

# **THE HIGH COURT OF SINDH AT KARACHI**

**Criminal Jail Appeal No.781 of 2022**

APPELLANT : Ismail Khan @ Razi, through  
Mr. Maula Bux Bhutto, Advocate

RESPONDENT : The State, through Ms. Seema Zaidi,  
Additional Prosecutor General,  
Sindh

Date of Hearing : 06.10.2025

Date of Decision : 21.10.2025

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

**Dr. Syed Fiaz ul Hassan Shah, J** :- Through this Criminal Jail Appeal, the Appellant seeks setting aside of the Judgment dated 31.10.2022 (**impugned Judgment**) of conviction passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court, Malir, Karachi (**trial Court**), in Sessions Case No.1631 of 2019 (The State vs. Ismail Khan @ Razi Gul), for offences under Sections 302/34 PPC, registered at Police Station Steel Town, Karachi.

2. The brief facts of the prosecution case are that on 11.03.2019 SIP Shakir Nawab of PS Steel Town on receiving information about the double murders within territorial remits of PS Steel Town, he had Entry No.13 and reached at place of incident /Crime scene which is a house of deceased victim namely Imran Khan situated at Soomar Goth, Karachi and found two dead bodies of deceased (1) Imran Khan Son of Saeed Jan and (2) Waleed Wali son of Wali Muhammad. Thereafter, SIP Shakir Nawab shifted the dead bodies of two deceased victims to the Jinnah Hospital, Karachi for post mortem examination and has also recorded 154 Cr.P.C statement of the complainant Abdul Malik, who is brother of deceased victim Imran Khan. Consequently, he has registered FIR for the commission of double murder. It is reported in FIR that brother of complainant, namely, Imran Khan alongwith his family had been living at Soomar

Goth, however, on 11.03.2019 at 1330 hours his relative via phone informed the complainant that his brother Imran Khan and his friend Waleed Wali were murdered, on receiving such sad information, the complainant desperately reached at crime scene alongwith other relatives and he found dead bodies of his real brother Imran and his friend Waleed Wali which were lying in pool of blood succumbed gunshot injuries. Complainant alleged in FIR that father-in-law of Imran Khan @ Razi Gul and his step brother-in-law Waleed Gul had been compelling Imran to sale out his property situated at Hyderabad and to give them sale proceed money for investment and because of such monetary issues both accused issued threats to Imran of killing and it were the accused who committed the crime hence, FIR. After usual investigation the accused/ appellant was challaned under section 173 Cr.P.C and after trial the accused was awarded sentences as mentioned hereinabove.

3. Initially the charge was framed on 13.11.2019 against the arrested co-accused Waheed Gul son of Abdul Waez and the Appellant at that time was abscond from and could not be arrested, therefore, the Investigation Officer has submitted challan under Section 512 Cr.P.C. against the Appellant. In the first round, the trial Court after recording of the evidence has acquitted the co-accused Waheed Gul vide Judgment dated 02.12.2019. After the arrest of present appellant Ismail Khan, charge was fresh framed by trial Court on 06.01.2021 and after concluding the evidence afresh, the learned trial Court found the appellant as "guilty" and has convicted under Section 302(b) PPC for 25 year Rigorous imprisonment **(RI)**.

4. I have heard learned counsel for appellant and learned Addl. Prosecutor General, Sindh and carefully perused the record with their assistance.

5. This case pertains to a double murder based on circumstantial and unseen evidence. To establish its case, the prosecution examined thirteen witnesses. PW-1 Abdul Malik, brother of deceased

