

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Jail Appeal No.566 of 2018

Dates of hearing: : 28.09.2021
Date of Judgment : 15.10.2021
Pauper Appellant Saeed Noor : through Mr. Mohammad Hanif
Noonari, Advocate
State : through Mr. Talib Ali
Memon, Asstt. P.G. Sindh.

JUDGMENT

Muhammad Saleem Jessar, J.- By means of this Criminal Appeal appellant Saeed Noor has assailed judgment dated 18.10.2018 handed down by learned IV-Additional Sessions Judge, Karachi East in Sessions Case No.610 of 2013 (Re: State Vs. Saeed Noor S/O Ameer Hamza), being outcome of Crime No.448/2012, registered at P.S. Zaman Town K.E. under Sections 302 PPC, whereby the appellant has been convicted for the offences punishable under Section 302(b) PPC and sentenced to undergo R.I. for life imprisonment and to pay fine of Rs.50,000/- (Rupees Fifty Thousand only) and in case of non-payment of fine, the appellant was ordered to suffer S.I. for six months more.

The crux of prosecution case, as per contents of FIR, lodged by complainant, Mst. Saeeda Khatoon at P.S. Zaman Town, are that she resides at the address mentioned in the FIR with her children. On the day of incident i.e. 05.09.2012 her son Ameer Hussain aged about 14 years was available in the street, when at about 12.00 / 12.15 p.m. accused Saeed Noor caught him hold with collar and started beating him, then she rashly reached in gali / street and found that his son was laying down in the street and Saeed Noor was beating him, when she tried to save him and restrain the accused, the accused also gave her beatings with fist and kicks. She further alleged that then she brought her husband, who was present at upper floor of house; however, accused Saeed Noor also used

abusive language against him, caught hold him with collar and fired on his left eye due to personal enmity, with the result he died at the spot. Thereafter, complainant went to PS and lodged FIR against the accused.

After completing usual investigation, IO submitted challan against the present accused Saeed Noor showing him as absconder before the concerned Judicial Magistrate, who completed proceedings under Sections 87 and 88 Cr. P.C. and declared him proclaimed offender. Thereafter, accused Saeed Noor was arrested by SIP Safdar of PS Awami Colony, who produced him before concerned Judicial Magistrate on 06.5.2013, who after taking cognizance, sent the R&Ps of this case to Sessions Judge, Karachi (East) as the case was exclusively triable by the Court of Sessions, where formal charge against the accused was framed vide Ex.2 to which he pleaded not guilty and claimed to be tried vide his Plea Ex2/A.

In order to prove its case, prosecution examined PW-1, Dr. Dilip Khatri at Ex.3, who produced postmortem report and medical certificate of cause of death as Ex.3/A, and 3/B respectively. Thereafter, the case was transferred to the trial Court on 11.02.2015 for its disposal according to law.

The trial Court then recorded statement of PW-2, SIP Aziz Muhammad at Ex.4, who produced entry No.14, inquest report, memo of inspection of dead body, receipt of dead body, copy of FIR and roznamcha entry No.16 as Ex.4/A to 4/G respectively. PW-3, complainant Saeeda Khatoon, was examined at Ex.6, while PW-4 Ameer Hussain was examined as Ex.7. PW-5, Muhammad Husain was examined at Ex.8, whereas PW-6 Hussain Ahmed was examined at Ex.9, who produced site inspection memo as Ex.9/A. PW-7 Inspector, Mohammad Aslam was examined at Ex.10, who produced FSL report as Ex:10/A. Thereafter, learned ADPP closed the side of prosecution vide his statement Ex.11.

Statement of accused under section 342 Cr. P.C. was recorded vide Ex.12, wherein he denied the allegations of prosecution leveled against him and claimed his false implication in this case. He further stated that complainant party was his tenant, who were defaulter in payment of rent therefore he got vacated his house from them, therefore they have involved him in this false case. However, accused neither examined

himself on oath under Section 340(2) Cr. P.C. nor produced any witness in his defence.

After formulating the points for determination, recording evidence of the prosecution witnesses and after hearing the arguments of the parties, learned trial Court vide impugned judgment convicted and sentenced the accused / appellant as stated above. Against said judgment the appellant has preferred instant appeal.

