

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Jail Appeal No. D-**31** of 2015.
Confirmation Reference No. D- **11** of 2015.

Present: Mr. Justice Naimatullah Phulpoto.
Mr. Justice Zulfiqar Ali Sangi.

Appellant: ArslanSanjrani, through Mr. Habibullah Ghouri, Advocate.

Respondent: The State, through Mr. Ali Anwar Kandhro, Additional Prosecutor General.

Dates of hearing: 03.11.2020, 17.11.2020 and 24.11.2020.

Date of the decision: 15-12-2020.

JUDGMENT

Zulfiqar Ali Sangi, J.- Through this criminal appeal, appellant Arslan son of Muhammad SallahSanjrani has impugned the judgment dated **04.09.2015**, passed by learned Judge, Anti-Terrorism Court Shikarpur, in Special case No.**11/2009**, re; St. v.**ArslanSanjrani**, arisen out of Crime No.**10/2009** of P.S New Foujdari Shikarpur; whereby the appellant was convicted u/s 302 (b) PPC r/w section 7 ATA, 1997and sentenced to death. The appellant was directed to pay fine of Rs.300,000/-, to be paid to the legal heirs of deceased as compensation under Section 544-A Cr.P.C. The learned trial Court has made captioned Reference for confirmation of death sentence or otherwise.

2. The facts of the prosecution case are that, on 15.01.2009 complainant Syed Baqar Ali Shah lodged F.I.R with P.S New Foujdari, alleging therein that his daughter, namely, Maria Shah (now deceased) was under training for mid-wife in RBUT Hospital, Shikarpur, and in the evening she used to work at Charity Clinic of Dr. Imran Shaikh situated at NeemKhabar Curve. It is alleged that accused ArslanSanjrani demanded hand of Maria Shah and on refusal, he extended threats. On fateful day, the complainant alongwith his cousin Shah Jehan Shah was sitting at the clinic of Dr. Imran Shaikh; his daughter Ms. Maria Shah was sitting on a chair in front of them, at about 05.00 p.m. accused ArslanSanjrani entered into clinic having steel glass in his hand containing acid, which he threw at the face of Ms. Maria Shah and then he ran away. The complainant party found that face, right eye and other parts of body of Ms. Maria Shah were burnt due to throwing acid upon her. It is alleged that she was taken to Civil Hospital, Shikarpur, for immediate treatment and then the complainant went to police station New Foujdari at 1800 hours and lodged the report against accused/appellant. It was recorded vide Crime No. 10/2009, under Sections 302, 354, 355 PPC & 6/7 ATA, 1997.

3. After registration of FIR, I.O conducted spot investigation, condition of injured girl was serious. She was referred to Burns Hospital Karachi, where she succumbed to injuries. Before her shifting to Karachi, one journalist recorded her interview. Accused was arrested on 23.01.2009. On the conclusion of usual investigation, challan was submitted against the accused for offences u/s 302, 354, 355 PPC r/w Section 6/7 ATA, 1997 before the learned Judge, ATC, Shikarpur. Trial Court framed charge against the accused under above referred Sections at Ex. 02. Accused pleaded not guilty and claimed to be tried.

4. The prosecution in order to prove its case, examined PW-1 H.C Awiz Khan, he produced daily diary at Ex.5-A, F.I.R, at Ex.5-B. PW-2 lady Dr. Samina Shaikh was examined at Ex.6, she produced provisional medical certificate at Ex.6-B. PW-3 Lady Dr. Mubina Siddiqui was examined at Ex.7, she produced postmortem report at Ex.7-B. PW-4 complainant Syed Baqar Shah was examined at Ex.8. PW-5 Mehtab Shah at Ex.9; PW-6 Nazir Ahmed at Ex.12, he produced mashirnama of injuries of injured/ deceased Maria Shah at Ex.12-A, mashirnama of place of vardat at Ex.12-B, memo of inspection of dead-body at Ex.12-C, inquest report at Ex.12-D and memo of recovery of burnt clothes of deceased at Ex.12-E. PW-7 Liaquat Ali Shah was examined at Ex.13, he produced sketch of place of vardat at Ex.13-A. PW-8 SIP Nadir Ali was examined at Ex.14, he produced memo of arrest of accused at Ex.14-A. PW-9 Mr. Shahid Ali Civil Judge and Judicial Magistrate was examined at Ex.15, he produced 164 Cr.P.C statement of PW Shah Jahan at Ex.15-C. PW-10 Inspector Muhammad Ali Soomro was examined at Ex.16, he produced sketch of place of vardat at Ex.16-A, entries of daily-diary of various police station at Ex.16-B to 16-H, confessional statement of accused recorded by S.P Investigation at Ex.16-I, order of learned Civil Judge and Judicial Magistrate passed on application at Ex.16-J, entry of daily-diary regarding death of Mst. Maria Shah at Ex.16-K, photograph of Ms. Maria Shah at Ex.16-L. Thereafter, learned prosecutor submitted an application before the trial Court under Section 540 Cr.P.C. for calling/examining Dr. Imran and KTN News Reports at Ex.17, which was allowed, then learned Prosecutor submitted three copies of CD with his statement at Ex.18, copy of such CD was supplied to accused vide Receipt at Ex.19 and KTN report at Ex.20. The learned Prosecutor gave up Dr. Imran vide

