IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.138 OF 2024

Appellant	Muhammad Iqbal son of Zarmand Khan through Mr. Ghulam Shabbir Babar, Advocate.
Complainant	Ismail Shah son of Feroze Khan through Mr. Bakht Azam, Advocate for the complainant.
Respondent	The State through Ms. Amna Ansari, Additional Prosecutor General [Sindh].
Dates of hearing	19.05.2025 and 26.05.2025
Date of Judgment	**18.06.2025**

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JUDGMENT

Shamsuddin Abbasi, J. Muhammad Iqbal son of Zarmand Khan, appellant, was tried by learned Additional Sessions Judge-II, Karachi [West], in Sessions Case No.330 of 2006 [FIR No.49 of 2006] registered at Police Station Baldia Town, Karachi [West], for offences under Sections 302, 324 and 34, PPC. By a judgment dated 26.01.2024 he was convicted and sentenced to suffer rigorous imprisonment for life and to pay a sum of Rs.5,00,000/- as compensation to the legal heirs of deceased in terms of Section 544-A, Cr.P.C. and to undergo simple imprisonment for six months more in lieu of compensation. The benefit in terms of Section 382-B, Cr.P.C. was, however, extended to the appellant.

2. FIR in this case has been lodged on 30.04.2006 at 12:10 am whereas the incident is shown to have taken place on 29.04.2006 at 7:00 pm. Complainant Ismail Shah son of Feroze Khan has stated that on the fateful day his nephew Jamil Khan son of Asal Khan alongwith his friend Waseem Qazi son of Muhammad Sadiq and relatives Javed son of Asal Khan and Khan Rauf son of Noor Habib was present at the street infront of Farhan Clinic. It was about 7:00 pm when Iqbal son of Zarmand Khan, accompanied by Qayyum son of Doran Gul and two unknown persons, came there on two motorcycles and started firing on Jamil Khan from their respective pistols, resultantly Jamil Khan sustained fire-arm injuries and died at spot whereas Waseem Qazi sustained fire-arm injuries and became injured. The incident was witnessed by Javed and Khan Rauf, who brought deceased Jamil Khan and injured Waseem Qazi at Jinnah Hospital, Karachi. The police arrived at

the hospital and after completing 174, Cr.P.C. proceedings got recorded statement under Section 154, Cr.P.C. of complainant and later on incorporated the same in FIR book wherein the complainant has nominated Muhammad Iqbal, Qayyum and two unknown persons for commission of murder of Jamil Khan and causing injuries to Waseem Qazi by firing with pistols owing to long standing tribal enmity.

3. 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 appellant was sent-up to face the trial whereas accused Qayyum son of Doran Gul was shown as absconder.

4. A charge in respect of offences under Section 302, 324 and 34, PPC, was framed against the appellant. He pleaded not guilty to the charged offence and claimed to be tried.

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

6. Complainant Ismail Shah appeared as witness No.1 [Ex.5], Khaista Rehman as witness No.2 [Ex.7], SIP Abdul Razzaq as witness No.3 Ex.8, SIP Nazeer Ahmed as witness No.4 [Ex.10], Dr. Muhammad Soomar Memon as witness No.5 [Ex.12], Javed Khan as witness No.6 [Ex.13], Khan Rauf as witness No.7 [Ex.14] and Dr. Abdul Razzaq as witness No.8 [Ex.15]. All of them have exhibited certain documents in their evidence and subjected to cross-examination by the defence. Thereafter, the prosecution closed its side vide statement Ex.16.

7. Statement of appellant under Section 342, Cr.P.C. was recorded at Ex.17. He has denied the allegations imputed upon him by the prosecution, professed his innocence and stated his false implication in this case due to previous enmity. He opted not to make a statement on Oath under Section 340(2), Cr.P.C. nor produce any witness in his defence.

