

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Appeal No.S-195 of 2019
Bashir Ahmed and others v. The State;

Criminal Appeal No.S-197 of 2019
Ameer Ali and others v. The State

and

Criminal Appeal No.S-232 of 2021
Aziz Ahmed v. The State

Syed Tariq Ahmed Shah, advocate for appellants in all the captioned criminal appeals, except appellant Ameer in cr. Appeal No. 197/2019.

Mr. Wazeer Hussain Khoso, advocate for Appellant Ameer in Cr. Appeal No.S-197/2019.

The State: Through Ms. Rameshan Oad A.P.G. Sindh.

Mr. Muhammad Hashim Laghari, advocate for complainant in all the captioned criminal appeals.

Dates of hearing : 14.02.2022 & 07.03.2022.
Date of Judgment : 22.03.2022.
Date of announcement : 28.03.2022.

JUDGMENT

MUHAMMAD SALEEM JESSAR, J.- I intend to dispose of the above three criminal appeals by this common judgment as the incident, facts and evidence as well as the FIR in all these criminal appeals are same.

2. The appellants are aggrieved by the judgment dated 17.07.2019 passed by learned Model Criminal Trial Court / 1st Additional Sessions Judge, Hyderabad, in Sessions Case No. 53 of 2004, in Crime No.02/2004 of PS Tando Jam, registered under sections 302, 324, 504, 147, 148 and 149, PPC, whereby the appellants Ameer, Raja, Bashir, Lal Muhammad, and Muhammad Khan @ Dado, were convicted under section 265-H(ii), Cr.P.C. and sentenced under section 144, PPC to suffer R.I. for two years. The appellants were further sentenced under section 302(b), PPC for life imprisonment and

also to pay fine of Rs.100,000/- each, if recovered, to be paid to the legal heirs of the deceased, as provided under section 544-A, Cr.P.C. and in default to suffer simple imprisonment for six months more. They were also extended benefit of section 382-B, Cr.P.C. Appellant Aziz Ahmed (Cr. Appeal No. 232/2021) was convicted under section 265-H(ii), Cr.P.C. and sentenced under section 144, PPC to suffer R.I. for two years. He was also sentenced under section 504/34, PPC to suffer R.I. for two years. He was also sentenced under section 302(b)/34, PPC to undergo life imprisonment and to pay fine of Rs.100,000/- under section 544-A, Cr.P.C., which, if recovered, was to be paid to the legal heirs of the deceased Shamsuddin. He was also extended benefit of section 382-B, Cr.P.C.

3. Brief facts of the prosecution case as disclosed in the FIR are that complainant Hakim Ali lodged his report bearing Crime No.02/2004 under sections 302, 324, 147, 148, 149, PPC at Police Station Tando Jam, Hyderabad, stating therein that he is zamindar and his younger brother Shamsuddin alias Shaman S/o. Taj Muhammad alias Tajoo Nizamani, aged about 30 years, was residing near his house and he was doing his private business. On 12-01- 2004, while he was sitting in his house he heard gun report from Otaq (out house) of his relative Muhammad Bux Nizamani, as a result of which Muhammad Bux also came out from his home and they both headed towards the Otaq where they saw that light of bulb was available and they saw that Ameer Nizamani armed with double-barrel gun, Shamsuddin alias Shamman Nizamani armed with 12-bore pistol, Dost Ali Nizamani armed with double barrel gun, Raja armed with iron rod, Aziz Ahmed armed with pistol, Bashir Ahmed armed with revolver, Lal Muhammad armed with hatchet, Dado Nizamani armed with pistol, who while abusing came out of the Otaq and when they entered in the Otaq, they saw that his brother Shamsuddin alias Shaman Nizamani has sustained injuries of gun fire over his left leg on the knee and also sustained firearm injuries on his right foot and injury was also found on the other part of the body and he was bleeding from his injuries and also from his head. Jahangir has also injuries of pallet due to firing at both of his legs and he was bleeding and in their presence, Shamsuddin succumbed to his injuries. On enquiry, Jahangir and his son Wasi Ahmed told them that they all three were sitting in the Otaq