I have heard learned counsel for the appellant as well as learned A.P.G. appearing for the State and perused the material available on the record.

Learned counsel for pauper appellant submitted that there are contradictions between the statements of prosecution witnesses; besides, there are also discrepancies in the prosecution case. He next submitted that, per prosecution case, deceased had sustained firearm injury on his **left eye** but the Medico Legal Officer namely, Dr. Dileep Khatri deposed that deceased sustained firearm injury on his **right eye**. He, therefore, submitted that it being a major contradiction, vitiates prosecution evidence. He further submitted that no offensive weapon was recovered from the appellant, even the witnesses who have been examined by the prosecution, are not independent witnesses; hence, he submitted that prosecution has not come with clean hands. He, therefore, prayed that by allowing instant appeal, impugned judgment may be set aside and appellant may be acquitted of the charge by extending him benefit of doubt. In support of his contentions, he placed reliance upon case-law (i) *Allah Ditta Vs. The State and another (2019 P. Cr. L.J. 172)*, (ii) *Mohammad Mansha Vs. The State (2018 CMR 772)*, (iii) *Tanveer alias Chand Vs. The State (2018 YLR 2264)*, (IV) *Ashfaque Ali Vs. The State (2018 YLR Note 246)*, (v) *Mohammad Imran Vs. The State (2018 YLR 2394)*, (vi) *Sikandar alias Sani Vs. The State (2018 MLD 1220)*, (vii) *Mohammad Islam Vs. The State (SBLR 2018 Sindh 1580)* and (viii) *Allah Ditta Vs. State (PLJ 2018 Cr.C. 843)*.

On the other hand, learned Assistant P.G. Sindh, appearing for the State, opposed the appeal and rebutted arguments advanced by learned counsel for pauper appellant. He submitted that incident occurred on 06.09.2012 whereas appellant was arrested on 06.5.2013 after about one year of the incident, therefore he had sufficient time to destroy the

evidence regarding offensive weapon. In support of his argument, he placed reliance upon the case of *Mohammad Nadeem alias Deemi Vs. The State (2011 SCMR 872)*. As far as, defective investigation is concerned, learned A.P.G. submitted that due to fault committed by the police or the prosecution, complainant should not be penalized. In this respect, he placed reliance upon the case of *NAWAB ALI Vs. The STATE (2014 p. Cr. L.J. 885)*. Lastly, he submitted that it was a broad-day light incident and PWs had fully supported the case of prosecution, therefore, impugned judgment does not suffer from any illegality or infirmity, which may require interference by this Court. In support of his contentions, he placed reliance upon the case of *MOHAMMAD ARSHAD Vs. The STATE (2020 SCMR 2025)*.

Prosecution, in the first instance, examined PW-1 Dr. Dilip Khatri, who deposed that on 05.9.2012 he was posted as SR.MLO at JPMC. On said date at about 3.15 p.m. dead body of deceased Hussain Ahmed @ Chand S/o Abdul Shakoor was brought by SIP Muhammad Aslam who submitted inquest report for postmortem examination and cause of death. He started postmortem at 3.30 p.m. and finished at 4.15 p.m. On examination of the dead body, he found following internal and external injuries:-

1. Punctured fire arm wound irregular in patron 6 cm x 4cm over **right eye** ball. Both severe blackening and burning. Bursted eye ball fractured orbital margin (wound of entry)
2. Punctured fire arm wound 1 cm in diameter with averted margins on back of head occipital region (exit wound).

He further deposed that internally vault of skull multiple fractured with cranial cavity full of massive blood in clots meninges and brain matter were damaged. Otherwise rest of body was normal. He opined that cause of death was due to cardiorespiratory failure on account of head injury resulting from firearm. He further deposed that Qameez and Banian were soaked in blood sealed, labeled and handed over to SIP Mohammad Aslam.

In his cross-examination, he admitted that he had not mentioned the distance of causing injury in the postmortem report. He also admitted that he cannot opine about the weapon used in causing injuries. He further admitted that entry wound was on the **right eye** and injury was through and through in the **straight direction**.

