

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

**Crl. Jail Appeal No.S-68 of 2022**

Appellant : Farooque s/o Shaban Jamali,  
Through Mr. Muhammad Saad Saeed  
Qureshi, advocate

Complainant : Riaz s/o Dil Murad  
Through Mr. Aijaz Shaikh, Advocate.

The State : Through Ms. Rameshan Oad, Assistant  
Prosecutor General.

Date of hearing: 30-09-2024

Date of decision: 11-10-2024

**JUDGMENT**

**ZULFIQAR ALI SANGI, J.** - Appellant was charged for committing murder / qatl-i-amd of Haji Wali Muhammad Jamali, a brother of complainant, at the road of Sehrish Nagar going towards Ali palace, near Max Bachat Mart, Hyderabad on 25.07.2020 in presence of witnesses including complainant. He was tried against such charge by learned Model Criminal Trial Court-I, Hyderabad, and has been returned guilty verdict vide impugned judgment dated 16.04.2022 in Sessions Case No.1199 of 2020, arising out of Crime No.135 of 2020, registered as Police Station Qasimabad, District Hyderabad and was sentenced to undergo rigorous imprisonment for life and to pay compensation of Rs.1,00,000/- (Rupees one lac), as required u/s 544-A CrPC, to the legal heirs, in case of non-payment, to suffer SI for six (06) months more. Benefit of Section 382-B CrPC has also been extended to him.

2. Complainant Riaz has alleged in FIR that his relative Shoban Jamali was murdered during the encounter but after his death, his uncle Saindad and his son Ahmed used to issue threats to the brother of complainant namely Wali Muhammad Jamali that he helped police with a spy to commit his encounter and due to this grudge accused party started to fight with complainant and his relatives despite of the fact that cases are pending in between them in Courts of law. Even the complainant party approached nekwards of

brotherly to compromise, but the accused party had not come on faisla. On 25.07.2020, the complainant, his friend Javed Hussain on one motorcycle, while his brother Wali Muhammad Jamali on a separate motorcycle went to the main Bazar Qasimabad for the purpose of work, his brother Wali Muhammad was just ahead of them and reached at road going from Sehrish Nagar to Ali palace near Max Bachat Mart at 1020 hours they had heard the sound of fire shots and within their sight four individuals boarding on two motorcycles holding pistols namely Imdad (since absconding) present appellant Farooque, Ghulam Fareed (since absconding) and unknown culprit (later on joined as absconding accused namely Abid alias Dasoo) with open face made straight fires upon Wali Muhammad Jamali to commit his murder who fell on earth. Complainant's friend Ghulam Sarwar joined them and they all made hackals to accused who tried to run away by starting motorcycles but motorcycles of Imdad and Forooq did not start who left it there and went towards Sheedi Goth. Complainant and PWs remained silent due to empty handed. Imdad Jamali (since absconding) was voicing slogans that he has taken revenge of his cousin Shoban Jamali. Thereafter they seen Wali Muhammad Jamali receiving injuries on his left hand and abdomen and blood was oozing and then arranged vehicle and took him to Civil Hospital for treatment but due to aforesaid injuries he died at the gate of Civil Hospital. The incharge of Check post Naseem Nagar reached there who made necessary proceedings then complainant brought dead body of Wali Muhammad Jamali at home and was busy in funeral proceedings and after burial appeared at PS and lodged instant FIR.

3. On 07.09.2020, during investigation, appellant Farooque was arrested and from him a TT Pistol of 30 bore with magazine, used in crime, with 08 live bullets of 30 bore were recovered, which were sent to lab for FSL report.

4. After usual investigation, Challan was submitted in the Court, and after due formalities, a charge was framed against the accused. He pleaded not guilty; hence, prosecution examined six (06) witnesses who have produced all the necessary documents i.e. FIR, postmortem report, memos etc. to prove the charge against the appellant.

5. Thereafter, statement of accused u/s 342 CrPC was recorded. He has denied prosecution's case, professed his innocence on the contrary, and opted not to examine either himself on oath or any witness in defence. The trial Court, after hearing the parties and examining the entire record, has handed down the impugned judgment as stated above.