when at 10-00 pm, while the light was available from the bulb, accused Ameer Nizamani, Shamsuddin *alias* Shamoan Nizamani, Raja Nizamani, Dost Ali, Aziz Ahmed, Bashir Ahmed, Lal Muhammad and Dodo Nizamani came in the Otaq and immediately, they started abusing them and threatened them that they would not spare them as so many times due to rotation of water they have quarreled with them and have insulted so many times so today, they will take revenge. So saying they started firing their guns, pistol and gave blows with iron rod and hatchet. Ameer Nizamani had caused fire arm injuries to his uncle Shamsuddin *alias* Shaman and he fell down on the ground, thereafter, Raja Nizamani caused iron rod blows and Lal Muhammad Nizamani gave hatchet blows and accused Dost Ali also fired his gun and accused Shamsuddin *alias* Shamoan Nizamani also fired his pistol and accused Aziz Ahmed with intention fired straight at him so he sustained pallet injuries on his legs, thereafter, accused Bashir Ahmed fired his pistol and Dado Nizamani also fired his pistol. He bow down so he did not sustain injury, thereafter arrangements were made through his son Wasi Ahmed and Muhammad Bux for transport for taking injured Jahangir and his deceased brother to Tando Jam. Jahangir was taken to civil hospital, Hyderabad by his father Muhammad Bux for treatment and dead body of Shamsuddin *alias* Shaman was taken to Rural Health Centre, Tando Jam where his son remained with dead body and now he has come to lodge report that due to old enmity due to rotation of water, accused Ameer Nizamani and others with common intention resorted to violence and they fired their guns, pistols, revolver, and used iron rod and hatchet, as a result of which his brother Shamsuddin has been murdered and Jahangir was injured. He has to report that investigation be conducted as they had taken the licensed pistols of his brother Shamsuddin *alias* Shaman.

4. After completing usual investigation, the accused persons were challaned before the concerned court showing the accused persons Ameer, Raja, Bashir Ahmed and Lal Muhammad in custody in the charge sheet, while remaining accused persons were shown as absconders.

5. The R & Ps of instant case were received by the trial court from the court of District and Sessions Judge, Hyderabad, by way of transfer as the court was designated/assigned as Model Criminal Trial Court

vide Notification No.RHC/PA/2019 dated 19-03-2019 of the High Court of Sindh Karachi, for its disposal as expeditious justice initiative (EJI).

6. The necessary case papers were supplied to the accused persons vide their receipt as Ex:1. Formal charge was already framed against the accused persons at Ex:5, to which they pleaded 'not guilty' and claimed for trial vide their pleas at Ex:6 to 11.

7. The prosecution examined Hakim Ali as PW-1 at Ex:21, Muhammad Bux *alias* Hakim as PW-2 at Ex:23, Jahangir as PW-3 at Ex:27, Ashique Ali as PW-4 at Ex:28 (who produced memo of dead body, memo of lash chakas form, and danishnama, memo of place of incident, mashirnama of injuries, mashirnama of arrest, mashirnama of recovery, mashirnama of arrest of accused Lal Muhammad and Bashir as Ex:28/A to Ex:28/H), Wasi Ahmed as PW-5 at Ex:29. Senior MLO who produced provisional and final certificate as Ex:30/A & Ex:30/B respectively), SIP Ghulam Nabi as PW-7 at Ex:31, MLO Dr. Ghulam Ali (who produced postmortem report as Ex:32/A). SHO Shah Nawaz as PW-9 at Ex:35. ASI Allah Obhayo as PW-10 at Ex:36, statement of ASI Ghulam Shabbir as PW-11 at Ex:37 (who produced report, statements, photocopy of prescription doctor, and office order as Ex:37/A to Ex:37/H respectively). SIP Ghulam Nabi as PW-12 at Ex:38. Thereafter, learned DDPP closed the side of the prosecution vide his statement at Ex:39.

8. Statements U/s 342 Cr.P.C of accused persons were recorded at Ex:40 to Ex:44. In their statements the accused persons refuted all the allegations leveled against them by the prosecution and claimed to be innocent. In their statements the accused neither wanted to lead any evidence in their defense nor desired to examine themselves on oath.

9. Thereafter the learned trial court framed the following points for determination:

- Point No. 1. Whether on 12-01-2004 at 2200 hours at the otaq of Muhammad Bux Nizamani situated at Tando Qaiser accused Ameer Ahmed, Raja Bashir Ahmed, Lal Muhammad, and Muhammad Khan and absconding accused Aziz Ahmed, Dost Ali and Dodo and accused Shamsuddin *alias* Shaman (since dead duly armed with deadly weapons viz. double barrel gun, pistol, revolver, 12 bore pistol, assembled unlawfully for their common

object to commit offence by means of criminal force against the complainant party?

Point No.2: Whether deceased Shamsuddin S/O Taj Muhammad Nizamani died un-naturally?

