IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

<><><><><>

Criminal Appeal No. 233 of 2020

Appellant	Muhammad Asif Ashraf son of Muhammad Ashraf through Mr. Muhammad Ashraf Kazi, Advocate.
Complainant	Muhammad Pervaiz son of Abdul Qadir through Mr. Shaikh Jawaid Mir, Advocate.
Respondent	The State. through Mr. Ali Hyder Saleem, DPG.

Criminal Revision Application No.86 of 2020

Applicant	Muhammad Pervaiz son of Abdul Qadir through Mr. Shaikh Jawaid Mir, Advocate.
Respondent No.1	Muhammad Asif Ashraf son of Muhammad Ashraf through Mr. Muhammad Ashraf Kazi, Advocate.
Respondent No.2	The State. through Mr. Ali Hyder Saleem, DPG.
Dates of hearing	05.08.2020, 13.08.2020, 10.09.2020 and 30.09.2020
Date of Judgment	**02.11.2020**

<><><><><>

JUDGMENT

SHAMSUDDIN ABBASI, J. Through captioned appeal, appellant Muhammad Asif Ashraf son of Muhammad Ashraf has challenged the vires of the judgment dated 15.02.2020, penned down by learned Additional Sessions Judge-I {Model Criminal Trial Court}, Karachi {South}, in Sessions Case No.2059 of 2015, arising out of FIR No.109 of 2015 registered at P.S. Mithadar, Karachi, for the offences punishable under Sections 302 & 34, PPC, through which he was convicted for the offence under Section 302(b) P.P.C. and sentenced to life imprisonment for committing murder of Shireen Khan and ordered to pay compensation of Rs.500,000/- (Rupees five hundred thousand) to the legal heirs of deceased, in default whereof he was ordered to undergo simple imprisonment for six months more. The benefit in terms of Section 382-B, Cr.P.C. was not extended in favour of the appellant as he has not remained in custody from the very beginning till ending of the trial.

2. The appellant has preferred Criminal Appeal No.233 of 2020 against conviction and sentence awarded to him by the learned trial Court whereas the Criminal Revision Application No.86 of 2020 has been filed by applicant Muhammad Pervaiz, who is complainant of FIR No.109 of 2015, seeking enhancement of sentence from life imprisonment to death and claimed compensation of Rs.5,684,966/- {Rupees five million six hundred eighty four thousand nine hundred and sixty six} towards medical expenses incurred on the treatment of deceased instead of Rs.500,000/- {Rupees five hundred thousand} as ordered by the learned trial Court.

3. FIR in this case has been lodged on 25.05.2015 at 5:00 pm whereas the incident is shown to have taken place on the same day i.e. 25.05.2015 at 3:20 pm. Complainant Muhammad Pervaiz son of Abdul Qadir has stated that he is peon in Tata Group, having its office at 6th floor, Textile Plaza, M.A. Jinnah Road, Karachi, while his younger brother, Shireen Khan aged about 25/26 years, is also working in the same company as lift operator. On the fateful day his brother was present on his duty in the parking floor of the building. It was about 3:20 pm there was an altercation between his brother and Asif Sethi and his workers whereupon Asif Sethi made firing on his brother with intention to kill him and in result of such firing his brother become seriously injured sustaining head injury. The complainant with the help of Commander Shakeel and other office colleagues shifted his brother to Civil Hospital, Karachi, for treatment.

4. The duty officer SIP Azhar Iqbal, on receipt of information, went to Civil Hospital, Karachi, through entry No.26 and sought permission from MLO to record statement of injured, but he was unfit to give statement as informed to him by the MLO so he recorded 154, Cr.P.C. statement of complainant Muhammad Pervaiz and subsequent thereto incorporated the same in FIR Book after reaching at P.S. Mithadar, Karachi, through entry No.31, whereby a case vide FIR No.109 of 2015 under Sections 302 and 34, PPC was registered on behalf of the State.

