Law and Morality
Expeditious disposal of Cases Para 17 352

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-207 of 2004

Ghulam Mustufa and others

Versus

The State

Appellants : Ghulam Mustufa and others	through Irfan Ali Khaskheli Advocate
Respondent : The State	through Ms. Sana Memon, A.P.G. Sindh
None present for complainant despite intimation in this date and time fixed matter	
Date of hearing:	06.03.2023
Date of judgment:	13.03.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.-This criminal appeal is directed against the judgment dated 25.10.2004, passed by the learned Sessions Judge, Mirpurkhas, in Sessions Case No.46 of 1998 (re: The State V Ghulam Mustufa and others), emanating from Crime No.100 of 1998, registered at Police Station Kot Ghulam Muhammad , under section 302, 337-A(ii), 337-F(i) (Q&D Ordinance since amalgamated in PPC), 147, 148, 149 PPC, whereby the appellants Ghulam Mustufa S/o Farman Ali, Farman Ali S/o Mir Ahmed and Liaquat Ali S/o Muhammad Ibrahim have been convicted u/s 302(b) PPC and sentenced to suffer imprisonment for life each for committing

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murder of deceased Abdullah. They were also directed to pay an amount of Rs.30,000/- each as compensation to the legal heirs of deceased as required under section 544-A Cr.P.C; and, in case of non-payment of the said compensation, the appellants shall suffer imprisonment for 06 months more. All the appellants were also convicted for causing injuries to P.W Abdul Qayoom u/s 337-A(i) and 337-F(i) PPC and sentenced to suffer R.I for a period of 01 year each on both the counts and total Daman amounting to Rs.3000/- to be paid to the injured P.W Abdul Qayoom by each accused/appellant. The sentences were ordered to run concurrently. They were; however, extended benefit of section 382-Cr.P.C. Whereas co-accused Niaz Ahmed alias Nawaz Ahmed S/o Mir Ahmed, Muhammad Ishaque S/o Nazeer Ahmed, Akhter S/o Muhammad Ishaque and Arshad S/o Ishaque were acquitted of the charge while extending them benefit of doubt.

2. The facts of the prosecution case as stated in the FIR lodged by complainant Abdul Razzaque on 03.01.1998 at 0550 hours at Police Station Kot Ghulam Muhammad, are as under:-

> *"He (complainant) used to do cultivation work, and used to reside alongwith his family. He has four brothers namely Abdullah, Abdul Qayoom, Ilyas and Abdul Rehman. There was friendship between his brother Abdullah and Farman Ali. His brother Abdullah was saying that Mst. Shahida Bibi, the daughter of Farman Ali, was married with him, while Farman Ali was saying that his daughter Mst. Shahida Bibi was not married with him (Abdullah). Thereafter, Farman Ali married his daughter Mst. Shahida Bibi with Arshad. Farman Ali and his sons were annoyed with Abdullah. On the evening of 02.01.1998, he, his brothers Abdullah, Abdul Qayoom and cousin Sanaullah were going on rotation of water and after finishing the rotation of water, at 2200 hours when they reached at Diyal Garh water course on the land of Ali Muhammad Jat, they saw on Torch light that Arshad, armed with rifle; Mustufa, armed with Desi pistol; Farman Ali, Liaquat Ali and six other persons, armed with lathies, were standing there, Mustufa told Abdullah that he has degraded them and they would not spare him. In the meanwhile, Farman Ali caused lathi blow on the head of Abdullah. Liaquat Ali caused lathi blow on the head and left arm of Abdul Qayoom and others also caused lathies blows. His brother Abdullah tried to run away on which Mustufa made fire from his pistol, which hit Abdullah on his back, and after sustaining the injury, he fell down. Thereafter, all the accused went away while abusing. They brought the injured Abdullah and Abdul Qayoom to Taluka Hospital, Kot Ghulam Muhammad, for treatment. Due to serious condition of*

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Abdullah, they were taking Abdullah to Civil Hospital, Mirpurkhas, when on 03.01.1998 at 0300 hours reached near Mirwah Gorchani, Abdullah died, therefore, they brought the dead body at Taluka Hospital, Kot Ghulam Muhammad and then complainant lodged the FIR. "

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed charge against all the accused, to which they pleaded not guilty and claimed trial.

