

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

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Criminal Appeal No.520 of 2024
[Confirmation Case No.07 of 2024

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Appellant Shakoor Khan son of Zavar Khan through Mr. Tariq Mehmood, Advocate.

Complainant Habib ur Rehman son of Hussain Ahmed through Mr. Saleem Nawaz Waziri, Advocate.

Respondent The State through M/s. Khadim Hussain Khuhro and Muhammad Iqbal Awan, Additional Prosecutor Generals (Sindh).

Date of hearing **23.04.2026**

Date of Judgment **13.05.2026**

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JUDGMENT

Shamsuddin Abbasi, J.- Shakoor Khan son of Zavar Khan, appellant, has assailed the validity of the judgment dated 13.07.2024, penned down by the learned Additional Sessions Judge-I/ Model Criminal Trial Court (MCTC), Karachi (West), in Sessions Case No. 2313-A of 2018 (FIR No. 319 of 2018) registered at Police Station Ittehad Town, District West, Karachi, for offences under Sections 302, 392, 397 and 34, PPC through which he was convicted under Section 302(b), PPC and sentenced to death, to be hanged by neck till he is dead. The appellant was further directed to pay compensation in the sum of Rs.300,000/- to the legal heirs of the deceased in terms of Section 544-A, Cr.P.C. and in default thereof, to undergo simple imprisonment for one year more. Additionally, the appellant was convicted under Section 392, PPC and sentenced to five years' rigorous imprisonment along with a fine of Rs.50,000/- and to suffer simple imprisonment for a further period of six months in lieu of fine. He was also convicted under Section 397, PPC and sentenced to fourteen years' rigorous imprisonment. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended in favour of the appellant.

2. Complainant Habib-ur-Rehman is the elder brother of deceased Sajid who alleged to be murdered by two unknown robbers, aged approximately

20 to 25 years, who arrived on a motorcycle and during an attempted robbery one of the assailants fired a pistol shot at Sajid as a result of which he sustained firearm injury on his chest and died at spot.

3. Succinctly, the case of the prosecution is that on 25.09.2018 SIP Noor Ahmed recorded the statement under Section 154, Cr.P.C. of the complainant Habib-ur-Rehman son of Hussain Ahmed at Emergency Ward of Jinnah Hospital, Karachi, wherein he has stated that on the said date he was present at his house while his younger brother Sajid was sitting outside along with his friends, Danish son of Liaquat Hussain and Sheraz son of Shamraiz. It was about 11:45 pm he heard a gunshot whereupon he rushed outside and found Sajid lying on the ground in injured condition, bleeding from his chest, near a motorcycle bearing Registration No.KGD-9715. Upon inquiry, Danish and Sheraz disclosed that while they were sitting together and Sajid was engaged in using his mobile phone, two unknown individuals, apparently of Pathan ethnicity, aged about 20 to 25 years, arrived on a motorcycle. One of them, who was seated on the back and was tall in height brandished a pistol and demanded Sajid to hand over his belongings and upon resistance a scuffle ensued whereafter the said assailant dismounted the motorcycle and fired at Sajid which hit him on his chest causing him to fall on the ground. The assailants then fled from the scene abandoning their motorcycle. The complainant upon examining his brother found that he had succumbed to his injuries. Thereafter, he shifted the dead body to Jinnah Hospital, Karachi, for legal formalities and his statement was subsequently incorporated in FIR Book.

4. Pursuant to the registration of FIR, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction under the above referred Sections, whereby the appellant and Yasir Khan son of Akbar Khan were sent up to face the trial, however, Yasir Khan being juvenile offender was tried separately whereas Shaukat was shown as absconder under Section 512, Cr.P.C.

5. A charge in respect of offences punishable under Sections 302, 392, 397 and 34, PPC was framed against appellant. He pleaded not guilty to the charged offences and opted to be tried.