Imran, testified that he received information regarding the murder of his brother Imran and Imran's friend Waleed from his sister Hazrat Bibi, and he has informed police as complainant of FIR. He produced the report at Exh.58 and also acted as Mashir for the recovery of empties, metallic projectiles, and other articles from the crime scene. PW-2 Hazrat Bibi, although is not an eyewitness; she deposed that on 11.03.2019, she was informed by her sister-in-law Maryam that her father Ismail Khan and the appellant Razi Gul had killed her husband Imran and his friend inside a room of their house. PW-3 Zaheer Ahmed Khan served as Mashir of the place of incident and confirmed the recovery of three empties and two metallic projectiles by the Investigating Officer. PW-4 SIP Zakir Hussain Abbasi, the Investigating Officer, visited the crime scene on the pointation of PW-1 and secured blood-stained articles including a blanket, bedsheet, and earth, along with three 9mm pistol empties and two projectiles. He also produced forensic reports and conducted proceedings under Section 174 Cr.P.C. PW-5 Naseem Shah, brother of deceased Waleed, confirmed receipt of his brother's dead body, corroborating the occurrence of the incident. None of the prosecution witnesses are eyewitnesses to the actual commission of the offence, and the case rests entirely on circumstantial evidence and post-incident recoveries.

6. In examining the chain of circumstantial evidence connecting the accused to the commission of the double murder, particular attention is drawn to the testimonies of PW-6 Babu (son of Ghareeb Shah) and PW-7 Waqar (son of Babu), both of whom are independent and natural witnesses with no apparent motive to falsely implicate the appellant. Their statements lend credibility to the prosecution's narrative. Additionally, the testimony of PW-10 Marium, the real daughter of the appellant/convict, emerges as highly pertinent and materially relevant to the case.

7. PW-10 Marium deposed that ***"On 10-03-2019 at about 0400 hours my husband and his friend Waleed came in house. My***

**husband asked me to go at my father's home along with kids. Then I along with my kids went to my father's home which was just 02 streets away. Then at about 0500 hours I reached at my father's home. In the morning while I was planning to return my home my father was stopping me to go home. Then I asked my father to bring some food for my goat and in the meantime I went to my home. When I reached at home I saw that house was locked from outside with lock, so I again returned to my father's home. Thereafter my father returned and he gave me grass and he then again left for home. Thereafter at about 1300 hours I again went at my husband's home and then entered in the house by climbing the wall. I saw that 125 motorcycle of my husband was parked in courtyard. When I checked the motorcycle I found mobile phone of my father in the pocket of motorcycle. Then I called my sister-in-law and enquired about Imran but she said Imran had not come to her. She asked me to check him in the room but I told her that even rooms are locked. I then took one hammer and broke lock of one room and found that dead body of my husband was lying on the cot while dead body of Waleed was on the floor. Then I made commotions on which Mohalla persons and even my father, mother and step mother came there.”**

8. She further deposed: **“I say that these murders have been committed by my father Ismail alone.”** During cross-examination, the PW-10 was put certain question which she deposed: **“It is correct that I am not eye witness of the incident, further says but my father/accused Ismail was with him at the time of murder and he had killed him. It is correct that my father left home along with his BANDOOQ. My father left home at 0400 hours and returned at around 0630 hours. It is correct that my father returned along with same BANDOOQ. It is incorrect that no blood stains were available on his cloths when he returned home, further says he changed them. I have not given those blood stained cloths to**

***police. I had visited police station on 03/04 occasions. I visited P.S along with my Nandh (sister-in-law)."***

9. The evidence of PW-10 Marium is relevant with regard to her direct allegations upon her own father for the commission of murder finding of mobile phone, witness of event that her father took bundooq and after more than one hour returned back to home with said bundooq as well as seen her own father cloth having blood stain are the necessary facts for relevant fact of homicide in terms of Article 22 of the Qanun-e-Shahadat Order, 1984 which state that:

*"22. Facts necessary to explain or introduce relevant facts.— Facts necessary to explain or introduce a fact in issue or relevant fact, or which support or rebut an inference suggested by a fact in issue or relevant fact, or which establish the identity of anything or person whose identity is relevant, or fix the time or place at which any fact in issue, or relevant fact happened, or Which show the relation of parties by whom any such fact was transacted, are relevant in so far as they are necessary for that purpose."*

10. When confronted with the issue of the mobile phone allegedly recovered from the bag of a motorcycle parked inside the home of deceased Imran, the crime scene, the learned counsel for the appellant contended that the prosecution failed to establish ownership or possession of the said mobile phone by the appellant. Admittedly, neither the motorcycle nor the mobile phone were secured by the Investigating Officer or produced by the Prosecution during trial. Nonetheless, the defence failed to offer any reasonable explanation or justification as to why the appellant's own daughter would directly implicate him in a murder case. Crucially, the appellant did not challenge the testimony of PW-10 during cross-examination regarding the presence of the mobile phone at the crime scene, nor did he raise any objection concerning her motives or credibility. PW-10 discharged her initial burden of proof under oath under Article 118 Qanun-e-Shahdat Order, 1984, shifting the evidentiary burden to the appellant, who failed to rebut the same before the trial court.

