under section 302 PPC, whereby the appellant was convicted under section 302(b) PPC and sentenced to death subject to confirmation by this court. He was also directed to pay compensation of Rs.200,000/- to the legal heirs of the deceased as provided under section 544-A Cr.P.C.

2. The brief facts of the prosecution case as per F.I.R, registered by complainant Khair Muhammad at Police Station Hala are that his brother Moula Bux who for a long time worked as Welder with mechanic Ashraf Siyal (accused) at his shop about one month before the incident started his own shop of spare parts where he also used to work as mechanic

and complainant as electrician, on which accused was unhappy, who by different ways used to pressurize them. On 27.12.2012 a Mazda pickup was brought to the shop of deceased for repair but its work could not be completed. Complainant and PWs Naseer Muhammad and Aamir Ali laid in Mazda pickup while Moula Bux went to sleep on a Charpai inside the shop by closing its shutter. On 28.12.2012 at about 7-00 a.m. the complainant and both the PWs Naseer Muhammad and Aamir Ali woke up on the sound of opening shutter and heard cries. They got off from the pickup and rushed to the shop where they saw accused Ashraf causing hatchet blows to Moula Bux. Complainant party challenged the accused (raised Hakals) on which accused by raising hatchet fled away. They found the deceased having sustained hatchet injuries on his face who died before them. The complainant through telephone informed his relatives and police. ASI Ubedullah reached at the place of incident, prepared inquest report, memo of inspection of dead body and sent it for autopsy. After post-mortem examination, he recovered/collected the blood stained clothes of deceased under a mashirnama and handed over the dead body of deceased to his heirs. After sending dead body of deceased to his village, the complainant went to PS and lodged the FIR.

3. After registration of FIR, SIP Gulsher carried out investigation of the case. He accompanied the complainant to the scene of offence, inspected the place of incident, collected the blood stained earth and on the same day arrested the accused. At the time of interrogation the accused was wearing clothes which were blood stained and consequently, I.O seized the same in presence of mashirs. On the same day, accused led the police and mashirs to his house and produced blood stained hatchet which I.O secured and sealed on the spot. He recorded 161 Cr.P.C. statements of the witnesses and on the next day got their 164 Cr.P.C. statements recorded before the concerned Magistrate, sent the case property to chemical

examiner and after completing the investigation, submitted the challan of the case in the court of law. After completing necessary formalities the trial court framed the charge against the appellant to which he pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to prove its case examined P.W- 1 Complainant Khair Muhammad at Ex. 10, who produced FIR at Ex. 10/A. P.W-2 Naseer Muhammad at Ex.11, who produced his 164 Cr.P.C. statement at Ex.11/A. P.W-3 Aamir Ali at Ex.12, who produced his 164 Cr.P.C. statement at Ex.12/A. P.W-4 Dr Shafiq Hussain at Ex.13, who produced letter whereby he received dead body of deceased along with Lash Chakas Form, receipt of handing over clothes of deceased stained with blood to ASI Ubedullah, two photographs of deceased and post-mortem report of deceased Moula Bux at Ex.13/A to 13/F respectively. P.W-5 Waheed Faisal Tapedar at Ex.15, who produced sketch of place of incident at Ex.15/A. P.W- 6 Muhammad Rafiq mashir at Ex.16, who produced inquest report of deceased, memo of inspection of dead body, memo of recovery of clothes of deceased, mashirnama of injuries of dead body, mashirnama of inspection of place of incident, mashirnama of arrest of accused, mashirnama of recovery of bloodstained clothes of accused and mashirnama of recovery of bloodstained hatchet at Ex.16/A to 16/H respectively. P.W-7 ASI Ubedullah at Ex.17 and P.W-8 SIP Gulsher Otho I.O of the case, who produced two photos of deceased Moula Bux, report of Chemical Examiner and Roznamcha Entry Nos. 09, 10, 11, 12, 13 and 14 dated 28.12.2012 at Ex.18/A to 18/F respectively. Thereafter prosecution closed its side vide statement at Ex.19. The statement of accused was recorded under Section 342 Cr.P.C whereby he claimed his false implication. He, however, neither examined himself on oath nor produced any witness in his defence.