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

9. The learned counsel appearing for the appellant has contended that he is innocent and has been falsely implicated in this case by the complainant due to previous enmity as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. Next contends that the FIR has been lodged after more than five hours of the incident and that too without furnishing any plausible explanation. Also contents that the ocular account has been furnished by related and interested witnesses, whose testimony is unsafe to rely upon especially when they have not been corroborated by an independent witness. Next contends that the medical evidence contradicts the ocular account produced by the prosecution which is unsafe to rely upon more particularly when crime weapons has not been recovered either from the possession of appellant or on his pointation. Per learned counsel, the prosecution has failed to discharge its legal obligation of proving the guilt of the appellant as per settled law and the appellant was not liable to prove his innocence. Next contents that the impugned judgment is bad in law and facts and based on assumptions and presumptions without assigning any valid and cogent reason. Next contents that the witnesses being interested and inimical to the appellant have falsely deposed against him, they were inconsistent with each other rather contradicted on crucial points benefit whereof must go to the appellant. The learned counsel while summing up his submissions has submitted that the learned trial Court while passing the impugned judgment has deviated from the settled principle of law that a slightest doubt is sufficient to grant acquittal to an accused and failed to appreciate the evidence in line with the applicable law and surrounding circumstances and based its findings on misreading and non-reading of evidence and arrived at a wrong conclusion in convicting the appellant merely on assumptions and presumptions ignoring the plea taken by the appellant in his defence as well as at the time of recording his statement under Sections 342 Cr.P.C., hence the conviction and sentence awarded to the appellant, based on such findings, are not sustainable in law and liable to be set-aside and the appellant deserves to be acquitted of the charge and prayed accordingly.

10. The learned Additional Prosecutor General [Sindh], duly assisted by the learned counsel for the complainant, has supported that impugned judgment and submitted that the FIR has been lodged with sufficient promptitude nominating the appellant with specific role of firing. Next contends that the witnessed while appearing before the learned trial Court

remained consistent on each and every material point, they were subjected to lengthy cross-examination but nothing adverse to the prosecution story has been extracted which can provide any help to the appellant. Also contends that the medical evidence in this case is in line with the ocular account which fully corroborates the story narrated in the FIR. Next contends that the prosecution in support of its case has produced ocular as well as medical evidence coupled with the circumstantial evidence, supported by strong motive, which was rightly relied upon by learned trial Court. Next contends that the appellant remained fugitive from law for more than 14 years and non-recovery of crime weapon in the background of absconsion of the appellant for a long period is not fatal to the prosecution case. Also contends that mere relationship is not a ground to discard the evidence of witnesses of ocular account until and unless some valid and cogent evidence is brought on record for false implication of the appellant, which is lacking in this case. While emphasizing her submissions, the learned Additional Prosecutor General has submitted that the findings recorded by the learned trial Court in the impugned judgment are based on fair evaluation of evidence and documents brought on record, to which no exception could be taken and that the prosecution has successfully proved its case against the appellant beyond shadow of reasonable doubt, thus, the appeal filed by the appellant warrants dismissal and his conviction and sentence, awarded through impugned judgment dated 26.01.2024 is liable to be upheld and prayed accordingly.

11. I have heard the parties' respective counsel, given my anxious consideration to their submissions, and also scanned the entire record carefully with their able assistance.

12. Occurrence took place at a street infront of Farhan Clinic when Muhammad Iqbal [appellant] alongwith his three companions, armed with pistols, arrived at the scene of offence and they conjointly made firing from their respective pistols at Jamil Khan, who while sustaining fire-arm injuries died at the spot whereas Waseem Qazi became injured due to receiving fire shots. They were brought at Jinnah Hospital by eye-witnesses Javed and Khan Rauf and meanwhile SIP Abdul Razzaq, on receipt of message from control room, also reached there and prepared memo of inspection of dead body as well as inquest report and also recorded the statement of injured and then went to the place of incident, conducted site inspection on the pointation of Javed Khan and Khan Rauf and secured five empties of 30 bore pistol,

sealed the same at spot, and then came at P.S. and registered a case incorporating the contents of 154, Cr.P.C. statement of Ismail Shah in FIR book.