4. At trial, the prosecution in order to prove its case examined 10 PWs and exhibited numerous documents and other items. The statements of the accused were recorded under section 342 Cr.P.C whereby they denied the allegations leveled against them and claimed their false implication by the complainant. Accused Muhammad Ishaque did not examine himself on oath nor led any evidence in his defense. Accused Niaz Ahmed and Akhter examined themselves on oath, but did not examine any defense witness; whereas accused Ghulam Mustufa, Farman Ali, Liaquat Ali and Arshad examined themselves on oath and also led defense evidence by examining DWs Ghulam Mustufa, Muhammad Abbas, Abdul Hameed and Muhammad Riaz with in essence their defence being one of alibi.

5. Learned trial Court after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the accused/appellants and acquitted the co-accused, as mentioned in the concluding para of the impugned judgment. Being aggrieved by their conviction and sentences, the appellants have preferred this appeal.

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

7. Learned advocate for the appellants has contended that the appellants are innocent and have been falsely implicated in this case by the complainant; that the evidence against the appellants is shaky and full of contradictions but the learned trial court has not appreciated the same; that the incident did not take place as claimed

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by the eye witnesses as the appellants were not present at the time of the incident and were else where; even if the eye witnesses were present they would not have been in a position to recognize the appellants because it was a dark night and the incident only lasted a few minutes at most; that the ocular evidence is contradicted by the medical evidence; that the pistol and lathies were foisted on the appellants by the police and that for any or all of the above reasons the appellants should be acquitted by extending them the benefit of the doubt. In support of his contentions, he placed reliance on the cases of **Azhar Mehmood and others V The State** (2017 SCMR 135), **Mst. Shazia Parveen V The State** (2014 SCMR 1197), **Notice to Police Constable Khizar Hayat son of Badait Ullah on account of his false statement in Cr. Misc. A. No. 200 of 2019 in Cr. Appeal No.238-L of 2013** (PLD 2019 Supreme Court 527), **Sardar Bibi and another V Munir Ahmed and others** (2017 SCMR 344), **Muhammad Arif V The State** (2019 SCMR 631), **Akhtar Ali and others V The State** (2008 SCMR 6), **Muhammad Imran V The State** (2020 SCMR 857), **Mureed Hussain V The State through Prosecutor-General Sindh** (2014 SCMR 1689) and **G. M. Niaz V The State** (2018 SCMR 506).

8. Learned counsel for the complainant was called absent without intimation despite this being a date and time fixed matter and being given direct initiation notice. The record also revealed that the counsel for the complainant preferred to remain absent on most dates of hearing as such since the appellants are in jail I do not find any legal justification in not proceeding with this appeal especially as it is an old appeal of 2004 (being almost 19 years old with the incident happening in 1998) and the learned APG can protect the interests of the complainant.

9. Learned Assistant Prosecutor General Sindh on behalf of the State, after going through the entire evidence of the prosecution witnesses as well as other record of the case has supported the impugned judgment. In particular, she has contended that the eye witnesses evidence is reliable, trust worthy and confidence inspiring and can be believed especially in respect of their correct identification

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of the appellants; that the medical evidence corroborates/supports the ocular evidence; that the pistol used in the murder was recovered on the pointation of the appellant Mustafa and the lathies recovered on the pointation of the appellants Farman Ali (now deceased) and Liaquat Ali and as such the prosecution had proved its case against the appellants beyond a reasonable doubt and their appeals be dismissed. In support of her contentions, she placed reliance on the cases of **Qasim Shahzad and another V The State and others** (2023 SCMR 117), **Azhar Hussain and another V The State and others** (2022 SCMR 1907) and **Naveed Akhtar V The State** (2022 SCMR 1784).

10. At the outset it appears from the record that during pendency of this appeal i.e. on 12.03.2020, this court was informed by the learned counsel for the appellants that appellant No.2 Farman Ali had died and the concerned SHO has filed report that appellant No.2 Farman Ali died in the year 2011 along with death certificate and as such the appeal has abated so far as he is concerned.

