

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.50 of 2021
Confirmation Case No.10 of 2021

PRESENT:

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

Appellant:	Nadir Ali @ Bahar and others
	through Mr. Wazeer Hussain Khoso, Advocate
Respondent:	The State
	Through Mr. Muhammad Iqbal Awan, Addl. Prosecutor General Sindh.
Complainant:	Through Mr. Muhammad Ali Leghari Advocate.
Date of Hearing:	31 st August 2022
Date of Judgment:	13 th September 2022

J U D G M E N T

ZULFIQAR ALI SANGI, J.– The appellants being aggrieved and dissatisfied with the common judgment dated 18.01.2021 passed by learned Model Criminal Trial Court/1st Additional District & Sessions Judge Malir, Karachi in Sessions Case No.480 of 2020 arising out of FIR No.14/2020 for the offences punishable U/S 302/34 PPC at P.S. Memon Goth whereby the appellants were convicted U/s 302 (b) PPC to death as Taazir and sentenced to hang by their neck till their deaths subject to confirmation by this Court and were also fined Rs.10,00,000/- each to be paid to the legal heirs of the deceased and in case of default they shall further undergo 06 months S.I. in addition to their substantive sentences the appellants have moved this appeal against their convictions.

2. The brief facts of the prosecution case appearing in the FIR are that on 09.01.2020 at 2300 hours complainant Dost

Ali reported at P.S. that he resides at Dunba Goth when on 09.01.2020 at about 1630 hours he was at his home when his nephew Sohail disclosed him that his son Zohaib who was working in Pakola Company was returning after closing hours when at Katcha Road near Naddi Dunba Goth, accused persons Babar, Zaman and Wali Muhammad who were armed with hatchets and knives inflicted injuries upon Zohaib, who has been taken to Baqai Hospital on the motorcycle by Sohail and Munawar and while going there, one person in the car gave them lift till Baqai Hospital where his son died on account of injuries and his post mortem was conducted in Jinnah Hospital and now he has reported the matter against the above named accused persons.

3. After completing the usual investigation, the charge against the appellants was framed on 01.09.2020, to which they pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case examined 09 Prosecution Witnesses and exhibited various documents and other items. The statements of the accused were recorded under Section 342 Cr.P.C in which they denied all allegations leveled against them. After appreciating the evidence on record, the learned trial Court convicted the appellants as mentioned above; hence, the appellants have filed this appeal against their convictions.

5. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 18.01.2021 passed by the learned trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

6. Learned counsel for the appellants has mainly contended that the motive in the case has not been asserted nor was it proven; that there is a delay in registration of FIR for about 7 ½ hours and the same has not been explained by the complainant; that no record of Baqai Hospital either was collected or was produced before the trial Court where the deceased had allegedly received first aid; that the eye witness Shoaib was given up by the prosecution so the presumption could be drawn that he was not supporting the case of

prosecution; that no dying declaration or any statement under Section 161 Cr.P.C. was recorded; however, statement under section 161 Cr.P.C. of PW-4 Imdad Hussain was recorded after a delay of five days with no explanation; that though PW-Munawar, the eye-witness, was with the dead body, however as per postmortem report the dead body was identified by Ghulam Rasool S/o Qadir Bux; that recovery of knife and mobile phone from the place of incident after some considerable time is doubtful; that the CDR of the mobile phone used by the accused persons was not collected to connect them with this crime; that all the witnesses are inter-se near relatives of the deceased and interested witnesses; that there are several contradictions in the evidence of prosecution witnesses and the same were not taken into consideration by the trial Court; that the prosecution has failed to produce any evidence as to which accused caused which injury to the deceased. Lastly, he submitted that the prosecution has miserably failed to prove the case and therefore by extending the benefit of the doubt the appellants may be acquitted of the charge. He has relied upon the cases of **G.M. Niaz vs. The State (2018 SCMR 506)**, **Zafar vs. The State (2018 SCMR 326)**, **Zeeshan @ Shani vs. The State (2012 SCMR 428)**, **Muhammad Asif vs. The State (2017 SCMR 486)**, **Abdul Khaliq vs. The State (1996 SCMR 1553)**, **Syed Saeed Muhammad Shah and another vs. The State (1993 SCMR 550)**, **Muhammad Khan vs. Maula Bakhsh and another (1998 SCMR 570)**, **Pathan vs. The State (2015 SCMR 315)** and **Khan Akbar vs. Mohib Gul (2001 P.Cr.L.J 1617)**.