13. As to the contention that FIR has been lodged after more than five hours of the incident, which has caused serious dent to the prosecution case, suffice to observe that soon after the incident the eye-witness brought the dead body of deceased as well as injured at Jinnah Hospital where police came and completed proceedings under Section 174, Cr.P.C. and thereafter visited place of incident and prepared memo of site inspection and meanwhile recorded the statement under Section 154, Cr.P.C. of complainant and later on incorporated the same in FIR book. This aspect of the matter has further been supported by eye-witnesses, who while appearing before the learned trial Court have testified the evidence, adduced by PW.3 SIP Abdul Razzaq. The complainant has reflected a natural conduct in registration of FIR which is absolutely inapt with the prevailing circumstances at that time. I am, thus, quite confident in observing that in such a disgusting situation, faced by the complainant, there remained hardly any occasion for consultation and due deliberation. The delay of only five hours is, thus, well explained and not fatal to the prosecution case.

14. The case of the prosecution is primarily structured upon ocular account furnished by Javed Khan [PW.6 Ex.13] and Khan Rauf [PW.7 Ex.14]. They have furnished graphic details of the occurrence without being trapped into any serious narrative conflict and plausibly explained their presence at the crime scene. Complainant is uncle of deceased Jamil Khan and not an eye-witness of the incident. On the fateful days was present in his house and offering Maghrib prayer when he heard fire-arm report and came out of the house and saw Jamil Khan lying dead and blood was oozing from his wounds and Waseem in injured condition and the eye-witnesses Javed Khan and Khan Rauf disclosed him the whole story. The complainant has supported the story narrated in the FIR in his deposition and he has been supported by eye-witnesses, who while appearing before the learned trial Court have deposed in the same line as that of complainant and remained consistent on each and every point and deposed that in their presence the accused persons made firing from their respective pistols and committed murder of deceased Jamil Khan and caused injuries to Waseem Qazi. They have also supported the

complainant that the incident had taken place on the date and time mentioned in the FIR and have correctly explained the manner and mode of taking place of the occurrence as well as their presence at the scene of occurrence. They remained consistent on each and every material point despite having undergone a lengthy cross-examination by the defence. Nothing has been extracted from their mouth during cross-examination favouring the appellant.

15. The prosecution has also examined SIP Abdul Razzaq [PW.3 Ex.8]. On the day of incident he received message from control room that one dead body and an injured person have been brought at Jinnah Hospital so he went there and after obtaining permission from MLO completed proceedings under Section 174, Cr.P.C. and also recorded the statement of injured and then visited place of incident, conducted site inspection and secured five empties of 30 bore pistol. He also recorded the statement under Section 154, Cr.P.C. of complainant and incorporated the same in FIR book.

16. A careful look to the testimony of eye-witnesses reveals that they have established their presence at the place of occurrence, which has not been shattered by the defence. They have deposed same facts in their evidence, which are in line to that of their earlier statements recorded by police during investigation. They have also supported the case of the prosecution and deposed full account of the incident and also implicated appellant in the commission of offence charged with. No doubt they are closely related to complainant and deceased, despite they cannot be considered as interested witnesses rather they are natural witnesses because they have explained their presence at the scene of occurrence by stating that while they were present at the street infront of Farhan Clinic, accompanied by deceased Jamil Khan and injured Waseem Qazi, the accused persons came on two motorcycles and started firing at Jamil Khan, who died at spot while Waseem Qazi sustained fire-arm injuries. Thus, their testimony cannot be disbelieved because the Court has to see the truthfulness and credibility of such witnesses.

17. The crux of the arguments of the learned counsel for the appellant is that the story set-forth in the FIR has been supported by the interested witnesses and no independent corroboration has been provided by any independent witness. I am unable to appreciate this submission because the law has now well settled on the point that the fact of relationship of the

