

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

Criminal Jail Appeal No.D- 138 of 2019.  
[Confirmation case No.56 of 2019]  
Criminal Jail Appeal No.S- 193 of 2019

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

Date of hearing: 12.01.2022.  
Date of judgment: 27.01.2022.

Appellant: Sobharo son of Maroof by caste Mangrio through Mr. Altaf Shahid Abro, Advocate.

The State: through Mr. Shahzado Saleem Nahiyoon, Additional Prosecutor General alongwith complainant Qaim Muhammad.

## **J U D G M E N T**

**NAIMATULLAH PHULPOTO, J:-** Appellant Sobharo was tried alongwith Muhammad Saleh and Muhammad Haroon (since acquitted) by learned 1<sup>st</sup> Additional Sessions Judge (MCTC), Mirpurkhas in Sessions Case No.338 of 2014 for offences under Sections 302, 324, 452, 337-F(i), 337-F(iii), 34 PPC. Appellant Sobharo was also separately tried by the trial court in off shoot / connected case for offence u/s 24, Sindh Arms Act, 2013. After regular trial, vide its' judgment dated 31.07.2019, the appellant Sobharo was convicted u/s 302(b) PPC as Ta'zir for committing Qatl-e-Amd of Allah Bux and Mst. Maryam and sentenced to death on both counts. He was ordered to pay compensation of Rs.5,00,000/- (Five lac) for each deceased in terms of Section 544-A Cr.P.C to the legal heirs of deceased persons. Appellant was also

convicted for offence u/s 337-F(iii) PPC to one year RI as Ta'zir and to pay Rs.50,000/- as Daman to injured Mst. Imamat as well as under Section 337-F(i) to suffer RI for one year and to pay Rs.50,000/- as Daman to injured Mst. Khadija. Appellant was extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case as narrated by injured Mst. Imamat (PW-4) before the trial court are as follows:-

***“Three years back, my marriage was solemnized with accused Sobharo and according to the written condition of the Nikah the accused Sobharo was required to live at the house of my parents with me as Ghar Damad. After marriage we started living as husband wife in the house of my parents, during which, accused started quarreling with me and demanded to go and live at the house of his parents. Thereafter, accused shifted at Karachi alone from where he started to extend threats of dire consequences to me on telephone with the above same demand to go with him and live at his village at the house of his parents. On this, I filed suit for Khulla in the court against accused Sobharo. On 20.07.2014 at 8:30 p.m I alongwith my maternal aunty (Mami) namely Khadija, my paternal uncle Qaim Muhammad, my paternal uncle namely Muhammad Sadique, my cousin Ali Bux, my father Allah Bux and my mother Maryam were present at our house, when accused Sobharo armed with Repeater alongwith his paternal uncle Saleh and one unknown person came at our house, out of whom accused Sobharo came at first floor of our house, while, other two accused remained standing outside our house. Accused Sobharo after entering in our house abused to my father Allah Bux and started firing on him with his Repeater who received firing bullets on his left side of chest. Then accused Sobharo did firing with his Repeater on my mother Mst. Maryam who***

***received firing bullets on her belly. Then accused Sobharo also did firing on me quarreling with me and I received bullets on left side of my kidney. Thereafter, accused Sobharo did firing on Mst. Khadija who received bullets on her arm but I do not remember that on left arm or right arm. Then accused Sobharo did firing on my brother Mossadiq but due to becoming the Repeater locked fire could not be made on my brother. Due to above firing of accused Sobharo my mother died at spot while my father also died succumbed to the injuries in the way while shifting to the hospital, whereas, we remaining family members became injured on which accused had made firing. Due to the firing of accused, the other family members had hidden themselves in the house and accused went away. Then my paternal uncle Qaim Muhammad shifted we all to the Civil Hospital Mirpurkhas. Then police recorded our statements and after two days FIR of this case was lodged by my paternal uncle Qaim Muhammad.”***

3. FIR of the incident was lodged by one Qaim Muhammad at Police Station Satellite Town on 22.07.2014 at 1730 hours. It was recorded vide crime No.81/2014 for offences u/s 302, 324, 452, 504, 34 PPC.