Point No.3. Whether on 12-01-2004 at 2200 hours at the otaq of Muhammad Bux Nizamani situated at Tando Qaiser accused Ameer Ahmed, Raja Bashir Ahmed, Lal Muhammad, and Muhammad Khan and absconding accused Aziz Ahmed, Dost Ali and Dodo and accused Shamsuddin *alias* Shaman (since dead), duly armed with deadly weapons viz. double-barrel gun, pistol, revolver, 12 bore pistol, iron rod, and hatchet with their common intention gave abuses to Shamsuddin S/o Taj Muhammad, Jahangir and Wasi Ahmed and made fire, accused Ameer shot, accused Lal Muhammad caused lathi blow, and accused Raja caused iron rod and committed Qatl-i-Amd of deceased Shamsuddin S/o Taj Muhammad Nizamani with their common intention?

Point No.4: Whether on 12-01-2004 at 2200 hour at the Otaq of Muhammad Bux Nizamani situated at Tando Qaiser Raja Bashir Ahmed, Lal accused Ameer Ahmed, Muhammad, and Muhammad Khan and absconding accused Aziz Ahmed, Dost Ali and Dodo and dead accused Shamsuddin *alias* Shaman duly armed with deadly weapons viz. double barrel gun, pistol, revolver, 12 bore pistols, iron rod, and hatchet, with their intention accused Aziz, Dost Ali and Common Shamsuddin gave injuries to P.Ws Jahangir and Wasi Ahmed?

Point No.5. What should the Judgment be?

10. The trial court after recording evidence and hearing the arguments of the learned D.D.P.P for the State and the learned Counsel for the appellants as well as the complainant, answered the points as proved, and convicted and sentenced the appellants as mentioned above. Hence these appeals.

11. Heard learned counsel for the appellant as well as learned counsel for the complainant and APG for the State.

12. Syed Tarique Ahmed Shah, learned counsel appearing on behalf of all the appellants, except appellant Ameer, submits that offence is unseen and therefore there had been contradictions with regard to the registration of FIR, time of incident as well as the post-mortem notes taken by the Medico Legal Officer. He next submitted that provisional medical certificate issued in favour of injured/P.WV Jehangir is delayed for about 10 days; whereas final medical certificate was also issued

with a delay of 07 months hence, according to him, all these facts were fatal to the prosecution case and rose many questions with regard to authenticity of the evidence of injured/P.W Jehangir. He also submitted that per prosecution case/FIR, appellant Dost Ali (since absconder) was having DBBL gun in his hand, appellant Shamsuddin (since died during trial) was having country made pistol in his hand and appellant Aziz Ahmed (in custody) was having pistol in his hand, they all have caused jointly firearm injuries to P.W Jehangir; however, he had received all injuries on his legs with pellet(s). He submitted that injuries allegedly sustained by injured/P.WN Jehangir were also recognized by Medico Legal Officer to be caused by smooth weapons like cartridges/gun/country made pistol, therefore, injuries allegedly attributed to appellant Aziz Ahmed, who was armed with pistol cannot be used against him, as there is no evidence against him though injured/P.W Jehangir before the trial Court had deposed that he had sustained bullet injuries on his person, which according to Mr. Shah, is contradictory to available evidence. He further submitted that injuries allegedly sustained by injured P.W Jehangir were opined by Medico Legal Officer to be falling under section 337-F(ii) PPC, which carries maximum punishment of three years. Mr. Shah further argued that appellant Lal Muhammad at the time of alleged offence was armed with hatchet and appellant Raja was having iron rod in his hand and both allegedly caused injuries to deceased Shamsuddin, which landed on his person; however, appellant Ameer who was having DBBL gun in his hand through which he made fire and thereby is alleged to have caused murder of deceased Shamsuddin; however, he has been acquitted from the charge of said offence bearing Crime No.07/2004, registered at Police Station Tando Jam, under section 13(d) Arms Ordinance, 1965 by the Court of Civil Judge/Judicial Magistrate-IV, Hyderabad in Cr. Case No.88 of 2007 (re: The State V Ameer). He further submitted that post-mortem report was delayed for about 27 hours hence it is also additional ground that the prosecution had not come with clean hands. He next submitted that incident allegedly had occurred in odd hours of night viz. 10:00 p.m. of 12.01.2004 and source of identification as disclosed in the FIR, was electric bulb; however, said bulb neither was secured nor shown by the complainant to I.O at the time of inspection of place of incident. He also submitted

that 161 Cr.P.C. statement of injured P.W Jehangir was also delayed by about 09 days and he even too did not identify the culprits; however, learned counsel admitted that in his evidence before the trial Court the said witness had implicated all accused with the commission of alleged offence.