11. Before proceeding further I would like to express my extreme concern with the fact that on the single bench side at Circuit Court Hyderabad there appears to be a massive backlog in respect of criminal appeals against conviction in cases of both life imprisonment and confirmation cases one of which in this roster had dated back to 1999.It is true that in a number of these older appeals the appellants are on bail by virtue of Section 426 Cr.PC so are not being unduly prejudiced however in many cases such bail has extended beyond 10 years with the appeal almost being forgotten which is almost amounting to an acquittal which was not the legislative intent behind Section 426 Cr.PC. Once a judgment is suspended and bail granted to the appellant under Section 426 quite naturally lawyers for the appellants under instructions show a great reluctance to proceed with the appeal. Why should they jeopardize the freedom of their client/appellant? Likewise, judges also tend to prefer to decide appeals where the appellant is in jail, as opposed to on bail under Section 426 Cr.PC, as the person in jail has lost his liberty and has a right to have his appeal heard expeditiously under Article 10(A) of the

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Constitution as in effect his appeal is the continuation of his trial and he may be acquitted and released from jail or at worst if his conviction is maintained by this court he can seek relief from the Supreme Court which would be his last port of call rather than being stuck at a High court waiting for his appeal to be heard.

12. A potential problem however of extended Section 426 Cr.PC orders where an appellant remains on bail for years on end, which was not the legislative intent behind Section 426 Cr.PC, is that in my view it does not take into account the victims/complainants who the criminal Justice is actually trying to cater for by bringing the accused who commit crimes against them or the State to justice. For example, an accused may be convicted of murder and sentenced to life imprisonment but after serving 6 years in jail his conviction might be suspended and he is released on bail. This is fair to the convict as he is entitled to have his appeal heard expeditiously, but is it fair to the complainant who may be the father of the murdered person who was his son who observes that the convicted murderer of his son remains on bail for over 10 years? To the complainant/victim such a circumstance is likely to be intolerable and lead to him losing faith in the criminal justice system. Likewise, such long period of an appellant being on bail poses subconsciously an unnecessary moral dilemma for the judge. Of course morality and the law is for the legislature to consider in passing law perhaps taking into account the thoughts of such great Jurists as H.L.A Hart, J.Finnis. John Rawals and others and whether a morally unacceptable law will even be enforced. For us Judges our role is simply to apply the law and/or interpret it should the need arise in an objective manner based on the facts and law without fear, favour, prejudice etc. Judges however are also human beings. We are not robots. We live and have feelings and emotions and are exposed to every day life situations just like every other citizen. In this internet age we can no longer put our hand on our heart and claim that Judges do not read news papers or watch television. Life has moved on with technological advances and changes in society as it will continue to do so. Such moral dilemma's and independence of the judiciary has been alluded to by former Chief Justice of Pakistan Asif Saeed Khan Khosa in some later chapters of his book, "Judging

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with Passion". So what is the subconscious moral dilemma which a judge may face when hearing an appeal against conviction where the accused has had his sentence suspended and has been on bail for the last 10 years or more. The obvious one is this; how can I in all good conscience send this man back to jail now after more than 10 years of freedom when he has since married, held down a steady job which supports his wife and young children who need their father, has not re offended, to all intents and purposes become a model citizen, suffered the agony of coming to court over the last 10 years with the sword of Damocles hanging over his head on each occasion? The answer to this subconscious moral dilemma might be to look for ways to acquit him which is contrary to a fair criminal justice system where the victim/complainant also has rights. It also potentially puts him at an advantage to those appellants who have not had their sentences suspended and not been granted bail under Section 426 Cr.PC. The so called elephant in the room.Judges must ignore such considerations but being human such feelings may be lurking within our subconscious. The answer might lie therefore in giving priority to deciding appeals of life imprisonment/confirmation cases rather than suspending sentences and granting bail under Section 426 Cr.PC as far as possible and when Section 426 Cr.PC is granted devise a system whereby such appeals are decided within two years of the Section 426 order being granted and thereby restore the balance between the appellant and the complainant/victim.