According to SIP Riaz Ali P.S Samaro, on 20.07.2014, he was posted as ASI at P.S Satellite town. On the same date, at about 2100 hours Mst. Imamat informed him on mobile phone about the incident while narrating that her husband Sobharo has committed the murder of her mother Maryam by firing at her so also at her father Allah Bux and firearm injuries have been caused to her (Mst. Imamat) and Mst. Khadija. SIP Raiiaz Ali kept entry No.19 of such information in the relevant register and proceeded to the place of wardat situated in the house of deceased persons. I.O

found the dead body of Mst. Maryam lying at the place of wardat. He prepared the inquest report and noted the injuries on the deceased in presence of the mashirs. I.O collected blood stained earth and two empty cartridges of 12 bore from the place of incident and shifted the dead body to the Civil Hospital Mirpurkhas for postmortem examination and report. Injured Allah Bux was referred to the hospital but he succumbed to the injuries. His postmortem examination was also conducted. Investigation officer also received the dead bodies of deceased persons after postmortem and handed over the same to the legal heirs of the deceased. Thereafter, blood stained earth, clothes of the deceased were sent to the chemical examiner for analysis and report. Inspection officer recorded 161 Cr.P.C statements of prosecution witnesses. On 23.07.2014, SIP Muqem arrested accused Sobharo and recovered one repeater and four live cartridges and one empty cartridge and lodged FIR No.83/2014 against the accused on behalf of State at P.S Satellite Town u/s 24 Sindh Arms Act, 2013. On the conclusion of usual investigation submitted challan against accused persons under the above referred sections in main case as well as in off shoot / connected case.

4. Learned trial court framed charge against the appellant and co-accused Muhammad Saleh and Muhammad Haroon (since acquitted) at Ex.02 to which accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined PW-1 Complainant Qaim Muhammad, PW-2 Mashir Noor Ahmed, PW-3 Muhammad Sadik, PW-4 Injured Mst. Imamat, PW-5 Injured Mst. Khadija, PW-6 Ali Bux, PW-7 Tapedar Niaz Hussain Shah, PW-8 Dr. Raheela Naz at Ex:15, PW-9 Dr. Herchand Rai at Ex:16, PW-10 First I.O / SIP Riaz Ali at Ex:17, PW-11 Mashir Misri, PW-12 Second I.O SIP

Muhammad Muqeem. It may be mentioned here that during trial co-accused Muhammad Saleh and Muhammad Haroon were acquitted u/s 265-K Cr.P.C vide orders dated:26-9-2018 and 21-01-2019. The learned ADPP for the State closed the prosecution evidence side at Ex:20.

6. Trial court recorded statement of accused Sobharo u/s 342 Cr.P.C at Ex.21, in which he claimed false implication in this case and denied the prosecution allegations. In question No.11 appellant was asked by trial court what else he has to say?, appellant replied as under:-

***“My marriage was solemnized with Mst. Imamat and after marriage she was residing at my home, prior to our marriage, Imamat was engaged with son of complainant, but she contracted love marriage with me against the wishes of complainant, therefore, complainant was inimical towards me and the relative of Imamat did not participate in our marriage. I am follower as well as was personal guard of Pir Sahib Paghara and on the day and time of incident, I was on my duty at Karachi. Before incident Imamat had come to meet with her parents and about 16-17 days before this incident, I came at the house my in-laws for taking back to Imamat, the parents of Imamat also tried to understand her that she now should go with me, but Imamat was not ready to go with me on account of her grievance with my parents, therefore, a faisla was also settled after Eid-ul-Fitr, but in the meanwhile, some culprits entered in house of my father-in-law and during resistance my father-in-law, mother-in-law, Imamat and Khadija sustained injuries and in result thereof my father-in-law and mother-in-law succumbed to injuries when complainant came to know regarding murder of my mother-in-law and father-in-law, he got a chance and immediately***

***rushed at the place of incident alongwith his real brother Sadik and nephew Ali Bux, prepared them to depose against me being eye-witnesses and lodged a false FIR after consultation against me for taking revenge. Imamt has no shelter against the house of complainant, therefore, she has also deposed due to great influence of complainant on her. I am innocent and pray for justice.”***

7. Learned trial court after hearing the learned counsel for the parties, assessment of the evidence vide judgment dated 31.07.2019, convicted and sentenced the appellant to death as stated above. Trial court made reference to this court for confirmation of death sentence recorded against appellant as required u/s 374 Cr.P.C.