6. Learned Counsel for the appellant has argued that there is delay of two days in registration of FIR and no plausible explanation has been furnished by the complainant; that in the entry No.11 the name of appellant is not mentioned; that mashirnamas were prepared prior to the FIR; that presence of PWs is doubtful as they are chance witnesses; that independent witness has not been cited; that ocular evidence contradicts with medical evidence; that place of arrest is disputed; that appellant is innocent, has been falsely implicated in this case; no confidence inspiring evidence has been brought on record against him; that the evidence of witnesses is weak in that on various features of the story they have contradicted each other; that the weapon has been foisted upon the appellant and nothing was recovered from him; the positive FSL reports have been manipulated to favour the prosecution's case by the IO; that evidence of the IO rings ordinary, he has revealed the events mechanically in routine manner, which shows that he conducted investigation and submitted its report blindly at the instance of complainant. Lastly, he contended that by extending benefit of the doubt appellant may be acquitted. He had relied upon the cases of Muhammad Ehsan vs The State (2006 SCMR 1857), Ashfaq Ahmed vs The State (2007 SCMR 641), Nawab Ali vs The State (2014 P Cr L J 885), Nazir Ahmed vs The State (2009 SCMR 523), Khadim Nabi vs Rasheed Ur Rehman and another (2020 P Cr L J 433), Arshad Ali vs The State and others (2024 MLD 212), Amanullah Shah and another vs The State and another (2023 YLR 1865), Bakht Nawas and another vs The State and another (2020 YLR 1685) and Muhammad Farooq vs The State and another (2023 P Cr L J 1771).

7. On the contrary, learned Counsel for the complainant and APG have supported the impugned judgment by contending that appellant

is named in the FIR with specific role of firing upon the deceased; that medical evidence has supported the ocular version; that recovery of crime weapon from appellant and empties collected from place of incident have matched; that Forensic Science Laboratory reports are positive; that appellant has rightly been identified by the complainant party as being daytime incident as such there is no chance of mistaken his identity; that appellant neither opted to examine himself in terms of section 340(2) Cr.P.C nor brought any defence witness to depose in his favour; that PWs are not interested; that enmity is a double edge weapon which cut both the sides; that no major contradiction has been pointed out by learned defence counsel to favour the appellant, therefore, they prayed for dismissal of instant appeal.

8. I have heard learned counsel for the parties and have minutely gone through the material available on the record with their able assistance.

9. In the case in hand **three eye-witnesses** PWs-1, 2 and 3 including the complainant have fully supported the case by specifically deposing that on the day of incident in their presence appellant and other his accomplices made straight firing from their pistols upon deceased Wali Muhammad who received firearm injuries and complainant party took him for the treatment towards the hospital however he succumbed to the injuries at the gate of hospital. The police officials completed the formalities and the postmortem was conducted thereafter dead body of the deceased was handed over to complainant party. It was daytime incident and the parties were known to each other being relative and being resident of the same vicinity. As per the evidence of eye-witnesses the accused were with open faces therefore there is no chance of mistaken identity. The perusal of record reflects that the incident took place on 25-07-2020 at 1020 hours and on the same date at 1100 hours complainant brought the deceased at hospital where at the main gate of hospital deceased died and as per the evidence of PW-05 Dr Shahzad Arain he started the postmortem from 11-30 to 1 pm. It has also come in the evidence that the police reached and completed the legal formalities which suggest that complainant was in contact with the police to

whom he narrated the offence promptly. The motive set out by the complainant was that prior to the incident Shoban Jamali was murdered in an encounter with the police and the accused persons were of the view it was the deceased who gave information to the police in respect of Shoban and on that information an encounter took place resulting to the death of Shoban (father of the appellant) therefore by taking such revenge they committed the murder. The motive set out by the complainant was not denied during the cross-examination nor was strong plea taken by the appellant for his false implication. The cross-examination conducted by the defence counsel to the witnesses is carefully examined found no substance favorable to the appellant.

10. The evidence of complainant and the PW-3 Ghulam Sarwar also supports the evidence of PW- 04 SIP Saif-ur-Rehman (Duty Officer/Investigation Officer) that injuries were inspected coupled with preparation of mashirnama, recovery of blood stained earth coupled with the recovery of three empties of 30 bore pistol and one empty of 9mm pistol so also one black color magazine containing with four live bullets from the place of incident. The evidence of three PWs in respect that accused Farooq (appellant) runaway by foot from the place of incident leaving his motorbike as his motorbike was not started is strengthened from the fact that from the place of incident said motorbike was recovered by the police by preparing the mashirnama. PW-3 and PW-4 also confirm that the appellant was arrested on 07-09-2020 from Sehrish Nagar Phatak and on search police recovered the TT pistol from left fold along with eight bullets in magazine which on spot was sealed. The investigation officer deposed that the recovered pistol and the empties from the place of incident were sent for FSL report and positive FSL report was received which was exhibited in the evidence. The blood stained cloths of the deceased and blood stained earth was also sent for FSL and a positive report was received and exhibited in the evidence. The PW-4 (Investigation Officer) had fully supported the case and the recoveries as discussed above which too supported by the PW-3 mashir who was also the eye-witness of the incident. The investigation Officer and the mashir were cross-examined at length but defence counsel failed to create a dent in their evidence.