5. Pursuant to the registration of FIR, the investigation was followed by SIP Muhammad Islam, who conducted site inspection and secured an empty of 30 bore and blood-stained earth from the place of occurrence and got the same inspected through ballistic expert and chemical examiner and recorded 161, Cr.P.C. statements of witnesses. Thereafter, by the orders of high-ups, the investigation was transferred from him and entrusted to SIP Muhammad Ejaz Awan, who conducted site inspection, recorded 161, Cr.P.C. statements of witnesses and with the approval of competent authority submitted challan under Sections 324 and 34, PPC showing the accused as absconders on 28.07.2015. On 18.02.2016 the injured Shireen Khan expired during treatment so he completed proceedings under Section 174, Cr.P.C. and submitted supplementary challan under Sections 302, 34 and 109, PPC with the approval of competent authority under Section 512, Cr.P.C. showing accused as absconders.

6. An amended charge in respect of offences punishable under Sections 302, 324 and 34, PPC was framed against appellant and co-accused Muhammad Nouman and Muhammad Hannan at Ex.8. All of them pleaded not guilty to the charged offence and claimed trial.

7. At trial, the prosecution has examined as many as eleven witnesses, namely, complainant Muhammad Pervaiz as PW.1 Ex.9, Kashif Hussain as PW.2 Ex.10, Pervaiz Ahmed son of Abdul Karim as PW.3 Ex.11, Muhammad Shafique as PW.4 Ex.16, Shakeel-ur-Rehman as PW.5 Ex.18, Dr. Shakeel Ahmed as PW.6 at Ex.22, Janzar as PW.7 Ex.23, SIP Azhar Iqbal as PW.8 Ex.24, Inspector {Retd} Muhammad Islam {first investigating officer} as PW.9 Ex.26, Inspector Muhammad Ejaz Awan {second investigating officer} as PW.10 Ex.27 and MLO Dr. Noor Ahmed as PW.11 Ex.28. All of them have exhibited number of documents in their evidence. Vide statement Ex.29, the prosecution closed its side of evidence.

8. Statements under Section 342, Cr.P.C. of accused Muhammad Asif Ashraf {appellant herein}, Muhammad Nouman and Muhammad Hannan recorded at Exs.30, 31 and 32 respectively, wherein they denied the prosecution case and professed their innocence. They

opted not to make statements on Oath under section 340(2), Cr.P.C. and did not produce any witness in their defence.

9. A joint application, duly signed by the learned counsel for the complainant as well as of accused, seeking separation of trial of accused Muhammad Nouman and Muhammad Hannan under Juvenile Justice System Ordinance, 2000, was filed. After hearing the respective sides, the learned trial Court allowed the said application on 13.01.2020 and ordered to proceed the case of juvenile offenders Muhammad Nouman and Muhammad Hannan separately from initial stage of framing charge against them while the case against appellant was ordered to proceed from the same stage of final arguments.

10. 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 mentioned and detailed in para-1 supra. Feeling aggrieved by the conviction and sentence as above, the appellant has preferred the captioned appeal while revision application has been filed by the applicant seeking enhancement of sentence from life imprisonment to death and claimed compensation of Rs.5,684,966/- {Rupees five million six hundred eighty four thousand nine hundred and sixty six}.

11. Since the captioned appeal and revision application relate to a common order involving similar question of law and facts, therefore, we deem it appropriate to decide the same together through a single judgment.

12. It is contended on behalf of the appellant that he has been falsely implicated in this case by the complainant and eye witnesses after joining hands with the local police at the instance of Anwar Ahmed Tata, Head of Tata Pakistan Company with whom there exists previous enmity of appellant over the affairs of Textile Plaza and pendency of civil and criminal litigation between them. It is next submitted that the complainant and eye-witnesses being employee of Tata Pakistan Company and subordinate to Anwar Ahmed Tata have falsely implicated the appellant in the commission of offence. It is also submitted that the prosecution has not been able to produce any independent witness in support of its case and the witnesses who