5. Learned trial court after hearing the parties and examining the evidence available on record convicted and sentenced the appellant as stated above hence this appeal against the conviction.

6. Mr. Salahuddin Khan Gandapur, learned advocate for appellant has contended that the case registered against the appellant is false and has been registered due to enmity on matrimonial dispute; that there is delay in registration of FIR and the same has not been explained by the complainant; that all the witnesses are related to each other and are interested witnesses; that the complainant party as alleged by them were present at the place of wardat but they not take efforts to save the deceased; that prosecution case is highly doubtful; that the evidence brought on record is contradictory on material particulars of the case and 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 the case of acquittal but learned trial court has wrongly discussed the points for determination and convicted the appellant; 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 trustworthy. He prayed that the appeal may be allowed and the appellant may be acquitted. In support of his contention he relied upon the cases of **Zeeshan @ Shani v. The State (2012 SCMR 428)**, **Noor Muhammad v. The State (2010 SCMR 97)**,

Muhammad Fiaz Khan v. Ajmer Khan and another (2010 SCMR 105), Iftikhar Hussain v. The State (2004 SCMR 1185), Hashim Qasim v. State (2017 SCMR 986), Muhammad Nawaz v. The State (2005 PLD SC 40), Tariq Pervez v. The State (1995 SCMR 1345), Ayub Masih v. The State (2002 PLD SC 1048), Yameen Kumhar v. The State (PLD 1990 Kar. 275), Amjad Shah v. The State (2017 PLD SC 152) and Ghulam Mohy-ud-Din v. The State (2014 SCMR 1034).

7. Ms. Safa Hisbani, 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. She argued that the prosecution produced three eyewitnesses who were natural witnesses and fully supported the case; that ocular evidence is supported by the medical evidence; that appellant was arrested on the same day and at the time of arrest his cloths were stained with blood; that crime weapon (hatchet) was recovered from the appellant on his pointation; that cloths of appellant and the hatchet were sent for chemical examination and report is in positive; that delay in the FIR was fully explained by the complainant; that mashir Rafique is an independent witness having no enmity with appellant. Lastly, she prayed that the appeal of the appellant may be dismissed and the conviction and sentence handed down by the trial court may be maintained.

8. Learned counsel for the complainant adopted the arguments of APG and further argued that the prosecution has proved the case against the appellant by producing reliable, trustworthy and confidence-inspiring evidence; that all the witnesses supported the case in all respects and deposed against the appellant; that the death penalty was rightly awarded by the trial court. In support of his contention he relied upon the cases of **Ahmad Nawaz v. The State (2011 SCMR 593), Iftikhar Mehmood v. Qaiser Iftikhar and others (2011 SCMR 1165), Muhammad Imran @ Asif v. The State (2013 SCMR 782), Sabir Hussain alias Sabri v. The State**

(2013 SCMR 1554), Zeeshan Afzal alias Shani v. The State and another (2013 SCMR 1602), Muhammad Anwar v. The State (2014 SCMR 338), Naveed alias Needu v. The State and others (2014 SCMR 1464), Muhammad Nadeem Waqas v. The State (2014 SCMR 1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR 2035), Qaddan and others v. The State (2017 SCMR 148) and Muhammad Sadiq v. The State (2017 SCMR 144).

9. We have heard learned counsel for the appellant, learned APG for the state and learned counsel for the complainant and have perused the material available on record with their able assistance.