13. As far as accused Bashir Ahmed and Muhammad Khan are concerned, Mr. Shah submitted that at the relevant time both allegedly had caused firearm injuries to P.W Wasi but he did not sustain any injury and fires allegedly made by them were proved ineffective. He also submitted that both appellants namely Bashir Ahmed and Muhammad Khan had allegedly produced their respective offensive weapons; however, both of them have been acquitted of the charges of said cases, therefore, their implication in this case is doubtful. He prayed for grant of appeals as well as acquittal of the appellants. In support of his contentions, he placed reliance on the cases of Muhammad Ashraf Javeed and another V. Muhammad Umar and others (2017 SCMR 1999), Sardar Bibi and another V. Munir Ahmed and others (2017 SCMR 344), Azhar Mehmood and others V. The State (2017 SCMR 135), Mst. Sughra Begum and another V. Qaiser Pervez and others (2015 SCMR 1142), Muhammad Imran V. The State (2020 SCMR 857), Muhammad Asif V. The State (2017 SCMR 486), Sufyan Nawaz and another V. The State and others (2020 SCMR 192), Nazir Ahmad V. The State (2018 SCMR 787), Mashooque Ali V. The State (2018 YLR 1533) and Irshad Ahmed V. The State (2011 SCMR 1190).

14. Mr. Wazeer Hussain Khoso, learned counsel for appellant Ameer in Cr. Appeal No.S-197 of 2019 submitted that though appellant Ameer is nominated in the FIR with specific role; however, due to material contradictions with regard to delay in post-mortem notes as well as non-recovery of the electric bulb and the offence having been occurred in odd hours of night, his implication in this case is doubtful. He further submitted that injury No.8 sustained by deceased Shamsuddin has been shown by the Medico Legal Officer as blackening and tearing; however, such fact has not been brought on record, which suggests that offence was unseen and complainant party due to enmity over water rotation have falsely implicated them in this case. He; however, adopts the remaining arguments as advanced by learned counsel for

remaining appellants and also prayed for grant of appeal as well as acquittal of appellant Ameer. In support of his contentions he placed reliance on the cases of Amin Ali and another V. The State (2011 SCMR 323), Zafar V. The State and others (2018 SCMR 326), Muhammad Asif V. The State (2017 SCMR 486) and Muhammad Shah V. The State (2010 SCMR 1009).

15. On the other hand, Ms. Rameshan Oad, the learned A.P.G appearing for the State opposed the appeals and submitted that prosecution has led direct evidence against the appellants, therefore, minor contradictions as claimed by the defence counsel may not vitiate the evidentiary value of the prosecution evidence, which on other hand has been corroborated with circumstantial evidence. She further submitted that delay in post-mortem notes cannot be taken into consideration, as Honourable Supreme Court of Pakistan in the case of Abdur Rehman V. The State (1998 SCMR 1778), where even no post-mortem examination was conducted yet the appellants therein were convicted for the capital charge. She also submitted that as far as no ballistic report is concerned, it does not cause any harm to the prosecution case and in support of her contention she placed reliance on the case reported as Muhammad Afzal V. The State (2021 SCMR 289). She also submitted that injured/P.W Jehangir is the eye-witness, who had supported the case of the prosecution by implicating all the accused/appellants in this case hence minor contradictions arising due to passage of time could not divert the direct evidence available against the appellants. She; however, could not controvert the fact that appellants Bashir Ahmed and Muhammad Khan had been attributed ineffective firing and P.W Waseem had not sustained even single scratch on his body at the hands of these appellants. She admitted that though offensive weapons were allegedly recovered from appellants Bashir Ahmed and Muhammad Khan yet both of them have been acquitted of the charge. She on Court query admitted that injuries allegedly sustained by P.W Jehangir as is evident from Medico-legal certificate/evidence are pellet injuries and per prosecution case co-accused Dost Ali, who is absconding, was having DBBL gun and has not been arrested so far, while remaining two accused namely Shamsuddin and Aziz Ahmed were having pistols for which no evidence is available on record that injured Jehangir had sustained any

bullet injury on his person. She has very candidly conceded that though the injured Jehangir had deposed before the trial Court that he sustained bullet injuries yet it does not have corroboration from any corner. She, however, reiterated her contention that accused Ameer, Lal Muhammad and Raja were assigned specific role of causing injuries to deceased Shamsuddin and since all three of them had caused injuries conjointly to him, therefore, they are liable to be held responsible for the offence they had committed. In support of her contentions she relied on the cases of Saleem Zada and others v. The State and others (2019 SCMR 1309), Asfandiyar V. The State and others (2021 SCMR 2009), Gulshan Shah V. The State (2021 SCMR 1456) and Mazhar Ellahi V. The State (2020 SCMR 586).