7. On the other hand, learned Addl. P.G. Sindh duly assisted by counsel for complainant contended that all the witnesses have fully supported the case of prosecution; that no major contradictions in their evidence has been pointed out by learned defence counsel; that the deceased has made dying declaration statement before two independent witnesses, who were examined by the prosecution and they have fully supported the prosecution case; that medical evidence is supportive to the ocular/direct evidence; that the main eyewitness Munawar Ali has fully supported the case of the prosecution and narrated each and every fact from receiving injuries by the deceased till his death; that though

the motive has not been asserted by the complainant, however, the same was investigated by the investigation officer and such evidence was produced before the trial Court; that recovery of two knives used in the commission of offence was effected from the appellants Zaman and Ali Muhammad on their pointation; that the chemical examiner's report and positive FSL report in respect of blood stained knives have fully supported the case of the prosecution. Lastly, they submitted that appeal of the appellants may be dismissed and confirmation reference may be answered in the affirmative. They relied upon the cases of ***Majeed Vs. The State (2010 SCMR 55) and Muhammad Ahmed (Mehmood Ahmed and another) Vs. The State (2010 SCMR 660)***.

8. We have heard the learned counsel for the appellants as well as learned Addl. P.G. Sindh and learned counsel for the complainant and perused the material available on record with their able assistance.

9. Although in the present case in FIR motive has not been asserted by the prosecution, however, during the investigation the investigating officer has examined P.W. 3 Dildar, who deposed that on 03.11.2019 marriage of his nephew Munawar was fixed and one week prior to this incident he was available at his home where Hussain Khaskheli and Safar approached him and disclosed that Zohaib and Munawar had eloped along with their niece Sabra the daughter of Lakhmeer, who told them that they resolved the matter and assured them and was informed that Zohaib and Munawar are available in their houses. Hussain Khaskheli was contacted on the phone and he requested that the matter of the girl may not be disclosed to anyone due to their respect and dignity. After a couple of days, he met with Hussain and assured him that Zohaib and Munawar have nothing to do with the issue of the girl, Hussain replied that they have no issue and the matter has been resolved and they were asked that they should participate in the marriage ceremony of Munawar but in the marriage ceremony neither Hussain nor any of his relative participated. On the night of marriage, respectable person of locality Wadera Ghulam Rasool came to their house and in his presence, Zohaib told him that Nadir and Wali Muhammad @

Wali are threatening him. The story was told by him to Dildar then Zohaib disclosed that Zaman and Ali Muhammad are also showing him weapons whenever he went to his job. On 09.01.2020 he received the telephone call that his nephew had been taken to Baqai Hospital in injured condition when he reached there his nephew Zohaib had already died. This witness has categorically deposed in respect of motive and though the appellants in their statements u/s 342 Cr.P.C. have denied the said motive, however, appellant Muhammad Zaman while replying on question 34 has stated that the witnesses have deposed against him because of some enmity and the complainant side has strained relationship with them from the day one. All three appellants produced their defence witnesses and D.W-2 Nadeem Khaskheli during his cross-examination specifically stated that, "I am relative of accused person. It is correct that I reside in neighborhood of accused persons. It is correct that there was a dispute between complainant's side with Khaskheli community over a girl. It is incorrect that the girl herself return to home, further says complainant side dropped/left her." From all the evidence discussed above, it is clear that the prosecution has proved the motive for murdering the deceased Zohaib by the appellants.