10. The evidence produced by the prosecution in the shape of ocular evidence and medical evidence coupled with documentary evidence, includes postmortem of deceased, recovery of blood stained earth from the place of wardat established beyond any shadow of reasonable doubt that on 28-12-2012 at about 07.00 am at shop of the deceased the deceased received injuries of sharp cutting weapon (hatchet) and died due to unnatural death at the spot. Prosecution in order to prove unnatural death of deceased has examined, **Dr. Shafique Hussain P.W-4** who deposed that on 28.12.2012 when he was on his duty at Taluka Hospital Hala as Medical Officer on the same day at about 09.30 am he received dead body of deceased Moula Bux son of Haji Hussain Bux Leghari, aged about 28 years belonging to village Saeed Khan Leghari, brought from PS Hala by ASI Ubedullah Rind through letter No.A-28.12.2012 along with Lash Chakas Form. He deposed that the information furnished by police revealed that the death of deceased was due to sharp cutting weapon injuries. The dead body was identified by brothers of deceased namely Khair Muhammad and Irshad Ali Leghari. He started conducting post-mortem examination of the dead body at 10.00 am and finished/completed at 11.30 am on same day.

On the external examination he found that the dead body was of a young age with healthy built and normal height with damaged face, structure, eyeball depressed internally, pupils dilated, mouth was also damaged, teeth detached and all structures of face stained with clotted blood. Rigor mortis were developed.

On the external examination, he found following injuries on the body of deceased.

- (1) Incised wound on front of head cutting skull bone, brain matter also seem measuring 15 cm x 2 cm x 7 cm deep (stained with blood).
- (2) Incised wound oblique from right parietal region to left side of face with damaged structures of face depressed left eyeball inside 21 cm x 6 cm x 4 cm stained with clotted blood.
- (3) Incised wound from medial side of right eyebrow up to upper level of right ear 14 cm x 4 cm x 3 cm stained with clotted blood.
- (4) Incised wound cutting nose to right side of face 15 cm x 4 cm x 2 cm (Blood stained).
- (5) Incised wound from lateral side of mouth to right cheek 8 cm x 1 cm stained with clotted blood.
- (6) Incised wound below lateral side of chin to medial side of chin right side with damaged teeth 11 cm x 2 cm deep internally stained with blood.
- (7) Incised wound at middle of chin 9 cm.
- (8) Incised wound on front of neck cutting major vessels (carotid) stained with blood.

All the above injuries were antemortem and caused with sharp cutting weapons. On internal examination, he found following damages.

Head.	As mentioned in surface injuries that injury No.1 of the head cuts the skull bone and brain matter is seen (damage of the vital organ (brain) found
Neck.	Injury No.8 of surface injury cuts the major vessels (carotid also) due to that there was a heavy bleeding.
Thorax.	No any injuries seen on thorax region so no need to open the thoracic cavity.
Abdomen.	No any abdominal injury seen so no need to open abdominal cavity.
Remarks.	Although all injuries were grievous in nature and damaged the internal structures but due to injury No.1 of surface injury damaged the vital organ (brain) and injury No.8 of surface injury damaged the major vessels (carotid vessels also) so there was a heavy loss of blood.

Keeping in view the findings on external as well as internal examination of deceased Moula Bux s/o Haji Hussain Bux he was of the opinion that the death occurred due to damage of vital organ (brain) and the circulatory failure due to the heavy loss of blood. The probable time elapsed between injuries and death was instantaneously and between death and post-mortem was about 9 to 10 hours. After conducting post-mortem examination the dead body and clothes which were in black colour shalwar was and Qameez (Shirt), white Banyan (Ganji) and orange colour agat (Nara) stained with blood were handed over to ASI Ubedullah Rind of PS Hala. He issued such postmortem report.

11. After proving the un-natural death of the deceased the prosecution brought on record ocular and other supportive evidence to prove who caused the death of the deceased. To prove the same, the prosecution examined Khair Muhammad P.W-1 (complainant) who deposed that the deceased Moula Bux was his brother and used to work for a long period as Kamani maker and welder at the shop of accused Mistri Ashraf Siyal. About one and half month prior to this incident deceased Moula Bux had opened his own shop of spare parts adjacent to the shop of Mistri Ashraf. The deceased also used to work as welder and Kamani maker at his own shop and he was also working as auto electrician with deceased on which Mistri Ashraf was unhappy. Mistri Ashraf with different ways used to pressurize the deceased to close the shop. On 27.12.2018 a Mazda came at the shop/garage for work of welding and kamani and they worked on Mazda up to 4:00 A.M of night but could not complete. P.W Naseer Muhammad son of Allah Rakhio and Aamir Ali son of Ali Nawaz, were also working as helpers and they both were present working on the Mazda till 4:00 A.M and then his brother Moula Bux slept in shop on a cot therein. P.W Naseer Muhammad, Aamir Ali and he (complainant) slept in Mazda. On 28.12.2012 at about 07:00 a.m. (morning) they heard voice of opening shutter of the