13. I have also noted that in criminal appeals of 2010 onwards pending before the Single benches in Hyderabad circuit court which concern only life imprisonment appeals of which there are many most of the appellants remain in custody and have probably been so for at least 10 years due to the short comings of the criminal justice system. It appears that appeals lodged later in time by hook or by crook seem to be fixed earlier in time than the old appeals. Not only is this practice unfair but such arbitrary fixation of cases lacks transparency as was recently pointed out by the supreme court in its order dated 28.02.2023 in Civil Petition No.3380 of 2020 **Muhammed Imtiyaz V Ch.Muhammed Naeem and others.**

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14. A Division Bench of this Court in the case of **Ahmed Omar Shaikh V The State** (2021 YLR 1777) in this respect had already held/suggested as under at para 15 which is reproduced as under in respect of slow disposal of criminal appeals;

> 15. *"Before proceeding to decide these appeals we were pained to have noticed with concern that these appeals have been pending for the last 18 years during which time the appellants have been in jail. An appeal is a continuation of a trial and in our view under Article 10 (A) of the Constitution which envisages an expeditious trial it also envisages an expeditious hearing and decision of an appeal if one is filed. In our view to keep an appeal pending for years on end regardless of who is at fault is tantamount to violating Article 10 (A) of the Constitution and ultimately it is for the judges before whom such cases are fixed to use their judicial authority to ensure that such appeals are decided expeditiously. In our humble view the High Courts need to put in place a system for expediting the hearing and deciding of old appeals to ensure that Article 10 (A) of the Constitution is complied with and an appeal is a meaningful right. For example, appeals which are up to 5 years old could be put in yellow files, between 5-10 years in blue files and over 10 years in green files. If a person is released after serving out his sentence and his appeal still remains pending then an appeal can only be regarded as a right on paper which is completely illusionary and would amount to a fraud on both the appellant and the criminal justice system. If a convict is acquitted after serving 18 years in jail he cannot make up for the loss of such precious time and is not compensated for it. In such a case if a man had a young child of say 3 years old at the time of sentencing he would completely have missed that child growing up who would be almost an alien to him at the time of his release. Even if a convicts conviction is up held by a High Court he can at least, if he so chooses, expeditiously move on to the next level of the appellate process which is his right and from where he may still get relief. A right of appeal will only become meaningful, as opposed to illusionary, in criminal cases if such appeals are decided expeditiously which is an obligation which the State owes to its convicted citizens which objective is to ensure that no person is deprived of his liberty for longer than is legally justified since a persons liberty is in our view the highest expression of his right to life which is also guaranteed by the Constitution".*

15. At this point it is worth noting that Justice Afridi when the aforesaid case came on appeal before the Supreme Court observed as under whilst reducing the death sentence to life imprisonment;

> "**Inordinate delay- Right to expectancy of life.**
>
> *78. It is extremely disturbing to note that the appeal of Ahmed Omar Sheikh against the conviction and sentence of death passed*

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by the Anti-Terrorism Court dated 15.07.2002 remained pending before the High Court of Sindh for almost two decades. Admittedly, it is not the case of the prosecution that Ahmed Omar Sheikh delayed or was in any manner a cause for the delay in deciding his appeal. ***This being so, the State, and in particular, its criminal delivery system, is responsible for his prolonged incarceration in the death cell, without providing him his right to be dealt with in accordance with the law; of being heard by an appellate court in a reasonable time. This prolonged incarceration of around two decades in the death cell gave rise to his 'right to expectancy of life', entitling him to the sentence of life imprisonment, and not death.*** *Even otherwise, when two worthy brother Judges having acquitted Ahmed Omar Sheikh of all charges, convicting and saddling him with the sentence to death, would not be akin to safe administration of criminal justice."* (bold added)