In the instant case, ocular testimony is consisting of .two witnesses i.e. P.W.3, complainant Mst. Saeeda Khatoon and P.W.4, Ameer Hussain, who are respectively widow and son of the deceased.

Complainant Mst. Saeeda Khatoon in her evidence at Ex.6 deposed that on the day of incident i.e. 05-09-2012, her son Ameer Hussain aged about 14 years was playing in a street at about 12.00 noon. The accused Saeed Noor was beating her son, who raised cries on which she came out from the house, but the accused Saeed Noor caused butt blow of pistol on her head. Thereafter, she went at the first floor of her house and brought her husband Hussain S/o Kala Chand, but the accused Saeed Noor fired from his pistol upon her husband which hit him on his **left eye** as a result he fell down and died at the spot. She has further deposed that thereafter she went to PS and got registered FIR against the accused. The police had also recorded her statement under Section 161 Cr.P.C. She identified accused present in the Court to be same.

In her cross-examination, she admitted that place of incident was situated at **thickly populated area**. She also admitted that out of two PWs shown in challan one is relative of her husband and another is neighbor. She; however, denied a suggestion that some unknown persons had committed murder of her husband and that she has falsely implicated the accused in the case due to previous enmity as he was their landlord.

PW-4, Ameer Hussain, who is son of the deceased, in his evidence recorded vide Ex.7 deposed that on 05-09-2012 he was playing in a street when accused Saeed Noor came at about 11.30 a.m. and started abusing him on which he stopped him, but he pushed him as a result he fell down. He further deposed that in the meantime neighbours called his mother Mst. Saeeda Khatoon, who came at the spot, but the accused Saeed Noor also caused butt blow of pistol on her head. Thereafter, she went and brought his father Hussain S/o Kala Chand, but the accused Saeed Noor also started abusing him and fired from his pistol upon his father which hit him on his **left eye** as a result he fell down and died at the spot. He further deposed that thereafter he alongwith P.W. Hussain and his mother went to PS where his mother got registered FIR against the accused. He further deposed that the police had also recorded his statement under Section 161 Cr. P.C. He identified accused present in the Court to be same.

In his cross-examination, he admitted that PWs Hussain and Mohammad Hussain are his relatives.

Apart from above, prosecution also got examined PW-2 SIP Aziz Muhammad who was posted as SIP at PS Zaman Town on the day of incident. He had recorded F.I.R. lodged by the complainant. In his evidence recorded vide Ex.4, he deposed that on 05-09-2012 he was posted as SIP at PS Zaman Town. His duty hours were from 8.00 a.m. to 8.00 p.m. and was performing his duties as duty officer, when at about 1230 hours he received information through phone at PS from one Nazeer Ahmed that at Gali No.2, Sector 48/F, one Hussain son of Kala Chand had been caused bullet injury, therefore he made entry No14 and proceeded to the pointed place alongwith SHO. He further deposed that they reached the place of incident and found the dead body of deceased Hussain @ Kala Chand. The bullet had hit the **left eye** of deceased. He has further deposed that he inspected the dead body in presence of witnesses and prepared such inquest report under Section 174 Cr. P.C. and memo of inspection of dead body. He also secured one empty from the place of incident which was sealed at the spot. Thereafter, dead body of deceased was shifted to JPMC for conducting postmortem through ASI Aslam Khanzada after giving him letter and he returned back to PS. According to him, complainant Saeeda Khatoon widow of Hussain @ Chand appeared before him at PS and lodged FIR. He further deposed that he narrated entire incident in daily diary vide entry No.16. He identified accused and case property available in the Court to be same.

In his cross-examination, he admitted that he had obtained blood-stained earth from the spot and had also sealed the same, but the same was not available in Court on the day of recording his evidence. He admitted that the bullet had hit above **left eye**. He further admitted that the place of incident was situated in **thickly populated area** and that about 5/10 persons had gathered at the place of incident; however, he did not record the statement of any such person.

