

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD**

Criminal Jail Appeal No.S-128 of 2015

Appellant: Asghar through Mr. Abdul Hameed Bajwa, Advocate.

Respondent: The State through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Complainant: Expired.

Date of hearing: 12.08.2022.

Date of Judgment: **.08.2022.**

J U D G M E N T

AMJAD ALI SAHITO, J. Through instant criminal jail appeal, the appellant has challenged the judgment dated 07.09.2015, passed by the learned Sessions Judge, Tando Muhammad Khan in Sessions Case No.13/2013 arising out of the FIR No.42/2013 for offence under sections 302, 324, 114, and 34 PPC registered at PS Bulri Shah Karim, whereby the appellant was convicted under section 302 (b) PPC for committing the murder of deceased Haji Muhammad Kapri and sentenced to suffer imprisonment for life with direction to pay compensation of Rs.1,00,000.00 [Rupees one hundred thousand only] to the heirs of deceased; in case of failure to undergo S.I. for two years; under section 324 PPC to suffer R.I. for five years with fine of Rs.10,000.00 [Rupees ten thousand only], in case of failure to undergo S.I. for six months; under section 337-D and 337-F(iii) PPC to suffer R.I. for three years and two years respectively and also to pay Rs.25,000.00 [Rupees twenty five thousand only] for each injury

[Total Rs.50,000.00] payable in lump sum, in case of failure in payment of Arsh and Daman, the accused may be kept in Jail and dealt with in the same manner as if sentenced to simple imprisonment until Arsh and Daman are paid in full or may be released on bail if he furnishes surety / security equal to the amount of Arsh and Daman to the satisfaction of the Court. If Arsh and Daman are paid by the accused Asghar Kapri, same be paid to injured Gulzar @ Gul Zaman as compensation. All the sentences were ordered to run concurrently. However, the benefit of section 382-B Cr.P.C. was also extended to the appellant.

2. The brief facts of the prosecution case as depicted in the FIR are that complainant's brother namely Haji Muhammad Kapri was married and his cousin Gulzar @ Gul Zaman Kapri both are cultivators. Moriyo Kapri and others were their neighbors. On 17.07.2013 his brother namely Haji Muhammad Kapri and his cousin Gulzar @ Gul Zaman Kapri were standing in the street of their house. Complainant and his cousin Ali Ghulam were providing fertilizer to the land adjacent to their house. In the meanwhile Asghar Kapri s/o Moriyo Kapri passed through street to whom Haji Muhammad restrained him not to cross from the street, on which he immediately went to his house and came out with SBBL gun, behind him, his father Moriyo Kapri and his brother Allah Bux Kapri came out, who instigated him to commit qatal of Haji Muhammad and Gulzar @ Gul Zaman, on which Asghar Kapri made straight fire at Haji Muhammad Kapri, who fell down on the ground. Asghar again loaded the cartridge in his gun and made straight fire at Gulzar @ Gul Zaman Kapri, which hit him at his chest, who fell down on the ground. Thereafter they went away to their house. Complainant and others came there and saw that Haji Muhammad had received firearm injuries at the public / perennial region and blood was oozing, whereas Gulzar @ Gul Zaman received firearm injury at his chest and blood was oozing.

Thereafter they arranged vehicle and shifted the injured persons to police station, received letter and went to the hospital, where Haji Muhammad succumbed to injuries and Gulzar @ Gul Zaman was referred to LMCH Hyderabad. After the post mortem was conducted, he received dead body, performed funeral ceremony and then appeared at police station and lodged FIR.

3. After usual investigation, report under section 173 Cr.P.C (Challan) was submitted against the appellant and co-accused before the concerned Magistrate.