16. Mr. Muhamma Hashim Laghari, learned Counsel for the complainant, also opposed these appeals and submitted that the prosecution has led direct evidence against the appellants which was corroborated by the circumstantial evidence and on certain minor contradictions or lacunas left by prosecution during evidence may not vitiate the evidentiary value of the prosecution witnesses as one innocent person has lost his precious life and other has received multiple injuries on his person. He further submitted that contention raised by learned counsel for the appellants that deceased had enmity with other communities carries no weight, as complainant party may not implicate or substitute the real culprits with others and that the plea without corroboration cannot be taken into consideration.

17. As regards motive as shown by the appellants with regard to the valuable property owned by them in Tando Adam city, the learned counsel submitted that neither a single piece of evidence has been brought on record nor survey numbers of said property has been mentioned / brought on record. He further emphasized that neither said land is in possession of the complainant party nor the appellants were dispossessed from it as still they are well enjoying the same, therefore, it is an afterthought motive formed by the appellants to vitiate the prosecution case. In support of his contentions, he placed reliance on the cases Sharafuddin *alias* Sharfoo and another V. The State (2022 YLR 324), Muhammad Rashid and another V. The State (2022 YLR 119), Ghaffar Ali V. The State and another (2021 SCMR 354),

Afsar Ali V. Majid Khan and another (2021 PCr.LJ 705), Syed Asif Ali V. The State (2020 PCr.LJ Note 179), Imran Khan and others V. The State (2020 PCr.LJ Note 187), Abdul Sattar V. The State (2018 YLR Note 5) and Muhammad Mansha V. The State (2016 SCMR 958).

18. So far as point No.2 is concerned, the finding of the trial Court that the evidence of the doctor / MLO is material, who has specifically stated in his evidence that the deceased died due to fire arm injuries. Thus, point No.2 was correctly answered in affirmative.

19. On the other points, the case of the prosecution rests on ocular evidence of two prosecution witnesses i.e. PW-3 Jehangir (the injured witness) and PW-5 Wasi Ahmed. In support of the ocular evidence as corroborative evidence, there is the evidence of the complainant PW-2 Muhammad Bux @ Hakim, PW-Dr. Baldev, Sr. MLO (Exh. 30 at page 241) and PW-Dr. Ghulam Nabi, retired MLO (Exh.32) apart from other witnesses.

20. First, I will take the deposition of the PW-2-complainant, namely, Muhammad Bux @ Hakim S/o. Noor Muhammad (Exh.23 at page 180 of R&P). Firstly, in the FIR lodged by him, he has named all the accused / appellants by name. In his deposition also he has fully narrated the facts with minute details and has exactly given the details of the portion of the incident seen by him i.e. of the going away of the appellants from the place of incident with their arms / weapons. He has clearly stated that on the gun shot report he came out from his home and met Muhammad Bux Nizamani and they went towards the Otaq and there they saw the appellants / accused fully armed and gave the details of the arm in the hand of the each appellant / accused using abusive language and going away. He further states that he saw PW Jehangir lying injured and Wasi Ahmed (typed as Waseem Ahmed in some places) was also available but was hiding and came out after the arrival of the complainant. On inquiry, he informed the complainant that all the accused came inside the Otaq and said that they (complainant party) were not providing them water and also insulting them, "accused Amir fired from his double barrel gun, Raja caused him iron rod blow and Lal Muhammad caused hatchet blow to Shamsuddin. PW Jehangir informed that Dost Ali fired from his gun, Shaman from TT

Pistol and Vaziz also fired from pistol.” In cross-examination he clearly admitted that he has not seen the incident by his own eyes. He also stated the accused did not attack them. He stated that his house is at a distance of about one furlong from the place of incident. He admitted that he did not know the name of the Suzuki driver who took the dead body and the injured. It is natural that a person taking dead body of his younger brother and an injured relative could not be expected to keep such details in mind. Thus, the circumstantial evidence produced by this witness corroborated the evidence of eye-witness Jehangir.

21. PW-3, Jehangir Nizamani S/o. Muhammad Bux (page 196 of R&P) is the injured of the incident and is an eye-witness. He has given the details of the incident seen by him. He has assigned specific roles to each appellant and the firearm / weapon held by them. He was cross-examined by learned counsel for the appellants/ accused but his testimony could not be shaken at all. He is the eye-witness of the incident who also sustained injuries in the incident. He has categorically denied the suggestion that at the time of incident there was no electricity in the area. No contradiction of note could be pointed out in his deposition.