8. Learned advocate for the appellant mainly contended that it was the night time incident; that there was inordinate delay in lodging of F.I.R; that Mst. Imamat prior to the marriage with appellant was engaged with son of the complainant but marriage could not taken place and complainant has lodged the FIR against the appellant for the malafide reasons. It is further contended that all the PWs are closely related to deceased persons; that crime weapon has been foisted upon the appellant; that there is no reliable evidence against the appellant; that co-accused have been acquitted by the trial court on identical evidence hence appellant was also entitled to be acquitted and thus for any of the above stated reasons he may be acquitted of the charge by extending him benefit of doubt. Defence counsel lastly contended that the motive as set up by the prosecution in FIR has not been established at the trial. In support of his contentions, he relied upon the cases reported as **1. Mst. Rukhsana Begum and others v. Sajjad and others (2017 SCMR 596)**, **2. Muhammad Ishaque v. The State (2007 SCMR 108)**, **3. Muhammad Asif v. The State (2017 SCMR**

**486), 4. Muhammad Bilal v. The State and others ( 2021 SCMR 1039), 5. Kamal Din alias Kamala v. The State (2018 SCMR 577), 6. Mansab Ali v. The State (2019 SCMR 1306) and 7. Muhammad Hayat and 3 others v. The State (2018 P.Cr.L.J. Note 61).**

9. On the other hand, learned Additional Prosecutor General has contended that prosecution has proved its case against the appellant beyond reasonable doubt; that there are two injured eye witnesses of the case. It is further submitted that Mst. Imamat who has sustained the firearm injury is the wife of appellant; that Mst. Imamat had filed suit for dissolution of marriage against appellant which caused much annoyance to him and appellant committed heinous offence. Learned Additional P.G submitted that prosecution has succeeded to prove the motive at trial, it has been admitted by the appellant in his statement recorded u/s 342 Cr.P.C. Learned Additional P.G further submitted that both the appeals may be dismissed and the death sentence may be confirmed. In support of his submissions he has relied upon the cases reported as Dadullah v. The State (2015 SCMR 856), Khalid Mehmood v. The State (2017 SCMR 201) and Abbas Ali and another v. The State (2021 SCMR 349).

10. We intend to decide the aforesaid appeal and the appeal in off shoot / connected case as well as confirmation reference made by the trial court by this common judgment as the same arise out of same incident and require same appreciation of evidence.

11. As regards to the un-natural death of deceased Mst. Maryam and Allah Bux, firearm injuries sustained by PWs Mst. Imamat and Mst. Khadija are concerned, the trial court has recorded the evidence of Dr. Raheela Naz (PW-8). Lady doctor has deposed that

on 20.07.2014 injured Mst. Imamat and Mst. Khadija were brought in the hospital at Mirpurkhas. She examined both the injured persons and found that Mst. Imamat had received one firearm injury and Mst. Khadija had received two firearm injuries. The same lady doctor received the dead body of Mst. Maryam for conducting her postmortem examination and report and started postmortem examination on 21.07.2014 at 12-00 a.m and finished at 12-45 a.m. Deceased had received two injuries which were caused by firearm. Postmortem examination report was prepared and it was produced before the trial court so also the certificates of the injured ladies. Lady doctor from the external as well as internal examination of the deceased Mst. Maryam was of the opinion that the death was caused due to shock and excessive haemorrhage by means of firearm. The trial court had also recorded the evidence of Dr. Herchand Rai (PW-9) who had received the dead body of one Allah Bux on 20.07.2014 for conducting the postmortem examination and report. Doctor started postmortem examination on 21.07.2014 at 12-30 a.m and finished the same at 1-30 a.m. Deceased had received only one firearm injury and it was the cause of death. From the external as well as internal examination of the dead body, Medical Officer was of the opinion that deceased had died due to firearm injury, resulting the haemorrhage and shock.