4. Charge was framed against accused at Ex. 03, to which they pleaded **“not guilty”** and claimed to be tried vide their pleas recorded at Ex. 04 to Ex. 06 respectively. In order to establish its case, the prosecution has examined PW-01 Dr. Abdul Rehman Samoon as Ex. 10, who produced letter dated 17.07.2013, provisional and final medical certificates of injured Gul Zaman (OPD Slip, indoor record, pathological reports 16 X-Ray films of injured Gul Zaman, radiologist reports, ultrasound reports, police letter No.A dated 17.07.2013 for post mortem of Haji Muhammad, Lash Chakas form, port mortem report of deceased Haji Muhammad Kapri at Ex. 10/A to Ex. 10/H respectively. PW-02 complainant Abdul Majeed Kapri was examined at Ex. 11, who produced FIR at Ex. 11/A. PW-03 injured Gulzar @ Gul Zaman Kapri at Ex. 12, who produced his CNIC at Ex. 12/A. PW-04 mashir Ghulam Shabbir at Ex. 14, who produced memo of examination of dead body, danishnama, memos of vardat, recovery of cloths of deceased Haji Muhammad Kapri, arrest of accused Morio Kapri and Allah Bux Kapri and recovery of Gun at Ex. 14/A to Ex. 14/F respectively. PW-05 I.O. ASI Qurban Ali Gopang at Ex. 15, who produced memo of arrest of accused Asghar Kapri, roznamcha entries NO.7 and 9, Ballistic Expert report, Chemical Examiner report, sketch of recovered Gun and sketch of vardat at Ex. 15/A to Ex. 15/G respectively. PW-06 mashir Abdul Rasheed Pirzado at Ex. 16. PW-07 Tapedar

Muhammad Anwar Umrani at Ex. 17, who produced sketch in triplicate at Ex. 17/A. PW-08 Mr. Sabghatullah Patoli, the then incharge Civil Judge and Judicial Magistrate-II, Tando Muhammad Khan at Ex. 18, who produced application moved by the I.O> notice issued to accused, production order and statement under section 164 Cr.P.C. of PW Ali Ghulam at Ex. 18/A to Ex. 18/D respectively. Then prosecution close its evidence through statement vide Ex. 19.

5. The statements of the accused under Section 342 Cr.P.C were recorded at Ex. 20 to Ex. 22 respectively, wherein they denied the prosecution allegation and claimed their innocence. They further stated that they have been falsely implicated in the instant case due to matrimonial disputes between the parties.

6. The learned trial Court after hearing the counsel for the parties and on the assessment of the evidence, convicted and sentenced the appellant/accused vide Judgment dated 07.09.2015, which is impugned by the appellant before this Court by way of filing the captioned Criminal Appeal. While co-accused Morio Kapri and Allah Bux Kapri were acquitted of the charge.

7. Learned counsel for accused/appellant argued that the appellant has been falsely implicated by the complainant due to matrimonial affairs; FIR has been lodged with delay without plausible explanation; there is also delay in recording of statements under sections 161 Cr.P.C. of the witnesses. Learned counsel has further contended that there are material contradictions in the evidence of prosecution witnesses, who have not corroborated the evidence to each other, even the witnesses are close relatives of the complainant and as such, they interested. There is enmity between the parties, as such, false implication of the appellant / accused cannot be ruled. There is no independent witness examined by the prosecution in

order to validate the version of complainant. Learned counsel pointed out that the complainant implicated all the male family members of accused, which depicts the animosity of complainant party for false implication of the accused. Learned counsel further contended that the case of prosecution is doubtful and the learned trial Court has rightly acquitted the co-accused by extending benefit of doubt and the present appellant / accused is also deserving same treatment to have benefit of doubt and as a result of which his acquittal. He, therefore, prayed that the appellant / accused may also be acquitted of the charge by extending benefit of doubt in his favour.

8. On the other hand, learned A.P.G. Sindh has contended that the prosecution has fully established the case against the appellant by adducing convincing evidence of eyewitnesses against him. The recovery has been effected from the accused. Chemical Report is also in positive. The evidence of medical officer, who conducted post mortem of the deceased has gone un-challenged and un-rebuttal, which fully implicates the appellant and is in line with the ocular version. She further contended that though the appellant has tried to colour the incident to have taken place for the reasons that they are at loggerhead with the complainant party due to matrimonial affairs but he has failed to adduce any evidence in this respect; even, the appellant has not examined himself on oath in order to strengthen his version. She, therefore, supported the impugned judgment and prayed for dismissal of instant appeal.

9. I have heard learned counsel for the parties and have minutely gone through the material available on record with their able assistance.

