

IN THE HIGH COURT OF SINDH, KARACHI

**Present:**

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

**Special Criminal Anti-Terrorism Appeal No. 160 & 161 of 2021  
Confirmation Case No.08 of 2021**

Appellant : Kifayatullah son of Khawaja  
Muhammad through Mr. Iftikhar  
Ahmed Shah, Advocate.

Respondent : The State through Mr. Ali Haider  
Saleem, Addl. P.G, Sindh.

Date of Hearing : 07.09.2022

Date of Judgment : 16.09.2022.

**J U D G M E N T**

**ZULFIQAR ALI SANGI-J.**, This single judgment will dispose of two captioned Appeals arising out of the same judgment dated 30.08.2021 passed by learned Anti-Terrorism Court No.XVI, Karachi in Special Case No.76/2021 and 76-A of 2021 bearing Crime Nos.486/2020 U/s 302, 324, 34 PPC r/w section 7, ATA, 1997 and 487 of 2020 u/s 23(1)(a) Sindh Arms Act, 2013, registered at PS Malir City, Karachi, respectively whereby appellant Kifayatullah was convicted u/s 302 PPC for causing the murder of deceased Khushdil and sentenced to death subject to confirmation by this court and to pay compensation of Rs.200,000/- to the legal heirs of deceased U/s 544-A Cr. P.C and u/s 23(1)(A) SAA, 2013 to suffer simple imprisonment for ten years with a fine of Rs.30,000/-, in default whereof, to suffer S.I for three months more. Both sentences were ordered to run concurrently with benefit u/s 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 11.12.2020, Khushkil UTP in Crime No.347/2016 U/s 302, 34 PPC was brought to the court of Additional Sessions Judge-I, Model Court, Karachi and while he was waiting for his call in waiting area, at about 1130 hours all of sudden a person came there and started firing upon UTP Khushdil to kill him, as a result, said UTP Khushdil sustained firearm injuries on his head. The accused was intercepted by the police along with an unlicensed pistol with one round. The injured

UTP Khushdil was shifted to Jinnah Hospital in an ambulance. ASI Sadaqat Ali meanwhile reached the place of the incident and arrested the accused who disclosed his name as Kifayatullah and recovered an unlicensed 30-bore pistol without a number with one round from him. Accordingly, two FIRs were registered against him. After registration of the FIR, during interrogation accused Kifayatullah disclosed that deceased UTP Khushdil had murdered his son, Ahsan Ali, therefore, in revenge thereof, he murdered him.

3. Charge against the appellant was framed to which he pleaded not guilty and claimed trial. At the trial, the prosecution examined 08 witnesses including the complainant, mashir of arrest and recovery, MLO and Investigating Officer, who produced certain documents.

4. Statement of appellant u/s 342 Cr. P.C was recorded wherein he denied the prosecution allegations and pleaded his innocence. He, however, neither examined himself on oath nor led any evidence in his defence.

5. After the trial, the learned trial Court convicted and sentenced the appellant through the impugned judgment as stated above.

6. Learned counsel for the appellant mainly contended that the appellant is innocent and has been falsely implicated in this case; that prosecution has produced CCTV footage of the place of incident wherein appellant is not seen either firing at the deceased or being arrested by the police, which creates doubt in the prosecution case; that the deceased was involved in number of criminal cases including murder of the son of the appellant as such it cannot be said who committed his murder; that as per CCTV footage the person who fired at the deceased escaped away while statement of complainant is contradictory who stated that after firing accused was apprehended, this aspect alone creates doubt in the prosecution case; that there is contradiction between oral and medical evidence in regard to bullet injures sustained by the deceased as PWs deposed that he got number of bullet shots on his face but per medical evidence he received only one bullet injury; that complainant claims to be eyewitness of the incident and deposed that after the appellant made

third fire, he arrested him whereas CCTV footage does not show his presence at the spot. P.W 6 in his cross-examination confirmed that P.W.1 is not seen at the time of the incident till the fire maker left the scene. Learned counsel emphasized that the alleged unlicensed pistol was not recovered from the appellant and in this regard, there is a contradiction between the evidence of the P.Ws and FSL report as P.Ws deposed it was without number while per FSL report it was rubbed. Learned counsel lastly contended that the prosecution had failed to prove the charge against the appellant but learned trial court convicted him and prayed for setting aside the impugned judgment. In support of his arguments, learned counsel has relied upon the case of Mst. Sughra Begum & another Vs. Qaiser Pervez & others (2015 SCMR 1142).