6. At trial, the prosecution has examined as many as 12 witnesses. The gist of the evidence, adduced by the prosecution in support of its case, is as under:-

7. Gulfam Khan appeared as witness No.1 Ex.5, ASI Syed Bahadur Shah as witness No.2 Ex.6, PC Sheheryar as witness No.3 Ex.7, Sheraz as witness No.4 Ex.9, Danish Hussain as witness No.5 Ex.11, complainant Habib ur Rehman as witness No.6 Ex.12, Mushtaque Ali, Civil Judge & Judicial Magistrate, as witness No.7 Ex.15, Dr. Ijaz Ahmed as witness No.8 Ex.16, Naik Shah as witness No.9 Ex.17 and SIP Nazir Ahmed as witness No.10 Ex.18. All of them have exhibited certain documents in their evidence and were subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.19. Statement of appellant under Section 342, Cr.P.C. was recorded at Ex.20. He has denied the allegations imputed upon him by the prosecution, professed innocence and stated his false implication at the instance of Naik Shah, owner of the motorcycle. He opted not to make a statement on Oath under Section 340(2), Cr.P.C. and did not produce any witness in his defence. Thereafter, the prosecution moved an application under Section 540, Cr.P.C. which was allowed with the consent of the defence and pursuant thereto Farhat Bukhari, Firearms Examiner and Amir Haider, Senior Chemist, were examined as PW.11 and PW.12 vide Exs.22 and 23, respectively. The prosecution thereafter closed its side vide statement at Ex.24. Subsequently, the appellant was again examined under Section 342, Cr.P.C. at Ex. 25, wherein he reiterated his previous stance.

8. Upon culmination of the trial, the learned trial Court found the appellant guilty of the offences charged with and, thus, convicted and sentenced him as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

9. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case due to mala fide intentions and ulterior motives having no nexus whatsoever with the alleged offence. It is next submitted that the prosecution has failed to establish the presence of the alleged eye witnesses at the place of occurrence and that the ocular account has been furnished by interested witnesses being friends of the deceased

whose testimony in the absence of independent corroboration is unsafe to be relied upon. It is further argued that the identification of the appellant during the identification parade conducted before the learned Magistrate through such interested witnesses loses its evidentiary value and renders the prosecution case doubtful. It is also submitted that the said witnesses made material improvements regarding the role attributed to the appellant both at the stage of identification before the Magistrate and during trial and have contradicted each other on vital aspects thereby creating serious doubt in the prosecution case, benefit whereof must go to the appellant. Learned counsel also contended that no incriminating article including the alleged crime weapon has been recovered from the appellant and thus the award of capital punishment in such circumstances is unjust and liable to be set aside. It is emphasized that the prosecution has failed to discharge its burden of proving the charge beyond reasonable doubt whereas the appellant was under no obligation to prove his innocence. It is further argued that the investigation was conducted in a dishonest manner and the appellant has been involved in the case without any lawful basis. Learned counsel has maintained that the impugned judgment is the result of misreading and non-reading of evidence and has been passed without proper appreciation of the material available on record and settled principles of law particularly the rule that even the slightest doubt is sufficient to entitle an accused to acquittal. It is also argued that the learned trial Court failed to consider the defence plea taken by the appellant in his statement under Section 342, Cr.P.C., wherein he has denied all allegations and stated his false implication. In conclusion, learned counsel prayed that the impugned judgment, being contrary to law and facts, may be set aside and the appellant may be acquitted of the charge.

10. Conversely, the learned Additional Prosecutor General, duly assisted by the learned counsel for the complainant, has supported the impugned judgment and contended that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt. It is next submitted that the ocular account furnished by the prosecution witnesses is natural, consistent and confidence inspiring and remained unshaken during cross-examination. The presence of the eye-witnesses at the place of occurrence has been satisfactorily established and their testimony is corroborated by the medical as well as circumstantial evidence. It is also

submitted that mere acquaintance with the deceased does not render the witnesses unreliable particularly when their evidence inspires confidence and is corroborated by other pieces of evidence available on record. No material contradictions or discrepancies have been pointed out by the defence which could cause dent to the prosecution case. The role attributed to the appellant has been proved through reliable and trustworthy evidence, leaving no room for doubt. It is argued that the learned trial Court has rightly appreciated the evidence in its true perspective and has passed a well-reasoned judgment, which does not call for any interference by this Court and the appeal being devoid of merits may be dismissed and the conviction and sentence awarded to the appellant may be maintained.

11. We have heard the learned counsel for the parties at length, given our anxious consideration to their submissions, and have also scanned the record carefully with their able assistance.