statement at Ex.21, while PW Jan Muhammad KTN Reporter was examined at Ex.22 as PW-11, he produced copy of CD at Ex.22-A. PW-12 Iqbal Din, S.P Investigation (Rtd) was examined at Ex.23. Lastly, the prosecution closed its side vide Ex.24.

5. Learned trial court recorded the statement of appellant under Section 342 Cr.P.C. at Ex.25, in which he denied the prosecution allegations against him and also denied to give statement on oath and to lead evidence in his defence. Learned trial Court on conclusion of trial passed impugned judgment whereby convicted and sentenced the appellant, as stated above.

6. Learned counsel for the appellant criticized the impugned judgment and argued that the prosecution witnesses are closely related inter-se, and no independent witness has been examined by the prosecution at trial; that the complainant and P.W Mehtab Shah are closely related to the deceased and according to him PW Mehtab Shah was not eye witness of the incident, as at the time of incident he was present at his home; that prosecution witnesses have made contradictions, improvements and omissions in their evidence on the material points, therefore, their evidence is un-reliable and un-trustworthy; that present incident occurred on 15.01.2009 and on the said date Acid Kerosene was not a scheduled offence, therefore, it is submitted that trial held by learned ATC was coram non-judice. In support of this contentions learned counsel relied upon the case of **Zain-UL-Abideen V. Additional Session Judge and 7 others (2020 P.Cr.L.J Note 19)**. He further submitted that no oath was taken by learned Judge, ATC before conducting the proceedings of this case which was mandatory requirement of law. Per learned counsel copy of

disc that was produced in evidence by the prosecution was not supplied to the accused at the time of submission of the challan; but it was supplied to the appellant after 5 years of the incident. It is admitted by learned counsel that application was submitted for production of the CD and copy was supplied to the appellant before recording evidence of journalist; that the CD was produced in evidence but there was no evidence with regard to the safe custody of the CD. Learned counsel next contended that charge was framed against the accused under Section 302, 354 & 355 PPC and 7 Anti-Terrorism Act, 1997, however finding with regard to the Section 354 and 355 PPC was not recorded by the trial Court. It is further argued that according to contents of the FIR, the appellant had issued threats to deceased and her father that in case hand of deceased is not given to the accused, he would face consequences. Learned counsel further contended that in the FIR presence of Dr. Imran Shaikh at his clinic is not mentioned but complainant in his evidence stated that Dr. Imran Shaikh alongwith patients was present at his clinic at the time of incident. Per learned counsel Dr. Imran Shaikh was not examined by the prosecution during trial but he was given-up by the prosecution two times. Per learned counsel Dr. Imran Shaikh was given up for the second time, when he was called on the ground that he has been won-over by the accused. Learned counsel contended that eye-witnesses Shah Jehan who was related to the complainant was also given-up by the prosecution, therefore, presumption would be that he was not prepared to depose before the Court in favour of the prosecution. Per learned second mashir of injuries and vardathas been examined by the prosecution but first mashir was not examined and second mashir has not deposed that glass in which Acid was brought was sealed in his presence. The second mashir who has been examined by the prosecution has admitted in his