7. On the other hand, learned Addl. P.G has contended that the prosecution has successfully proved its case by examining the P.Ws, who have no enmity with the appellant; that there are eyewitnesses who deposed that in their presence, the appellant made firing at the deceased while he was waiting for his call in the court and the appellant was arrested at the spot; that CCTV footage and medical evidence corroborated the version of the complainant viz-a-viz firing upon the deceased by the appellant and his consequential arrest and recovery of unlicensed weapon; that the empties recovered from the place of the incident were sent for FSL and the same matched the pistol recovered from the appellant. There is no major contradiction between the statements of the complainant and P.Ws, thus the impugned judgment does not call for any interference by this court. He prayed for dismissal of the appeal and confirmation of death reference. Learned Addl. P.G has relied upon cases of Ishtiaq Ahmed Mirza and two others Vs. Federation of Pakistan and others (PLD 2019 S.C. 675), Mawas Khan Vs. The State and another (PLD 2004 S.C 330), Dadullah and another Vs. The State (2015 SCMR 856), Zulifqar Ahmed and another Vs. The State (2011 SCMR 492), Niaz-ud-Din and another VS. The State and another (2011 SCMR 725), Muhammad Arshad Vs. The State (2004 SCMR 1645), Amrood Khan Vs. The State (2003 SCJ 604). Muhammad Din Vs. The State (1985 SCMR 1046) and Majhi Vs. The State (1970 SCMR 331).

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

9. There are three eyewitnesses of the incident viz. PW.1 HC Syed Mairajuddin, P.W.2 Moharram Ali Narejo, both are police officials, who had brought custody of deceased Khushdil Khan in the court premises and in their presence, the appellant fired pistol shots upon deceased Khushdil Khan, who received firearm injuries and at the spot, appellant was arrested by them and they recovered pistol along with live bullets. The third eyewitness is P.W.7 UTP Muhammad Zahid, who was handcuffed with deceased Khushdil Khan and was brought with the deceased to the court for attending the case. All three eyewitnesses have fully supported the case prosecution. P.W.1 and 2 had arrested the appellant on spot and recovered a pistol with live bullets from him. They also collected empties, shifted the injured Khushdil Khan to hospital, and called the police for further action. All three abovementioned eyewitnesses are independent having no relation with the deceased or having no ill will with either of the parties and even the same had not been suggested during cross-examination. They were not dented despite a lengthy cross examination. On reassessment of their evidence, we find the same reliable, trustworthy and confidence-inspiring in nature. In the case of ***Muhammad Din v. The State (1985 SCMR 1046)***, the Honourable Supreme Court of Pakistan has maintained the death sentence of the accused who was arrested at the spot and crime weapon was recovered from him while observing as under:-

***“9.On going through the evidence, we find that the case against the petitioner is established to the hilt. He had been caught red-handed with a razor, produced before the police. He also sustained injuries on, his hand which could be the result of dealing blows to the deceased. We find no reason for the witnesses, who had actually allowed the petitioner to reside in their house for about two years, to depose falsely against him. This petition does not merit any interference by this Court and the same is, consequently dismissed.”***

The Honourable Supreme Court in another case of ***Majhi v. The State (1970 SCMR 331)*** has also maintained the death sentence of the accused caught red-handed with the recovery of a crime weapon and observed as under:-

***“The petitioner has been sentenced to death for the murder of Mst. Budhai on 4-6-1968 in village Sangra, district Jhang. The deceased was a woman of loose character. She at first formed illicit intimacy with the petitioner, but she soon discarded him and made a liaison with Rehman, the village barber. Attempts made by the petitioner to dissuade the deceased from carrying on with her new paramour having failed to invoke any response, he felt provoked and finding the deceased alone in her house at peshlwela strangled her to death. The alarm raised by the deceased attracted her uncle Sultan, P. W. 7, Mazhar Hussain, P. W. 8, and Muhammad Hussain, P.W. 9. They actually succeeded in apprehending him and latter on made him over to the police officer who visited the spot after recording the F. I. R., lodged by P. W. 7 at 4 p.m. Courts below have found no enmity between the three eyewitnesses and the petitioner. None had, therefore, any motive to falsely implicate the petitioner on a capital charge. The grounds raised in the petition for leave to appeal go to mere appreciation of evidence which do not warrant interference with the conviction of the petitioner by this Court.”***

