

# IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Criminal Appeal No.D- 47 of 2019.  
[Confirmation case No.03 of 2019]  
Criminal Appeal No.D- 50 of 2019  
Criminal Appeal No.S- 54 of 2019

Present.  
Mr. Justice Naimatullah Phulpoto.  
Mr. Justice Shamsuddin Abbasi.

Date of hearing: 23.02.2022 and 24.02.2022.  
Date of judgment: 08.03.2022.

Appellants: Bilawal @ Allauddin, Dost Ali, Umed Ali, Mukhtiar Ali @ Karo and Niaz @ Jogi, all by caste Kalhoro through Mr. Abdul Rasool Abbasi, Advocate.

The State: through Mr. Shawak Rathore, Deputy Prosecutor General, Sindh.

Complainant: Hakim Ali Soomro through M/s Meer Ahmed Mangrio and Irfan Ali Khaskheli, Advocates.

## J U D G M E N T

**NAIMATULLAH PHULPOTO, J:-** Appellants Bilawal @ Allauddin, Dost Ali, Umed Ali, Mukhtiar Ali @ Karo and Niaz @ Jogi were tried by learned Sessions Judge, Jamshoro in Sessions case No.409 of 2014 for offences under Sections 302, 504, 147, 148, 149 PPC. After regular trial, the learned trial Court vide its' judgment dated 13.03.2019, convicted the appellants for committing Qatl-e-Amd of Jehangir and Asghar Ali, the brothers of complainant and sentenced them as under:-

<i>u/s.302(b)/149 PPC</i>	<i>For committing Qatl-i-Amad of deceased Jehangir Soomro</i>
<i>u/s.302(b)/149 PPC</i>	<i>For committing Qatl-i-Amad of deceased Asghar Ali Soomro</i>
<i>u/s.504/149 PPC</i>	<i>For using abusive language</i>
<i>u/s. 147/149 PPC</i>	<i>For unlawful assembly</i>
<i>u/s. 148/149 PPC</i>	<i>For rioting</i>

45. I therefore convict accused Bilawal @ Allauddin Kalohoro, having specific role of issuing repeater fire shots upon deceased Asghar Ali and Jehangir, under Section 265-H(ii) Cr.PC in above mentioned offences and sentence him as under:-

1	<b><i>u/s.302(b)/149 PPC</i></b>	<i>Death imprisonment as Tazeer for causing Qatl-i-Amad of deceased Jehangir Soomro. Accused Bilawal @ Allauddin be hanged by neck till he is dead. He is also liable to pay compensation amount of Rs.1,000,000/- (one million) to the legal heirs of deceased Jehangir Soomro. In default of payment compensation amount, he shall suffer S.I for one year.</i>
2	<b><i>u/s.302(b)/149 PPC</i></b>	<i>Death imprisonment as Tazeer for causing Qatl-i-Amad of deceased Asghar Ali Soomro. Accused Bilawal @ Allauddin be hanged by neck till he is dead. He is also liable to pay compensation amount of Rs.1,000,000/- (one million) to the legal heirs of deceased Asghar Ali Soomro. In default of payment compensation amount, he shall suffer S.I for one year.</i>
3	<b><i>u/s.504/149 PPC</i></b>	<i>R.I for six months</i>
4	<b><i>u/s.147/149 PPC</i></b>	<i>R.I for six months</i>
5	<b><i>u/s.148/149 PPC</i></b>	<i>R.I for six months</i>

46. I also convict accused Mukhtiar Ali @ Karo, Niaz Ali @ Joji, Dost Ali and Umed Ali, having role of common object, facilitating accused Bilawal @ Allauddin in commission of double murder offence being his close relatives i.e sons and close relatives, under Section 265-H(ii) Cr.PC in above mentioned offences and sentence them as under:-