12. Learned advocate for the appellant did not dispute the unnatural death of both the deceased persons and injuries on the above named injured persons by means of firearm. We have no hesitation to agree with the findings of the trial court that both the deceased persons and both the injured persons had received the firearm injuries as described by the doctors. Now the point for determination would be who caused Qatl-e-amd of the deceased persons namely Mst. Maryam and Allah Bux and caused injuries



to PWs Mst. Imamat and Mst. Khadija on the night of incident in the house of deceased Allah Bux?

13. In the order to prove this case, the prosecution has examined before trial court 12 witnesses. Mst. Imamat and Mst. Khadija are the injured witnesses in this case. Mst. Imamat is the wife of appellant. She married to appellant 03 years prior to the incident, with a condition to the parents of Mst. Imamat that the appellant after marriage would live with Mst. Imamat in the house of her parents as "Ghar Damad". After marriage Mst. Imamat has stated that appellant started quarreling with her and demanded to leave the house of her parents resultantly the relations between Mst. Imamat and the appellant became strained. Appellant shifted to Karachi and issued threats to wife of dire-consequences on the mobile phone. In such circumstances, Mst. Imamat finding no other way filed the suit for dissolution of marriage against her husband. On the night of incident (20.07.2014) at 08-30 p.m she was present in the house alongwith her maternal aunty namely Khadija, paternal uncle Qaim Muhammad, paternal uncle Muhammad Siddique, cousin Ali Bux, father Allah Bux and mother Maryam where it is stated that appellant Sobharo armed with repeater appeared. He was accompanied by his uncle Saleh and one unknown person. Mst. Imamat has further disclosed that as soon as the appellant entered into the house, remaining two accused persons stood outside the house and accused Sobharo abused to her father Allah Bux and started firing upon him with his repeater who received fire on his left side of chest, then accused Sobharo fired upon Mst. Maryam then accused Sobharo started quarreling with his wife Imamat and fired upon her then he fired upon Mst. Khadija. She also sustained the firearm injuries. Mst. Imamat has deposed that her husband Sobharo fired upon

his brother Musadiq but the repeater cartridge stuck and his brother was saved. In the firing of appellant it is stated that mother of Mst. Imamt namely Mst. Maryam died at the spot and her father succumbed to the injuries on the way to the hospital. Mst. Imamt and Mst. Khadija were taken to the hospital in injured condition for treatment. She has deposed that accused Saleh Muhammad present in the court was same but she could not identify third accused person, present in the court. In the cross examination Mst. Imamt replied that there was no light at the time of incident. However, she has denied the suggestion that complainant Qaim has deposed falsely against the appellant because her marriage was not solemnized with his son. Mst. Imamat has also denied the suggestion for deposing falsely against her husband.

Another injured witness namely Mst. Khadija (PW-5) has deposed that after her marriage she was living with her husband at Hingorno Taluka Sindhri. 2/3 days prior to the incident, she came in the house of her sister-in-law Mst. Maryam on the occasion of Eid-ul-Fitr. On 20.07.2014, at 8-30 p.m, she was present alongwith Mst. Maryam, Allah Bux, Mst. Imamat and Mussadiq in the house of deceased Allah Bux. At that time, appellant Sobharo armed with repeater came in the house and started firing from his repeater and fires hit to Allah Bux on his chest. Appellant also fired upon Mst. Maryam who received firearm injury on her abdomen. Appellant Sobharo fired upon Mst. Imamt at kidney so also at her. She deposed that Mst. Maryam died at the spot but Allah Bux succumbed to the injuries in hospital. Police recorded her statement. She clearly deposed that appellant Sobharo present in the court is same who fired upon them whereas she could not identify the remaining two persons on the ground that she had not seen them, at the time of incident.