10. In the present case, the prosecution has examined P.W.6 (eye witness) who while supporting the case has deposed that on 09.01.2020, while returning from Pakola Company when he reached Jatoi Hotel on Super Highway Muhammad Sohail asked him to wait for two minutes as his brother will come and then they both will return to their homes. On arrival of his brother he along with Sohail left for home and on reaching Thaddo Nala, he **saw** one Nadir, Ali Muhammad and Zaman inflicting injuries on Zohaib and when they reached near Zohaib, he cried in pain. All three accused persons escaped from there by taking advantage of the bushes. They took Zohaib home and on their way saw Amanullah standing who also came running towards them and enquired from Zohaib as to what happened because at that time Zohaib was in senses. Zohaib himself disclosed to Amanullah that when he was returning from his job the accused persons had injured him. They got a motorcycle from Amanullah and took Zohaib for first aid at Baqai Hospital. Zohaib sat in between Munawar and Sohail and

while on the way when they reached the shop of one Dewan Sohail asked him (Munawar) to stop as he wanted to inform his father. Sohail went and informed his father while Munawar and Zohaib remained on the motorcycle. Sohail returned within two minutes and thereafter they proceeded towards Baqai Hospital when they reached near Wadi-e-Hussain Super Highway one unknown person met them, who had a car and helped them after seeing Zohaib bleeding and took him in the Car towards Baqai Hospital. When they reached Hospital Zohaib was taken in for emergency treatment where he was given first aid but after five minutes he succumbed to injuries. Sohail and Dildar took the dead body to Jinnah Hospital for postmortem and further proceedings. He deposed that on the next day he was called by the investigation officer to whom he has shown the place of incident where blood-stained grass and straw were taken into possession and a memo was prepared which was signed by him. He was cross-examined at some length but we could not find any substantial to discard his evidence. Sole evidence of a material witness i.e an eye witness is always sufficient to establish the guilt of accused, if the same is confidence inspiring and trustworthy and supported with other independent source of evidence because the law requires quality of evidence not quantity to prove the charge. The accused can be convicted if the court finds the direct oral evidence of *one eye-witness* to be reliable, trustworthy and confidence inspiring. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State (2006 SCMR 1857)**. The Honourable Supreme Court in the case of **Niaz-Ud-Din v. The State (2011 SCMR 725)** has also observed in respect of the ability of the court to uphold a conviction for murder even based on the evidence of *one eye-witness* provided that it was reliable and confidence inspiring and was substantiated from the circumstances and other evidence since it is the quality and not the quantity of evidence which is of importance. Further the Honourable Supreme Court in the case of **Allah Bakhsh v. Shammi and others (PLD 1980 SC 225)** also held that "even in murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable."

11. After the direct evidence as discussed above the other piece of evidence against the appellants is the dying declaration made by the deceased before two persons at two different places while he was on the

way to hospital. The prosecution examined PW-6, the eyewitness who has stated that deceased himself narrated the facts of incident in respect of causing him the injuries by the accused persons to Imdad Hussain and Amanullah. P.W.4 Imdad Hussain Zardari stated that at the time of incident he was standing at grocery shop at Dunba Goth where he saw three persons on motorcycle driven by Munwar, Zohaib was sitting in between Munwar and Sohail, he saw Zohaib was bleeding and injured and on his query disclosed that he was coming from his work through passage of Nadi where he was maltreated by Nadir with hatchet and Ali Muhammad and Zaman with knives. P.W-7 Amanullah stated that on 09-01-2020 he was returning from the factory and was available outside his house and saw Munwar and Sohail bringing Zohaib where he rushed and inquired from Zohaib as to who had done this to which Zohaib replied that Nadir, Zaman and Wali Muhammad have caused injuries with hatchet and knives. They took motorcycle of Amanullah for taking the injured Zohaib to Bakai hospital. During cross-examination he negated the suggestion of defence counsel in respect of sense of the injured at the time when he inquired and stated that "It is incorrect that Zohaib was unconscious when I saw him." These witnesses are independent witnesses having no enmity or ill-will with the appellants nor was it suggested during their cross-examination. Here in the present case such dying declaration was oral and was not in writing. There seems to be no particular format for a dying declaration and the main requirement appears to be that it is made without influence which we find to be in this case as it was made before two independent persons by the deceased when he was alive and was in full senses. The dying declaration thus, in our view, fulfills all the requirements of law and we find that it is admissible and can be relied upon. In this respect reliance is placed on ***Majeed v. State (2010 SCMR 55)*** wherein Honourable Supreme Court of Pakistan has held as under:-