1	<b><i>u/s.302(b)/149 PPC</i></b>	<i>Life imprisonment as Tazeer for causing Qatl-i-Amad of deceased Jehangir Soomro and to pay compensation of Rs.500,000/- (five hundred thousands) each accused to the heirs of deceased Jehangir Soomro as required under Section 544-A Cr.PC. In default of payment of compensation, they shall suffer R.I for one year more.</i>
2	<b><i>u/s.302(b)/149 PPC</i></b>	<i>Life imprisonment as Tazeer for causing Qatl-i-Amad of deceased Asghar Ali Soomro and to pay compensation of Rs.500,000/- (five hundred thousands) each accused to the heirs of deceased Asghar Ali Soomro as required under Section 544-A Cr.PC. In default of payment of compensation, they shall suffer R.I for one year more.</i>
3	<b><i>u/s.504/149 PPC</i></b>	<i>R.I for six months</i>
4	<b><i>u/s.147/149 PPC</i></b>	<i>R.I for six months</i>

5	<i>u/s.148/149 PPC</i>	<i>R.I for six months</i>
---	----------------------------	---------------------------

All the sentences were ordered to run concurrently. Appellants were extended benefit of Section 382-B Cr.P.C.

Trial court made reference to this court for confirmation of death sentence awarded to appellant Bilawal @ Allauddin for committing the Qatl-e-Amd of Jehangir and Asghar Ali both by caste Soomra in terms of Section 374 Cr.P.C.

2. The prosecution story as given in the impugned judgment reads as under:-

*“Brief facts of the prosecution case are that on 07-11-2014 at 2345 hours complainant Hakim Ali Soomro lodged FIR at P.S Manjhand, stating therein that he had already dispute with Bilawal @ Allauddin party over coming and going from the street and on 07-11-2014 he had laid bricks in the street near his house for repair of house and he alongwith his brothers Asghar Ali aged about 44 years and Jehangir aged about 32 years were shifting the bricks inside the house and their relatives Meer Mohammad and Sikandar Ali Soomro were also present in the street. It was about 4.30 p.m, Bilawal @ Allauddin with repeater gun, Umed Ali with DBBL gun, Dost Ali with pistol, Mukhtiar Ali @ Karo with hatchet & Niaz Ali @ Joji with pistol came and abused them and asked ‘as to why they have laid down bricks in the street’, to which complainant party replied that it is public street and they are shifting the bricks inside the house, be decent and not to abuse, on which Bilawal @ Allauddin made straight fire with his repeater upon Asghar Ali, which hit him and he fell down. Bilawal @ Allauddin also made fire at Jehangir, which hit him and he also fell down. In the meantime, co-villagers arrived and then accused went away towards their houses. The complainant saw that his both brothers Asghar Ali and Jehangir sustained fire arm injuries on their necks and died. Thereafter complainant brought the dead bodies to Taluka Hospital, Manjhand and leaving the same there, appeared at P.S and informed the police. The police also arrived at hospital and issued letter for postmortem and after postmortem the dead bodies were handed over to him, he leaving the dead bodies in house, appeared at P.S and lodged FIR.”*

It was recorded on 07.11.2014 at 2345 hours at P.S Manjhand District Jamshoro vide crime No.20/2014 for offences u/s 302, 147, 148, 149, 504 PPC.

3. After usual investigation, challan was submitted against accused for offences u/s 302, 147, 148, 149, 504 PPC.

4. Trial Court framed charge against appellants / accused at Ex.3. Accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined complainant Hakim Ali (PW-1), Meer Mohammad Soomro (PW-2), Mumtaz Ali Soomro (PW-3) who produced mashirnama of arrest of accused at Ex.13/F, mashirnama of recovery of repeater from accused Bilawal @ Allauddin on 11.11.2014 at Ex.13/G, Dr. Asghar Ali (PW-4) at Ex.14, who produced postmortem report of deceased Asghar Ali at Ex.14/A, postmortem report of deceased Jehangir at Ex.14/B, Tapedar Basheer Ahmed (PW-5) and SIP Mohammad Ali Khaskheli (PW-6), who produced investigation papers and reports. Thereafter, prosecution side was closed vide statement at Ex.18.

6. Trial court recorded the statements of accused under Section 342 Cr.P.C at Ex.19 to 23 respectively to which accused claimed false implication in this case and denied the prosecution allegations. Accused did not lead evidence in defence and declined to give statement on Oath in disproof of the prosecution allegations. Accused Bilawal raised plea that he has been falsely implicated due to enmity.

7. Trial court after hearing the learned counsel for the parties and assessment of the evidence vide judgment dated 13.03.2019 convicted and sentenced the accused as stated hereinabove.