cross-examination that complainant Syed Baqer Shah is on family terms with him. Learned counsel further contended that, burnt clothes, glass and chair on which deceased was sitting were not produced before the trial Court and glass was not sent to the Chemical Examiner for report. Learned counsel contended that no independent person from clinic was made as mashir. Per learned counsel the Investigating Officer /SIP Nadir Ali has also not produced glass and chair before the trial Court and he has not given description of the case property. Learned counsel further submitted that P.W Shah Jahan has also not been examined; his 164 Cr.P.C statement may be kept out of consideration because his version is contradictory to the evidence of the complainant and he did not identify the accused in his 164 Cr.P.C statement. Learned defence counsel further contended that, 161 Cr.P.C statement of Ms. Maria Shah which was treated as dying declaration was not produced by the Investigating officer. Learned counsel submitted that statement of accused recorded by the SP investigation Shikarpur is inadmissible in evidence. Learned counsel further contended that reasons have not been assigned as to why accused was not produced before concerned Civil Judge & Judicial Magistrate having jurisdiction in the matter on the day when confessional statement was recorded before the S.P. Lastly it is submitted that Journalist had interviewed appellant as well as deceased without formal entry and investigating officer did not record 161 Cr.P.C statement of Journalist Jan Muhammad. On all these scores, it is prayed for acquittal of the accused. In the end, it is submitted that in case, the Court is not convinced from the arguments advanced on behalf of appellant, at-least death sentence may be converted into imprisonment for life keeping in view mitigating circumstances in the case.

7. Learned Addl. P.G. controverted the arguments of learned appellant's counsel and submitted that the prosecution evidence has rightly been believed by the learned trial Court and the appellant has rightly been sentenced to death. He next contended that father of deceased had no enmity to falsely implicate the accused in this case; that the motive was very much evident and that has been proved at trial. He further added that point of jurisdiction for conducting the trial under the provisions of ATA, 1997 was questioned by the appellant in Cr. Revision Application No. D-34 of 2009 before this Court, which has already been dismissed and said orders have attained the finality; that P.W Journalist Jan Muhammad had been called as **Court-witness** and he was important from prosecution point of view; that the Journalist Jan Muhammad recorded narration of the incident as given by deceased; she had narrated the entire episode; that Journalist Jan Muhammad also interviewed the appellant in the jail who admitted his guilt, which extra judicial confession rightly was relied by the trial court. He further contended that evidence of S.P is admissible under Section 21-H of the Anti-terrorism Act, 1997; that CD was properly produced in the evidence and was rightly relied by the trial Court. He further argued that PW Shah Jehan Shah and Dr. Imran Shaikh were given-up by the prosecution as they were won over by accused. Learned Addl. P.G. relied upon case of **Saeed Akhtar and others V. The State (2000 SCMR 383)** and argued that prosecution was not bound to produce all the witnesses. Lastly, it is argued by learned Addl. P.G that prosecution succeeded in proving its case beyond a reasonable doubt and prayed for dismissal of the appeal.

8. We have heard the learned counsel for the appellant, learned Addl. P.G. and perused the record and have read the evidence of prosecution witnesses with their able assistance.

9. The first contention of the learned counsel for the appellant that Anti-terrorism court had no jurisdiction to try the present case has no force, as during trial an application under section 23 of the Anti-Terrorism Act was filed and was dismissed by the trial court vide order dated: 20-05-2009 and the same was assailed before this court in Cr. Revision No. D-34 of 2009 which was too dismissed vide order dated: 25-03-2013 and the same was not challenged by appellant before Honourable Supreme Court of Pakistan, thus attained finality. This Court while deciding the issue of jurisdiction in Criminal Revision Appln. No. D- 34 of 2009, filed by the appellant has observed as under:-

“The offence from very face of it seems to be very serious in which on account of refusal of a lady or her father for her marriage with the applicant she was murdered which is a heinous crime in nature because initially it disfigured the face of the victim to disable her to move in the society creating terror in the society and that may be a serious instance of insecurity amongst the ladies of the society. Such incident is taken place in the town creating serious insecurity and fear in the public so the same is required to be discouraged at this stage of the case when charge has not yet been framed.

In view of the above, there is nothing appearing from the impugned order so as to call for interference by this Court. Accordingly this revision application is dismissed. However, the applicant shall be at liberty to repeat such application if so advised after the evidence of material P.Ws is recorded by the trial Court. Needless to say that the trial Court shall not be influenced by the observation, if any, made in this order as the case is to be decided by it on merits of the case in accordance with law.”