12. The prosecution case primarily rests upon the ocular account furnished by Sheraz (PW-4 Ex.9) and Danish Hussain (PW-5 Ex.11), who being close friends of the deceased Sajid were accompanying him and were sitting outside his house at the relevant time. According to both the eye-witnesses, two culprits having uncovered faces, appearing to be Pathans aged between 20 to 25 years, arrived at the place of occurrence on a motorcycle bearing Registration No. KGD-9715. The culprit sitting on the rear seat demanded the mobile phone of Sajid and upon his resistance a scuffle ensued whereafter the other culprit alighted from the motorcycle and fired a pistol shot at Sajid which hit him on the chest. Resultantly, Sajid fell on the ground and succumbed to the firearm injury at the spot. Upon cries being raised by Sheraz and Danish Hussain, both culprits fled away from the scene in haste leaving behind the motorcycle on which they had arrived as well as the mobile phone of the deceased. It has further come on record that upon hearing the report of fire shot, the complainant Habib-ur-Rehman immediately reached the place of occurrence and shifted Sajid to Jinnah Postgraduate Medical Centre, where he was declared dead by the Medical Officer. Thereafter, the police completed the requisite legal formalities under Section 174, Cr.P.C. and recorded the statement of the complainant under Section 154, Cr.P.C., on the basis whereof the formal FIR was lodged. Both

the eye-witnesses fully supported the prosecution case and categorically implicated the appellant in the commission of the offence. Their testimony remained consistent on all material particulars and nothing favourable to the defence could be elicited during lengthy cross-examination so as to discredit their veracity or shake their confidence-inspiring account of the occurrence. No doubt, the occurrence took place on 25.09.2018 at about 10:45 pm whereas the FIR came to be lodged on 26.09.2018 at about 6:00 am i.e. after a lapse of approximately seven hours, however, in the peculiar facts and circumstances of the present case such delay is neither fatal nor sufficient to cast any dent upon the prosecution case. The record reflects that immediately after the occurrence the injured was shifted to hospital, the police reached there, completed proceedings under Section 174, Cr.P.C., arranged for post-mortem examination and thereafter recorded the statement of the complainant under Section 154, Cr.P.C. at about 5:00 am which was subsequently incorporated in the FIR register upon return to the police station. Thus, the delay occasioned in the lodgment of FIR stands reasonably and satisfactorily explained through unavoidable procedural formalities undertaken by the police immediately after the occurrence. It is by now a settled principle of law that every criminal case has to be examined on its own peculiar facts and circumstances and mere delay in lodging the FIR is not by itself fatal to the prosecution case particularly where the same stands plausibly explained and the case otherwise rests upon confidence-inspiring ocular account. The ocular account furnished by the prosecution remained unshaken and firmly established that Sajid was done to death by the appellant through a firearm injury caused by a pistol shot. The overwhelming evidence produced by the eye witnesses implicating the appellant in the commission of the offence cannot be discarded merely on the ground that they were friends of the deceased rather they are natural witnesses of the occurrence who plausibly explained their presence at the crime scene by stating that they were accompanying the deceased at the relevant time when the unfortunate incident took place.

13. The ocular account furnished by the prosecution further finds complete corroboration from the medical evidence adduced through PW.8 Dr. Aijaz Ahmed (Ex.16), who produced the Post Mortem report (Ex.16/B) and opined that the death had occurred due to firearm projectile injury on the chest anteriorly leading to irreversible hypovolemic shock and cardio-

respiratory failure consequent to firearm injury. Admittedly, the occurrence took place at about 10:45 pm on 25.09.2018 whereas the Post Mortem examination was conducted on 26.09.2018 at about 2:40 am i.e. within approximately four hours of the occurrence. Such delay in conducting the post-mortem examination is inconsequential in the circumstances of the present case. The record reveals that immediately after the occurrence the police reached the hospital, completed proceedings under Section 174, Cr.P.C. and thereafter issued the requisite letter to the concerned doctor for conducting the autopsy, thus, the time consumed in conducting the post-mortem examination stands reasonably explained through official and procedural formalities necessarily required under the law before commencement of autopsy proceedings. No adverse inference, therefore, can be drawn against the prosecution on this score. We are thus of the considered view that the ocular account furnished by the prosecution stands fully corroborated by the medical evidence available on record. No element of doubt whatsoever is apparent regarding the presence of the eye-witnesses at the place of occurrence at the relevant time. They have graphic details of the occurrence without being trapped into any material contradiction or narrative inconsistency and their testimony before the learned trial Court remained fully consistent with their earlier statements recorded during investigation.