witnesses with the complainant or with the deceased would not be sufficient to smash the evidence, adduced by such witnesses, or to disbelieve their credibility as well as legal sanctity. Guidance in this behalf may be taken from the case of *Muhammad Aslam v The State* (2012 SCMR 593), *wherein the ocular version had been furnished by PW-6, who was real son of deceased and PW-7, the other eyewitness, who was cousin of the complainant and their statements were not discarded on the ground that they made consistent statement against the accused and specific role of firing was attributed.* In another case of *Mirza Zahir Ahmed v The State 2003 (SCMR 1164), two eye-witnesses PW Muhammad Zaheer and Muhammad Shafiq were closely related to deceased, but they had furnished trustworthy evidence to support the prosecution case. It was held by the Hon'ble Supreme Court that "the statements of both the witnesses get corroboration from each other. As far as the medical evidence is concerned, it being in the nature of conformity has also substantiated their version, therefore, the evidence of these prosecution witnesses cannot be discarded merely for the reason that they were closely related to Tariq Javed deceased".* Even otherwise the rule requiring independent corroboration of testimony of related or interested witnesses is a rule of prudence which is not to be applied rigidly in each case especially when the Courts of law do not feel its necessity. Mere relation of a witness with any of the parties would not dub him as an interested witness because interested witness is one who has, at his own, a motive to falsely implicate the accused, is swayed away by a cause against the accused, is biased, partisan, or inimical towards the accused, hence any witness who has deposed against accused on account of the occurrence, by no stretch of imagination can be regarded as an "interested witness". There can be cases like the present one where implicit reliance can be placed on the testimony of related witness if it otherwise inspiring confidence of the Court. It is noteworthy that witnesses having some relation with deceased, particularly in murder cases, may be found more reliable, because they, on account of their relationship with the deceased, would not let go the real culprit or substitute an innocent person for him. The eye-witnesses have deposed full account of the incident and fully involved the appellant in the commission of murder of Jamil Khan due to old tribal enmity and they have been supported by the complainant on the point of enmity. I am, thus, of the firm view that eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear cut manner. They while appearing before the learned trial Court provided full support to the case of the prosecution and also

implicated the appellant in the commission of offence. They were subjected to lengthy cross-examination by the defence but could not extract anything from them as they remained stick to their stance. Admittedly, the parties are known to each other and the occurrence has taken place near about Maghrib prayer, hence questions of mistaken identity or substitution are the possibilities beyond comprehension and there is no chance of any misidentification.

18. The direct evidence, as detailed above, is in shape of evidence of PW.6 Javed Khan and PW.7 Khan Rauf, who have supported the case of the prosecution and finds corroboration from the other witnesses coupled with medical evidence in shape of PW.8 Dr. Abdul Razzaq, who while appearing before the learned trial Court has deposed that he conducted post-mortem of deceased Jamil Khan, testified the injuries on his body and declared cause of death as cardio respiratory failure due to shock and hemorrhage resulting from fire-arm. He also acknowledged signature of Dr. Zeeshan [now deceased], who examined injured Waseem Qazi and issued M.L. Certificate. The ocular account has further been corroborated by circumstantial evidence viz Chemical Report [Ex.10/M], issued by the office of Chemical Examiner to the Government of Sindh, Karachi, which testified that shirt of deceased, received through parcel No.1, and earth secured from the place of incident and received through parcel No.2, are stained with human blood, which has not been discredited by the defence. The appellant while recording his statement under Section 342, Cr.P.C. did not discredit such confidence inspiring evidence, hence the recoveries effected and brought on record in shape of circumstantial evidence, referred herein above, provide full corroboration to the ocular account.

19. Another intriguing aspect of the matter, which is an immense importance, is the absconsion of appellant. The record reveals that the incident took place on 29.04.2006 and since then the appellant remained fugitive from law till he joined the trial on 27.10.2021. He neither joined the investigation nor entered appearance before the learned trial Court and after initiating appropriate proceedings against him, he was declared proclaimed offender. This means that he remained fugitive from law for more than 14 years and that too without furnishing any plausible explanation. He deliberately concealed himself and avoided to face the consequences of his act, which clearly shows his guilty conscious. Had he been not involved in the commission of offence, he would have dared to appear before the Court

of law and face the legal process. The appellant's abscondance for a long time draws an adverse inference against him about his guilty conscious. I am conscious of the settled proposition of law that absconsion by itself is not sufficient to convict an accused but it is a strong piece of corroborative evidence of the other direct and circumstantial evidence in the case and where the accused remained fugitive from justice for a very long time without any plausible and reasonable explanation, his conduct after the occurrence is indicative of his guilt when considered in conjunction with the ocular and circumstantial evidence. Guidance is sought from the case of *Mst. Roheeda v. Khan Bahadar* (1992 SCMR 1036).