"7. The evidence of P.Ws.3, 4 and 7 reveals that when they reached on the fire-arm reports they found the deceased Mir Shandad lying dead while Mujeeb-ur-Rehman was alive but lying in injured condition who disclosed that the appellant Majeed and Ismail had fired at them. P.W.7 apart from naming the above two persons also named Naseer and Bashir. All these three witnesses were cross-examined but nothing came on record to discredit their evidence. No serious effort was made to challenge their statement on the question of dying declaration. From the evidence it has been established beyond any shadow of doubt that deceased Mujeeb-ur-Rehman made dying declaration immediately after the incident, eliminating the

possibility of influence etc. before the witnesses making the appellant responsible as one of the accused for causing them injuries. It is a well-settled principle of law that if dying declaration is made even before a private person, is free from influence and the persons before whom such dying declaration was made was examined then it becomes substantive piece of evidence and for that no corroboration is required and such declaration can be made basis of conviction. This Court gave following guiding principles for relying upon the dying declaration in the case of Farmanullah v. Qadeem Khan 2001 SCMR 1474.

(i) There is no specified forum before whom such declaration is required to made.

(ii) There is no bar that it cannot be made before a private person.

(iii) There is no legal requirement that the declaration must be read over or it must be signed by its maker.

(iv) It should be influence free.

(v) In order to prove such declaration the person by whom it was recorded should be examined.

(vi) Such declaration becomes substantive evidence when it is proved that it was made by the deceased.

(vii) Corroboration of a dying declaration is not a rule of law, but requirement of prudence.

(viii) Such declaration when proved by cogent evidence can be made a basis for conviction."

12. Another corroborative piece of evidence against the appellants is the evidence of P.W-5 Raham Ali in whose presence, the appellants were arrested on 10.01.2020 and police on search recovered cash of Rs.600/- from Nadir, Rs.150/- from Ali Muhammad and Rs.275/- from Zaman and prepared the memo of arrest, which he has signed. On 14.01.2020 at about 1400 hours he was available at his home and came to know that police had apprehended three persons at Thaddo Nala where he saw the same three accused persons namely Nadir, Ali Muhammad and Zaman and other large numbers of public. The accused themselves took police inside the Nala. Police made him and Safdar as witness and in their presence accused persons said that they have killed Zohaib with a hatchet and knife and further disclosed that two knives and two mobile phones have been thrown by them at some distance ahead of the same place and they can get them recovered. After 20/25 paces the accused persons dug the earth and got recovered one green plastic shopper in which two knives one with the wooden handle having blood stains and other was flick knife of black colour having blood stains, two mobile phones one of Q-Mobile and VIGO Tel were also available, blood stains were visible on Q-Mobile phone.

Accused Zaman disclosed that the knife with a wooden handle was used by him while the flick knife was used by Ali Muhammad. Nadir disclosed that he had thrown a hatchet while leaving the place into the Nala. As per the evidence of this witness reasonable search was made to find the hatchet but due to the presence of water, the hatchet was not found. The police officers had sealed both knives and mobile phones in one cloth parcel and prepared the memo, which he and co-mashir singed. This witness was cross-examined at some length but his evidence has not been shattered by the defence counsel. The recovered articles including the crime weapons have not been denied to be the same which were used in the commission of offence nor was it suggested that the same were foisted upon the appellants. Non recovery of hatchet also not helpful for the appellants to acquit them in the offence which otherwise is proved by the prosecution by producing reliable, trustworthy and confidence inspiring evidence. Where charge was proved by other direct, natural and confidence inspiring evidence, then non-recovery of crime weapon was not fatal to the prosecution case. Reliance is placed on the case of **Sikander Teghani alias Muhammad Bux Teghani V. The State (2016 Y L R 1098)**.