14. According to the prosecution case, the culprits arrived at the place of occurrence on motorcycle bearing Registration No. KGD-9715 and after committing the offence fled away abandoning the said motorcycle at the crime scene. The record unequivocally reflects that the motorcycle was taken into possession by the police from the place of occurrence immediately after the incident. During investigation, the motorcycle was found to belong to Naik Shah, who appeared as PW.9 (Ex.17) and categorically deposed that on 25.09.2018 Yasir had taken the said motorcycle from him on the pretext of purchasing articles from the market and later returned at about 11:30 pm informing him that the motorcycle has been snatched from him. He further deposed that Yasir subsequently took him to the place of occurrence and pointed out the spot whereafter they went to the police station and got an entry recorded regarding the alleged snatching of the motorcycle.

15. What assumes considerable significance is that during the course of investigation Yasir was interrogated by the police and he disclosed that the

appellant and co-accused Shaukat, who were habitual offenders involved in street crimes, had taken the motorcycle from him. He further disclosed that they subsequently returned without the motorcycle and informed him that while attempting to snatch a mobile phone in the area of Baldia Town, they fired upon the victim and fled away from the scene in haste leaving the motorcycle behind. These attendant circumstances form a complete, coherent and unbroken chain of incriminating evidence irresistibly pointing towards the guilt of the appellant. The recovery of the abandoned motorcycle from the place of occurrence, its subsequent linkage with Yasir through independent evidence and the disclosures made during investigation furnish strong corroborative circumstances lending assurance to the ocular account furnished by the prosecution witnesses. It is also pertinent to observe that Yasir was likewise sent up for trial, however, being a juvenile offender, he was tried separately whereas co-accused Shaukat could not be arrested and was accordingly shown as an absconder in the challan. The entire sequence of events when read collectively forms a consistent and uninterrupted chain of incriminating circumstances connecting the appellant with the commission of the offence and leaves no room whatsoever for any hypothesis inconsistent with his guilt. Consequently, the possibility of false implication of the appellant stands completely ruled out.”

16. A further significant aspect of the case carrying immense evidentiary value is that the appellant was arrested on 30.09.2018 on the pointation of the juvenile accused Yasir, who disclosed that the appellant Shakoor Khan was the same person, who along with co-accused Shaukat had taken the motorcycle from him on 25.09.2018. Record further reflects that soon after his arrest a test identification parade was conducted before the learned Magistrate on 01.10.2018, wherein both eye-witnesses Sheraz and Danish Hussain without any hesitation, ambiguity or suggestion of prompting correctly identified the appellant and specifically attributed to him the role assigned in the occurrence. Their identification was prompt, spontaneous and confidence inspiring, thereby lending strong assurance to its truthfulness and reliability. The said identification proceedings stand further fortified by the testimony of PW.7 Mushtaque Ali, learned Civil Judge and Judicial Magistrate, who conducted and supervised the parade. He categorically deposed that the identification parade was held strictly in accordance with law in a fair, transparent and untainted manner and that adequate

safeguards were observed to rule out any possibility of tutoring, prompting or suggestion. He further affirmed that both witnesses have identified the appellant during the proceedings without any hesitation whatsoever. It is a well settled principle of criminal jurisprudence that a test identification parade when conducted in accordance with law and under the supervision of a Magistrate constitutes a vital piece of corroborative evidence particularly in cases where the accused were not previously known to the witnesses. In the present case, the FIR was lodged against unknown persons, which clearly establishes that the appellant was not previously known to the eye-witnesses. Consequently, it stands amply demonstrated that the witnesses had no prior acquaintance, ill-will or motive to falsely implicate the appellant. The identification parade, therefore, assumes great evidentiary significance in the present case as both eye-witnesses Sheraz and Danish Hussain have correctly identified the appellant with specific reference to his role in the commission of the offence. The consistent, independent and unshaken identification duly conducted under judicial supervision and certified by the learned Magistrate not only inspires full confidence in its genuineness but also provides strong corroboration to the ocular testimony of the prosecution witnesses. In these circumstances, the identification parade emerges as a strong, reliable and legally sound piece of corroborative evidence forming a safe and dependable evidentiary basis for sustaining the conviction of the appellant and leaving no room for any reasonable doubt in the prosecution case.