20. The argument of the learned counsel for the appellant that non-recovery of crime weapon has rendered the case of the prosecution extremely doubtful, benefit whereof must go to the appellant. No doubt the Investigating Officer has failed to recover the crime weapon, used in the commission of offence, nonetheless, the failure does not tremor the prosecution case otherwise firmly founded on ocular account furnished by the witnesses who plausibly explained their presence at the crime scene. Even otherwise, non-recovery of crime weapon is not harmful to the prosecution case in view of long ascendance of appellant for more than 14 years because recovery of crime weapon after such long period could not expected. I am, thus, of the view that non-recovery of crime weapon is not enough to demolish the case of prosecution more particularly when the appellant remained fugitive from law for more than 14 years.

21. I am convinced that the learned trial Court has appreciated the evidence and scrutinized the material available on record in complete adherence to the principles settled by the Hon’ble apex Courts in various pronouncements and has reached a just conclusion. There is no denial of the fact that the learned trial Court has taken into account all the aspects of the matter as well as the defence taken by the appellant at trial minutely and found the appellant guilty of the offence with which he has been charged. No mala-fide, ill-will, or personal grudge has been established showing that evidence furnished by the prosecution was based on malice or ill-will. I am conscious of the fact a man was done to death in a shocking and brutal manner, which disentitles the appellant from any leniency or mercy because such an act certainly would have created a sense of fear, panic and terror, which is directed against the Society. No one could be granted license

to take the law of the land in his own hands, which is un-Islamic, illegal and unconstitutional.

22. It is a well settled that onus to prove its case always rests on the shoulder of the prosecution and once the prosecution succeeded in discharging such burden with cogent evidence then the accused become heavily burdened to disprove the allegations levelled against him and prove his innocence through cogent and reliable evidence. The appellant in his statement under Section 342, Cr.P.C. though denied the commission of offence and pleaded his innocence, but failed to produce any material to disprove the prosecution case. He has also failed to speak a single word as to why the witnesses have deposed against them, which gives rise to a presumption that the plea taken by him in his defence was not a gospel truth, therefore, he avoided to appear and depose on Oath under Section 340(2), Cr.P.C. I am also conscious of the fact that law requires that if accused had a defence plea the same should be put to the witnesses in cross-examination and then put forward the same while recording statement under Section 342, Cr.P.C. which is lacking in the instant case. In the circumstances, since the specific defence plea has not been taken by the appellant either at trial or while recording his statement under Section 342, Cr.P.C. the learned trial Court has rightly discarded the same to be of untrustworthy. If both the versions, one put forward by the appellant and the other put forward by the prosecution, arc considered in a juxtaposition, then the version of the prosecution seems to be more plausible and convincing and near to truth while the version of the appellant seems to be doubtful.

23. The motive behind the occurrence was that there was a long standing tribal enmity and in the background of that enmity the accused party committed murder of deceased, which finds support from the testimony of complainant and eye-witnesses and they despite undergoing a lengthy cross-examination remained consistent on the point of motive. The defence has also failed to shatter the evidence of complainant and eye-witnesses on the point of motive rather admitted the same. The motive, thus, cannot be discarded as held by the learned trial Court. Even otherwise, it is now a well settled that the motive is not a requirement of law and there is no bar or hindrance to award conviction and sentence to an accused when the chain of guilt is found not to be broken and irresistible conclusion of the guilt is surfacing from the evidence, which is connecting the accused with the commission of that offence without any doubt or suspicion.

24. In view of the analysis and combined study of the entire evidence by way of reappraisal, with such care and caution, I am of the considered view that the prosecution has successfully proved its case against the appellant to the extent of commission of murder of Jamil Khan through reliable and trustworthy evidence. The learned counsel for the appellant also failed to point out any material illegality, or irregularity, mis-reading and non-reading of evidence or serious infirmity or defect in the judgment, impugned herein, which in my humble view is based on fair evaluation of evidence and documents brought on record, hence calls for no interference. Insofar as the case of prosecution with regard to causing injuries to Waseem Qazi, neither he appeared before the learned trial Court for recording his evidence nor the learned trial Court has awarded any conviction to the appellant under the provision of Section 324, PPC.

25. For the foregoing reasons, this Criminal Appeal No.138 of 2024 is bereft of any merit stands dismissed and the conviction and sentence awarded to the appellant through impugned judgment dated 26.01.2024 is upheld.

JUDGE

Naeem /PA