22. PW-5 Wasi Ahmed has also narrated the same story and assigned the identical roles to the appellants. He stated that accused Ameer abused them and made straight fire at his uncle Shaman, while Lal Muhammad caused him hatchet blow. He also stated that Dost Ali caused bullet injury from DBBL gun to Jehangir. He stated that he saved himself by sitting down and hiding.

23. PW- Dr. Baldev, Senior Medical Officer, LUMH, Hyderabad, was examined as Exh.30. In his examination in chief he stated that on 13.1.2004 he was posted as MLO, LUMH, Hyderabad and at 2.20 a.m. injured Jehangir came with police letter No.Cr/2/2004 dated 12.1.2004 of PS Tando Jam for examination and certificate. He was examined by the said doctor and a provisional certificate was issued showing the injuries sustained by him; however, final report was reserved as the injured was sent to X-ray. On receiving the X-ray report the final report was prepared. He was cross examined by the defense counsel; however, no noteworthy contradiction was found in his deposition.

24. The prosecution also examined Dr. Ghulam Ali, retired MLO, as Exh.32. He stated that he was posted as MLO at RHC Tando Jam on 14.1.2004 when dead body of one Shamsuddin was brought at the hospital at 12.35 a.m. for post mortem. He has conducted post mortem of the dead body and submitted his report mentioning the injuries sustained by the deceased. He stated the cause of death of the deceased as hemorrhage and heavy bleeding with shock due to firearm. I have examined the cross examination of this PW and found that it is of no help to the defense as there is no substantial contradiction in the ocular evidence and the medical evidence.

25. PW-1 Hakim Ali who is complainant of the FIR, fully corroborates the fact that the appellants were leaving the place of incident duly armed at the time of incident and the ocular evidence of PW-3 Jehangir and PW-5 Wasi. He has named all the appellants in the FIR with details of fire arms and weapons in their hands. Similarly, PW-3 Jehngir and PW-5 Wasi Ahmed had also mentioned the names of the appellants in their deposition.

26. Learned counsel for the appellants raised a question as to the identification of the accused / appellants in order to expel the possibility of mistaken identity. In this regard it may be noted that both the parties are well known to each other, therefore, there is no chance of mistaken identity. All the PWs have correctly named the appellants and have also stated their role correctly and there is no contradiction between the depositions of witnesses on any material point. In this regard reliance may be placed on the case of Sharfuddin @ Sharfoo and another v. The State (2022 YLR 324), relied by learned counsel for the complainant, in which a learned Single Bench of this Court held as under:

“In the instant matter all 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 manner. Besides this, eye witnesses have also explained the mode and manner of taking place the occurrence qua the culpability of the appellants. Although, they were cross examined by the defense at length, wherein the learned counsel for the defense asked multiple questions to shatter their confidence so also presence at the scene of occurrence but could not extract anything from them and they remained consistent on all material points. The parties are known to each other, so there was no chance of mistaken identity of the appellants.”

27. The present case is fully covered by the above case as the witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence and have also explained the mode and manner of taking place the occurrence qua the culpability of the appellants. They were cross examined at length, but defense could not extract anything from them and they remained consistent on all material points.

28. In the case of Muhammad Rashid and another V. The State (2022 YLR 119) a learned Division Bench of this Court held that conviction could be made on the basis of sole evidence of an eye-witness if the same is found to be trust worthy, reliable and confidence inspiring. In the present case there are two eye-witnesses whose evidence is trustworthy, reliable and confidence inspiring, and one of them also sustained injury in the same incident of firing.

29. Learned counsel for the appellants also submitted that the provisional medical certificate was issued after a delay of 10 days while the final medical certificate was issued after delay of seven months. However, when no major contradiction can be pointed out in the prosecution evidence, then the delay in issuance of the medical certificates is of no significance and importance. In such cases the delay is sometimes attributable to non-availability of certain reports which is a usual occurrence. Therefore, this delay is of no help to the defense.

30. Mr. Wazeer Hussain Khoso, learned counsel for appellant Ameer in Cr. Appeal No.S-197 of 2019 submitted that though appellant Ameer is nominated in the FIR with specific role; however, due to material contradictions with regard to delay in post-mortem notes as well as non-recovery of the electric bulb and the offence having been occurred in odd hours of night, his implication in this case is doubtful. He further submitted that injury No.8 sustained by deceased Shamsuddin has been shown by the Medico Legal Officer as blackening and tearing; however, such fact has not been brought on record, which suggests that offence was unseen and complainant party due to enmity over water rotation have falsely implicated them in this case.