8. By this single judgment, we intend to decide the aforesaid appeals and confirmation reference made by the trial court as the same require same appreciation of evidence.

9. We have heard Mr. Abdul Rasool Abbasi, learned counsel for appellants, Mr. Shewak Rathore, Deputy Prosecutor General Sindh and Mr. Meer Ahmed Mangrio, learned counsel for complainant and perused the evidence available on record.

10. Mr. Abbasi, learned advocate for appellants argued that there was inordinate delay in lodging of FIR without plausible explanation; that

all the PWs are related to the deceased persons; that preliminary investigation was conducted, thereafter FIR of the incident has been lodged; that ocular evidence is contradictory to the medical evidence; that Doctor in his cross-examination has admitted that injury was caused to the deceased with bullet and according to the case of prosecution the repeater was used in the commission of the offence; that according to the case of prosecution, the incident had occurred in a street where bricks were lying but when the Investigation Officer visited place of wardat, no bricks were found there; that the specific role of causing firearm injuries to both the deceased persons is only attributed against accused Bilawal @ Allauddin and no overt act has been assigned to the remaining accused; that case of co-accused with no role is distinguishable from the case of main accused Bilawal @ Allauddin. It is further submitted that other two accused are sons of accused Bilawal and remaining two accused are his cousins; that the place of wardat was also inspected by Tapedar, but nowhere in his report it is mentioned that bricks were lying in street; that motive for committing the offence was weak and prosecution case against accused persons is doubtful. In support of his contentions, he has relied upon the cases reported as 1. Mehar Ali Channa v. The State (SBLR 2018 Sindh 381), 2. Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652), 3. Mst. Zohra Bibi and another v. The State (2005 YLR 1490), 4. Akhtar Saleem and another v. The State and another (2019 MLD 1107), 5. Noor Muhammad v. The State (2012 YLR 1927), 7. Muhammad Khan and another v. The State (1999 SCMR 1220), 8. Muhammad Rafique alias Feeqa v. The State (2019 SCMR 1068), 9. Abaid ullah v. The State and others (2016 MLD 1107), 10. Abdullah Khan and 5 others v. The State (2008 MLD 535). 11. Zameen and 2 others v. Mata Khan and others (PLD 2019 Peshawar 188), 12. Arshad Hussain alias Arshi v. The State (2015 MLD 431), 13. Muhammad Zaman v. The State & others (2014 SCMR 749), 14. Khalid Mehmood and another v. The State and others (2021 SCMR 810), 15. Muhammad Ahmad alias

Baggi and another v. The State (2022 YLR Note 19) and 16. Abdul Wahid and others v. The State & others (2021 YLR 913), 18.

11. Mr. Shawak Rathore, learned Deputy Prosecutor General Sindh argued that prosecution has established its' case against the appellant Bilawal @ Allauddin; he has been specifically attributed the role of causing firearm injures to both deceased persons; that ocular evidence to the extent of accused Bilawal is corroborated by medical evidence. It is further submitted by D.P.G that no doubt, PWs are closely related to deceased but it is no ground to reject their evidence; that so far the case of remaining accused / appellants is concerned, learned D.P.G submitted that no overt act has been attributed against them and their case is distinguishable from the case of main accused Bilawal @ Allauddin who has been sentenced to death. Lastly, it is submitted that appeal filed by appellant Bilawal may be dismissed as prosecution has succeeded in proving its' case against him. However, learned D.P.G did not support the impugned judgment passed by the trial court to the extent of appellants namely Dost Ali, Umed Ali, Mukhtiar Ali @ Karo and Niaz @ Jogi for want of evidence.

12. Mr. Mangrio, learned counsel for the complainant argued that delay in lodging the FIR has been fully explained as soon after the incident, complainant firstly rushed to the hospital; then to the police station for obtaining police letter as the Medical Officer had refused to conduct the postmortem examination of deceased persons and asked the complainant first to produce the reference letter of police, thereafter, complainant contacted the police, police came and referred the deceased to Doctor for conducting postmortem examination thereafter, complainant lodged FIR; that ocular evidence is corroborated by the medical evidence; that the incident had occurred in front of the house of complainant in the street; that Trial Court has already rejected the defence plea.; that motive as setup in FIR has been established at trial; that accused were armed with deadly