shop and heard cries from there. He deposed that they all three woke up and immediately rushed towards the shop. They saw accused Ashraf having hatchet was causing blows with sharp side on face of his brother Moula Bux. They raised hackles on which accused left his brother and moved his hatchet towards them. Due to fear they stopped at the door of shop. The accused along with hatchet went away from the shop and his brother died within their presence. Thereafter, they informed their relatives and the police who arrived at place of incident. Police after completion of formalities referred the dead body to Taluka Hospital Hala for post-mortem examination. After conducting post-mortem the dead body was handed over to them and they sent it to the village and he went to PS Hala and registered the FIR. He further deposed that on his pointation police inspected the place of incident in presence of mashirs Muhammad Rafique and Umed Ali on same day.

12. In support of evidence of complainant (eye witness) another eyewitness Naseer Muhammad P.W-2 was examined by the prosecution who deposed that deceased Moula Bux was working as welder and kamani maker. He, complainant Khair Muhammad and P.W- Aamir were also working with deceased Moula Bux in his garage. About one and half months prior to this incident deceased had opened his shop of spare parts with the name of the Nigahe Ali. The deceased was also working as welder and kamani maker in his shop. Prior to opening of his shop deceased Moula Bux used to work with Mistri Ashraf (present accused). Accused Ashraf was unhappy with deceased Moula Bux on opening his separate shop of spare parts. Accused Ashraf with different ways used to pressurize Moula Bux for getting share in his shop. On 27.12.2012 a Mazda came at the shop of deceased Moula Bux on which they all, deceased Moula Bux, complainant Khair Muhammad, P.W- Aamir and he started work. They worked on Mazda up to 4:00 a.m. at night and then deceased Moula Bux slept in his shop on

cot after closing the shutter. Complainant Khair Muhammad, P.W- Aamir Ali and he slept in Mazda. On next day viz. 28.12.2012 at 07:00 am they heard the voice of opening shutter of shop of deceased and also heard cries from there. They all three immediately went to the shop at its gate and saw Mistri Ashraf having hatchet causing hatchet blow with sharp side on the face of deceased Moula Bux. They raised hakals on which he pointed his hatchet towards them and compelled them to go back. They stood at the gate and then accused went away along with his hatchet. They tried to carry deceased and found that he had sustained hatchet blows on his face but he died in their presence. They informed about the incident to their relatives through telephone who came there. Thereafter they informed the police and police also arrived there. Police referred the dead body to Taluka Hospital Hala. After post-mortem examination the dead body was handed over to them. Then Khair Muhammad went to register the FIR. On 30.12.2012 his statement under Section 161 Cr.P.C. was recorded by police. On 04.01.2013 he was called for recording his statement under Section 164 Cr.P.C. before Magistrate but it could not be recorded for some reason. On 09.01.2013 his 164 Cr.P.C. statement was recorded before the Civil Judge and JM Hala-I in presence of accused Ashraf. Statement of P.W- Aamir Ali under section 164 Cr.P.C. was also recorded on the same day before the Magistrate. He was cross-examined by the defence counsel but we could not find any substance favourable to the appellant.