Prosecution also examined PW-5, Mohammad Hussain, who deposed that deceased was his maternal uncle. On the day of incident he was available at his place of work when one of his friends came there and informed him that murder of his maternal uncle Hussain @ Chand had taken place. He further deposed that on receiving such information he reached at the place of incident situated in a street of house of complainant where the complainant informed him that accused Saeed Noor had fired upon his maternal uncle, as a result he received injury on his **left eye** and

died at the spot. He further deposed that police also came at the spot and inspected the dead body and recovered one empty of pistol from there and prepared such memo and inquest report at the spot. He further deposed that police had also recorded his statement under Section 161 Cr. P.C. He identified accused present in the Court to be same.

In his cross-examination, he admitted that his signature on the memo was appearing at the below of his name. He further admitted that only one signature was obtained from him on a written document at the spot.

PW-6 Hussain Ahmed deposed that on 05-09-2012 i.e. on the day of incident he was present in his house where he heard fire-shot, therefore, he came out from his house and saw that dead body of Hussain Ahmad @ CHAND was lying in the street. He further deposed that on enquiry, the public informed him that deceased was murdered by Saeed Noor with pistol by firing and he received injury on **left eye**. He further deposed that the accused Saeed Noor had already escaped away from the spot. The police prepared one document at the spot on which his signature was obtained. Thereafter, an ambulance came at the spot who took away dead body to the hospital. He further deposed that I.O had recorded his statement under Section 161 Cr. P.C. He identified accused present in the Court to be same.

In his cross-examination, he admitted that deceased was his close relative. He also admitted that public informed him about the incident. He admitted that he was uneducated and that police had prepared document and obtained his signature at the spot. He also admitted that the contents of memo were not read over to him. He also admitted that police obtained his signature at 3.00 / 3.30 pm.

It is worthwhile to point out at this stage that I.O. of the case namely SIP Mohammad Ashraf Qaimkhani could not be examined by the prosecution and instead PW-7, Inspector Muhammad Aslam was examined in his place, who deposed that he was well conversant with signature of SIP Ashraf Qaimkhani. He further deposed that said I.O. had been **dismissed from his service** on 08.01.2018 and had shifted away to some **unknown place**, therefore there was no any likelihood of his appearance for evidence in this case. He confirmed memo of place of incident at Ex:9/A and said that it bears the signature of SIP Ashraf Qaimkhani. He further deposed that after completing investigation and

legal formalities the said SIP submitted challan against the accused before concerned Magistrate. He was not cross-examined by the defence counsel.

From the evidence of aforesaid prosecution witnesses examined in the instant case, it is apparent that they have fully implicated the accused / appellant in the commission of the alleged offence. From minute scrutiny of their evidence, it appears that their evidence is consistent with each other on all material aspects / points. All of them are firm and unanimous on all material events and I do not find any such flexibility or any material lacuna in their evidence which could damage / destroy the case of the prosecution.

Both the alleged eye-witnesses are unanimous that on the day of incident i.e. 05-09-2012, complainant's son P.W. Ameer Hussain aged about 14 years was playing in the street and that accused Saeed Noor was beating him and on his cries complainant came out from her house, but the accused Saeed Noor also gave her beatings. Thereafter, she went and brought her husband Hussain son of Kala Chand, but the accused Saeed Noor fired from his pistol upon him which hit him on his **left eye** as a result he fell down and died **at the spot**. Thereafter, complainant went to police station and got registered FIR against the accused.

Such ocular version is further supported by the evidence of PWs Mohammad Hussain and Hussain Ahmed. P.W. 5 Mohammad Hussain deposed that on receiving information about the incident, when he reached at the spot, complainant informed him that accused **Saeed Noor** had fired upon his maternal uncle, as a result he received injury on his **left eye** and died **at the spot**. He further deposed that police also recovered **one empty** of pistol from the spot.

PW-6 Hussain Ahmed deposed that on 05-09-2012 i.e. on the day of incident he was present in his house where he heard fire-shot, therefore, he came out from his house and saw that dead body of Hussain Ahmad @ CHAND was lying in the street. He further deposed that on enquiry, the public informed him that **deceased was murdered by Saeed Noor with pistol by firing and he received injury on left eye**.