16. It might be claimed that our pendency/rate of disposal of criminal appeals is no better or worse than any other country. In my view this misses the point. Just because say, another or even neighboring country, has more pending older criminal appeals than us this is no reason to ignore the issue and accept mediocrity. We, as a nation, must strive to do better on this front regardless of what any other country is doing as it is a sacred obligation which we owe under our constitution to those imprisoned who have a **right** to have there appeal heard expeditiously. Instead let us strive to improve the efficiency of our criminal justice system where due process is observed and the Constitutional obligation under Article 10 (A) is made meaningful rather than an illusionary paper right for optical purposes only where MCTC's decide cases expeditiously and the superior courts also strive to do so without causing any miscarriage of justice. Is it justice for a person to spend 15 years in jail only to be acquitted due to systemic failures of the criminal justice system and the callousness of the State in fulfilling its obligations to all its citizens rather than failures of his own? I think not.

17. No doubt under the auspices and attention of the Chief Justice of this Court by establishing special benches for the purpose the pendency of appeals of life imprisonment and confirmation cases has in recent times been greatly reduced at the principle seat at Karachi however despite the best effort of the Hyderabad circuit court the pendency of such appeals remains both high and consists of many

older cases. **I therefore recommend to the Chief Justice of this court depending upon the availability of resources at his discretion and in his wisdom to place all criminal appeals of life imprisonment pending before single benches of this court up to 2017 in different colored files, for example red, and issue directives that these red colored files be placed before a single bench every two weeks for hearing (whether the appellant is on bail or not) until it is finally disposed of as with civil cases in Karachi where the files of elderly petitioners/plaintiffs are placed in red files and put up for hearing about every two weeks. If possible, subject to resources, set up a dedicated bench for this purpose which will sit each working day. In my humble view such a mechanism/system would ensure both a fair and transparent disposal of criminal appeals whereby both the rights of the appellant and the complainant/victim are equally taken into consideration whilst ensuring the safe administration of criminal justice which promotes confidence among the public.**

Returning to the instant appeal

18. I have considered the submissions of the parties and have perused the material available on record as well as the case law cited by the learned counsel for both the parties.

19. Based on my reassessment of the evidence of the PW's especially the medical evidence and other medical reports and blood at the crime scene I find that the prosecution has proved beyond a reasonable doubt that Abdullah (the deceased) was hit by lathi's and shot by fire arm on 02.01.1998 at about 2200 hours and died as a result of his firearm injury 05 hours later on 03.01.1998 en route to hospital and that Qayoom received lathi injuries during the attack on the deceased at 02.01.1998 at 2200 hours at Dayalgar Water course district Mirpurkhas.

20. The only question left before me therefore is whether it was the appellants who murdered the deceased and injured Qayoom by pistol and lathi's respectively at the said time, date and location?

21. After my reassessment of the evidence I find that the

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prosecution has proved beyond a reasonable doubt the charge against the appellants keeping in view that each criminal case must be decided on its own particular facts and circumstances for the following reasons;

(a) That the FIR was lodged with relative promptitude based on the particular facts and circumstances of the case within 5 hours and 30 minutes of the incident. This slight delay has been explained by the complainant taking the deceased to hospital and then returning to lodge the FIR. As such I do not find that the complainant had sufficient time to cook up a false case against the appellants and this slight delay in lodging the FIR is not fatal to the prosecution case. In this respect reliance is placed on the case of **Muhammad Nadeem alias Deemi v. The State** (2011 SCMR 872).

(b) That in the promptly lodged FIR all the appellants are named with a specific role and even 5 hours after the incident as recorded in the FIR the appellants were recognized by torch light.

(c) I find that the prosecution's case primarily rests on the evidence of the eye witnesses to the murder of the deceased and the injury to Qayoom and whether I believe their evidence whose evidence I shall consider in detail below;