10. On the assessment of the material brought on the record, it appears that the case of prosecution solely depends upon the ocular and circumstantial evidence adduced in the shape of evidence of the complainant as well as eyewitnesses

namely Abdul Majeed Kapri (complainant) and Gulzar @ Gul Zaman Kapri (injured), Investigating officer, Medical Officer and other witnesses of the case, which include mashirs and a Civil Judge & Judicial Magistrate, who recorded statement under section 164 Cr.P.C. of PW Ali Ghulam. To prove the case, the prosecution has examined complainant Abdul Majeed, who deposed that on 17.07.2013, his brother Haji Muhammad kapri was standing in the street of house. Gulzar alias Gul Zaman was also standing near to Haji Muhammad at Thalla. He and Ali Ghulam Kapri were providing fertilizers to Pedi crops. In the meantime accused Asghar Kapri crossed through street of their house, to whom his brother Haji Muhammad Kapri and Gulzar alias Gul Zaman Kapri restrained to not cross through street of their house. In the meanwhile accused Asghar Kapri brother Allah Bux Kapri and his father Morio Kapri, who instigated accused Asghar Kapri to commit Qatal of Haji Muhammad Kapri and Gulzar alias Gul Zaman Kapri and not spare them. Thereafter, accused Asghar Kapri made fire from his gun at Haji Muhammad with intention to commit his Qatal, who fell down on the ground. Thereafter, unloaded and re-loaded his gun and made another fire at Gulzar alias Gul Zaman Kapri with intention to commit his Qatal. Pellets of said fire hit to Gulzar alias Gul Zaman at his chest. It was 08.00 a.m. Thereafter all the three accused went away towards their house. He and Ali Ghulam came at vardat and took deceased Haji Muhammad, who received firearm injuries at his public /perennial region. They found pellets injuries at chest and other parts of injured Gulzar alias Gul Zaman. They arranged vehicle, shifted injured Haji Muhammad and Gulzar alias Gul Zaman to PS Bulri Shah Kareem, obtained letter for examination and treatment. Thereafter, they shifted them to Taluka hospital Bulri Shah Kareem. In the meanwhile, his brother injured Haji Muhammad succumbed to the injuries and expired away at the hospital. Doctor referred injured Gulzar alias Gul Zaman to Hyderabad for

further treatment, examination and report. ASI Qurban Ali Gopang of PS Bulri Shah Kareem came at Bulri Shah Kareem hospital, go conducted post mortem of deceased Haji Muhammad. After post mortem, dead body of deceased was handed to them by ASI Qurban Gopang. They brought dead body at their village and buried the same after observing funeral ceremony, he appeared at PS and lodged FIR.

11. The complainant was cross-examined by the learned counsel for the accused at length, but his evidence has not been shattered. In his cross-examination, the complainant has denied to the suggestion of defense counsel by deposing that *“It is incorrect to suggest that I and deceased Haji Muhammad Kapri made fire upon each other in which Haji Muhammad Kapri and injured Gulzar @ Gul Zaman received firearm injuries at their land.”*

12. Eyewitness / injured namely Gulzar @ Gul Zaman during his evidence deposed that Abdul Majeed is his cousin. This incident took place on 17.07.2013. On the day of commission of incident he and his cousin Haji Muhammad were standing in the street of their house. Accused Allah Bux Kapri, Asghar Kapri and Morio Kapri are residing near their house. At that time he was standing at Thalla in the street of their house. Abdul Majeed and Ali Ghulam were providing fertilizers to Pedi crop. Asghar Kapri crossed through street of their house to whom he and Haji Muhammad restrained to not cross from there. Thereafter, Asghar Kapri immediately went to his house, came with SBBL gun, who was followed by his brother Allah Bux kapri and father Morio Kapri, who instigated him to commit Qatal of Haji Muhammad Kapri and Gulzar alias Gul Zaman Kapri. It was about 08.00 a.m. In their presence Asghar Kapri made fire from his SBBL gun at public / perennial region of Haji Muhammad. Thereafter, accused Asghar Kapri made fire upon him, which hit at his chest, abdomen and other parts of body. Thereafter, all the

three accused run away. Complainant Abdul Majeed and cousin Ali Ghulam came there arranged vehicle and shifted them to PS Bulri Shah Kareem. After obtaining police letter they through them at Taluka Hospital Bulri Shah Kareem. Injured Haji Muhammad Kapri succumbed to his injuries at Taluka Bulri Shah Kareem and expired away. Doctor referred him to Hyderabad for further treatment. During cross-examination, this witness also denied the defense suggestive plea put by the counsel for the appellant / accused that *“It is incorrect to suggest that due to matrimonial dispute complainant Abdul Majeed made firing upon deceased Haji Muhammad and me and caused firearm injuries. It is incorrect to suggest that we have got registered false case against Morio and others due to matrimonial dispute.”*