17. It is by now a firmly entrenched and well recognized principle of criminal jurisprudence that the testimony of an eye-witness cannot be discarded merely on account of his relationship, friendship or association with the deceased if otherwise his evidence is natural, truthful, confidence inspiring and trustworthy. Mere friendship or relationship with the deceased does not ipso facto render a witness "interested" in the legal sense so as to justify outright rejection of his testimony. An "interested witness" is one who has a direct motive, personal interest, ulterior consideration or deep-seated animus to falsely implicate an accused person for some extraneous benefit or vendetta. Mere relationship or friendship, without proof of any such motive, is wholly insufficient to infer bias or false implication. The consistent and authoritative view of the superior Courts is that the evidence of related or friendly witnesses is to be subjected to cautious judicial scrutiny and, where

upon such scrutiny the same is found consistent, natural, confidence inspiring and free from material infirmities, it constitutes substantive evidence and can safely be relied upon even without independent corroboration. The requirement of corroboration in the case of related witnesses is merely a rule of abundant caution and prudence and not an inflexible rule of law to be mechanically applied in every case regardless of the attending facts and circumstances. It also cannot be lost sight of that in offences against the human body, particularly in cases of murder, the close relatives, companions or friends of the deceased are ordinarily the most natural witnesses because their presence at or near the place of occurrence is expected in the normal course of human conduct. Such witnesses would ordinarily be the last persons to allow the real culprits to escape while falsely substituting innocent persons in their place, especially when no motive for false implication has been suggested or established. In the present case, the eye-witnesses Sheraz and Danish Hussain were admittedly accompanying the deceased and were naturally present at the place of occurrence while sitting outside the house when all of a sudden two dacoits arrived on a motorcycle and, during the course of an attempted dacoity, opened fire upon the deceased and committed his murder. Their presence at the crime scene is thus most natural, probable and beyond suspicion. Both the witnesses furnished a vivid, straightforward and confidence-inspiring account of the occurrence and categorically implicated the appellant in the commission of the offence. Despite lengthy, searching and incisive cross-examination, the defence failed to extract any material contradiction, discrepancy, improvement or omission affecting the substratum of the prosecution case. Their testimonies remained consistent on all material particulars and they unequivocally identified the appellant before the learned trial Court. The ocular account furnished by the prosecution further finds complete corroboration from the medical evidence, which conclusively establishes that the deceased sustained firearm injury on his chest resulting in his instantaneous death at the spot. Their testimony is further reinforced by the surrounding circumstances and other corroborative pieces of evidence brought on record by the prosecution lending full assurance to their truthfulness. Reference in this regard may well be made to the case of *Muhammad Aslam v The State* (2012 SCMR 593), wherein the august Supreme Court maintained reliance upon the ocular account furnished by closely related witnesses on the ground that their testimony was confidence

inspiring and consistent on material particulars. Likewise, in the case of *Mirza Zahir Ahmed v The State* (2003 (SCMR 1164)), it has been held by the Hon'ble Supreme Court that testimony of closely related witnesses could not be discarded merely because of their relationship with the deceased when the same stood corroborated by medical evidence and inspired confidence. Similar view is reiterated in the case of *Ijaz Ahmed v The State and others* (2022 SCMR 1577), wherein it was authoritatively held that relationship of a witness with the deceased is not by itself a ground to discard otherwise trustworthy and reliable testimony. We are thus of the view that the contention advanced by the learned counsel for the appellant that conviction cannot be based upon the statements of the eye witnesses merely because they were friends of the deceased is wholly misconceived, legally untenable and devoid of substance.

18. The argument advanced by the learned counsel for the appellant that non-recovery of the crime weapon has rendered the prosecution case doubtful and that the appellant is entitled to the benefit thereof does not appeal to us. It is true that the weapon allegedly used in the commission of the offence could not be recovered during investigation, however, such failure by itself is not sufficient to shatter an otherwise confidence inspiring and trustworthy prosecution case firmly founded upon reliable ocular testimony. It is by now a settled proposition of law that recovery of the crime weapon is only a corroborative piece of evidence and not a sine qua non for maintaining conviction where the prosecution has otherwise succeeded in establishing the charge through cogent, convincing and reliable evidence. Mere non-recovery of the weapon cannot outweigh direct and trustworthy ocular account particularly when the same is corroborated by medical evidence and other attending circumstances. Defective or incomplete investigation on a particular aspect cannot be allowed to benefit the accused where the substantive evidence available on record unmistakably points towards his guilt. In the instant case, the prosecution has produced natural eye witnesses who plausibly explained their presence at the place of occurrence and consistently narrated the manner in which the occurrence took place. Their testimony remained unshaken despite lengthy cross-examination and no material contradiction, improvement or infirmity could be elicited to discredit their veracity. Their ocular account is fully supported by the medical evidence, which confirms that the deceased sustained firearm