10. The evidence produced by the prosecution in the shape of ocular evidence and medical evidence coupled with documentary evidence, includes medical certificate and Postmortem of deceased Ms. Maria Shah, recovery of steel glass in which accused brought acid and recovery of the burnt clothes of the deceased, established beyond any shadow of reasonable doubt that on 15-01-2009 at about 05.00 pm at the clinic of Dr Imran Shaikh, deceased received injuries due to throwing the acid on her face and later-on died due to un-natural death

in the hospital. Prosecution in order to prove unnatural death of deceased has examined, **Dr. Samina Shaikh**PW-2, who deposed that on 15.1.2009 she was posted as Medico Legal Officer at RBUT Hospital, Shikarpur. At 0600 p.m. injured namely Maria Shah daughter of Baqar Ali Shah was brought by S.H.O, P.S New Foujdari Shikarpur, for examination, treatment and certificate. She examined her and found following injuries:

1. *One burn injury present over the face involving Rt and left eye also Rt ear.*
2. *One burn injury involving the in front of the neck and both side of neck.*
3. *One burn injury involving the front of the chest of abdomen anteriorly.*
4. *One burn injury involving the upper Rt arm and forearm.*
5. *One burn injury involving the both thigh anteriorly.*
6. *One burn injury the Rt foot on its dorsum surface.*

Doctor further deposed that injuries were result of liquid heated substance. She gave her first aid and then referred her to Civil Hospital, Karachi, for further treatment. She produced provisional medical certificate at Ex.6-B. She further deposed that after about one month she came to know that injured has died. **Dr. Mubina Siddiqui**PW-3, was also examined, she deposed that on 10.2.2009 she was posted as Women Medical Officer at RBUT Hospital, Shikarpur; at 0830 p.m. P.C Talib Hussain of P.S New Foujdari brought dead-body of Maria Shah daughter of Baqar Ali Shah for examination and certificate. She started postmortem of the dead-body at 0830 p.m. and finished at 1030 p.m. The doctor further deposed that she examined her and found following injuries:

1. *One burn injury, swelling, pus formation involving the whole face and also the Rt ear.*

2. *One burn injury, swelling, pus formation involving the chest and abdomen anti blackish in colour.*
3. *One burn injury, pus formation involving the anti-surface of both eyes blackish colour.*
4. *One burn injury, swelling, pus formation in front of neck blackish in colour.*
5. *One burn injury involving right upper and forearm, blackish in colour.*
6. *One burn injury, swelling around, dorsal surface of right foot, blackish in colour.*

Doctor further deposed that from external as well as internal examination of Ms Maria Shah, she was of the opinion that death had occurred due to septicemia and cardio-respiratory arrest as a result of acid-burn wounds. All the injuries were ante-mortem in nature and sufficient to cause the death in normal course of life.

11. The prosecution examined **H.C Awiz Khan** PW-1 (author of FIR) who deposed that on 15.1.2009, he was posted at P.S New Foujdari and was duty officer; on same day complainant Syed Baqar Ai Shah came at P.S and disclosed the fact of cognizable offence, as such he registered the F.I.R. Thereafter, he handed over F.I.R to S.I.O for further investigation.

12. Baqar Ali Shah PW-4 (**complainant**) deposed that on 15.1.2009 at 0500 or 0530 p.m. he alongwith Shah Jahan Shah, Dr. Imran Shaikh and other patients were available at Clinic of Dr. Imran Shaikh situated opposite to Building Office Colony NeemKhabar Mor Shikarpur and while they were sitting, accused Arsalan Sanjrani came at the clinic, he was having steel glass in his hand and he went towards ladies waiting room, which was with partition, he poured acid upon Maria Shah, who raised

cries and then accused ran away. The complainant further deposed that Maria Shah at that time was working at the clinic as mid-wife; he and others saw burn on some portion of body including face, right eye, chest and down ward. The complainant and Dr. Imran Shaikh took her towards civil hospital where treatment was started and in the meanwhile son of complainant Mehtab Shah, Shah Jahan Shah came there and they proceeded to P.S New Foujdari Shikarpur where he lodged F.I.R. He further deposed that police accompanied him to place of vardat, where they prepared mashirnama in presence of mashirs Nazir Ahmed Jakhro and Irshad Mahar; they then returned to hospital, where doctors informed them that they should take injured to Karachi for further treatment and management. He further deposed that Mehtab Shah took his daughter to burn center near civil hospital, Karachi, where she was admitted for 24-days and then expired and Mehtab Shah informed him on telephone that he was bringing the dead-body to Shikarpur. The complainant then informed the police about the death of his daughter Maria Shah who registered another report. Complainant further deposed that his statement was also recorded and police sent dead body of Maria Shah for postmortem. He was cross examined at some length but we could not find any substance favourable to appellant, however during cross examination by replying the suggestion made on behalf of the appellant he stated that **“My daughter was educated. It is incorrect to suggest that she was literate and she wanted to marry of her own accord. It is incorrect to suggest that I was not allowing her free for marriage according to her will. It is incorrect to suggest that she had herself put acid on herself.”**From these suggestion, it is clear that the death was caused by burning from acid and the cause was the marriage of the deceased Ms. Maria Shah and the same was a motive setup in the FIR.