were examined are interested and set-up witnesses, who have falsely deposed against the appellant, hence no reliance can be given to their testimony. The ocular account has been furnished by interested and set-up witnesses who while appearing before the learned trial Court failed to prove their presence at the scene of offence at relevant time as well as involvement of the appellant in the commission of crime. The post-mortem of deceased was not conducted and the medical evidence adduced by the prosecution is too meager to explain the real cause of death. The alleged recoveries were also useless to connect the appellant with the commission of alleged offence. The prosecution has failed to produce any independent witness to prove that the deceased has been done to death by the appellant. The material available on record does not justify the conviction and sentence awarded to the appellant and the same is not sustainable in the eyes of the law. There is difference of time between occurrence and reaching the witnesses at the scene of offence. The statements of the prosecution witnesses are full of discrepancies and contradictions made therein are fatal to the prosecution case. Admittedly, the appellant was not apprehended at spot nor any incriminating article was recovered from his possession. The prosecution has not been able to bring on record any evidence against the appellant so as to establish his guilt. The FIR has been lodged with due deliberations and consultations and no motive has been set-forth in the FIR. The learned counsel while summing up his submissions has emphasized that the impugned judgment is the result of misreading and non-reading of evidence and without application of a judicial mind, hence the same is bad in law and facts and 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 deserve to be acquitted from the charge and prayed accordingly. In support of his submissions, he has relied upon the cases of *Mamoon and another v The State* {PLD 1962 {W.P.} Karachi 800, *Niaz Muhammad alias Niazi v The State* {1996 P.Cr.L.J. 394}, *Ghulam Muhammad and 2 others v The State* {PLD 1975 Supreme Court 588}, *Pir Jalal Shah v The State* {PLD 1982 Karachi 567}, *Fayaz v The State and another* {2014 P.Cr.L.J. 1645}, *Hakim and another v The State* {2020 P.Cr.L.J. 169}, *Wali Muhammad v The State* {1969 SCMR 612} and *Ashique Hussain v The State 1993 SCMR 417}*

13. In contra, the learned Deputy Prosecutor General and the learned counsel for the complainant have contended that the FIR has been lodged with sufficient promptitude wherein the appellant has been nominated attributing specific role of firing. 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. The medical evidence in this case is in line with the ocular account which fully corroborates the story of the FIR. The role of the appellant is borne out from the medical evidence adduced by the prosecution. The recoveries have also been proved through reliable evidence adduced by the recovery witnesses. The appellant has brutally committed murder of deceased by making straight firing on him as such he deserves no leniency. The plea taken by the defence that appellant has no nexus with the occurrence does not carry weight vis-à-vis providing help to the defence. The appellant intentionally remained fugitive from law for a considerable period without furnishing any plausible explanation, which shows his involvement in the commission of crime. The prosecution has successfully proved its case against the appellant beyond shadow of any reasonable doubt, thus, the appeal filed by the appellant warrants dismissal and his conviction and sentence recorded by the learned trial Court is liable to be enhanced from life imprisonment to death and the amount of compensation may be enhanced from Rs.500,000/- {Rupees five hundred thousand} to Rs.5,684,966/- {Rupees five million six hundred eighty four thousand nine hundred and sixty six} towards medical expenses incurred on the treatment of deceased. The learned counsel for the complainant has placed reliance on the cases of *Munir Ahmed v The State* {2020 SCMR 968}*, Muhammad Iqbal v The State* {PLD 2001 Supreme Court 222}, *Muhammad Shabbir v The State 2020 SCMR 1206, Nasir Iqbal v The State and* {2018 P.Cr.L.J. 143}, *Khair Muhammad alias Khario v The State and another* {2018 P.Cr.L.J. 617}, *Muhammad Miskeen v The State* {2019 P.Cr.L.J. 1423}, *Muhammad Sharif v Muhammad Javed alias Jeda Tedi* {PLD 1976 Supreme Court 452}, *Aurangzeb v The State* {1978 SCMR 255}, *Asad Ahmed v Akhlaq Ahmed and another* {2010 SCMR 868} and *Muhammad Iqbal v The State* {PLD 2001 Supreme Court 222}.

14. 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.