injuries in the manner deposed by the witnesses. It is also an admitted position that the parties were previously unknown to each other. Despite that the eye-witnesses successfully identified the appellant during the identification parade conducted before the learned Magistrate and thereafter also identified him without any hesitation while deposing before the learned trial Court. The identification parade was conducted in accordance with law and nothing has been brought on record to suggest any irregularity therein or any possibility of mistaken identity. Such identification, made by witnesses having no prior acquaintance with the accused, carries substantial evidentiary value and provides strong assurance to the prosecution case. When all these circumstances are evaluated cumulatively, it becomes abundantly clear that the prosecution has succeeded in establishing the guilt of the appellant through trustworthy, confidence inspiring and legally admissible evidence leaving no room for any reasonable doubt. Therefore, mere non-recovery of the crime weapon is not sufficient to demolish the otherwise well founded prosecution case or to extend benefit of doubt to the appellant.

19. Learned counsel for the appellant contended that there are major contradictions in the evidence of the prosecution witnesses causing serious dent to the prosecution case which have not been considered by the learned trial Court while maintaining the conviction of capital punishment. From deep examination of witnesses, we have observed certain minor contradictions but the same are immaterial. We have come to the conclusion that contradictions as pointed out by the learned defence counsel are of no avail to the defence. By and large, the people cannot accurately recall the consequences of events which took place in a short span. They can only remember the main purport of the incident. It is unrealistic to expect from a witness to be a human tape-recorder or a video camera. It is not expected from the witness to have a photographic memory and to recall the minute details of the incident. It cannot be expected from a witness to narrate the incident on the mathematical niceties in criminal cases. Thus, the discrepancy pointed out by the learned defence counsel in prosecution evidence with regard to the time of arrival of the police at the place of occurrence could not obliterate, an otherwise acceptable evidence. From the perusal of entire evidence, the manner of incident and the genesis of the incident have not been

disputed. We, therefore, do not find any force in the contention of the learned defence counsel.

20. After undertaking a meticulous and comprehensive appraisal of the entire evidence available on record, we have reached the inescapable conclusion that the prosecution has succeeded in establishing the guilt of the appellant beyond any shadow of reasonable doubt. The conviction recorded by the learned trial Court is firmly founded upon trustworthy ocular account furnished by natural eye-witnesses, which stands fully corroborated by the medical evidence as well as other attending circumstantial evidence available on record. The eye-witnesses consistently narrated the manner of occurrence and remained steadfast on all material particulars. Their testimony inspires confidence and bears the imprint of truth. Despite lengthy and searching cross-examination, the defence failed to extract any material contradiction, discrepancy or infirmity affecting the core of the prosecution case. Nothing has been brought on record to suggest that the witnesses had any motive, ill-will or ulterior consideration to falsely implicate the appellant while allowing the real culprit to escape. The appellant was duly identified by the eye-witnesses during the identification parade conducted before the learned Magistrate as well as before the learned trial Court. Although identification parade is only a corroborative piece of evidence and not substantive evidence in itself, yet where the same lends assurance to otherwise trustworthy ocular account, it considerably strengthens the prosecution case. The medical evidence fully supports the ocular version and conclusively establishes that the deceased sustained firearm injury on a vital part of the body resulting in his death. The medical evidence is in complete harmony with the prosecution story regarding the seat of injury, nature of weapon used and manner of occurrence. Thus, the ocular and medical evidence are so interwoven and mutually corroborative that no room is left for any doubt regarding the complicity of the appellant.