13. PW / mashir Ghulam Shabbir, was also examined, who is mashir of inspection of dead body of deceased Haji Muhammad, preparation of Danishnama, inspection of place of incident, handing over cloths of deceased to the Investigating Officer, arrest of accused and recovery of crime weapon i.e. SBBL Gun from the sugarcane crop near watercourse on the pointation of accused Asghar. Though this witness / mashir was cross-examined at length but his evidence could not shattered by the learned defense counsel.

14. PW ASI / I.O. Qurban Ali was also examined by the prosecution. He deposed that on that date, complainant Abdul Majeed along with injured Haji Muhammad and Gulzar @ Gul Zaman came at police station. He issued letter for examination, treatment and report. Thereafter he received information that injured Haji Muhammad expired away in the hospital. Then he proceeded to the hospital and found that dead body of deceased was lying on the stature in the room of hospital. He issued letter to the Doctor for conducting post mortem of dead body of deceased Haji Muhammad. He further deposed that he prepared memo of examination of dead body, danishnama and lash

chakas form in presence of mashirs namely Ghulam Shabbir and Noor Ahmed in Taluka Hospital Bulri Shah Kareem. He obtained signatures from mashirs on memo of examination of dead body, lash chakas form and danishnama. He also put his signatures on said documents. After postmortem of deceased Haji Muhammad, he received dead body from the Doctor and handed over to Abdul Majeed and obtained such receipt from him. On same day at about 11:40 p.m. complainant Abdul Majeed appeared at police station and lodged F.I.R. He read over contents of F.I.R to the complainant, who admitted the same as true and correct and put his signature on F.I.R. Then he also put his signature on it. On 18.07.2013 at about 0640 hours he left police station for arrest of the required accused. When they reached Bulri Sim Nali where he received spy information that accused Asghar Kapri is present at Khiryari bus stop. Thereafter they proceeded towards pointed place and reached there. They apprehended accused Asghar Kapri in presence of PC Abdul Rasheed and PC Sohrab. He conducted personal search of accused in presence of said mashirs and prepared such memo of arrest. Thereafter accused was confined in police lock up. This witness further deposed that on 18.7.2013 at about 1500 hours, he prepared memo of wardat in presence of mashirs. Place of wardat was shown to him by the complainant. He secured two empty cartridges and blood stained mud from wardat. On 18.07.2013 at about 1800 hours complainant appeared at PS and produced blood stained clothes of deceased Haji Muhammad. On 20.07.2013 at about 0755 hours they proceeded from police station in connection with investigation of case. At about 1530 hours when they reached near Shan Field main Sujawal road and arrested accused Allah Bux Kapri and Morio Kapri. On 21.07.2013, he taken out Asghar Kapri from police lockup for interrogation regarding gun, which was alleged to have been used in the commission of offence. During interrogation accused Asghar Kapri voluntarily became ready for producing the gun alleged to have been used by him in

the commission of offence, which was concealed by him in the sugar cane crop situated in front of his house. Thereafter, he along with police officials and accused Asghar Kapri left police station vide roznamcha entry No.9 at about 1500 hours and proceeded from police station. When they reached at village Muhammad Yakoob Kapri, where mashirs joined them and proceeded ahead at about 1530 hours when they reached in front of house of accused Asghar Kapri, who proceeded ahead of police party, taken out gun from the bank of water course situated in the sugar cane crop in presence of mashirs namely Ghulam Shabbir Kapri and Noor Ahmed Kapri and disclosed that with said gun he has committed murder of deceased Haji Muhammad and caused injury to Gulzar @ Gul Zaman. They unloaded said gun and found empty. Thereafter a separate FIR under section 23(i)(a) Sindh Arms Act, 2013 was registered against accused Asghar Kapri. Then blood stained mud and blood stained clothes were dispatched to Chemical examiner; Gun, empty cartridges and pellets to the ballistic expert Hyderabad for examination and report. On 30.07.2013, he got recorded statement under section 164 Cr.P.C. of PW Ali Ghulam Kapri. Learned counsel though cross-examined the Investigating Officer but could not be able to shatter his evidence.