weapons and they abused the complainant party; that PWs have supported the case of prosecution; that two empties and repeater were recovered and sent to the ballistic expert for report and it was positive; that appellant Bilawal had chosen vital part of the deceased persons for firing and demonstrated brutality in the commission of two murders in-front of the house of complainant; that it is sufficient ground for confirmation of death sentence against him; as regards to the contention of the learned defence counsel that Doctor who had conducted the postmortem examination of the deceased persons had submitted an application in order to resolve the ambiguity with regard to the word "bullet". Learned counsel for complainant in support of his submissions has relied upon the cases reported as Muhammad Riaz v. Muhammad Zaman and another (PLD 2005 Supreme Court 484), Muhammad Mansha v. The State (2016 SCMR 958), Haji Muhammad alias Jhoora v. The State (PLD 2014 Supreme Court 322), Muhammad Tufail v. The State (PLD 2002 Supreme Court 786), Shabib Hussain v. Alamzeb and another (2020 YLR Note 41) and Muhammad Zaman v. The State (PLD 2009 Supreme Court 49).

13. The prosecution in order to prove the unnatural death of deceased Asghar Ali and Jehangir had examined Dr. Asghar Ali at Ex.14. He has deposed that on the above date, at about 5-45 p.m, he received both dead bodies for conducting postmortem examination and report. He started postmortem examination of deceased Asghar Ali at 7-00 p.m and completed at 8-00 p.m. On external examination following injuries were found:-

***"1. Lacerated punctured type of wound measuring 4 cm x 4 cm through and through, margins inverted, blackening and charring present on the base of neck, right side of neck anteriorly (wound of entrance), through and through. Wound measuring 6 cm x 5 cm margin everted below the right side of scapula (wound of exist).***

***2. Lacerated punctured type of wounds 08 in numbers, each measuring 01 cm x 01 cm crossed the body. Margins inverted, blackening present around the injury No.1 (wound of entry) with through and through. Margins everted each measuring 1.5 cm x 1.5 cm around***

***the exit wound No.1 below the scapular bone on the right side (wound of exit).***

On internal examination of the deceased Asghar Ali, the doctor opined that injuries were anti-mortem in nature. Time between injuries and death was five minutes and the time between death and postmortem was 1/ ½ hours. Doctor started postmortem examination of another deceased Jehangir at 8-00 p.m and completed the same at 9-00 p.m. On external examination, the Doctor found the following injuries on the body of another deceased namely Jehangir:-

***“1. Lacerated punctured type of wound measuring 4 cm x 4 cm through and through. Margins of wound inverted blackening and charring present on the base of neck at right side (wound of entrance) with wound of exit through and through measuring 6 cm x 5 cm. Margins everted below the right scapula.***

***2. Lacerated punctured type of wound 08 in numbers, each measuring 01 cm x 01 cm into margins everted. Blackening present around the injury No.1 at the base of right side of neck (wound of entrance) with through and through wound measuring 1.5 cm x 1.5 cm, margins of wound were everted on the right side of scapula (wound of exit).***

On internal examination, it was opined that the injuries were anti-mortem in nature. Time between injuries and death was five minutes and the time between death and postmortem was 2 ½ hours. Doctor from external as well as internal examination of both the deceased opined that the cause of death was due to firearm injuries.

Trial court after examination of the medical evidence came to the conclusion that both the deceased died their un-natural death in the result of firearm injuries as described by the Medical Officer. We have also perused the evidence minutely and have come to the conclusion that finding of the trial court regarding medical evidence requires no interference.