15. As to the contention that post-mortem examination of the deceased was not conducted, the factum of Qatl-i-Amd of Shireen Khan has been independently established through strong and convincing evidence adduced by PWs Dr. Shakeel Ahmed {Ex.22} and Dr. Noor Ahmed {Ex.28}. PW Dr. Noor Ahmed has deposed that on 25.05.2015 he was posted as MLO at Civil Hospital, Karachi. It was about 4:10 pm an injured Shireen Khan son of Abdul Qadir, aged about 25 years, brought at hospital with history of firing. He examined the injured and found a gutter shaped wound measuring about 6 cm x 2 cm, which was fresh in nature and caused by fire-arm projectile. The injury was kept reserved and the patient was referred to CMO for treatment. He produced M.L. Certificate No.2380 of 2015 at Ex.28/A. PW Dr. Shakeel Ahmed has deposed that on 16.07.2015 while he was Neurologist at Medicare Centre, PECHS, Karachi, a patient Shireen Khan was brought at hospital from Liaquat National Hospital, Karachi, who was unstable and unconscious. He examined him and found that brain operation of patient was conducted by removing his piece of skull bone and due to brain edema the said piece was placed in his abdomen so that it can be used when needed. The patient remained under his care and treatment for about seven months during which he got infections, his lungs and heart become weak and put on ventilator, but he could not survive and finally expired on 18.02.2016. He produced case summary of patient and death certificate, issued by Dr. Asma Mazhar, declaring cause of death as a result of cardio respiratory arrest. Mere fact that post-mortem examination was not conducted has no material effect or legal consequence for the reason that deceased had an injury over left parito-occipital region of skull caused by fire-arm and expired after about seven months as a result of sustaining such injury. It is important to note that injured Shireen Khan remained under treatment in hospital since the day of sustaining injury and died due to said injury, hence in view of this background of the matter non-performance of postmortem would not be fatal to the prosecution case as held by

the Hon'ble Supreme Court in the case of *Abdul Rehman v The State* {1998 SCMR 1778}. We, therefore, are in agreement with the learned trial Court that deceased Shireen Khan died his unnatural death in result of firearm injury as described by the Medical Officers.

16. As to the ocular account is concerned, the prosecution has examined complainant Muhammad Pervaiz as PW.1 Ex.9, who has produced his statement under Section 154, Cr.P.C. recorded by SIP Mazhar Iqbal in emergency ward of Civil Hospital, Karachi, at 4.30 pm. A bare look to such statement reveals that the complainant has simply given information regarding firearm injury sustained by his brother Shireen Khan {deceased} at the hands of appellant Asif Sethi. He has not disclosed to police that incident has taken place within his sight and he is an eye-witness of the incident, even he has not disclosed the names of the prosecution witnesses who at the relevant point of time were present at the scene of occurrence and this fact has also been admitted by him that he had not seen appellant Asif Sethi shooting his brother, he however, claimed to be the eye-witness of the incident and deposed in his examination-in-chief that when he reached at the place of occurrence Asif fired at his brother Shireen Khan, who sustained head injury and fell down on the ground. Learned counsel for the appellant has emphasized that in view of his clear cut admission, the complainant is not eye-witness of the incident. To substantiate this aspect of the matter, we have gone through the evidence of PWs Kashif Hussain {Ex.10} and Pervaiz Ahmed Ex.11. Both of them in their respective statements have not disclosed the presence of complainant at the crime scene. In view of this background of the matter, we cannot give due weight to the testimony of complainant with regard to his presence at the scene of offence, which is not free from doubt and unsafe to rely upon in view of his above admission in cross-examination. He has only given information to police regarding alleged incident.

17. PW Janzar {Ex.23} is the uncle of complainant as well as of deceased. He deposed that on the day of incident while he was present on his duty as Chowkidar at Bungalow No.173-Z, Block-2, PECHS, Karachi, he received phone call of his nephew Pervaiz, who

informed him that Shireen Khan has sustained bullet injury so he rushed to Civil Hospital and saw his nephew Shireen Khan under treatment and his head was bloody. He inquired from Shireen Khan as to who inflicted injury he named Asif Sethi in low voice.

18. The other witnesses examined by the prosecution are police officials. PW Azhar Iqbal {Ex.24} is serving as Sub-inspector and on the day of incident posted at P.S. Mithadar, Karachi, as duty officer. Similarly, PW Muhammad Islam {Ex.26} is Inspector in rank and on the day of incident posted as SIO/SIP at P.S. Mithadar. He is the first investigating officer of the case. Likewise, PW Muhammad Ejaz Awan {Ex.27} is also Inspector and on the day of incident posted at SIU/CIA, Saddar. He conducted final investigation and submitted challan in Court. All of them are high rank officers of police, thus it is not believable that they may depose falsely against the appellant and that too without any rhyme or reason. It has remained consistent view of the Hon'ble apex Court that the police officials are as good as private witnesses and their testimony cannot be discarded merely for the reason that they are police officials unless the defence succeeds in giving dent to the statements of prosecution witnesses and prove their mala fide or ill-will against the appellant/accused. Admitted position of the case is that neither there had existed any relationship between the police officials and the appellant nor earlier they knew each other, thus there was no occasion for the police officials to falsely implicate the appellant in the crime.