Qaim Muhammad (PW-1) had lodged the FIR of the incident. He was examined by prosecution before the trial court. He has deposed that deceased Allah Bux was his brother and deceased Mst. Maryam was wife of his brother. During the incident, Mst. Maryam and Mst. Khadija had also received firearm injuries. The present incident had occurred on 20.07.2014 at 08-30 p.m. Injured Mst. Imamat was married to accused Sobharo with condition that after marriage appellant would stay in the house of his father-in-law but after 2/3 years of the marriage, appellant asked the deceased Allah Bux that he would live separately with his wife to which Allah Bux refused and much annoyance was caused to accused Sobharo. The relations between the husband and wife became strained and Mst. Imamat filed a suit for dissolution of marriage in the court of law. When appellant came to know about the filing of suit for dissolution of marriage by his wife, he came to the house of father-in-law and started firing upon father-in-law, mother-in-law, wife and Mst. Khadija.

Prosecution examined mashir Noor Muhammad at Ex.4. He acted as mashir of arrest and recovery but he was declared as hostile. Co-mashir Misri was examined at Ex.18, he deposed that police made him mashir of the place of incident, collected blood stained earth in his presence, prepared such mashirnama and accused produced repeater used by him in the commission of offence to the police in his presence along with one cartridge and four live cartridges. Such mashirnama was prepared in his presence.

Riaz Ali (PW-10) Investigation Officer deposed that on 20.07.2014 he was posted as ASI at P.S Sattelite Town. On the same date, at about 2100 hours Mst. Imamat gave information of the incident to him on mobile phone that her husband has killed

her mother and father and caused her injuries as well as to Mst. Khadija. Investigation officer kept such roznamcha entry No.9 in the relevant register and produced before the trial court at Ex.17/A. I.O proceeded to the place of wardat and found the dead body of Mst. Maryam lying there in the house of complainant, inspected dead body, prepared such mashirnama and sent the dead body to Civil Hospital for postmortem examination. I.O collected two empty cartridges of 12 bore from the place of wardat in presence of mashirs Noor Muhammad and Qaim Muhammad (who is also complainant in this case) and referred injured persons to the hospital and Allah Bux succumbed to the injuries on the way to the hospital. Postmortem examination of both the deceased Mst. Maryam and Allah Bux was conducted. Investigation officer received the clothes of both the deceased from the doctors and dispatched to the chemical examiner for analysis and report. SIP Muqem arrested accused Sobharo on 23.07.2014 in presence of mashirs and recovered from his possession one repeater, four live cartridges and one empty cartridge and lodged separate FIR No.83/2014 against accused and sent the repeater, empties, live bullets and live cartridges to the ballistic expert and received the positive report and produced such report before the trial court at Ex.17/B.

14. Appellant in his statement recorded u/s 342 Cr.P.C has raised plea that his wife PW Mst. Imamat was previously engaged with son of the complainant but she contracted love marriage with him against the wishes of complainant which caused annoyance to him and he has committed this offence and appellant has been falsely implicated in this case.

15. Learned trial court while appreciating the evidence came to the conclusion that prosecution has proved its' case against the appellant.

16. Learned advocate for appellant mainly argued that there was inordinate delay in the lodging of FIR for which no plausible explanation has been furnished as the incident had occurred on 20.07.2014 at 8:30 p.m. in the house of deceased Allaha Bux and it was reported to the police on 22.07.2014 at 1730 hours. From the perusal of evidence of Investigation Officer Riaz Ali at Ex.17, it is crystal clear that on 20.07.2014 he was present at PS Satellite Town. On the same date, at about to 2100 hours Mst. Imamat gave him information of the incident on mobile phone that her husband Sobharo had committed murder of her mother and caused firearm injuries to her father, Mst. Khadija and firearm injuries have also been caused to her. Police officer immediately kept such entry No.19 in the relevant register of the police station and it is produced in evidence at Ex.17/A. The name and specific role assigned to the appellant is mentioned in the said roznamcha entry. **Information of the incident was given by the injured Mst. Imamat to the police within 30 minutes which excludes the possibility of false implication of the appellant in this case.** It is also argued by learned advocate for appellant that there was no electric light in house at the time of incident. According to the prosecution case, incident occurred at 8-30 p.m in early hours of the night. Darkness by itself does not provide an amenity to the offender because in this case injured witness was the wife of appellant. She felt no difficulty to identify her husband at the time of incident. Contention has also been raised by the learned defence counsel that Mst. Imamat was engaged with the son of the complainant and he was unhappy when she contracted marriage