(i) **Eye witness PW 1 Abdul Razzak. He is the complainant and brother of the deceased.** According to his evidence on 02.01.1998 he, Abdul Qayoom, Sanauallah and his brother had been utilizing their water turn on the lands on which they were working near Dialghar water course and at about 10pm were returning to their residences. At the lands of Muhammed Ali he **saw** 7 to 8 persons. Arshad was armed with a gun, appellant Mustafa armed with a desi pistol and appellants Farman and Liaquat duly armed with lathies. Four unknown person were also standing with the appellants with lathi's. Appellant Mustafa raised a Lalkara and threatened the deceased who they said would not be spared as he was claiming to be the husband of sister of Mustafa namely Shahida Bibi. He **saw** Farman inflict lathi injury on the head of the deceased and Liaquat inflict lathi blow on the left hand on Qayoom. **When the deceased attempted to run way appellant Mustafa fired at him** which hit him on the back. The appellants then ran away. They took the deceased to the hospital via their village but he succumbed to his injuries en route to hospital. Qayoom also went to hospital for treatment of his injuries. He then lodged the FIR. According to his evidence appellant Farman was a friend of the deceased who had promised to marry his daughter with the deceased, but the deceased used to claim that he had already married his daughter which was why the deceased was murdered. In cross examination he

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states that it was incorrect that he did not have a torch with him and he saw the appellants from 10 to 15 paces.

This eye witness is related to the deceased however no enmity or dispute has been proven between the eye witness and the appellants and thus his mere relationship to the deceased is no reason to discard his evidence which has to be judged on its own worth. In this respect reliance is placed on the cases of **Amal Sherin v The State** (PLD 2004 SC 371), **Dildar Hussain v Muhammad Afzaal alias Chala** (PLD 2004 SC 663).

This eye witness **knew the appellants** before the incident which admittedly occurred at night time. However this eye witness had a torch with him at the time (which is quite natural if it is dark and you are coming home from the lands at night) which was recovered by the police.He saw the appellants over a few minutes who he knew from before and thus he would have got a good look on the torch light and thus there is no case of mistaken identity and no need to hold an identification parade in order to determine the identity of the appellants. His presence at the scene of the incident is corroborated by PW 2 Qayoom who was injured at the crime scene and PW 3 Sanauallah.

This eye witness was not a chance witness as he lived in the area and was tending the land at the time of water rotation and had every reason to be with the deceased and his brothers and other relatives at the time of the incident. He gave his Section 154 Cr.PC statement with relative promptitude which was not significantly improved on during his evidence. He named the appellants with specific roles in his FIR along with the other eye witnesses. He gave his evidence in a natural manner and was not dented at all during lengthy cross examination and as such I find his evidence to be reliable, trust worthy and confidence inspiring and believe the same especially in respect of the identity of the appellants who hit Qayoom with a lathi and shot and murdered the deceased with his pistol.

We can convict on the evidence of this eye witness alone though it would be of assistance by way of caution if there is some corroborative/ supportive evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917), **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725) and **Muhammad Ismail vs. The State** (2017 SCMR 713). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this eye witness to be of good quality and believe the same. **In this case however there is more than one eye witness.**

(ii) **Eye witness PW 2 Abdul Qayoom. He is also a**

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brother of the deceased. His evidence corroborates **PW 1 Abdul Razzak's** evidence in all material respects. He is named in the FIR as an eye witness and his evidence is not materially improved from his S.161 Cr.PC statement which was made with promptitude and his S.164 Cr.PC statement. He was also hit over the head with a lathi by appellant Liaquat. His injuries are supported/ corroborated by the medical evidence and as such his presence at the scene of the incident is not in any doubt. The same considerations apply to his evidence as the evidence of **PW 1 Abdul Razzak.**

(iii) **Eye witness PW 3 Sanaullah**. He is also a cousin of the deceased. His evidence corroborates **PW 1 Abdul Razzak's** and **PW 2 Abdul Qayoom's** evidence in all material respects. He is named in the FIR as an eye witness and recorded his S.161 Cr.PC statement and S.164 Cr.PC statements promptly and no material improvements were made during his evidence. The same considerations apply to his evidence as the evidence of **PW 1 Abdul Razzak's** and **PW 2 Abdul Qayoom's** evidence

Thus, based on our believing the evidence of the 3 eyewitnesses what other supportive/corroborative material is there against the appellants? It being noted that corroboration is only a rule of caution and not a rule of law. In this respect reliance is placed on the case of Muhammad Waris v The State (2008 SCMR 784)