19. PW.2 Kashif Hussain Ex.10 and PW.3 Pervaiz Ahmed Ex.11 while recording their evidence have established their presence at the place of occurrence. They have deposed same facts in their evidence, which are in line to that of their earlier statements recorded by the investigating officer during investigation. Both of them have stated that their Boss Commander Shakeel-ur-Rehman called them in his office and informed that he has seen something wrong in the parking area, situated at first floor, through CCTV camera and directed them to go and see what had happened there. On his direction, both of them went to the parking area and saw lift operator Shireen Khan {deceased} in injured condition, who informed them that Asif Sethi {appellant} and his companions have beaten him and in the

meantime Asif Sethi came there, duly armed with pistol, and fired at Shireen Khan, which hit on his head and he fell down on the ground. Both of them rushed towards their office, situated at 6th floor, through stairs in order to call ambulance as well as to inform their Boss Shakeel-ur-Rehman. They alongwith their Boss again came at the place of incident and found injured Shireen Khan missing, however, the people gathered there informed that Asif Sethi {appellant} took injured to Jinnah Hospital, Karachi, in his car. They immediately went to Jinnah Hospital, but the injured Shireen Khan was not available there so they went to Civil Hospital, Karachi, and saw injured Shireen Khan in emergency ward of Civil Hospital. Both of them have stated that Shireen Khan was in serious condition due to head injury and doctors were providing treatment to him, who was subsequently shifted to Liaquat National Hospital, where he was operated upon.

20. No doubt PWs Kashif Hussain and Pervaiz Ahmed were employees of Tata Pakistan Company and complainant Muhammad Pervaiz and deceased Shireen Khan were also working in the same company as peon and lift operator respectively, despite they cannot be considered as interested witnesses rather they are natural witnesses because they being employees of Tata Pakistan Company were present in the office when their Boss called them and informed that something has happened in the parking area and directed them to go and see what had happened there as such their presence on the scene of occurrence is natural, however, PW.3 Pervaiz Ahmed has stated that he left Tata Pakistan Company well before recording his statement before the learned trial Court. Even otherwise, the testimony of PW.2 Kashif Hussain and PW.3 Pervaiz Ahmed cannot be disbelieved because the Court has to see the truthfulness and credibility of such witnesses. As regards the contention that both these witnesses were office colleagues of complainant and deceased and working in the same company where they worked, and, thus, they are interested witnesses and their testimony could not be believed, suffice it to say that mere working relation of a witness with complainant or deceased is no ground for discarding his evidence if he, otherwise appears to be truthful and his presence at the place of occurrence is probable. 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, of 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 the accused on account of the occurrence, by no stretch of imagination can be regarded as an "interested witness". It is noteworthy that witnesses having some relation with deceased some time, 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. Both these witnesses have deposed full account of the incident and fully involved the appellant in the commission of offence by deposing that firstly there had been a quarrel taken place between Asif Sethi {appellant} and Shireen Khan {deceased} whereupon Asif Sethi alongwith his companions had beaten Shireen Khan and secondly while PWs Kashif Hussain and Pervaiz Ahmed came at the scene of offence on the directions of their Boss Commander Shakeel-ur-Rehman to see what had happened in the parking area, in their presence, the appellant fired from his pistol on Shireen Khan, which hit on his head and owing to such injury he expired during treatment. We are of the firm view that both the 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 manners. In addition to this, they were subjected to lengthy cross-examination by the defence where multiple questions were asked by the learned defence counsel, but could not extract anything from them, as they remained consistent on all material points. The minor discrepancies in the statements and in the documents particularly regarding minor difference in mentioning of times of different proceedings in the investigation are not enough to demolish the case of prosecution because these discrepancies always occur and more so always possible time of occurrence is mentioned in the documents. In the case in hand, the appellant has failed to bring on record any material to show any animosity or ill-will with complainant and the prosecution witnesses, thus in the absence thereof, the competence of prosecution witnesses was rightly believed by the learned trial Court. Insofar as the contention of learned defence counsel that there are so many defects in the

investigation benefit of which ought to have been given to the appellants, suffice it to say that a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The reference in this context may well be made to the case of *State/ANF v. Muhammad Arshad* {2017 SCMR 283} wherein the Hon'ble Supreme Court of Pakistan held that:-