with the appellant and for taking such revenge he has lodged false FIR against the appellant. This contention appears to be without any merit for the reasons that wife of the appellant and Mst. Khadija have fully implicated the appellant in the commission of offence. Mst. Khadija on the other hand was guest but appellant also fired upon her at the time of incident. Learned defence counsel submitted that appellant's wife is the daughter of both the deceased persons and Mst. Khadija is the closely related to the deceased and their evidence is not reliable. It is well settled position of law that, merely because, the witnesses are closely related to the deceased, evidence of those witnesses cannot be discarded treating as interested witnesses unless otherwise established it cannot be concluded that persons who are closely related to the deceased would make statements for falsely implicating any person so as to spare the real culprit to escape from the clutches of law. It is argued that complainant has deposed due to enmity, we are of the view that, mere enmity, even if it is proved cannot be a ground to discard the evidence if such evidence is found to be reliable. But in the present case, PWs had no enmity with appellant.

In the present case, **presence of the injured PWs namely Mst. Imamat and Mst. Khadija at the spot in the house is not in controversy. Both injured have sustained injuries by means of firearm in the incident. Injuries on the persons of injured witnesses ensure their presence at the time of place of occurrence and their evidence have ring of truth. Being injured witnesses, their testimony inspires confidence. Minor contradictions / improvements on trivial matters cannot render evidence of the injured witnesses untrustworthy.** It is settled law that the evidence of an injured witness must be given

due weightage being a stamped witness, thus, his presence cannot be doubted. His statement is generally considered to be very reliable and it is unlikely that he has spared the actual culprit in order to falsely implicate someone else. The testimony of an injured witness has its own relevancy and efficacy as he has sustained injuries at the time and place of occurrence and this lends support to his testimony that he was present during the occurrence. Thus, the testimony of an injured witness is accorded a special status in law. The witness would not like or want to let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness should be relied upon unless there are grounds for the rejection of his evidence on the basis of the major contradictions and discrepancies therein. Reliance is placed upon the case of *Abbas Ali and another v. The State* (2021 SCMR 349). For the sake of convenience, relevant para-5 of the judgment is hereby reproduced as under:-

***“5. Prosecution case is primarily structured upon ocular account furnished by Haji Muhammad Siddique (PW-1), Ali Sher (PW-2) and Khamiso Khan (PW-4); the last being injured during the episode; they have furnished graphic details of the occurrence without being trapped into any serious narrative conflict. Both sides, being part of the same household, questions of mistaken identity or substitution are the possibilities beyond comprehension. There is a remarkable promptitude in recourse to law by the witnesses that included an injured, medically examined under a police docket. Though the Investigating Officer failed to recover the weapons used during the occurrence, nonetheless, the failure does not tremor the prosecution case otherwise firmly founded on ocular account furnished by the witnesses who plausibly explained their presence at the crime scene. Inconsequential and directionless cross-examination mainly comprising bald suggestions vehemently denied fails to undermine the preponderance of prosecution case. Acquittal of co-accused with a role vastly distinguishable as well as inconsequential appears to be inspired by a judicial caution and as such does not***

***adversely impact upon the integrity of the charge. View taken by the courts below being well within the remit of law calls for no interference. Petition fails.”***