Likewise, P.W.2 SIP Aziz Mohammad also supported ocular version. According to him, when he alongwith SHO reached the place of incident, they found the dead body of deceased Hussain @ Kala Chand with bullet injury on his **left eye**. He also secured **one empty** from the

place of incident which was sealed at the spot, thereafter dead body of deceased was shifted to JPMC for conducting postmortem.

From above, it is apparent that all the prosecution witnesses have made no material contradiction so far as main features / events of the incident are concerned. From the perusal of the evidence of prosecution witnesses, it seems that the contradictions pointed out by learned counsel for the appellant, are of minor nature. Of course, there seems one very material and major contradiction in between medical evidence and ocular testimony i.e. according to alleged eye-witnesses and other prosecution witnesses, the deceased sustained firearm injury on his **left eye**, whereas in his evidence, Dr. Dileep Khatri, who had conducted postmortem examination on the dead body, deposed that the deceased had sustained injury on his **right eye**. This point would be discussed in the later part of the judgment. So far as minor contradictions are concerned, suffice it to say that now it is well settled that minor contradictions in the evidence of the prosecution witnesses cannot be made the basis for acquittal of the accused if otherwise on material aspects the witnesses have corroborated each other. In fact, with the passage of time such minor contradictions usually take place, thus the same are ignorable. In this connection reliance could be placed on a decision delivered by Honourable Supreme Court in the case reported as *Mohammad Ilyas Vs. The State (2011 SCMR 460)* wherein it was held as under:

“We are conscious of the fact that there are certain contradictions but in our view the same being minor in nature can be ignored safely. The learned Advocate Supreme Court on behalf of the appellants has stressed that these contradictions in oblivion of the fact that merely on the basis of contradictions, statement of a prosecution witnesses cannot be discarded if corroborated by other incriminating material.”

There are plethora of decisions of Superior Courts on this points, however for the sake of brevity, I confine myself to only aforesaid one decision of the Apex Court.

Learned counsel for the appellant also pointed out certain flaws and discrepancies committed during the investigation and proceedings of the case. For instance; bloodstained earth allegedly secured from the spot and bloodstained clothes allegedly sealed by the police, were not produced by the police before the trial Court; that although the complainant allegedly received injury at the hands

of the accused but she was not referred for medical treatment and report etc. In this context, it may be observed that although such defects in a case, where there would have no strong ocular testimony and circumstantial evidence, of course, would have been very important and should be given due weight, and in the cases having weak ocular testimony, on account of such defects / discrepancies, acquittal could also be ordered. However, in a case, like the present one, where there is unimpeachable and confidence inspiring ocular testimony and there are only some **minor** contradictions in the evidence of alleged eye-witnesses, apart from one major contradiction, as stated above, which would be discussed in the later part of judgment, such lacunas cannot be given such a weight so as to nullify the strong ocular testimony and cannot be made basis for acquittal of the accused. In this connection, reference may be made to the case of *Muhammad Javed and Others Vs. Zameer Haider and two others* reported in **2018 YLR 1021**, wherein it was held that *the minor discrepancies in the statements of witnesses and irregularities in the investigation were of no avail to the defence and could be ignored in circumstances*. In another case reported as *Muhammad Aslam and others Vs. The State and others* (**2005 P.Cr.L.J. 1352**) it was held that *it is a settled and well entrenched principle of law that the procedural defect and irregularities and sometime even the illegalities committed during the course of investigation shall not demolish the prosecution case nor vitiate the trial*, while in the case of *The State/ANF Vs. Muhammad Arshad* reported in **2017 SCMR 283** it was observed by Honourable Supreme Court that *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 crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case*.