(d) That it does not appeal to logic, commonsense or reason that a real brother would let the real murderer of his real brother get away scott free and falsely implicate an innocent person by way of substitution. In this respect reliance is placed on the case of **Muhammed Ashraf V State** (2021 SCMR 758)

(e) That the medical evidence of PW 4 MLO Dildar Hasnain and medical reports fully support the eye-witness/ prosecution evidence. It confirms that the deceased died from a firearm injury to his chest area and also received a lathi blow to his head. Burning, blackening and tattooing is also seen around the wound with fits in with the prosecution case that the firearm shot was from close range. Pellets were also found in the dead body which is also consistent with the deceased being shot by a Desi pistol which used cartridges as opposed to a regular pistol. The medical evidence also reveals that PW 2 Qayoom had a lacerated wound on his head and wrist caused by a hard and blunt substance such as a lathi which ties in with PW 2 Qayoom's evidence regarding his injuries. Even if there are some minor contradictions between the ocular and medical evidence it is settled by now that the ocular evidence will take precedence. In this respect reliance is placed on the cases of **Muhammad Riaz V Muhammad Zaman** (PLD 2005 SC 484), **Muhammad Hanif v. The State** (PLD 1993 SC 895) and **Amir Khan v. The State** (2000 SCMR 1885)

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(f) That appellant Mustafa after his arrest took the police to where he had hidden the pistol (murder weapon) which was hidden only in a place which he would have known about which lead to a positive FSL report.

(g) That the lathi's used in the attack were recovered by the police on the pointation of the appellants Farman and Liaquat.

(h) That it has not been proven through evidence that any particular police PW's had any enmity or ill will towards the appellants and as such had no reason to falsely implicate them in this case for example by foisting a pistol or lathi's on them and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon and as such we rely on the police evidence. In this respect reliance is placed on the case of **Mushtaq Ahmed V The State** (2020 SCMR 474).

(i) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to effect the prosecution case and the conviction of the appellants. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669).The evidence of the PW's provides a believable corroborated unbroken chain of events from the time the appellant Mustafa and Farman got annoyed with the deceased to the appellants attacking the deceased by pistol shot and lathi and attacking Qayoom with lathi to the deceased dying en route to hospital to the arrest of the appellants to the recovery of the murder weapons on the pointation of the appellants.

(j) The fact that the co-accused were acquitted is of no help to the appellants as the acquitted co-accused were not named in the FIR, were not put before an identification parade and were not even recognized by all the eye witnesses in court. Furthermore, no recovery was made from them and no appeal has even been filed against their acquittal whereas the evidence against the appellants as discussed above is far more compelling and much stronger especially in terms of identification by the eye witnesses.

(k) That the motive for the attack as per the eye witness evidence seems to be the deceased claiming that he was married to the daughter of the sister of appellant Mustafa and a relative of appellant Farman which was not the case which caused them great anger and annoyance.

(l) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but I have also considered the defence case to see if it at all can caste doubt on or dent the prosecution case. The defence case is primarily one of alibi. Namely, the appellants were not present at the time of the incident and that they were with some one else at the time of

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the incident. In their Section 342 Cr.PC statements no such defence was mentioned and nor was it put to a single prosecution witness during cross examination. The defence only emerged when the appellants gave evidence under oath and called some DW's in support of it. Under these circumstances I find the defence of the appellants a complete after thought in order to save their skins especially as none of these DW's gave statements to this effect to the police during the investigation or even before commencement of the trial. Thus, for the reasons mentioned above I disbelieve the defence case in the face of reliable, trust worthy and confidence inspiring eye witness and other corroborative /supportive evidence against the appellants which has not at all dented the prosecution case.

22. Thus, based on the above discussion I have no doubt that the prosecution has proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and sentenced and hereby dismiss their appeals. Their sentences shall run concurrently and they shall have the benefit of Section 382 (B) Cr.PC.

23. The appeals are disposed of in the above terms.

24. A copy of this Judgment shall be sent to the Registrar who shall place the same before the Hon'ble Chief Justice for his consideration of para 17.