In the present case, Mst. Imamat is the wife of appellant. She has clearly deposed that her marital life with the appellant was not happy. After 2/3 years of the marriage, the appellant was found in habit of ill-treating her. In the result, her wife who is the injured witness in this case filed a suit for dissolution of marriage. We have no reason to disbelieve her evidence as well as the evidence of injured witness Mst. Khadija. As regard to contention of defence advocate that PW Musadiq has not been examined by prosecution and his non-examination would be fatal to the prosecution case. It is observed that prosecution is not bound to examine all witnesses in the case. Injured witnesses have been examined, hence, non-examination of PW Musadiq would not be fatal to the prosecution case. Unimpeachable ocular evidence is corroborated by the medical evidence in this case. Repeater was recovered from the accused on his pointation in the presence of the mashirs on 27.07.2014, the same was sent to the ballistic expert alongwith empties which matched. Positive report of the ballistic expert is produced in evidence before the trial court at Ex.17/B. As regards to the last contention of the learned defence counsel that the motive as set up by the prosecution was not put to the accused in his statement recorded u/s 342 Cr.P.C, it is submitted that the prosecution's failure on the motive and acquittal of co-accused may be sufficient to demolish its case but we are of the view that prosecution has succeeded to prove its motive at the trial and the accused in reply to the question No.11 admitted that his relations with his wife were strained after the marriage. Case of co-accused namely Muhammad Saleh and Muhammad Haroon was quite



distinguishable. Absolutely, no role was assigned to them in the commission of offence. Prosecution case is firmly structured on ocular evidence corroborated by medical evidence and several other pieces of evidence.

17. Defence plea raised by the appellant that his wife Mst. Imamat was previously engaged with son of the complainant but she contracted love marriage with him which caused annoyance to the complainant. On the day of incident he was performing his duty as Guard at Karachi with Pir Sahab Pagaro. We have carefully examined the defence plea and found that appellant failed to substantiate such plea at trial. Pir Sahab Pagaro was also not examined in defence. Trial court rightly rejected the defence plea of appellant by assigning sound reasons.

18. For the above stated reasons, we have come to the conclusion that prosecution has proved its case against the appellant beyond any shadow of doubt. The next issue is of sentence. Best on the evidence we find that the appellant committed the murders of his father-in-law and mother-in-law and caused firearm injuries to his wife Mst. Imamat and Mst. Khadija because wife of the appellant namely Mst. Imamat filed a suit for dissolution of marriage against the appellant by adopting legal course which caused much annoyance to the appellant and he committed brutal pre-mediated murders, though he was a guard of one spiritual leader. The manner in which the offence has been committed by the appellant deserved no leniency in sentence. The courts should not hesitate in awarding the maximum punishment in such like cases. Deterrence is a factor to be taken into consideration while awarding the sentence, specially the sentence of death. Reliance in this regard is placed upon the case of

Dadullah v. The State reported in 2015 SCMR 856. The relevant para No.9 is reproduced hereunder:-

**“9. Conceptually punishment to an accused is awarded on the concept of retribution, deterrence or reformation. The purpose behind infliction of sentence is two fold. Firstly, it would create such atmosphere, which could become a deterrence for the people who have inclination towards crime and; secondly, to work as a medium in reforming the offence. Deterrent punishment is not only to maintain balance with gravity of wrong done by a person but also to make an example for others as a preventive measure for reformation of the society. Concept of minor punishment in law is to make an attempt to reform an individual wrongdoer. However, in such like cases, where the appellants have committed a pre-planned dacoity and killed two persons, no leniency should be shown to the culprits. Sentence of death would create a deterrence in the society due to which no other person would dare to commit the offence of murder. If in any proved case lenient view is taken, then peace, tranquility and harmony of society would be jeopardized and vandalism would prevail in the society. The Courts should not hesitate in awarding the maximum punishment in such like cases where it has been proved beyond any shadow of doubt that the accused was involved in the offence. Deterrence is a factor to be taken into consideration while awarding sentence, specially the sentence of death. Very wide discretion in the matter of sentence has been given to the courts, which must be exercised judiciously. Death sentence in a murder case is a normal penalty and the Courts while diverting towards lesser sentence should have to give detailed reasons. The appellants have committed the murder of two innocent citizens and also looted the bank in a wanton, cruel and callous manner. Now a days the crime in the society has reached an alarming situation and the mental propensity towards the commission of the crime with impunity is increasing. Sense of fear in the mind of a criminal before embarking upon its commission could only be inculcated when he is certain of its punishment provided by law and it is only then that the purpose and object of punishment could be assiduously achieved. If a Court of law at any stage relaxes its grip, the hardened criminal would take the society on the same page, allowing the habitual recidivist to run away scot-free or with punishment not commensurate with the proposition of crime, bringing the administration of criminal justice to ridicule and contempt. Courts could not sacrifice such deterrence and retribution in the name of mercy and expediency. Sparing the accused with death sentence is**