13. The prosecution also produced another eyewitness Amir Ali P.W-3 who deposed that deceased Moula Bux was his relative. Deceased used to work as welder and kamani maker. Deceased Moula Bux used to work as welder and kamani maker for a long period with accused Ashraf. Deceased Moula Bux was aged about 28 years. About one and half months prior to this incident deceased left the shop of accused Ashraf and opened his own shop of spare parts on which complainant Khair Muhammad used

to work as auto electrician and P.W Naseer and he used to work as welder and kamani maker with deceased. Accused Ashraf was unhappy with deceased Moula Bux on opening his own shop of spare parts. Accused Ashraf with different ways used to pressurize deceased Moula Bux. On 27.12.2012 a Mazda came at the shop for working of kamani. They worked on Mazda till 4:00 am at night. Then deceased Moula Bux slept in shop after downing its shutter while complainant, P.W Naseer Muhammad and he slept in Mazda. On next day 28.12.2012 at 7:00 am they heard voice of opening shutter on which woke up and heard cries from the shop. They immediately went towards shop and at the gate they saw accused Ashraf having hatchet causing blows with sharp side to deceased Moula Bux on his face. They raised hakals on which accused pointed his hatchet towards them and due to fear they could not intervene and then accused went away from wardat along with hatchet. They went over to the deceased and found that he had sustained hatchet blows on his face and died in their presence. They informed about incident to their relatives through telephone. The relatives Irshad Ali and others arrived at the place of incident and then they informed the police. Police also reached at the spot and after completing legal formalities referred the dead body to Taluka Hospital Hala. After post-mortem examination of deceased the dead body was handed over to them they took away the dead body to the village and complainant Khair Muhammad went to register the FIR. On 30.12.2012 his statement under Section 161 Cr.P.C. was recorded by the police. On 09.01.2013 his section 164 Cr.P.C. statement was also recorded before the Magistrate in presence of the accused. He was cross-examined by the defence counsel but his evidence was not shattered.

14. All the above three eyewitnesses fully supported the prosecution case. They were cross-examined and even during cross-examination they all were on same line and no major contradiction was

pointed out by defence counsel. They all being workers at the said shop are natural witnesses. Their presence at the place of incident at the relevant time is established. The incident was of day time and they all knew the appellant prior to the incident, therefore, there is no chance of mistaken identity. As regards to the contentions of learned advocate for the appellant that the witnesses are near relatives to the deceased and are interested therefore their evidence cannot be relied upon has no force as in the instant case. This is because the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence. We would not hesitate that where the witnesses fall within the category of natural witnesses and detailed the manner of the incident in a confidence-inspiring manner then only escape available to the accused/appellant is that to satisfactorily establish that witnesses are not the witnesses of truth but “interested” one. An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate an accused. No substance has been brought on record by the appellant to justify his false implication in this case at the hands of the complainant party on account of the previous enmity. Reliance may be placed on the case of **Lal Khan v. State (2006 SCMR 1846)** wherein Honourable Supreme Court has held as under:-

... The mere fact that a witness is closely related to the accused or deceased or he is not related to either party, is not a sole criteria to judge his independence or to accept or reject his testimony rather the true test is whether the evidence of a witness is probable and consistent with the circumstances of the case or not.

In another case of **Farooq Khan v. The State (2008 SCMR 917)**, Honourable Supreme Court has held as under:-

11. PW.8 complainant is real brother of the deceased who is a natural witness but not an interested witness. An interested witness is one, who has motive, falsely implicates an accused or has previous enmity with the person involved. There is a

rule that the statement of an interested witness can be taken into consideration for corroboration and mere relationship with the deceased is not “sufficient” to discredit the witness particularly when there is no motive to falsely involve the accused. The principles for accepting the testimony of interested witness are set out in **Nazir v. The State PLD 1962 SC 269** and **Sheruddin v. Allhaj Rakhio 1989 SCMR 1461**.

In another case of **Zulfiqar Ahmed & another v. State (2011 SCMR 492)**, Honourable Supreme Court has held as under:-

...It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of ‘interested witness’ was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR-01) and it was held that ‘friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused.