Additionally, the appellant's prolonged absconsion following the murder of his daughter's husband further strengthens the prosecution's case.

11. PW-10 Marium, the biological daughter of the appellant, has provided direct and incriminating testimony against her father, unequivocally implicating him in the commission of the double murder. Given the close familial relationship and the gravity of the allegations, her statement carries substantial evidentiary weight and materially reinforces the prosecution's case. No mala fide intent is discernible in her testimony, and notably, the defence has failed to challenge her credibility by suggesting any ill motive, bias, or grudge. However, it is a settled legal proposition that in a murder case based on circumstantial evidence, conviction cannot rest solely on the testimony of a single witness, even if credible, without the support of corroborative evidence and chain of evidence through facts and fact of facts. Therefore, while her testimony is significant, it must be evaluated in conjunction with other cogent and corroborative material to sustain a conviction.

12. The second connection is the evidence of two independent and natural witnesses PW-6 Babu son of Ghareeb Shah and his teenage son PW-7 Waqar son of Babu, I have noted that both are residing in the neighborhood of deceased Imran, where deceased Imran and his friend deceased Waleed were murdered. PW-7 deposed that ***"Then at about 0442 hours I heard one by one six fires and after one minute I heard two more fires. So, I woke up and again take a look. I even noticed some strange voices as somebody was trying to grab somebody. I continuously woke up till 0455 hours and then again slept. At about 0510 hours door of house of Imran which was exactly in front of block factory was opened. I was sleeping in the bed but was awake and saw that one tall lean person came out from the house of Imran and he was wearing some brown cloths which were appearing as it black and he went towards Masjid Side and I thought that somebody is going***

***for Fajr Prayers. .... In the evening when I returned my home at 05:00 p.m. I came to know that Imran and his friend had been killed inside the house. My son Waqas who is 14 years old disclosed me at home that at 0815 hours while he was going to drop my daughter to school he met Ismail who told him that your father had quite urgency as he woke up as soon I made fire. My son enquired from him why you made firing on which he disclosed that he was just checking pistol.”***

13. PW-7 Waqas son of Babu, aged about 16 years, who deposed that: ***“.. when I reached at the block factory where my father works I met Ismail Pathan, who was also standing there. He stopped me. He told me that my father had quite urgency of waking up when I just made 08 fires. He disclosed that last night two persons came to purchase pistol from him and one of the person made six fires and other two fires for checking the pistol. Thereafter Ismail went away from there and he was wearing brown color cloths and light brown color cot.”***

14. It is observed that at the commencement of a criminal trial, the prosecution bears both the invariable legal burden and the initial evidential burden to adduce sufficient evidence establishing the accused's guilt beyond the reasonable doubt. Once this threshold is met, the evidential burden may shift to the defence, not as a legal obligation, but as a tactical necessity to create reasonable doubt. The defence may respond by presenting rebuttal evidence or by strategically challenging the prosecution's case through cross-examination and discrediting witnesses and may include a defence plea. The objective remains to generate reasonable doubt, and if successful, the evidential burden may revert to the prosecution. This shifting of burden does not require direct oral or documentary evidence alone; it may be supported by circumstantial evidence, legal presumptions, or reasonable inferences drawn from established facts, and may occur repeatedly throughout the trial depending on the strength of the evolving evidence.