31. In support of his contentions he places reliance on the cases of Amin Ali and another V. The State (2011 SCMR 323), wherein it was found that there was blackening around injury while none of the witnesses deposed that any of the appellants had caused the injury from a close range. However, this minor discrepancy cannot be taken into consideration as there are a number of injuries and it has not been clarified as to what caused the blackening. In the case of Abdur Rehman V. The State (1998 SCMR 1778), relied by learned APG, the esteemed Apex Court held as under:

“11. This Court while considering probative value of ocular evidence and making its comparison with medical evidence had observed in case Arif Shah v. State (1985 SCMR 850) that testimony of witnesses when overwhelmingly establish offence against the accused and nothing existed to create reasonable doubt concerning his involvement then medical evidence being merely an expert opinion could not be relied upon with mathematical precision. Relevant observations are thus:--

"It was then argued that the medical evidence also negates the possibility of the deceased having made the dying declaration in presence of the S.H.O. In this connection reference has been made to the evidence of Doctor Khaista Khan Afridi who has stated that the probable time between the injuries and death must have been 25 to 35 minutes and further that the injured must have been unconscious or drowsy on account of shock within 10 to 15 minutes of receiving the injuries. Nothing much turned upon these statements of the doctor which are a matter of expert opinion and cannot, therefore, be relied upon with mathematical precision. The marginal difference being only of 15 minutes there would always be an allowance to be made from case to case depending upon so many variable factors obtaining in a particular case. This is clear from the manner in which the opinion has been expressed in hypothetical terms."

32. Mr. Khoso also relied on the case of Zafar V. The State and others (2018 SCMR 326), to argue that the post mortem of the dead body was carried out with unexplained delay. In the cited case there was delay of more than 11 hours. In the case in hand, the incident took place at about 10.00 p.m. and the dead body was received by the MLO at 12.30 a.m. i.e. merely after about 2 and half hours. Therefore, the cited case is not relevant due to distinguishable facts.

33. Learned counsel for appellant, Ameer, also relied on the case of Muhammad Asif V. The State (2017 SCMR 486), wherein there was delay in recording of the 161 statement of the eye-witness which were

recorded after one month and one day, to contend that there was delay in recording of 161 statement of the eye-witness which is fatal to the prosecution case. However, I have not found any unexplained and inordinate delay in recording of the 161 statements of the eye-witnesses.

34. Learned counsel for the appellants argued that it has come in evidence that Dost Ali (since absconder), was having DBBL gun in his hand; accused Shamsuddin (since dead) was armed with country made pistol, and Appellant Aziz Ahmed (in custody) was having pistol in his hand and they have been alleged to have caused injuries to PW Jehngir. However, as per medical report, all injuries sustained by PW Jehangir were pallet injuries sustained in his legs. Therefore, injuries sustained by injured PW Jehangir cannot be attributed to appellant Aziz Ahmed as he was having a pistol in his hand.

35. PW-3 Jehangir in his deposition has assigned specific roles to appellants Ameer having fired on the deceased Shamsuddin. He also stated that appellant Lal Muhammad caused hatchet blow to the deceased while appellant Raja caused iron rod blow to the deceased. Since, as per the medical report, the deceased Shamsuddin died due to excessive bleeding. Therefore, these appellants were rightly convicted for the offence of murder of the deceased Shmsuddin.

36. Learned counsel for the appellants relied on the case of Muhammad Ashraf Javed V. Muhammad Umar and others (2017 SCMR 1999) and Sardar Bibi and another V. Munir Ahmed and others (2017 SCMR 344) to argue that as the bulb in the light whereof the prosecution witnesses identified the appellants was not taken into custody by the I.O. therefore the case of the prosecution has become doubtful. However, in the cited case, which has been examined minutely, there are a number of infirmities and illegalities, while in the case in hand there are no such illegalities and infirmities. Therefore, on this ground alone the evidence of the prosecution witnesses cannot be discarded. In the case of Azhar Mehmood and others V. The State (2017 SCMR 135), the same objection regarding non-securing of the bulb has been raised; however, in that case the accused was not named in the FIR as in the FIR six unknown persons were mentioned

as accused. In the present case all the accused have been named in the FIR with specific role, therefore, the cited case is not relevant and is distinguishable on facts.