Based on the particular facts and circumstances of the case mere relationship of these eye-witnesses with the deceased alone is not sufficient to discard the testimony of the complainant and the other eye witnesses. In the matters of capital punishment, the accused would not stand absolved by making a mere allegation of dispute/enmity but would require to bring on record that there had been such a dispute/enmity which could be believed to have motivated the “natural witnesses” in involving the innocent at the cost of the escape of “real culprits”. We would mention here that where the natural witnesses are in blood-relations then normally the possibility of substitution becomes rare. The appellant has failed to bring on record any evidence to show that the deep-rooted enmity existed earlier between the parties which could have been the reason for false involvement of the appellant in this case particularly when it is a case of single accused. Reference may be made to the case of **Zahoor Ahmed v. The State (2007 SCMR 1519)**, wherein Honourable Supreme Court has held as under:-

6. The petitioner is a maternal-cousin of the deceased, so also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High Court that the blood relation would not spare the real culprit and instead would involve an

innocent person in the case. Further it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial.

15. The prosecution to prove the recoveries and other circumstantial evidence examined Muhammad Rafique P.W-6 who was the mashir of the case who deposed that on 28.12.2012 in the morning complainant Khair Muhammad through telephone informed him about the murder of his brother Moula Bux. At about 9.00 am he reached at the shop of deceased Moula Bux. Police also arrived there. On inquiry of police the complainant Khair Muhammad disclosed that deceased was his brother. Police after inspecting the dead body of deceased Moula Bux prepared Danishnama/inquest report of the dead body in his presence and in presence of Umed Ali Leghari who was also present with him. He deposed that police also prepared memo of inspection of dead body in his presence and in presence of Umed Ali and obtained their signatures thereon. Thereafter, the dead body was referred to Taluka Hospital Hala. After conducting post-mortem examination the clothes of dead body were recovered by police in his presence and in presence of same co-mashir. Police also prepared mashirnama of injuries of dead body in his presence and in presence of co-mashir Umed Ali. After conducting post-mortem examination the dead body was handed over to complainant Khair Muhammad. Thereafter complainant along with him and Umed Ali went to PS Hala and lodged FIR of the incident. After registration of FIR police along with complainant, co-mashir Umed Ali and him came at place of incident and on the pointation of complainant police inspected the place of incident which was inside the shop of deceased Moula Bux where a cot / Charpai was lying on which deceased was sleeping at the time of incident. Police also recovered blood stained earth from place of incident and sealed the same on spot and prepared such mashirnama of inspection of place of incident. On the same date police was informed that accused Muhammad Asharf was

present at bypass with intent to escape away. Police along with complainant, co-mashir Umed Ali and him immediately rushed towards bypass. When they reached there they saw that accused was sitting there waiting for some conveyance. Police arrested accused in his presence and in presence of Umed Ali. Nothing was recovered from his possession and mashirnama of his arrest was prepared. Police brought the accused at PS. and also found blood stains on the clothes of accused. During interrogation, the accused told the police that he had received blood stains while killing deceased Moula Bux. Police make arrangement of the clothes of accused and recovered blood stained clothes worn by him in his presence and in presence of co-mashir Umed Ali and prepared such mashirnama. On the same date during further interrogation, he (accused) confessed his guilt and told police that he had committed murder of deceased Moula Bux with hatchet and disclosed that the same was concealed by him in the roof of his house and became ready to produce the said hatchet. Police along with the accused, co-mashir Umed Ali and him went to the house of accused in a private vehicle. When they reached their accused led the police party towards his house and from the roof he took out the hatchet with wooden handle stained with blood and produced before the police in his presence and in presence of co-mashir which was recovered by the police and prepared such mashirnama. He was cross-examined but nothing favourable to accused was brought on record by the defence counsel.