Now, advertent to the aforesaid alleged major contradiction in between medical evidence and ocular testimony, inasmuch as; according to alleged eye-witnesses and other prosecution witnesses, the deceased sustained firearm injury on his **left eye**, whereas in his evidence, Dr.Dileep Khatri, who had conducted postmortem examination on the dead body, deposed that the deceased had sustained injury on his **right eye**. In this connection, in the first place, it may be observed that from the evidence of prosecution witnesses, it is evident that all of them have categorically and specifically deposed that the deceased had sustained injury on his **left eye**. The complainant in her evidence specifically deposed that accused Saeed Noor fired from his pistol upon her husband which hit him on his **left eye** as a result of which he fell down and died at

the spot. Another alleged eye-witnesses namely P.W.4 Ameer Hussain, who is son of the deceased also made statement that accused fired from his pistol which hit at the **left eye** of the deceased, resultantly the deceased died at the spot. Likewise, PW-2 SIP Aziz Muhammad who had registered the F.I.R. and had prepared Inquest Report, has stated in the Inquest Report and also admitted in his cross-examination that the bullet allegedly fired by the accused had hit **left eye** of the deceased. Even, other two prosecution witnesses namely, P.W. Mohammad Hussain and Hussain Ahmed have also stated in categorical terms that deceased had sustained injury on his **left eye** at the hands of accused. Not only this, even in the Charge framed against the accused, so also in all other documents, except the evidence of Medico Legal Officer, Dr. Dilip Khatri, it is mentioned that deceased had sustained injury on his **left eye** at the hands of accused.

So far as the medical evidence is concerned, from the minor scrutiny of the postmortem report it appears that although against Column No.13, at page 99 of the paper book, titled, "*Surface wounds and injuries*", it has been written, "*Punctured firearm wound irregular in pattern 6 cm x 4 cm over Right eye ball.....*", however, prior to this against Column No.12 while describing condition of certain parts of the dead-body of deceased it has, *inter alia*, been stated, *Left eye Bursted*. This creates, if not serious doubt, at least serious confusion, about the authenticity of the contents of the postmortem report itself. It is not understandable that when in the first part of the postmortem report it was specifically mentioned that the deceased had his ***Left eye Bursted***, then as to how in the later part of the postmortem report it was mentioned that the deceased had received a punctured wound over his ***Right eye ball***. Either this has happened due to typographical / humanitarian mistake or error, or Dr. Dilip Khatri has deliberately made two contradictory statements regarding the place seat of injury allegedly sustained by the deceased. However, in my humble opinion, such doubtful or at least confusing statement of the Medico Legal Officer cannot be given preference over the unimpeachable and confidence inspiring ocular testimony, evidence of other prosecution witnesses and circumstantial evidence. In this connection, I am fortified by following decisions of the Superior Courts.

In the case of *Arif Vs. The State and 2 other* reported in *PLD 2006 Peshawar 5*, it was observed as under:

"We have examined the original P.M. Report and found overwriting and tampering therein at various places. The

words "charring of wound present" were a later entry with different handwriting and different ink with no signature/initial to verily additions. The additions were further tampered and the word "charring" had been substituted with the word "singeing Dr. Irshad (P.W.10), when questioned about the additions, had categorically denied making any addition in Exh.PW-10/2. Therefore, in view of the above, the contention of the learned counsel hardly required any consideration. Even otherwise when Qatal-i-Amd had been independently established through consistent and confidence inspiring evidence of the eye-witnesses, then the ocular account had to be preferred over medical evidence."

(Emphasis has been applied)

In the case of *Riaz Masih alias Bhola Vs. The State [Lahore] (2001 YLR 279)*, Honourable Lahore High Court held as under:

"Even otherwise now it is well-settled that in case of any contradiction in the medical evidence and the ocular account, the ocular account will be preferred over the medical evidence as the eye-witnesses have themselves seen the occurrence. On the other hand the doctor gives his opinion after seeing the injuries which can be incorrect. Hence opinion cannot prevail over the ocular account."

In another case of *Mohammad Safdar through Attorney Vs. The State (2016 MLD 1325)* it was held that *where there was contradiction between medical and ocular account, the ocular testimony was to be preferred over medical evidence.*

In view of above legal position, it can safely be held that the version of the eye-witnesses that the deceased had sustained firearm injury on his **left eye** at the hands of accused would be given preference over the evidence of the Medico Legal Officer who had made two contradictory statements in one and the same postmortem report, inasmuch as; in Column No.12 he has stated that the deceased had his **Left eye Bursted**, whereas against Column No.13 he has stated that the deceased had punctured wound over his **Right eye ball**.