15. In the present case, while PW-10 Marium denied during cross-examination question of defence that it is incorrect she had not seen blood stains on her father's clothes upon his return home, she did not affirmatively depose to this fact in her examination-in-chief. Therefore, the Court held that this fact has not to be proved against the appellant's clothing solely on the basis of cross-examination, as such assertion lacks evidentiary foundation in her primary testimony for this part of cross-examination. Conversely, PW-10 Marium testified that she found her father's mobile phone at the crime scene. Although the mobile phone was not produced during trial, her testimony was sufficient to shift the evidential burden to the defence. However, the defence failed to discharge this burden, as it neither presented rebuttal evidence nor challenged or discredited PW-10's testimony during cross-examination. Consequently, the Court shall presume, under Article 129(g) of the Qanun-e-Shahadat Order, 1984 that the mobile phone of the appellant was indeed found at the crime scene. The second link in the chain of evidence comprises the testimonies of two independent and natural witnesses PW-6 Babu, a neighbor of deceased Imran, and his teenage son PW-7 Waqar. Both reside near the crime scene where Imran and Waleed were murdered. PW-6 testified that around 4:42 a.m., he heard six gunshots followed by two more, along with sounds of a struggle, and later observed a tall, lean man in dark brown clothing exiting Imran's house and walking toward the mosque. That evening, he learned of the murders and was informed by his son Waqar that Ismail had admitted firing shots, claiming he was checking a pistol. PW-7 Waqar corroborated this, stating that Ismail told him two individuals had come to purchase a pistol and had fired six and two shots respectively for testing. Ismail was seen wearing brown clothing and left the area shortly after. These statements provide circumstantial support linking the appellant to the crime. Furthermore, the Appellant remained absconder for more than 01 years and finally he was arrested from KPK and his action as fugitive from law is another circumstance where an inference has to draw under Article 129(g) of the Qanun-e-Shahadat



Order, 1984 that he intentionally hide himself out in KPK to avoid trial and there is no reason to believe that the Appellant had no knowledge of murder of his son-in-law and his friend.

16. The principle has been laid down by the Hon'ble Supreme Court in the case of **Muhammad Abid**<sup>1</sup> that as a form of circumstantial evidence, the "last seen evidence" must be incompatible with the innocence of the accused and its evidentiary value is assessed through principles of probability, causation, and logical connection, and is attracted only when certain foundational elements are established: (i) cogent reasons indicating that the deceased was ordinarily expected to accompany the accused; (ii) proximity of the crime scene; (iii) a minimal time gap between the last sighting and the death; (iv) absence of third-party interference; (v) existence of motive; and (vi) determination of the time of death. In the present case, all these elements stand satisfied. The motive arising from a monetary dispute between the appellant and the deceased, who was his son-in-law, has been clearly established. The crime scene was in close proximity to the appellant's residence, his presence confirmed by independent witnesses and no evidence suggests the involvement of any third party. In view of the cumulative effect of these factors, the application of the "last seen" principle is fully justified, and no interference is warranted with the impugned judgment.

17. It is a settled principle of criminal jurisprudence that the object of punishment is not only retribution and deterrence but also reformation of the offender. The courts are empowered to exercise judicial discretion in tailoring punishment where mitigating factors exist, ensuring that justice is tempered with equity and compassion. Reliance is placed on the dicta laid down by the Hon'ble Supreme Court in the case of **Faiz Ahmad**<sup>2</sup>, wherein it was held that sentencing must be proportionate to the gravity of the offence and the

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<sup>1</sup> Muhammad Abid v. The State & another (PLD 2018 Supreme Court 813)

<sup>2</sup> Faiz Ahmad & another v. Shafiq ur Rehman (2013 SCMR 583)

attendant circumstances which lack recovery of actual weapon. In such circumstances, while the offence of murder stands proved, the aggravating factors that may justify the imposition of the maximum sentence are not fully established and the impugned Judgment does not specify about the sentence in double murder case.

18. In view of the above, and while maintaining the conviction, I am inclined to take a lenient view with respect to sentencing. Accordingly, the instant Criminal Appeal is dismissed. However, the sentence of life imprisonment awarded to the Appellant under section 302(b) PPC is converted into Sentence under section 302(c) PPC and is modified and reduced to the period of **20 (Twenty) years each** on two counts for murder of Imran Khan son of Saeed Jan and Waleed Wali son of Wali Muhammad while maintaining the benefit of section 382(b) PPC as extended by the trial Court.

19. Criminal Jail Appeal stands dismissed.

**J U D G E**