13. Mehtab ShahPW-5 was examined by the prosecution who deposed that on 15.1.2009 he was present in his house situated at Building Office SanjraniMuhalla Shikarpur, it was 0500 p.m., he received telephone call from his father on mobile informing him that accused ArsalanSanjrani had put acid on his daughter Maria Shah and they were taking her towards Shikarpur hospital; he then proceeded and reached civil hospital; the doctors had started the treatment and then they referred them to Karachi. He further deposed that, he took her and proceeded to Karachi, where he got her admitted in burn hospital Karachi; she remained under treatment in Karachi for some time and then expired on 10.2.2009. He then informed about the death of his sister to his father on telephone and then took dead-body to Shikarpur civil hospital on ambulance. He was cross examined by the defence counsel at length but we could not find any substance favourable to the appellant. However during cross examination he stated that "It is correct that my sister was highly qualified. It is incorrect that she wanted to marry out of her free will. It is incorrect to suggest that due to our pressure she put acid on herself."

14. Prosecution examined Nazir Ahmed PW-6(**Mashir**) whodeposed that on 15.1.2009 at about eveningtime at 7.00 p.m. he came to know that incident had taken place with the daughter of Syed Baqar Ai Shah; he proceeded to the hospital and arrived there at about 7.p.m. and saw that Ms. Maria Shah was trembling and she was in the ladies ward. He further deposed that ASI Nadir Ali Chang recorded the statement of girl in his presence and obtained his signature; he saw that her face was burnt including the neck and she worn yellowish cloths. The co-mashir was Irshad Ali. He further deposed that he then returned to clinic of Dr.

Imran Shaikh viz. place of incident alongwith ASI Nadir Ali Chang and co-mashir Irshad Ali. He further deposed that on the western side of clinic steel glass was lying with which the accused had poured acid over Ms. Maria Shah and she was said to be present under partition in the clinic from the seat of doctor; one chair was also lying at some distance stained with acid. The police secured the glass and also took chair; such mashirnama was prepared. He further deposed that on 10.2.2009 he came to know that dead-body of Ms. Maria Shah was coming from Karachi in the civil hospital Shikarpur, such mashirnama was prepared by Inspector Muhammad Ali Soomro and co-mashir was same. This witness further deposed that Danistnama was also prepared by Inspector Muhammad Ali Soomro. He further deposed that on 11.2.2009, he alongwith others were available at condolence place, where Inspector Muhammad Ali Soomro came who secured the burn cloths which were sealed and prepared such mashirnama.

15. Syed Liaquat Ali ShahPW-7(**Tapedar**)was examined who had prepared the sketch of place of incident and produced such sketch on record.

16. SIP/ SHO Nadir Ali PW-8 was examined by the prosecution who deposed that on 15.2.2009, he was posted as I.O at P.S New Foujdari Shikarpur; H.C Awiz Khan brought copy of F.I.R of Crime No.10/2009 and handed over it to him for investigation. He further deposed that complainant Baqar Shah came at his office, he took complainant, lady ASI Shagufta and proceeded to civil hospital Shikarpur for inspection of injuries of Ms. Maria Shah; they arrived at hospital in ward where injured was sleeping; he saw her face and got inspected her body through lady ASI Shagufta who informed that the chest, stomach, both

arms and legs were burnt; such mashirnama was prepared in presence of mashir Irshad Mahar and NazirJakhro. He further deposed that, he then recorded 161 Cr.P.C statement of PW Shah Jahan Shah and thereafter he alongwith complainant visited place of vardat which was situated in the clinic of Dr. Imran Shaikh near NeemKhabarMor, where he saw one chair, steel glass, table with cloth were lying; he sealed the steel glass and prepared such mashirnama in presence of same mashir. He further deposed that he also recorded 161 Cr.P.C statement of Dr. Imran Shaikh and then returned to his office and on 16.1.2009, he handed over papers to Inspector Muhammad Ali Soomro for further investigation and on 22.1.2009 he alongwith Inspector Muhammad Ali Soomro proceeded to Karachi and arrived there on 22.1.2009 in night and on 23.1.2009 Inspector Muhammad Ai arrested accused Arsalan from Sher Pao Colony Landhi Karachi in his presence, the co-mashir was P.C Talib. This witness was cross examined but defence counsel had not shattered his evidence.