14. In order to prove its' case, the prosecution has examined complainant Hakim Ali and another eye witness namely Mir Muhammad. Complainant Hakim Ali (PW-1) has deposed that present incident had occurred on 07.11.2014 at 4-30 p.m in the street. Motive for commission of offence was that prior to the incident appellant Bilawal and others had raised objection to the complainant party for the use of common street. On the day of incident, complainant alongwith his brothers Asghar Ali and Jehangir (both deceased) was shifting bricks from street to the house, at that time appellants / accused Bilawal @ Allauddin armed with repeater gun, Umed Ali armed with DBBL gun, Dost Ali armed with pistol, Mukhtiar @ Karo having hatchet, Niaz @ Jogi armed with pistol appeared there. PWs Mir Muhammad and Sikandar, residing in the neighbourhood were also present there. He has further deposed that accused Bilawal and others abused to complainant party, as to why they had collected the bricks in the street. They replied for the construction of house. Thereafter, it is stated that accused Bilawal @ Allauddin fired from his repeater upon the brother of complainant namely Asghar Ali who sustained firearm injury at his neck. Appellant Bilawal @ Allauddin made second fire upon another brother of complainant namely Jehangir which also hit him at his neck and both died at the spot. Complainant raised cries which attracted Mohalla people. Thereafter, complainant made arrangement of vehicle and took both the dead bodies of his brothers to Manjhand hospital. Doctor refused to conduct the postmortem examination without reference of the police then complainant gave information of the incident to the police. Police came in the hospital thereafter, doctor conducted the postmortem examination of both deceased namely Asghar Ali and Jehangir. After postmortem examination, complainant brought the dead bodies in the house and went to police station and lodged FIR. On the next day, police visited the place of wardat in his presence at 8-15 a.m and secured blood stained earth and two empties from the place of wardat in presence of mashirs. He had also shown the place of incident to Tapedar who had prepared the sketch of place of wardat. Complainant was cross examined

by defence counsel at length and he denied the suggestion that delay was caused in lodging of the FIR for falsely implicating the accused in this case. Complainant has also denied the suggestion that accused Bilawal had demanded the hand of daughter from the complainant to which he had refused and on account of such annoyance he had lodged false FIR. Complainant has also denied the suggestion that incident was committed by Solangi community on old enmity.

Mir Muhammad (PW-2) was also the eye witness of incident. He has deposed that on 07.11.2014 at 4-30 p.m, he alongwith his maternal uncle Sikandar was present in the street. Complainant Hakim Ali, deceased Jehangir and Asghar Ali were shifting the bricks from street towards their house, at that time accused Bilawal @ Allaudin armed with repeater, Umed Ali armed with DBBL gun, Dost Ali armed with pistol, Mukhtiar @ Karo having hatchet and Niaz @ Jogi armed with pistol appeared and started abusing the complainant party over the dispute of street. Thereafter, accused Bilawal fired from his repeater gun upon Asghar Ali which hit him at his neck and he fell down. Accused Bilawal also made second fire upon Jehangir and he received firearm injury at his neck and fell down. Cries were raised which attracted Mohalla people. Jehangir and Asghr Ali succumbed to the injuries at spot. No overt act has been attributed by this eye witness against the remaining accused. He was also cross examined by defence counsel and denied the suggestion that he was deposing falsely against the accused due to enmity.

Mumtaz Ali (PW-3) has deposed that on 07.11.2014 at 06-05 p.m police inspected the dead bodies of Asghar Ali and Jehangir lying in Taluka Hospital Manjhand and noted down injuries and prepared inquest report. He was made as mashir. Co-mashir was Fateh Muhammad. On 08.11.2014 at 08-15 a.m, he was present at the place of incident, SHO Muhammad Ali Khaskheli came at the place of wardat and collected blood stained earth and two empties of cartridges from there. He was made as mashir. Co-mashir was Fateh Muhammad. On 08.11.2014, SHO secured

clothes of the deceased persons and he acted as mashir; clothes were stained with blood. Such mashirnama was prepared. Co-mashir was same. He had further deposed that on 11.11.2014 police interrogated accused Bilawal, during investigation he prepared to produce the repeater gun used by him in the commission of offence and led the police party so also the above named mashir to his Otaq and produced the same at 2-30 p.m. Accused Bilawal had also produced the license of repeater gun. Such mashirnama was prepared. He acted as mashir. Co-mashir was same. He was cross examined at length and denied the suggestion that all the mashirnamas were prepared at police station.

Basheer Ahmed Tapedar (PW-5) has deposed that on 08.11.2014 he inspected the place of wardat which was shown to him by complainant Hakim Ali situated in a street of Lakha city. He prepared the sketch of place of wardat and produced it before the trial court at Ex.16/B.