***causing a grave miscarriage of justice and in order to restore its supremacy, sentence of death should be imposed on the culprits where the case has been proved.”***

We have come to the conclusion that trial court has rightly convicted the appellant and sentenced him to death.

19. As regards to the conviction and sentence of the appellant recorded by the trial court for offence u/s 25 Sindh Arms Act, 2013 vide judgment dated 31.07.2019 is concerned, it has come on record that appellant led the Investigation Officer and mashirs to the place of recovery and produced licensed repeater on 27.07.2014. Repeater and empty cartridges were sent to the ballistic expert and its' positive report was produced before the trial court at Ex.17/B. Investigation Officer and recovery mashirs have not been suggested any past enmity with appellant. 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.

20. At the cost of repetition, we have already observed that ocular account remained consistent and their evidence was reliable, which is supported by medical evidence; and there are no major contradictions in their evidence which would adversely impact on the prosecution case. There are two injured ladies, one of them Mst. Imamat is the wife of appellant and none of them had any ill will or enmity or other reason to falsely implicate the accused. Even if there are any contradictions in the

evidence of the 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 v. State* (1995 SCMR 1793).

21. In the view of above, the record makes it abundantly clear that the appellant had acted in the manner brutally and mercilessly and that he is a desperate person evoking no sympathy in the matter of his sentence. As such we uphold all the sentences for each offence through the impugned judgment and confirm the death sentence awarded to the appellant whilst dismissing his appeal against his conviction.

22. In the view of above conviction and sentence recorded by the trial court through impugned judgment dated 31.07.2019 are maintained and Criminal Jail Appeal No.D-138/2019 filed by appellant is dismissed. Death sentence is confirmed. Appeal in off shoot case bearing Criminal Jail Appeal No.S-193/2019 is also dismissed. Consequently, the Confirmation Reference No.56 of 2019 made by the trial court is answered in **affirmative**.

JUDGE

JUDGE

Tufail

19. As regards to the conviction of appellant for offence u/s 25 Sindh Arms Act, 2013 to 05 years RI and fine of Rs.50,000/- is concerned, it is connected with main case u/s 302 PPC. In this off shoot / connected case, appellant pleaded not guilty and at the trial prosecution examined mashir Noor Muhammad (PW-1), SIP Muhammad Muqem (PW-2), mashir Misri (PW-3) and SIP Riaz Ali (PW-4). Thereafter, prosecution side was closed.

Trial court recorded the statement of accused u/s 342 Cr.P.C. Accused claimed false implication in this case and denied the prosecution allegations and raised plea that repeater is licensed weapon and it was lying at home of the appellant and it has been foisted upon him due to enmity. Trial court after assessment of the evidence convicted and sentenced the appellant as stated above.

We have also come to the conclusion that prosecution has succeeded to prove the off shoot / connected case against the appellant for the reasons that accused led the Investigation Officer and mashirs to the place of recovery on 27.07.2014 and produced repeater. It was licensed weapon in the name of appellant. Empty cartridges and repeater were sent to the Ballistic Expert and its' report was positive and it was produced before the trial court at Ex.17/B. PWs faced cross examination without any serious dent to the case of prosecution. No question regarding safe custody or safe transmission of the repeater and empties from police station to the Ballistic Expert was put to the prosecution witnesses. We have no hesitation to hold that trial court rightly appreciated the evidence and convicted the appellant u/s 25 of Sindh Arms Act, 2013 and sentenced him to 05 years RI and to pay the fine of Rs.50,000/-