16. The prosecution examined Ubedullah P.W-7 who on receipt of information about the incident immediately rushed there and completed some formalities. He deposed that on 28.12.2012 he was posted at PS Hala and was also duty officer from 8.00 a.m. to 8.00 p.m. On the same date at about 8.45 a.m one **Khair Muhammad s/o Haji Hussain Bux Leghari through telephone informed him that his brother Moula Bux was murdered by Mistri Ashraf in spare parts shop of deceased** near Gajni

petrol pump. On receipt of such information, he along with his staff went to the place of incident where he found the dead body of deceased Moula Bux was lying on iron cot in his spare parts shop. The head of deceased was on western side and feet on eastern side. He prepared such Danishnama/inquest report of the dead body in presence of mashirs Muhammad Rafiq and Umed Ali. He inspected the dead body and prepared such memo of inspection of dead body in presence of same set of mashirs. After completion of legal formalities he got shifted the dead body to Taluka Hospital Hala. He noted injuries on the person of deceased and prepared such mashirnama in presence of same mashirs Rafique and Umed Ali. He referred the dead body for post-mortem examination with Lash Chakas Form. After conducting post-mortem examination doctor handed over dead body and also clothes of deceased. He recovered the clothes of deceased and sealed the same. Thereafter, he handed over the dead body to the legal heirs under receipt. Further investigation was conducted by ASI Gul Sher Oatho to whom he handed over case papers and clothes of deceased. He was cross-examined but we could not find any substance favourable to the appellant.

17. The other witnesses/investigation officer ASI Gulsher P.W-08 was also examined by the prosecution who deposed that on 28.12.2012 he was posted as SIP at PS Hala and on the same date he was also duty officer and during his duty at 12:00 hours complainant Khair Muhammad appeared before him at PS and lodged FIR regarding the murder of his brother Moula Bux against accused Muhammad Ashraf Siyal which was recorded by him in FIR book vide Crime No. 207/2012, under Section 302-PPC. The FIR was recorded in verbatim and read over to the complainant. He deposed that after registration of FIR he along with his staff, complainant, mashirs Muhammad Rafiq and Umed Ali left PS for inspection of place of incident vide Roznamcha entry No.10. On the pointation of

complainant, he inspected the place of incident in presence of mashirs, which was inside the spare parts shop of deceased Moula Bux, which was situated near Gagni petrol pump near old National Highway Hala. Inside the shop of spare parts an iron cot / charpai was lying in corner with northern and western side. Blood stains were found on the western side wall. There was cemented floor of the shop. There were blood stains lying thereon under the cot and he brought dry earth from outside the shop mixed with the blood of deceased and then took up the same and sealed them and prepared such mashirnama of inspection of place of incident in presence of mashirs Muhammad Rafiq and Umed Ali. On the same day he received spy information that the accused Muhammad Ashraf Siyal was present at new bypass Hala. He along with mashirs, complainant and his staff immediately proceeded to new bypass Hala and when they reached their complainant identified the accused Muhammad Ashraf. It was 1330 hours and he arrested the accused at New By-pass Hala and prepared such mashirnama in presence of same mashirs. Thereafter they brought the accused at PS. ASI Ubedullah handed over to him documents of initial proceedings of the case, clothes of deceased and photo of the deceased. On the same date vide Roznamcha Entry No.12 he got the accused out from lock-up and interrogated him and during interrogation he found that the clothes worn by accused were also stained with blood. The accused confessed his guilt and admitted to have committed murder of deceased Moula Bux with hatchet. The accused further disclosed that he had received blood stains on his clothes while committing the murder of deceased Moula Bux. The accused further disclosed that he had kept/ hidden said hatchet on the roof of his house and he became ready to produce the same. He further deposed that he arranged other clothes for accused and got the accused clothes changed with those and sealed the accused clothes. Vide roznamcha Entry No.13 he along with accused, mashirs, complainant and his staff left PS for the house of accused. When they reached at the house of accused situated