SIP Muhammad Ali Khaskheli (PW-17) had investigated the case. He has deposed that on 07.11.2014 he was posted as SHO at P.S Manjhand. At 1750 hours one Hakim Ali appeared at the police station and narrated that his brothers namely Asghar Ali and Jehangir have been murdered at about 1630 hours and he had taken the dead bodies to the hospital. I.O kept such entry in Roznamcha register bearing entry No.10 at 1750 hours. SHO alongwith his sub-ordinate staff proceeded to Taluka Hospital Manjhand and inspected the dead bodies at 1805 hours, prepared inquest report in presence of the mashirs and issued letter to the Medical Officer for conducting postmortem examination of both the deceased. After postmortem examination, dead bodies were handed over by SHO to the complainant Hakim Ali, then SHO returned back to the police station. On the same night at about 2345 hours complainant Hakim Ali appeared at police station and lodged the report against accused. It was recorded vide crime No.20/2014 for offences u/s 302, 147, 148, 149, 504 PPC. Investigation Officer visited the place of wardat on the next morning in presence of the mashirs and collected blood stained earth and

secured two empties lying at the place of wardat / street. Such mashirnama was prepared and case property was sealed. Complainant produced clothes of the deceased persons before the SHO which he secured in presence of the mashirs and prepared such mashirnama. On spy information accused Bilawal, Dost Ali, Umed Ali, Mukhtiar Ali and Niaz Ali were arrested by him in presence of the mashirs on 08.11.2014 at about 1400 hours. Such mashirnama was prepared. Thereafter, he issued letter to the Mukhtiarkar for preparation of sketch of place of wardat which was prepared. On 09.11.2014 he dispatched the blood stained earth and clothes of both the deceased for chemical analysis and report. I.O recorded 161 Cr.P.C statements of PWs on 10.11.2014. On 11.11.2014 during interrogation accused Bilawal prepared to produce the crime weapon used by him in the commission of offence. Thereafter, accused Bilawal led the police party to the village Lakha towards Otaq and voluntarily produced the repeater from straws lying beside his Otaq. Investigation Officer checked the repeater, it was of 12-bore and had the smell of gun powder. I.O inquired about the license of repeater from accused Bilawal, he produced license of repeater having No.1423 before the I.O. Thereafter, Investigation Officer lodged separate FIR against accused Bilawal u/s 25 of Sindh Arms Act, 2013. On 12.11.2014, I.O dispatched the crime weapon to F.S.L and interrogated the remaining accused. I.O received the positive reports of chemical and ballistic experts. On the conclusion of investigation submitted challan against accused before the competent court of law. In the cross examination I.O denied the suggestion that he had not conducted the fair investigation of the case. I.O has also denied the suggestion that accused have been falsely implicated in this case.

15. Appellants / accused were examined u/s 342 Cr.P.C as stated above and they have claimed the false implication in this case due to enmity.

16. Ocular account has been furnished by complainant (PW-1) and Mir Muhammad (PW-2). Occurrence had taken place in the broad day light in street in front of the house of complainant. The presence of the complainant and another eye witness namely Mir Muhammad at the scene of occurrence was quite natural. Ocular evidence is corroborated by medical evidence. Statements of the prosecution witnesses are consistent, confidence inspiring and in consonance with probability of circumstances of the case and being worthy of credence which could not be brushed aside. Complainant and PW-2 had no enmity or malice against appellant Bilawal and their testimony is duly supported by medical evidence having been found confidence inspiring, truthful and unimpeachable. As regards to the delay in lodging of FIR is concerned, no doubt, there is delay of about 07 hours but yet seen in the light of attending circumstances of the case, complainant has fully explained the delay in lodging of FIR. **Entry No. 10 dated 07.11.2014 at 1750 hours was kept by I.O regarding the incident within 02 hours**, which clearly show that delay in lodging of the FIR has been fully explained. It is settled principle of law that in criminal cases, the delay by itself in lodging of the FIR is not material. The factors to be considered by the courts are firstly, that such delay has been reasonably explained and secondly, prosecution has not driven any undue advantage through the delay involved. Rightly reliance has been placed upon the case of Muhammad Nadeem alias Deemi v. The State (2011 SCMR 872). As regards to the next contention of learned defence counsel that complainant Hakim Ali is the brother of both the deceased persons, but his mere relationship with the deceased persons is no ground to discard the evidence of complainant. He cannot be termed as interested witness. The interested witness is the one, who has a motive to falsely implicate an accused or has previous enmity with the person involved. There is a rule that the statement of an interested witness can be taken into consideration for corroboration and mere relationship with the deceased is not "sufficient" to discredit the witness particularly when there is no motive to falsely involve the accused. The

principles for accepting the testimony of interested witness are set out in the case of **Zulfiqar Ahmad and another v. The State (2011 SCMR 492)** in which it is held as under:-

“It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of 'interested witness' was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR-01) and it was held that 'friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused.