> *"We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of a crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case."*

21. The direct evidence, as detailed above, is in shape of evidence of PW.1 complainant Muhammad Pervaiz {Ex.9}, PW.2 Kashif Hussain {Ex.10} and PW.3 Pervaiz Ahmed {Ex.11}, who have supported the case of the prosecution and finds corroboration from the other witnesses coupled with medical evidence in shape of PWs Dr. Shakeel Ahmed {Ex.22} and Dr. Noor Ahmed {Ex.28}, referred herein above.

22. PW.2 Kashif Hussain and PW.2 Pervaiz Ahmed have been supported by PW Shakeel-ur-Rehman {Ex.18}, who has deposed in same line as that of the abovenamed eye-witnesses. This witness has deposed that on the day of incident he was present in his office, situated at 6th floor of Textile Plaza where he came to know that some quarrel had taken place in the parking area so he asked Pervaiz Ahmed to go and see what had happed there and after about 5 to 10 minutes Pervaiz Ahmed returned back and informed that Asif Sethi had fired on Shireen Khan. He alongwith Kashif and Pervaiz rushed to the parking area where he saw blood lying on the ground and the people present there informed that Asif Sethi took injured to Jinnah Hospital, Karachi, so they went to Jinnah Hospital but injured was not available there as such then they went to Civil Hospital and saw injured in emergency ward and Asif Sethi was also present there. He further deposed that due to critical condition of injured Shireen Khan, he was first shifted to Liaquat National Hospital and then to

Medicare Centre, PECHS, Karachi, and finally expired after eight months of the incident. He has handed over the CCTV footages to investigating officer.

23. A close scrutiny of the evidence of prosecution witnesses reveals that they were subjected to lengthy and searching cross-examination but nothing could be extracted in favour of defence showing that either the offence not happened in the manner narrated in the FIR or deposed by the PWs. Similarly, no mala-fide, ill-will, previous enmity or personal grudge could be brought on record showing that evidence furnished by the prosecution is based on malice or ill-will. The perusal of the record shows that complainant and witnesses have no motive or reason to falsely involve the appellant particularly when he did not plead any specific enmity against them. The medical evidence is in line with the ocular account furnished by the prosecution supported by circumstantial evidence.

24. Another intriguing aspect of the matter, which is an immense importance, is the absconsion of appellant. The record reveals that after registration of the FIR, the appellant first obtained protective bail from Hon'ble Lahore High Court and subsequent thereto approached the learned Sessions Judge, Karachi {South} for seeking pre-arrest bail on 08.06.2015 and on declining the same absconded away from Court on 27.06.2015. He was shown as absconder in the interim as well as supplementary challan. It is noteworthy that the appellant has joined trial on 14.10.2017, which means that he remained fugitive from law for about two years and four months 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 abscondence for a long time draws an adverse inference against him about his guilty conscious. We are conscious of the settled proposition of law 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. Reliance may well be made to the case of *Mst. Roheeda v. Khan Bahadar* {1992 SCMR 1036}.

25. As to the contention of learned defence counsel that on the same set of evidence, co-accused Muhammad Nouman and Muhammad Hannan, the sons of appellant Asif Sethi, have been acquitted by the learned trial Court, suffice to observe that none from the complainant and eye-witnesses have either nominated or involved them in the commission of crime and did not depose a single word as to their participation in the alleged offence as such we are of the considered view that the learned trial Court has rightly acquitted them of the charge.