17. Mr. Shahid AhmedPW-9(**Civil Judge & Judicial Magistrate**)was examined who deposed that on 30.01.2009 he was posted as 7th Civil Judge and Judicial Magistrate Shikarpur; on same day SIO P.S New Foujdari Muhammad Ali Soomro submitted application for recording 164 Cr.P.C statement of PW Syed Shah Jahan Shah in Crime No.10/2009 which he recorded and produced the same. He identified the appellant as same in whose presence statement under section 164 Cr.P.C was recorded.He deposed that Counsel Mr. Shahbaz Ali Brohi for accused made cross to PW.He was cross examined but defence counsel failed to create any dent in his evidence.

18. Muhammad Ali SoomroPW-10 (**IInd Investigation Officer**) was examined who deposed that on 16.1.2009 he was posted as S.I.O at P.S New Foujdari and on same day ASI Nadir Ali Chang handed over to him the papers of this case for further investigation; he inspected the papers. He left police-station under roznamcha entry No.2 at 4.00 hours alongwith other staff in mobile for recording the statement of injured Ms. Maria Shah who was admitted in Karachi and also for arrest of accused and on 17.1.2009 he arrived at P.S Qaid-abad within the jurisdiction where the house of accused was situated; he got kept entry No.27 at P.S Qaid-abad at about 16.00 hours. He further deposed that he alongwith other staff went to the flat of accused situated on 4th Floor of Labor Colony F-2 Sher Pao, Landhi the flat of the accused was under the lock and they could not succeed in apprehending the accused and on 18.1.2009, he went to the civil hospital Karachi **in burns ward ICU Bed No.A-1 and recorded the statement of injured Ms. Maria Shah under Section 161 Cr.P.C** and such entry was also got made at P.S Risala as No.22 at 19:50 hours. Thereafter, he tried to apprehend the accused and made inquiry from different places, such entry was also kept at P.S Shahra-e-Faisal dated 19.1.2009 and on 21.1.2009 he returned to Shikarpur; however on 22.1.2009 he received information that accused was available at his flat in Karachi, he then left Police-station alongwith staff in mobile under entry No.29 at 17.00 and on 23.1.2009 at 3.00 they arrested the accused from street in Labour Colony F-2 Sher Pao Landhi in presence of mashir ASI Nadir Ali Chang and P.C Talib Khoso and such mashirnama was prepared; after arrest of the accused they proceeded from Karachi for Shikarpur and at 1300 they reached at P.S New Foujdari, where he kept such entry No. 17. He further deposed that he got recorded statement of PW Shah Jahan Shah under Section 164 Cr.P.C from the Court of 7th Civil Judge and Judicial

Magistrate Shikarpur on 31.1.2009. He further deposed that he also gave letter to PW/ Dr. Imran Shaikh for his appearance before the Magistrate for recording 164 Cr.P.C statement, but he did not appear and on 2.2.2009 he produced the accused Arsalan before the S.P Investigation Mr. Iqbal Ahmed Junejo, where he admitted his guilt and such statement was recorded by S.P Investigation in his presence. He further deposed that on 03.2.2009 he produced the accused Arsalan before 7th Civil Judge and Judicial Magistrate for recording his confessional statement and submitted such application, but accused refused to record his confessional statement and then accused was sent to judicial custody and on 06.2.2009 he submitted interim challan. He further deposed that on 10.2.2009 at 08.30 complainant Baqar Ali Shah informed him on telephone that his daughter injured Ms. Maria Shah had expired in burns ward Karachi; he kept such entry No. 4 at P.S New Foujdari and on 10.2.2009 at 20.00 hours Mehtab Shah the brother of injured Ms. Maria Shah brought dead-body at dead-house at Civil Hospital Shikarpur, where he got inspection of her dead-body through lady ASI Shagufta, such mashirnama was prepared in presence of Irshad Mahar and NazirJakhro; he also prepared Danistnama of Ms. Maria Shah in presence of same mashirs and on 11.2.2009 father of deceased Maria Shah produced last worn cloths, which were burnt by acid, the same were secured and sealed under memo, which was prepared in presence of Irshad Mahar and NazirJakhro. He further deposed that Mehtab Shah then produced the proceedings regarding death of Ms. Maria Shah, which he collected. He deposed that complainant had also produced the photograph of Ms. Maria Shah, which was taken prior to the incident and after completing the formalities on 16.2.2009 he submitted final challan by adding section