37. Learned counsel for the appellants also relied on the case of Mst. Sughra Begum and another V. Qaiser Pervez and others (2015 SCMR 1142), wherein it was held that purported eye-witnesses were not present at the place of incident as their names are not mentioned in the specific column. In the cited case the eye witnesses claimed that they took the injured (who later on died) to the hospital. However, in the present case the eye-witness was injured himself and was taken to hospital for treatment and report.

38. The learned counsel for the appellants also relied on the cases reported as Muhammad Imran v. The State (2020 SCMR 857), Muhammad Asif V. The State (2017 SCMR 486), Nazir Ahmed V. The State (2018 SCMR 787), Sufyan and others V. The State and others (2020 SCMR 190), Mashooque Ali V. The State (2018 YLR 1533) and Irshad Ahmed V. The State (2011 SCMR 1190); however, all these cases are distinguishable and not relevant to the facts of the present case.

39. Since appellant Ameer, Lal Muhammad and Raja were assigned specific roles of causing direct injuries to deceased Shamsuddin and offensive weapons also shown to have been recovered from them during investigation; besides, the prosecution has adduced concrete-cum-tangible material in evidence against them which is sufficient to hold that said appellants are responsible for causing death of deceased Shamsuddin hence the Criminal Appeal No. 197/2019 to that extent is **dismissed** and the impugned judgment with regard to the conviction and sentences awarded to these appellants is hereby **maintained**.

40. So far as the case of appellants Bashir Ahmed and Muhammad Khan is concerned, both allegedly made straight fires upon P.W Wasi (or Waseem) which were proved ineffective and they had not repeated the same hence propriety demands that a lenient view should be taken, therefore, Criminal Appeal No.195/2019 is allowed and the impugned Judgment is set aside to the extent of, both these appellants

i.e. Bashir and Muhammad Khan @ Dado and they are hereby acquitted of the charge(s).

41. So far as case of appellants Aziz Ahmed is concerned, he along with co-accused Dost Ali (since absconder) and Shamsuddin (since died) allegedly had caused multiple injuries to P.W Jehangir; however, as discussed above, appellant Aziz Ahmed was having pistol in his hand and, as per medial report and evidence of the MLO, no bullet injury is sustained by injured/P.W Jehangir. Per medical evidence, injured/P.W Jehangir sustained pellet injuries and, hence prosecution has miserably failed to prove its case/charge against appellant Aziz Ahmed, therefore, Criminal Appeal No.S 232 of 2021 is hereby allowed. The conviction and sentence(s) to the extent of appellants Aziz Ahmed, are hereby set aside.

42. The upshot of the above discussion is that, Criminal Appeal No. 197 of 2019 is **dismissed** and the conviction and sentence in respect of the appellants Ameer, Lal Muhammad and Raja are hereby **maintained**, while Criminal Appeals No. 195 of 2019 and 232 of 2021 are allowed, the impugned judgment to the extent of conviction and sentence of appellants Bashir Ahmed, Khan Muhamamd @ Dado and Aziz Ahmed are hereby set aside and these appellants are hereby acquitted. They shall be released forthwith if not required in any other case.

43. As regards the role attributed to co-accused Dost Ali(since absconder) he was having DBBL gun in his hand and caused gunshot injury(ies) to injured/P.W Jehangir, which has been corroborated through medical evidence, therefore, appellant Dost Ali is also liable to be held responsible for causing injuries he allegedly caused to P.W Jehangir. Accordingly, case against co-accused Dost Ali be kept on dormant file. Let permanent NBWs be issued against him through SHO concerned till he is arrested or surrenders himself before the trial Court, as the case may be.

44. A copy of judgment be communicated to the trial Court/Model Criminal Trial Court, Hyderabad along with R&Ps of Sessions Case No.53 of 2004 (re: The State V Ameer and others) for compliance.

45. Before parting with the judgment, it may be pointed out that page numbering of the paper book was far from satisfactory. Office is directed to be careful in future so that inconvenience is not caused at the time of hearing of a case due to bad page numbering. Apart from it, there are a number of FIRs in the paper book and every FIR is simply mentioned as "FIR" without date or number, which is causing great inconvenience to the Court to locate the relevant FIR. Each document should be mentioned with date and number, if available.

46. The upshot of above discussion is that Cr. Appeal No.S-197 of 2019 is dismissed, whereas Cr. Appeals No.S-195 of 2019 and 232 of 2021 are allowed.

47. Office is directed to place a copy of judgment in each file.

Hyderabad, the 28th March, 2022.

Judge