10. In the present case three eyewitnesses fully supported the case as has been discussed above. However, the sole evidence of a material witness i.e an eyewitness is always sufficient to establish the guilt of the accused if the same is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers the quality of evidence and not its 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 respect for the ability of the court to uphold a murder conviction 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. There can be no denial of 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 stands the test of it being *natural and confidence-inspiring* then the requirement of independent *corroboration* is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. 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”.*

12. The duty officer was P.W.4 ASI Sadaqat Ali, who after receiving information, reached the place of incident to whom custody of the appellant was handed over along with the recovered weapon. He searched the accused Kifayatullah and recovered cash amount of Rs.7000, one keypad Q-Mobile E4 and one CNIC in his name. He prepared mashirnama at the spot and thereafter shifted deceased Khushdil Khan to the hospital through ambulance. He collected blood from there; also recovered three empties of 30 bore and sealed the same at the spot, which was signed by HC Mairajuddin and SIP Moharram Ali. He tried to record the statement of injured Khushdil Khan but could not record the same as according to the MLO, the injured was not fit for recording his statement. He also recorded the statement of HC Mairajuddin u/s 154 Cr.P.C. and thereafter lodged FIR. On 15.12.2020, he along with HC Mairajuddin and Inspector Zahir Shah visited the place of the incident and pointed out it to the I.O., who inspected the same and prepared memo. P.W.5 SIP Eijaz Ahmed was also examined, who deposed that on 15.12.2020 he was posted in the investigation branch at P.S. Malir City. He received

information that one injured namely Khushdil Khan succumbed to injuries, therefore, he approached the MLO for proceedings u/s 170 Cr. P.C, and wrote letters, where he also saw in Jinnah Hospital the dead body of the deceased lying on the bed in ICU No.16, he prepared the memo of inspection of the dead body and also received a medical certificate in respect of the cause of death from MLO. Thereafter he handed over the dead body to Chippa Incharge, cold storage and then handed over all the papers to the I.O. SIP Zahir Shah.

13. The investigation officer P.W. 5 SIP Zahir Shah was examined by the prosecution, who also supported the prosecution case by stating that after receiving the FIR, he started the investigation, sought remand of the accused and dispatched recovered property for FSL report. Later on, received information that injured Khushdil Khan had succumbed to injuries in the hospital. He sent SIP Eijaz Ahmed for proceedings u/s 174 Cr.P.C. Thereafter he handed over the dead body to the brother of the deceased and inspected the site in presence of ASI Sadaqat Ali and HC Mairajuddin, where he prepared a memo. He made photographs at the place of the incident and recorded 161 Cr. P.C statements of P.Ws, collected CRO of the accused and on 21.12.2020 he sent collected blood to the Laboratory through correspondence and received it later on. **On 22.12.2020 he collected a CCTV camera recording of the incident from learned District & Sessions Judge, Malir, and stored it in a USB under the memo in presence of PC Abdul Majeed and others.** Thereafter under permission from learned Additional Sessions Judge, Malir/ Model Court, he recorded statements u/s 161 Cr. P.C of those UTPs, who were brought along with deceased Khushdil Khan on the day of the incident. **The I.O. in cross-examination by the court stated that the deceased was facing trial for the murder of the son of the accused in Crime No.347/2016. Collecting of CCTV footage in USB has also been supported by P.W.6 PC Abdul Majeed.** We have observed that while recording evidence of P.W.6 Abdul Majeed, the trial court observed as under:-

*“Order: Let USB be played in the open Court in the presence of both the party.*

***The Brief Court Superficial Observation:*** *The UBS was played; it contains in it four long video clips, 1st video clip starting from 08:23 a.m showing the main gate of the court where from the accused enters who has been identified by the PW to be same. The 02nd video clip of administration branch office, 03rd video clip of library hall where accused also seen. The 04th video clip*

*which contains the coverage of the incident is starting from time 11:16 am; the deceased UTP is seen sitting with two other custody persons with one policeman. The policeman leaves the custody at 11:16:33 and the accused emerges at 11:16:53 when he shoots with his pistol on the UTP/deceased. The accused is seen repeating the fire at the deceased/UTP with close range at 11:17:01 and goes off the scene from CCTV camera. The public including lawyers start gathering around the deceased at 11:18:01.”*

14. 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 the offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence concerning certain facts including the 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 the involvement of the accused person in the commission of the 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 three eyewitnesses, it is established that the accused used the pistol for murdering deceased Khushdil Khan which is further corroborated by the recovery of the crime weapon at the spot when the accused was caught red-handed and arrested. The ocular account in respect of the incident furnished by the prosecution has been supported by the medical evidence in the shape of the deposition of P.W.3 MLO Dr. Abdul Basit, who in his evidence has stated that he examined



deceased Khushdil Khan and found firearm injuries over the occipital region of his head with exit wounds over the left side of the face near below angle of mouth. He opined that the injured died on 15.12.2020 as per the death certificate issued by the Neuro Surgery Department, which he has exhibited in his evidence reflecting that the cause of death of the deceased was due to aforesaid injuries.