in railway colony accused voluntarily led them to his house and through stair he took them to the roof of his house where from a corner he took out one hatchet and disclosed that it was same which had been used by him at the time of commission of offence. On checking he found blood on the hatchet. He sealed the hatchet then and there and prepared such mashirnama in presence of mashirs Muhammad Rafiq and Umed Ali. He brought the accused and recovered hatchet at PS and recorded such entry in roznamcha vide entry No.14. On next day, he obtained the remand of accused and post-mortem report from the doctor. On 30.12.2012 he recorded 161 Cr.P.C. statements of the witnesses named in FIR. On 01.01.2013 he wrote a letter to SDPO for seeking permission to send the case property to chemical examiner. On receiving such permission he sent the case property to chemical examiner. On 03.01.2013 he recorded statement of accused and served a notice on him for recording section 164 Cr.P.C. statements of the witnesses. On the same date he also gave notice to the witnesses for recording their section 164 Cr.P.C. statements before the Magistrate. On 04.01.2013 he produced accused and witnesses and submitted application to the Civil Judge and JM-I Hala for recording section 164 Cr.P.C. statements of the witnesses but the concerned Magistrate fixed the date viz. 08.01.2013 for recording statements of the witnesses. On 08.01.2013 section 164 Cr.P.C. statements of the witnesses were not recorded and again date was fixed 09.01.2013 and finally on said date section 164 Cr.P.C. statement of witnesses namely Aamir Ali and Naseer Muhammad was recorded by the concerned Magistrate in presence of accused. After completion of investigation he submitted challan of the case against accused. The report of chemical examiner was received which showed that all the articles sent to laboratory were found stained with human blood. He was cross-examined by the defence counsel but his evidence was not dented.

18. From the evidence produced by the prosecution in support of recoveries and other circumstantial evidence as discussed above we find that the prosecution proved beyond a reasonable doubt that the crime weapon (hatchet) used in the commission of offence was recovered from the roof of house of the appellant which only appellant knew and no one else. The appellant was arrested on the same day and the clothes worn by the appellant at the time of his arrest were stained with blood. The hatchet and the clothes of the appellant were sent for chemical analyzer and as per report both were stained with human blood. The police PWs had no enmity or ill-will towards the appellant and had no reason to falsely implicate him in the present case. Even any such enmity or ill-will was not suggested from the police witness as to why they foisted the hatchet and the cloths stained with human blood. Therefore, in our view the evidence of police witnesses can safely be relied upon. Furthermore, it does not appeal to reason, logic or commonsense that a real brother who was an eye witness would let the murderer of his real brother go free by substituting him with an innocent person. Reliance is placed on the case of **Allah Ditta V. The State (PLD 2002 SC 52)**.

19. The motive setup by the prosecution against the appellant is very strong that for a long period the deceased was working with appellant at his (appellant's) shop and few months prior to the incident he (deceased) opened his own shop for same work as appellant near the shop of appellant which angered the appellant who warned him to close and on refusal the deceased was murdered by him.

20. Learned counsel for the appellant not been able to point out any major contradiction in the evidence of witnesses which bring the case of appellant within the ambit of doubt, however, we find some minor contradictions in the evidence of prosecution witnesses which might have

occurred due to lapse of time. It is settled by now 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. 10 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.”

21. As to sentence a lenient view cannot be taken as the circumstances of this case indicate that the act of the appellant was gruesome and merciless. The deceased was young men aged about 28 years and was deprived of his life only on the ground that he opened the shop near the shop of appellant. Further the particular facts and circumstances of this case keeping in view the brutality of the crime where one innocent young man was murdered in his own shop with hatchet; the complete lack of mitigating circumstances and the presence of aggravating circumstances as mentioned above whereby the deceased received 08 separate injuries and the need to discourage such kind of offences which regrettably are most common now a days, 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)**.

22. Thus based on the above discussion it is established that the prosecution has successfully proved its case against the appellant through ocular account furnished by eye-witnesses, which is corroborated by the medical evidence coupled with the recoveries and other circumstantial/supportive evidence. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in our view is based on a correct appreciation of the evidence and the same does not call for any interference by this court. In view thereof the conviction awarded to the present appellant by learned trial Court is hereby maintained and the instant appeal filed by the appellant merits no consideration which is **dismissed** accordingly. The death penalty handed down by the trial court is confirmed. Death Reference sent by the trial court is answered in the **AFFIRMATIVE**.

JUDGE

JUDGE