15. PW Abdul Rasheed, who was mashir of arrest of appellant / accused Asghar Kapri, was also examined by the prosecution. This mashir corroborated the memo of arrest of appellant / accused and despite cross-examination by learned defense counsel. PW Muhammad Anwar Tapedar of the Tapo Bulri Shah Kareem was also examined, who in his evidence disclosed the location of place where incident taken place and produced such sketch. His evidence was not shattered by the defense during cross-examination.

16. PW Mr. Sabghatullah Patoli, Civil Judge & Judicial Magistrate was also examined. The Magistrate confirmed that he

has recorded statement under section 164 Cr.P.C. of PW Ali Ghulam, which he produced in his evidence. He was cross-examined by the learned defense counsel in which he stated that *“Statement under section 164 Cr.P.C. of PW Ali Ghulam was reduced with my own handwriting. It is incorrect to suggest that I have not verified the N.I.C. and photograph of PW Ali Ghulam before recording of his statement u/s 164 Cr.P.C. It is correct to suggest that CNIC or photograph of PW Ali Ghulam is not attached with his statement under section 164 Cr.P.C. Voluntarily says that it is not requirement of law. It is incorrect to suggest that I had not recorded statement of PW Ali Ghulam. It is also incorrect to suggest that I had recorded statement of some other person other than PW Ali Ghulam.*

17. Since statement under section 164 Cr.P.C. of eyewitness Ali Ghulam was recorded before the learned Magistrate, as such, he was given up by the prosecution. In his 164 Cr.P.C. PW Ali Ghulam stated that on 17.07.2013, he and complainant Abdul Majeed while spreading out fertilizer [Bhaan] in the crop. Haji Muhammad Kapri was standing in his street where house of Morio Kapri is also situated. Gulzar @ Gul Zaman was standing in the courtyard of his house. While Asghar Kapri crossed from this street, to which Haji Muhammad and Gulzar @ Gul Zaman restrained him not to pass from the street. Asghar angered and went towards his house and immediately came with SBBL Gun. Morio Kapri and Allah Bux Kapri instated him not to leave both of them and commit their murders. Asghar Kapri immediately made fire shot upon Haji Muhammad with intention to kill him, which hit him and he fell down and blood started oozing. Asghar Kapri loaded other cartridge in SBBL Gun and made fire shot upon the chest of Gulzar @ Gul Zaman, who fell down. Thereafter all three accused went towards their house. It was 08.00 a.m. He and Abdul Majeed carried the both injured, went to PS and after getting letter for treatment came at hospital where Haji Muhammad succumbed to the injuries while injured

Gulzar @ Gul Zaman was referred to Hyderabad. Then ASI Qurban Ali Gopang came at hospital and after postmortem delivered the dead body. They carried the dead body at their village and after funeral ceremony, complainant Abdul Majeed lodged FIR at PS. This witness was also cross-examined by learned defense counsel but his evidence was not shattered.

18. The Complainant, Eyewitnesses and Investigating Officer, Mashir, Tapedar, Medical Officer and Magistrate were put on a lengthy cross wherein the learned counsel for the defence asked multiple questions to shatter their confidence but they could not extract anything from any of the said witnesses, who remained consistent on all material points. The parties are known to each other, so there was no chance of the mistaken identity of the appellant.

19. From the perusal of the evidence of the complainant and both the eyewitnesses, it appears that they cannot be termed as chance witnesses but rather would fall within the category of natural witnesses. From the appreciation of evidence, it is crystal clear that the prosecution remained successful to bring cogent and unimpeachable direct evidence well supported and corroborated by the medical version against the accused. The evidence of complainant and eyewitnesses cannot be discarded merely because they are relatives inter-se particularly the presence of eyewitnesses at the place of occurrence was obvious as the incident took place during bright day time at 08.00 a.m. when except the eyewitnesses, who were providing fertilizers to the crops, none from the public was available there. The accused has been assigned with the definite role. The defense plea of the accused is general in nature without substance.