26. The other objection raised by the learned counsel for the appellant that complainant and eye-witnesses being employees of Tata Pakistan Company and subordinate to his Boss have deposed falsely against the appellant on account of controversy between head of Tata Pakistan Company and appellant Asif Sethi due to civil and criminal litigation pending between them in Court, we would like to say that might be there was some dispute between the appellant and the head of Tata Pakistan Company, but we do not see any ill-will or animosity on the part of complainant and eye-witnesses to falsely implicate the appellant in this case owing to such dispute. Even otherwise, the appellant has not been able to bring on record any evidence to substantiate his plea. The appellant while recording his statement under Section 342, Cr.P.C. has taken the plea that at the time of incident 4/5 armed persons caught hold of him from back and meanwhile someone made firing which hit to Shireen Khan. The appellant further stated that he alongwith his sons took injured Shireen Khan to hospital on humanitarian grounds. He lodged FIR No.123 of 2015 registered at same P.S. Mithadar under Section 324, 365, 511 and 34, PPC on 12.06.2015 regarding the same incident allegedly taken place on 25.05.2015, however, the record shows that said FIR had been recommended by police for its disposal under 'B' class and the concerned Magistrate after hearing the parties approved such report and disposed of the FIR under 'B' class vide

order dated 28.07.2015. The entire record is silent as to whether appellant had assailed such order in appeal or filed any direct complaint, which established that the appellant has admitted the report of the investigating officer for disposal of said FIR under 'B' class and the order passed by the learned Magistrate approving report of police as well as his presence at the crime scene and sustaining fire-arm injury to Shireen Khan {deceased}. It is noteworthy that the appellant has neither appeared on Oath under Section 340{2}, Cr.P.C. nor adduced any evidence to substantiate the plea of his innocence. The prosecution has produced footages of CCTV camera which too shows the presence of appellant at the scene of offence, however, the prosecution has taken the plea that at the time of incident there was only one camera installed which only covered the space of entering lift area and the incident has taken place beyond this area. Suffice to observe that plea taken by the appellant in his defence has not been established through independent and solid evidence. The crime was witnessed by PW.2 Kashif Hussain and pw.3 Pervaiz Ahmed, whose statements have been found cogent, solid and reasonable, thus such evidence of the PWs cannot be brushed-aside merely on the basis of bald denial of the appellant claiming his false implication without any solid proof.

27. The prosecution, in our considered opinion, has led sufficient evidence to prove its case against the appellant beyond any shadow of doubt and when once the burden of proof is discharged by the prosecution with cogent evidence then the appellant/accused become heavily burdened to prove his innocence through reliable evidence. The appellants did not opt to appear under Section 340{2}, Cr.P.C. nor examine any witness to prove his innocence. There is no evidence on the record on behalf of the appellant that the prosecution witnesses have some grudge against him to falsely implicate him in the instant case. We have noticed that in rebuttal to overwhelming prosecution evidence, the appellant has failed to produce any tangible material to rebut the trustworthy and confidence inspiring evidence of the prosecution witnesses. The case law cited by the learned counsel for the appellant, in support of his submissions, in our humble view, the facts and circumstances of the said cases are distinct and different from the present case, therefore, none of the precedents cited by the learned counsel are helpful to the appellant.

28. Considering the facts and circumstances, as discussed above, we are of the humble view that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on fair evaluation of evidence, hence calls for no interference by this Court. Thus, the conviction and sentence awarded to the appellant by the learned trial Court through impugned judgment dated 15.02.2020 is hereby maintained and the instant Criminal Appeal is dismissed as being devoid of any merit. We may make it clear that the period spent by the appellant in prison shall be treated as sentence served under the provision of Section 382-B, Cr.P.C.

29. As to Criminal Revision Application No.86 of 2020 is concerned, suffice to observe that the manner in which the occurrence had taken place does not disclose premeditated circumstances whereas the attack upon deceased by the appellant seems to be without premeditation. The appellant had only made a single shot, which led to death of deceased. This position give rise to the mitigating circumstances due to which capital punishment of death cannot be awarded to the appellant. In the circumstances, the Criminal Revision Application, seeking enhancement of sentence from life imprisonment to death, is dismissed. As to the claim of Rs.5,684,966/- allegedly expensed on the treatment of deceased is concerned, suffice to observe that such a claim cannot be decided in criminal proceedings. However, the applicant/ complainant would be free to seek his remedy from a Court of competent jurisdiction in this regard.

30. The captioned appeal and revision application stand disposed of in the foregoing terms.

JUDGE

JUDGE

NAK/PA