Thus, the mere relationship of these eye-witnesses with the deceased alone is not enough to discard the testimony of complainant and his witnesses. In matters of capital punishments, the accused would not stand absolved by raising plea in statement of accused that there was matrimonial dispute but would require to bring on record that there had been such enmity which could be believed to have motivated the "natural witnesses" in involving the innocent at the cost of escape of "real culprits". We would mention here that where the natural witnesses are in blood-relations then normally the possibility of substitution becomes rare. Thus, no material has been brought on record by the appellant to show that the deep-rooted enmity existed earlier between the parties, which could have been the reason for false involvement of the appellant Bilawal alias Allauddin in this case.

17. Appellant Bilawal's sole nomination as being the one to have fired upon both deceased effectively is a circumstance that reflects positively on complainant's version. Defence plea raised by appellant Bilawal @ Allauddin that there was enmity with complainant party over matrimonial affairs, has not been substantiated at trial and such theory has rightly been rejected by the trial court. As regards to the **motive**, it is the case of prosecution that there was a dispute between the parties over the street and complainant party had collected bricks in the street for construction work in their house and appellant Bilawal by means of licensed repeater fired upon deceased persons at their vital part such as neck on the day of

incident. Motive as set up in the FIR has been established by prosecution at trial. So far as contention of the learned defence counsel that there are major discrepancies in the statements of PWs but such contradictions were not pointed out by him; it is settled law that if the discrepancies are shattering the prosecution story on salient feature then it has substance to intervene on the subject otherwise it has no impact on the veracity of the prosecution story. Reliance in this regard is placed on the case titled as MUHAMMAD IQBAL v. THE STATE (PLD 2001 Supreme Court 222). **There is only nomination of co-accused Mukhtiar Ali @ Karo, Niaz @ Jogi, Dost Ali and Umed Ali with inconsequential roles / no overt act at the time of occurrence.** Appellants / accused Mukhtiar Ali @ Karo and Niaz @ Jogi are the sons of principle accused Bilawal @ Allauddin and the remaining two accused namely Dost Ali and Umed Ali are his cousins. False implication of these co-accused cannot be ruled out. Learned Deputy Prosecutor General has also not supported the judgment of trial court to the extent of these 04 appellants as no overt act was attributed against them. Rightly reliance has been placed upon the case of **Shaheen Ijaz alias Babu v. The State (2021 SCMR 500)**. The relevant portion is reproduced as under:-

***“5. The deceased and the petitioner lived in the same neighbourhood; though disbelieved by the High Court, nonetheless, motive alleged in the crime report appears to have ignited the unfortunate situation with a past, otherwise peaceful and smooth; in this backdrop, petitioner's nomination in a broad daylight incident by resident witnesses hardly admits a space to entertain any hypothesis of mistaken identity or substitution. Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation. Petitioner's sole nomination as being the one to have targeted the deceased with five entrance wounds is a circumstance that reflects positively on complainant's conduct; nomination of co-accused with inconsequential roles notwithstanding, their presence at the scene followed by acquittal, seemingly out of abundant caution, does not tremor prosecution's mainstay qua the role assigned to the petitioner. In the totality of circumstances, presence of petitioner's sons in an incident, coming about next door, would not by itself bring them into the community of intention and as such their acquittal cannot be viewed as a***

*circumstance casting away the entire case. Forensic report Ex.PR, though viewed with suspicion by the High Court in view of even dated dispatch of casings (P-6/1-2) with gun (P-4), nonetheless, unmistakably confirms injuries sustained by the deceased consistent therewith. A straightforward and consistent ocular account furnished by the witnesses overwhelmingly preponderates over petitioner's plea of an accidental fire by the deceased costing his own life in a brawl wherein he admits his own presence. The plea in view of repeated fire shots widely covering different parts of deceased's body, merits outright rejection being preposterous. The courts below rightly placed implicit reliance on the prosecution evidence that squarely constituted "proof beyond doubt"; scales are in balance with wage settled conscionably. Leave declined."*