20. Neither the prosecution needs to draw the said aspect of the matter, nor the defense is devoted to discarding it, thus, it is an admitted fact that the deceased Haji Muhammad has died an unnatural death. The medical evidence also describes the seat

and nature of injuries and how his death occurred. Dr. Abdul Rehman Samoon, Senior Medical Officer, who has conducted the Postmortem of the deceased and issued such Report produced in evidence at Ex. 10/G. He has deposed that on 17.07.2013, injured namely Gul Zaman s/o Allah Warrayo Kapri aged about 28 years and Haji Muhammad s/o Ghulam Hussain Kapri aged about 45 years were brought by ASI Qurban Ali Gopang of PS Bulri Shah Kareem for examination, treatment and reports with police letter. He firstly examined injured Gul Zaman and after providing first aid treatment to him, he was referred to LUMHS Hyderabad. Thereafter he examined injured Haji Muhammad, who was brought in serious, gasping condition and shock; pulse feeble and blood pressure was in audible and injured was unconscious, not responding to maximum stimuli. Oxygen inhalation, artificial respiration, intravenous line maintained, injection solucortef given but injured expired due to severe bleeding and injuries to vital organs. Thereafter police handed over letter and inquest report. He conducted postmortem of the deceased Haji Muhammad. He started the postmortem on 17.07.2013 at 09.30 pm and completed it at 11.30 pm on the same date. On external examination of dead body, he found as under:-

“No mark of ligature seen. Dead body is of middle age, male... Mouth and both eyes closed, tongue inside the mouth, teeth intact, wearing blood stained heavy green coloured shirt and shalwar with multiple holes (pellets) on the front of shirt and upper part of shalwar with brown agath and one multiple coloured towel. Nothing present in the pockets. Postmortem staining present on dependent parts of body like back of chest, buttocks, heels, back of chest. Decomposition still not developed.

RIGOR MORTIX:- Started developing in the neck and left arm.

I found following injuries:-

INJURY NO.1:- Firearm lacerated circular wound 2 cm x 2 cm x cavity deep in the middle portion, one cm lateral to midline on right side of abdomen with multiple lacerated oval wounds (pellets) measuring 0.5 cm x 0.5 x cavity deep present on the front of whole abdomen, lower part of both sides of chest and upper side of both thigh with severe bleeding from the pellets wounds. On further dissection under injury No.1 there is rupture of right diaphragm, right pleura and right lower lobe of right lung. There is rupture of liver, portal vein and venacava and rupture of peritoneum and mesentery, rupture of stomach, small intestine and large intestine at multiple sides due to pellets discharge and rupture of abdominal aorta. Peritoneal cavity full with blood and there is expulsion of stomach and intestinal contents in it. Seven pellets recovered from the abdominal cavity during dissection.

Probable time between injury and death: About one hour and five minutes. Probable time between death and post-mortem 25 minutes. From external and internal examination of deceased Haji Muhammad, the medical officer was of the opinion that the cause of death was profuse bleeding and shock leading to cardio-respiratory failure cause by Injury No.1 resulting by gunshot injury with pellets discharge. The injury No.1 was ante-mortem and sufficient to cause death in ordinary course of life. The distance at which firearm was fired was about 20 feet.

21. In view of the above position, it is clear that the accused has murdered deceased Haji Muhammad, as such, he is guilty of such offence and liable for the punishment which extends to death or imprisonment for life. In the instant matter, the complainant as well as the eyewitnesses have sufficiently explained the date, time, place of incident, manner of occurrence, and involvement of the appellant. There can be no denial to the legally established principle of law that it is always direct evidence that is material to decide the fact and to prove the charge. Insufficient, contradictory, discrepant direct evidence is deemed adequate to hold a criminal charge as not proved but where direct evidence remains in the field with that of its being natural and confidence-inspiring then the requirement of independent corroboration is only a rule of abundant caution and not a mandatory rule to be applied invariably in each case. Reliance may be placed upon the case of Muhammad Ihsan v. The State (**2006 SCMR 1857**) wherein the Apex Court has held that:

“5. It be noted that this Court has time and again held that the rule of corroboration is rule of abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence.”