13. There can be no denial to the legally established principle of law that it is always the *direct* evidence which is material to decide a *fact* (charge). The *failure* of direct evidence is always sufficient to hold a criminal charge as '**not proved**' but where the *direct* evidence holds the field and with stands the test of its being *natural and confidence inspiring* then requirement of independent *corroboration* is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. In the present case the direct evidence furnished by PW-6 Munawar Ali is sufficient to prove the case however the same is corroborated by the evidence of PWs-4 and 7 before whom the deceased made dying declaration while when he was alive and was in his senses which too proved that when he was shifted to hospital he was sitting on motorbike. Further their evidence is corroborated by PW-5 in whose presence the appellants were arrested and who led the police to the recovery of crime weapons on their pointation from a hidden place which no one else knew about. Reliance can *safely* be placed on the case of **Muhammad Ehsan vs. the State (2006 SCMR-1857)**, wherein the Honourable Supreme Court of Pakistan has held that;-

“5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and **not a mandatory rule to be applied invariably in each case** rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence”.

14. The criminal case is to be decided based on the totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination or otherwise of a witness on a particular fact stated by him. A similar view had been expressed by the Honourable Supreme Court of Pakistan in the case of **State v. Rab Nawaz and another (PLD 1974 SC 87)** wherein Honourable Supreme Court has observed that a criminal case is to be decided based on the totality of circumstances and not based on a single element. The prosecution produced oral/direct evidence which is corroborated by the dying declaration made by the deceased and the recovery of crime weapons on the pointation of accused persons as has discussed above. The direct evidence and the dying declaration are also supported by the medical evidence produced by the prosecution in shape of PW-2 Dr. Afzal Ahmed who conducted the postmortem of deceased **Zohaib aged about 22 years** and noted the following injuries on the person of deceased and declared all the injuries as ante-mortem in nature with further observation that the cause of death was cardio respiratory failure due to abdominal injuries/poly trauma due to **sharp edge weapon**.

(i). Lacerated wound size 4cm x 2cm over occipital region of skull.

(ii). Incised wound size 3cm x 1cm over scapular region left side.

(iii). Incised wound size 2cm x 1cm over left arm.

(iv). Incised wound size 2cm x 1cm over left hand.

(v). Incised wound size 2cm x 1cm over right arm.

(vi). Three incised wounds of variable sizes over different part of abdomen cavity deep.

15. The medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not “corroborative evidence” in the sense the term is used in legal parlance

for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person. Reliance can be placed on the cases of **Yaqoob Shah v. State (PLD 1976 SC 53); Machia v. State (PLD 1976 SC 695); Muhammad Iqbal v. Abid Hussain (1994 SCMR 1928); Mehmood Ahmad v. State (1995 SCMR 127); Muhammad Sharif v. State (1997 SCMR 866); Dildar Hussain v. Muhammad Afzaal (PLD 2004 SC 663); Iftikhar Hussain v. State (2004 SCMR 1185); Sikandar v. State (2006 SCMR 1786); Ghulam Murtaza v. Muhammad Akram (2007 SCMR 1549); Altaf Hussain v. Fakhar Hussain (2008 SCMR 1103) and Hashim Qasim v. State (2017 SCMR 986)**. In the case in hand from the oral evidence produced by the PW-6 Munwar Ali (eyewitness) it is established that the accused persons used the sharp edged weapons like hatchet and knives further corroborated by the evidence of PW-5 Raheem Ali in whose presence on their pointation, accused persons produced two knives which were blood stained including the mobile phones used by the accused persons at the time of incident at the place of incident from near the place of incident and the same evidence is supported by the medical evidence as discussed above.

16. The investigation officer PW-9 Inspector Sardar Ahmed Abbasi has also fully supported the case of prosecution who during investigation brought on record the motive for committing murder by examining PW-3 Dildar Palari and the accused persons also after their arrest disclosed the same motive to him. He recorded the statements under section 161 Cr.P.C of prosecution witnesses, arrested the accused persons and during interrogation accused led him to place of incident where they committed the murder of deceased Zohaib and concealed the crime weapons and on their pointation two knives used in the murder were