21. The learned trial Court has appreciated the evidence in its true perspective and in consonance with the settled principles governing the appreciation of evidence in criminal cases. We have independently reappraised the entire evidence available on record and do not find any illegality, misreading or non-reading of evidence warranting interference by this Court. It is, however, settled principle of criminal jurisprudence that

while determining sentence, the Court is required to maintain a delicate balance between the heinousness of the offence and the mitigating circumstances attending the offender. The object of sentencing is not only to punish the convict but also to achieve the ends of justice by keeping in view the possibility of his reformation and rehabilitation in society. There can be no cavil with the proposition that an offence punishable under Section 302(b), PPC is heinous in nature and in appropriate cases may warrant the extreme penalty of death, however, it is by now firmly settled that capital punishment is to be awarded carefully and only in cases where the mitigating circumstances are either altogether absent or are so insignificant that no leniency can be extended to the convict. In the present case, record reflects the existence of substantial mitigating circumstances. The appellant is admittedly a young person of about 24 years of age at the time of recording of his statement under Section 342, Cr.P.C. on 03.02.2024. He is stated to be a first offender with clean antecedents and there is nothing on record to suggest his involvement in any previous criminal activity. Being a young man at the threshold of his life, the appellant still has to pass a long span of life ahead and therefore the possibility of his reformation and rehabilitation cannot be ruled out. The mitigating factors available on record clearly suggest that the appellant being a young man does not fall within the category of a hardened or incorrigible offender for whom no hope of reformation exists. Furthermore, such consensus though not binding upon the Court is nevertheless a relevant circumstance which may legitimately be taken into consideration particularly when it stands reinforced by independent mitigating circumstances available on the record.

22. Taking an overall view of the matter and exercising judicial discretion in a balanced and cautious manner, we are persuaded to hold that the ends of justice would be adequately met if the sentence of death awarded to the appellant is converted into imprisonment for life. This course would not only meet the ends of deterrence but would also uphold the principles of proportionality, fairness and reformation in sentencing policy. Therefore, while treating the present case as one involving mitigating circumstances, we find guidance from the case of *Amjad Shah v. The State* (PLD 2017 Supreme Court 152), wherein it has been held that youthful tendency toward excitement and impulsiveness were treated by the law as a mitigating circumstance. The relevant extract is reproduced as under:-

"9.....Reference is made to Zeeshan Afzal v. The State (2013 SCMR 1602). Another ground for mitigation in sentence of the appellant is the fact that about two months after the occurrence, on 10.06.2002 the learned Trial Court whilst framing the charge has recorded the appellant's age to be 24 years and that of his co-accused to be 19/20 years. Youthful tendency toward excitement and impulsiveness are also treated by the law as a mitigating circumstance. Under section 302(b), P.P.C. imprisonment for life is one of the lawful sentences for the commission of offence under section 302, P.P.C. In the light of the aforesaid discussion the sentence of the appellant merits reduction from death to life imprisonment."

In another case of *Ahmad Nawaz and another v. The State* [2011 SCMR 593], the Hon'ble Supreme Court has observed as under:-

"In Muhammad Riaz and another v. The State (2007 SCMR 1413) while considering the penalty for an act of commission of Qatl-i-Amd it was observed that "No doubt, normal penalty for an act of commission of Qatl-i-Amd provided under law is death, but since life imprisonment also being a legal sentence for such offence must be kept in mind wherever the facts and circumstances warrant mitigation of sentence, because no hard and fast rule can be applied in each and every case".

23. For the foregoing reasons, and in view of the settled principles governing sentencing policy, coupled with the dictum laid down by the Hon'ble Supreme Court of Pakistan in the cases (supra) we are persuaded to hold that the present case squarely falls within the ambit of mitigating circumstances warranting interference in the quantum of sentence. Accordingly, while maintaining the conviction of the appellant under Section 302(b), PPC, we in exercise of appellate jurisdiction and upon reappraisal of the mitigating circumstances available on record convert the sentence of death awarded to the appellant into imprisonment for life. It is, however, clarified that the amount of compensation imposed upon the appellant and the sentence awarded in default thereof as well as all other convictions and sentences recorded by the learned trial Court under Sections 392 and 397, PPC including the sentences awarded in lieu of fine are maintained in toto. Nevertheless, all substantive sentences shall run concurrently in accordance with law and the appellant shall also be entitled to the benefit of Section 382-B, Cr.P.C. for the period already undergone by him during incarceration.

24. Subject to above modification in the sentence, Criminal Appeal No.520 of 2024 is dismissed on merits whereas the Murder Reference arising out of Confirmation Case No.07 of 2024 is answered in Negative and disposed of accordingly.

JUDGE

JUDGE

Naeem/PA