22. So far as the contention of the learned counsel for the appellant/accused that there was a delay in the registration of FIR is concerned, the complainant has fully explained the delay. The defense has failed to bring on record any material to show that there was previous ill-will/grudge between the accused person and witnesses; mere taking plea that they were at dispute due to matrimonial affairs would not be sufficient without corroborative piece of evidence, which, of course, is not available

with defense. The Medical evidence of the doctor supports the ocular version of the complainant and the eyewitnesses that the deceased had died with unnatural death after receiving gunshot injuries. The ocular account finds support from the circumstantial evidence collected by the investigating officer coupled with recovery of crime weapon i.e. SBBL gun. The Forensic and Chemical Examiner's report are in positive. The Incharge Forensic Science Laboratory Forensic Division Hyderabad has confirmed that two empties (these empties recovered from the place of incident vide memo Ex. 14/C) were fired from the recovered SBBL Gun from the possession of appellant / accused Asghar vide memo Ex. 14/F. Similarly seven pellets, which the medical officer handed over to SHO PS Bulri Shah Kareem, have also been testified by the Forensic Expert that the same are of shot gun cartridge. The reliance is placed upon the case of **Zahoor Ahmed Vs. The State (2017 SCMR 1662)**, wherein the Honourable Supreme Court of Pakistan has held that:

“4. The ocular account, in this case, consists of Muhammad Khan complainant (PW-06) and Shahbaz (PW-07). They gave the specific reasons of their presence at the place of occurrence as, according to them, they alongwith the deceased were proceeding to harvest the sugarcane crop. Although they are related to the deceased they have no previous enmity or ill-will against the appellant and they cannot be termed as interested witnesses in the absence of any previous enmity. They remained consistent on each and every material point. The minor discrepancies pointed out by the learned counsel are not helpful to the defense because with the passage of time such discrepancies are bound to occur. The occurrence took place in broad day light and both parties knew each other so there was no mistaken identity and in absence of any previous enmity, there could be no substitution by letting off the real culprit specially when the appellant alone was responsible for the murder of the deceased. The evidence of two eyewitnesses was consistent, truthful and confidence inspiring.

The medical evidence fully supports the ocular account so far the injuries received by the deceased, time which lapse between the injury and death and between death and postmortem. Both the Courts below have rightly convicted the appellant under section 302(b), PPC.

23. Learned counsel for the appellant pointed out some minor contradictions and discrepancies in the evidence of witnesses, which in my view are not sufficient to hold that the case of the prosecution is doubtful. It is settled by now that, wherein the evidence, the prosecution established its case beyond a reasonable doubt by producing reliable, trustworthy and confidence-inspiring evidence supported by others viz. medical and circumstantial evidence then if there may some minor contradictions which always are available in each and every case such may be ignored, as has been held by Honourable Supreme Court in case of **Zakir Khan v. The State (1995 SCMR 1793)**. The relevant paragraph is reproduced as under:-

“13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving

evidence before the Court has sufficient probative force to bring home the guilt to the accused.”

24. While recording the statements under section 342 Cr.P.C no substance has been brought on record by the appellant to justify his false implication at the hands of the complainant party. I would mention here that the deceased was the real brother of the complainant, normally the possibility of substitution of accused become rare by leaving the actual persons and involving other persons, thus, no material has been brought on record by the appellant to show the deep-rooted enmity existed earlier between the parties, which could have been the reason for false involvement of the accused in this case. Reliance in this respect is placed in the case of **Lal Khan v. State (2006 SCMR 1846)** **Farooque Khan v. The State (2008 SCMR 917)**, **Zulifqar Ahmed and others v. The State (2011 SCMR 492)** so also case of **Zahoor Ahmed v. The State (2007 SCMR 1519)** wherein Hon'ble Apex Court discussed as under:-

6. *The petitioner is a maternal-cousin of the deceased, so also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case. Further, it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial.*

25. Considering the above facts and circumstances, I have concluded that the prosecution has successfully established its case against appellant through ocular account furnished by the complainant and eyewitnesses which is corroborated by the medical evidence coupled with circumstantial evidence. Learned counsel for the appellant has failed to pin point any material irregularly or serious infirmity committed by the learned trial Court while passing the impugned judgment which in my humble view is based upon proper appreciation of evidence and

the same does not call for any interference of this Court. Thus, the conviction and sentence awarded to the appellant by the learned trial Court are hereby maintained and the captioned Criminal Jail Appeal filed by the appellant merit no consideration, which is **dismissed** accordingly.

JUDGE