11. The ocular account furnished by above **three eye-witnesses** was further supported by the medical account and to prove unnatural death of deceased Wali Muhammad, the prosecution examined PW-05 Dr. Shahzad Arain who while deposing has confirmed that on 25.07.2020, he while posted as MLO at LUH, Hyderabad received dead body brought at hospital by SIP Saif-ur-Rehman for conducting postmortem and report. The dead body was identified by one Riaz Jamali the brother of the deceased. The postmortem was started on the same date at about 11-30 am, completed it at about 01.00 P.M. As per the postmortem report deceased received 05 firearm injuries which were through and through. As per the opinion of the doctor the cause of death of the deceased was due to damage of right lung and also lower lobe of liver which cause heavy bleeding leads hemorrhage shock and cardio respiratory failure resulted into death caused by discharge from fire arm. The defence counsel also cross-examined the doctor but not succeeded in getting material which may favor the appellant.

12. In the present case, **three eye-witnesses** have 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 guilt of the accused if the same is confidence-inspiring and trustworthy and supported by other independent source of evidence because the law considers quality of evidence and not its quantity to prove the charge. The accused can be convicted if the Court finds direct oral evidence of ***one eye-witness*** to be reliable, trustworthy and confidence-inspiring. In this respect, reliance is placed on cases of ***Muhammad Ehsan v. The State (2006 SCMR 1857)*** and ***Niaz-Ud-Din v. The State (2011 SCMR 725)***. Further, the Supreme Court in 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.*" 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 *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 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”.*

13. Learned counsel for appellant mainly focused on the point that the witnesses are near relatives to deceased and are interested therefore, their evidence cannot be relied upon. The contention raised has no force as in the instant matter, the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence. Both the parties are known to each other and are relative as is evident from their evidence and the incident is a daytime incident, therefore, there was no chance of mistaken identity of the appellant. It is observed 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 with the accused/appellant is 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. Mere relationship of eye-witnesses with the deceased alone is not enough to discard testimony of the complainant and his witnesses. In 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 evidence that there had been such a dispute/enmity which could be believed to have motivated the **“natural witnesses”** in involving innocent at the cost of escape of **“real culprits”**. No any tangible substance has been brought on record by the appellant to justify his false implication in this case at the hands of complainant party on account of any previous enmity and the documents produced by him in his support is also belied by

his own DW Mst.Hotri (maternal aunt of accused) who in her cross examination admitted that at the time of incident she had not gone to P.S for registration of FIR against complainant Sikandar Ali and that she had not gone to the Court for getting the order of registration of FIR after the incident. If such wavering statement of the defence witness produced by the appellant in his defence is believed to be true then it obviously has led the defence plea of the appellant at stake. In case of **Zulfiqar Ahmed & another v. State (2011 SCMR 492)**, the Supreme Court of Pakistan 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.*

14. Learned counsel for the appellant had pointed out some minor contradictions in the evidence which in my view are not sufficient to discard evidence of the three eye-witnesses who have fully supported the case of prosecution on every aspect coupled with the recoveries and the medical evidence. It is settled principal of law that where in the evidence, the prosecution established its case beyond reasonable doubt then if there arise some minor contradictions which always are available in each and every case as no one can give evidence like a pen-picture, hence the same are to be ignored. The reliance is placed on case of **Zakir Khan V. The State (1995 SCMR 1793)**, wherein the Supreme Court of Pakistan has held as under:-

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



15. The sequel of above discussion arrived at judicious conclusion that the learned trial Court on being finding the present appellant guilty of committing murder of an innocent person, has rightly convicted and sentenced him and thus has committed no illegality or irregularity while passing the impugned judgment which even otherwise is based on substantive reasoning, therefore, it does not call for any interference by this Court. Resultantly, instant criminal jail appeal being devoid of merits is ***dismissed*** accordingly.

**JUDGE**