18. As discussed above, no overt act has been attributed to appellants / accused Dost Ali, Umed Ali, Mukhtiar Ali @ Karo and Niaz @ Jogi and the prosecution has failed to prove the case against these accused. Accordingly, Criminal Appeal No.D-50 of 2019 filed by appellants / accused Dost Ali, Umed Ali, Mukhtiar Ali @ Karo and Niaz @ Jogi is allowed and the impugned judgment dated 13.03.2019 to the extent of appellants Dost Ali, Umed Ali, Mukhtiar Ali @ Karo and Niaz @ Jogi is set aside. Appellants / accused Dost Ali s/o Ghulam Rasool, Umed Ali s/o Ghulam Rasool, Mukhtiar Ali @ Karo s/o Bilawal @ Allauddin and Niaz @ Jogi s/o Bilawal @ Allauddin, all by caste Kalhoro are acquitted of the charge out of **abundant caution**. They shall be released forthwith if they are no more required in other case.

19. Ocular account is principal evidence in this case, the same is corroborated by medical evidence **to the extent of appellant Bilawal**. Complainant is the brother of both deceased persons, in absence of any material to hold that he is interested witness, his evidence cannot be rejected. Evidence of another eye witness Mir Muhammad is also reliable and confidence inspiring. Delay in lodging of the FIR has been fully explained. Trial court has rightly appreciated the evidence of prosecution witnesses according to settled principles of law. View of the trial court deserves to be accepted. Appellant Bilawal voluntarily produced repeater



from his Otaq. The said repeater and empties were sent to the ballistic expert. Positive report is produced in evidence. Ocular evidence, being consistent with medical evidence and other pieces of evidence constitute ***“proof beyond doubt”***.

20. The appellant Bilawal @ Allauddin has committed the murders of two innocent persons over a dispute on street and there is nothing on record which would suggest that appellant has falsely been implicated in the case in hand. Even if there are any contradictions in the evidence of PWs, we consider these contradictions as minor in nature and not material and certainly not of such materiality so as to affect the prosecution case and the conviction of the appellant. In this respect reliance is placed upon the case of Zakir Khan and others v. The State (1995 SCMR 1793).

21. As regards to the conviction and sentence of the appellant Bilawal @ Allauddin for the period of 03 years recorded by the trial court for offence u/s 25 Sindh Arms Act, 2013 vide judgment dated 13.03.2019 is concerned, it has come on record that appellant led the Investigation Officer and mashirs to the place of recovery (Otaq) and produced licensed repeater on 11.11.2014, such mashirnama was prepared in presence of mashirs. Repeater and two empty cartridges were sent to the ballistic expert and its' positive report was produced before the trial court at Ex.17/H. Investigation Officer and recovery mashirs had no motive to falsely implicate the appellant Bilawal. Trial court after proper appreciation of the evidence found the witnesses in a unison. Upon our own examination of witnesses, we have found the witnesses straightforward and consistent, bracing the cross examination without any embarrassment. Safe custody and safe transmission of the repeater and empty cartridges accompanied by a positive forensic report clinched the indictment. In the above stated circumstances, appeal in off shoot / connected case merits no consideration.

22. In the view of above, prosecution has succeeded to prove that appellant Bilawal alias Allauddin committed murders of two innocent persons with his licensed repeater, in a manner most callous and brute, there are no mitigating circumstances in the case for lesser sentence. Consequently, appellant deserves no leniency in his death sentence.

23. For the above stated reasons, conviction and sentence recorded by the trial court through impugned judgment dated 13.03.2019 to the extent of appellant Bilawal @ Allauddin are maintained and Criminal Appeal No.D-47/2019 filed by appellant Bilawal @ Allauddin is dismissed. Death sentence awarded to appellant Bilawal @ Allauddin on two counts is confirmed. Appeal in off shoot case filed by appellant Bilawal @ Allauddin bearing Criminal Appeal No.S-54/2019 is also dismissed. Consequently, the Confirmation Reference No.03 of 2019 sent by the trial court is answered in **AFFIRMATIVE**.

JUDGE

JUDGE

Tufail