15. To believe or disbelieve a witness all depends upon the intrinsic value of the statement made by him. Even otherwise, there cannot be a universal principle that in every case interested witness shall be disbelieved or a disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present at the scene of a crime and that he is making a true statement. A person who is reported otherwise to be very honest, above board and very respectable in society but gives a statement which is illogical and unbelievable by any prudent man despite his nobility would not be accepted as has been held by the Hon'ble Supreme Court of Pakistan in case of **Abid Ali & 2 others v. The State (2011SCMR 208)**. In the case, at hand, all three eyewitnesses are independent having no relations with the deceased, witnesses or the appellant, therefore, their evidence cannot easily be discarded and being direct in nature cannot be overridden by the video evidence which is only supportive in nature and at the very least confirms the presence of the accused in the court premises on the day of the incident.

16. The evidence produced by the prosecution was put to the accused in his statement u/s 342 Cr. P.C, wherein too, he admitted the motive set forth by the prosecution that the appellant murdered deceased Khushdil Khan in revenge of his son, whose murder case was pending. However, he produced copies of several FIRs against deceased Khushdil Khan attempting to make an inference that deceased Khushdil Khan might have been killed by someone else but his attempt is of no consequence in presence of direct ocular evidence supported by the medical evidence and other circumstantial evidence. The P.Ws, who were on duty at the time of the incident deposed that he had fired at the deceased and was caught hold at the spot along with a crime weapon, which the appellant could not rebut as it was made in presence of mashirs. Learned counsel in his

arguments has relied upon the case of **Mst. Sughra Begum (supra)**, wherein the incident was unwitnessed and the motive was not established, whereas in the case in hand, not only confidence inspiring oral account has been produced by the prosecution but the motive has also been established coupled with his arrest and recovery at the moment, thus this case is not helpful to the defence counsel. All these factors *prima facie* established a charge against the appellant. The appellant in his statement neither wished to be examined on oath nor led any evidence in his defence in rebuttal of prosecution evidence, which fully proved the charge against him beyond a shadow of a doubt. Careful examination of the impugned judgment shows that the learned trial court has rightly appreciated the evidence on record and passed the conviction. The case law relied upon by learned Addl. P.G supports his contentions.

17. The motive is always a double-edged weapon. No doubt, the previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in the case of a previous grudge. However, on scrutiny of the evidence produced by the prosecution, it established that the prosecution has proved its case against the appellant beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence. The appellant though availed the chance of cross-examination to the witnesses but he failed to bring on record any material contradiction in their evidence. In the case in hand, the motive for committing the offence is that the deceased Khushdil Khan was facing trial in the murder case of the son of the appellant and in order to take revenge for the murder of his son, the appellant had attacked upon deceased Khushdil Khan resulting in his death. The FIR in respect of the murder of the son of the appellant has also been exhibited in evidence and there is no denial from the appellant's side in respect of such motive. However, the only defence plea taken by the appellant is that since the deceased Khushdil Khan was involved in several criminal cases, therefore, someone else has committed his murder and he has been falsely implicated in this case. The incident is a daytime incident and coupled with the recovery of the crime weapon appellant was arrested red-handed on the spot with no mistaken identity, three independent

eyewitnesses fully supported the case of the prosecution. The CCTV camera recording was collected during the investigation in which appellant is seen from the entry gate till arrival at the place of incident and later on he was arrested on the spot with crime weapon.

18. For the foregoing reasons, we are of the view that the prosecution has successfully proved the charge of murder of deceased Khushdil Khan against the appellant. The impugned judgment is based on sound reasons and does not call for any interference by this court. Accordingly, these appeals are dismissed and the conviction and sentence awarded by the trial court are maintained. The reference for confirmation of the death sentence is answered in the affirmative.

JUDGE

JUDGE