recovered including other articles duly blood stained. He got CDR reports of the witnesses as well as of the accused persons and came to know that the location of all those persons was same at the time of incident. He exhibited the CDR report in his evidence to prove location of the accused persons and the witnesses at the place of incident at the relevant time. He collected the record from the Bakai hospital to establish that at the first instant the deceased was taken to Bakai hospital when he was alive and in injured condition which he too exhibited in the evidence. The record of Bakai hospital available at page 201 of the paper book reflects that the deceased was alive when reached hospital having multiple stab wounds and was bleeding. He sent blood stained clothes, parcel and recovered articles for serology and also issued letters including letter to DNA lab and he collected the report of serologist which he exhibited in his evidence and is available at page 209 of the paper book. The report issued by the Sindh Forensic DNA and Serology Laboratory reflects that **“Human blood was identified on Shalwar with azarband (item# 1), Qameez (item# 2) and banyan (item# 3) of Zohaib. Human blood was identified on straws (item# 4), Q mobile cell phone (item# 6), knife with wooden handle (item# 7) and black colored knife (item# 8) recovered from the scene of occurrence.** This witness was cross-examined at some length but we could not find any dent in his evidence. He is independent person being the police official having no ill-will against the accused persons nor it was suggested against him during his cross-examination. The evidence of police witnesses can be safely relied upon since no allegation of enmity, bias or ill will has been made against any of them and as such they had no reason to falsely implicate the appellants in this case. In this respect reliance is placed on ***Zafar v. State (2008 SCMR 1254)***.

17. We have also examined the statements under section 342 Cr.P.C of the appellants and evidence of their defence witnesses and found that the appellant Muhammad Zaman admitted while answering the question No. 34 and stated that witnesses deposed against them because of some enmity with complainant party who have also strained relations with them. The defence witness No.2 during his cross-examination stated that **“I am relative of accused persons. It is correct that I reside in neighborhood of accused persons. It is correct that there was a dispute between complainant’s side with Khaskheli community over a girl. It is incorrect that the girl**

herself returned to home, further says complainant side dropped/left her.” This also supports the case of prosecution that the murder was committed by the accused persons to take the revenge from the complainant party for abducting their female relative.

18. Thus based on the evidence on record as discussed above we find that the prosecution has proved its case against the appellants beyond a reasonable doubt by producing reliable, trustworthy and confidence inspiring evidence.

19. Turning to the quantum of sentence awarded to the appellants by the trial court we have considered the evidence produced by the prosecution and found that there were general allegations against the appellants of causing hatchet and knife injuries to the deceased resulting in his death and all the witnesses have deposed that the appellants actively participated in the commission of offence and their evidence was corroborated by recoveries of the crime weapons on their pointation and the motive so also is supported by medical evidence which reflects that the deceased received 08 injuries from sharp edged weapon. In case of ***Muhammad Riaz and another V. The State and another (2007 SCMR 1413)***, the Honourable Supreme Court has held as under:-

6. A glance at the particulars of injuries would clearly show that these injuries were caused from some distance. In the ordinary course of events, it would thus, be difficult to ascertain as to which of the injuries was caused by which of the appellants. Even one of the injuries could have been caused by the fire attributed to co-accused Abdul Khaliq who stands acquitted at the trial and is, no longer available before this Court in the present appeal and petition for leave to appeal. The Medical Officer has pointed out that both injuries were sufficient to cause death in the ordinary course of nature, It would thus, mean that both the injuries were individually and collectively sufficient in the ordinary course' of nature to cause the death of the deceased. During the course of cross-examination, Medico-Legal Expert did not deny the possibility that both the injuries on the person of the deceased could be the result of a single fire. **Since it is very difficult and not easily ascertainable as to which of the accused out of three assailants was responsible for causing these injuries, discretion in the matter of sentence exercised by the trial Court in our considered view does not suffer from perversity or any arbitrariness.**

20. Considering the above facts and the circumstances of this case, we are of the view that this is not a case which warrants the death sentence but is a case which warrants the alternate sentence for

murder. We therefore dismiss this appeal, uphold the conviction of the appellants and alter their sentence from death to life imprisonment under section 302 (b) PPC and they are also liable to pay the compensation of Rs.10,000,00/ each to the legal heirs of the deceased u/s 544-A Cr. P.C and in case of default they shall further undergo S.I for 06 months more. The benefit of section 382-B Cr.P.C is also extended to the appellants and any remission applicable under the law. The confirmation reference made by the trial court is answered in the negative.

21. The appeal and the confirmation reference are disposed of as above.

JUDGE

JUDGE

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