Learned counsel also laid stress on the fact that the alleged eye-witnesses and the mashir are close relatives of the complainant as well as the deceased. In this connection, it may be observed that confidence inspiring evidence of witnesses cannot be discarded merely on account of their relationship with complainant party. Certainly, complainant and P.W. Ameer Hussain are widow and son of the deceased respectively, so

also other two prosecution witnesses namely, Mohammad Hussain and Hussain Ahmed are also relatives of the deceased; however, their evidence is confidence inspiring and there is no material contradiction in their evidence and all the said witnesses are unanimous on all material aspects / events of the alleged incident, and the defence side could not succeed in shaking / shattering their evidence. Even otherwise, now it is well settled that mere relationship of a witness with the complainant party will not render their evidence unreliable unless it is established that he had some motive to implicate the accused falsely in the case. In the instant case, although the accused has taken a plea that he, being landlord of the complainant party, had got vacated the rented premises from them, therefore, they have falsely implicated him in this case, but this ground does not appear to be so strong and convincing so that it may persuade the complainant and her son to spare the real murderer of their husband and father respectively and instead involve the appellant / accused in his place. There is also no delay in lodging the F.I.R. so that an inference could be drawn that the complainant party has indulged in consultation and deliberation in order to implicate present accused falsely. Admittedly, the F.I.R. was lodged promptly, therefore there is no room for such presumption.

In this view of the matter, I am of the firm opinion that there is no justification for discarding the evidence of complainant and other witnesses merely on the ground that they are related to the deceased. In this context, reference may be made to the case reported in *Zakir Khan Vs. The State (1995 SCMR 1793)*, wherein Honourable Supreme Court held that *mere relationship of a prosecution witness with complainant or other prosecution witness cannot render this evidence unreliable unless it is established that he had motive to implicate the accused falsely in the case*. In another case reported as in *ASHFAQ AHMED Vs. THE STATE (2007 SCMR 641)*, Honourable Supreme Court observed as under:

“It is well-settled by now that merely on the basis of inter se relationship the statement of the prosecution witness cannot be disbelieved. The intrinsic value of such evidence is required to be examined and not the inter se relationship. In this regard we are fortified by the dictum laid down by this Court in the following cases:

Muhammad Amin v. The State 2000 SCMR 1784, Iqbal alias Bhala v. The State 1994 SCMR 1, Nazir v. The State PLD 1962 SC 269, Khalil Ahmad v. The State 1976 SCMR 161, Allah Ditta v. The State 1970 SCMR 734, Muhammad Akbar v.

Muhammad Khan PLD 1988 SC 274 and Farmanullah v. Qadeem Khan 2001 SCMR 1474.

6. We may mention here that interested witness is one who has a motive for falsely implicating the accused, is a partisan and having some rancor or enmity against the accused.”

So far as the defence plea that no offensive weapon was recovered from the possession of the accused is concerned, suffice it to say that the accused / appellant was arrested after about eight months of the alleged incident, therefore, he had sufficient time to destroy this important piece of evidence. It cannot be expected from a culprit who has committed murder of a person that despite lapse of such a long period he would still keep the crime weapon with him. In this view of the matter, this plea is also devoid of force.

The upshot of above discussion is that prosecution has succeeded in proving its case against accused / appellant Saeed Noor beyond shadow of any reasonable doubt, therefore, the impugned judgment of conviction and sentence handed down by the trial Court does not require any interference by this Court. It may be pointed out that learned trial Court has already taken a lenient view while awarding lesser sentence, therefore, there is no room for any further reduction in the sentence.

Consequently, instant Criminal Jail Appeal filed by appellant Saeed Noor son of Ameer Hamza is hereby dismissed; and the impugned Judgment dated 18.10.2018 handed down by learned IV-Additional Sessions Judge, Karachi East in Sessions Case No.610 of 2013 (Re: State Vs. Saeed Noor), being outcome of Crime No.448/2012, registered at P.S. Zaman Town K.E. under Sections 302 PPC, is hereby maintained, with extension of benefit of Section 382-B Cr. P.C. to the appellant.

JUDGE