302 P.P.C. He was cross examined but we could not find any substance favourable to appellant.

19. The important witness Jan Muhammad MaharPW- 11 **(Journalist)** was examined as **Court witness** he deposed that he is journalist by profession and reporter of KTN News Channel and Daily Kawish newspaper; he had conducted the interview of Maria Shah in the district hospital in the year 2009, when he arrived in hospital Ms. Maria Shah was in injured condition; the interview of Ms. Maria Shah was recorded in camera which was telecast on KTN, Ms. Maria Shah during her interview had informed that she was available at clinic when one Arsalan Sanjrani entered in the clinic and poured something on her face and body, then she felt that there was burning over that portion of body where liquid was thrown, so she felt it was acid she (deceased) further disclosed that after throwing the acid, Arsalan ran away. He further deposed that he came to know that she was shifted to Karachi and thereafter he came to know she died at Karachi; He further deposed that he came to know through police sources that the accused Arsalan Sanjrani was arrested by the police. He further deposed that he was of the view that perhaps for the first time this type of incident had occurred and feeling it to be very sensitive, he decided and came at Shikarpur and meet with police officials and recorded interview of police-officials, **then he recorded interview of accused Arsalan who was in police-lockup, in which accused disclosed that as Maria Shah was residing in his Muhalla, so he had acquaintance with her; he also disclosed that he used to take her on rickshaw for school or college when she was studying; the accused further disclosed that during that period of pick and drop he developed a love affair with her and wanted to marry her, but Maria Shah was not ready due to**

her reason that accused was without any job and that her parents were also not ready. This witness further deposed that accused disclosed that he had arranged Rs.1,60,000/- for marriage with Maria Shah, when she was keeping him on hopes and during this period the amount of Rs.1,60,000/- he spent upon her; the accused further disclosed that after amount was consumed he again requested her for Court marriage as agreed, whereupon she said that accused has no financial source and he was jobless, therefore, she was not ready to marry with accused. This witness further deposed that the accused further disclosed that due to such annoyance he took out acid from battery of jeep and went to clinic and poured acid on her and then ran away. According to this witness, he had seen the CD supplied in the Court and says that it was the same which was recorded by him. He further deposed that **accused present in the Court is same whose interview he recorded**. He was cross examined during cross examination it was not denied that he had not recorded the interview of Ms. Maria Shah and the appellant Arsalan Sanjrani. He stated in his cross examination that **“it is impossible to make any change in the video, however if some change is brought that can be easily detected by even common man. It is correct that voice can be dubbed, but that will not be matching with the lips expression, but that can be clarified in the forensic lab.”**

20. Another important witness **Iqbal-din** PW-12 was examined by the prosecution who deposed that on 2.2.2009 he was posted as **S.P Investigation** at Shikarpur; accused Arsalan of Crime No.10/2009 was produced before him by investigation officer for recording confessional statement of accused; he called the accused, then directed the other

police-staff to leave his office; at the time when accused was produced before him, he was under hand-cuff; he got removed his hand-cuff and turned out the other police staff from his office, then made inquiry from accused, whereupon accused admitted that he and Maria Shah were studying together and then whatever he stated, he recorded the same verbatim, then he appended such certificate on the foot of confessional statement after getting signature from the accused on his statement. He identified the accused in Court, to be same who appeared and gave statement before him. He was cross examined on behalf of the appellant but nothing favourable was brought on record.

21. Contention of the learned counsel for the appellant that the witnesses Dr. Imran Shaikh and Syed Shah Jehan Shah were not examined by the prosecution during the trial and they were given up by the prosecution has no force as the prosecution has to prove the case by producing confidence inspiring and trustworthy evidence. PW Dr: Imran was won over by the accused, such statement was filed by the DDPP on 24-11-2014. Sole evidence of a material witness is always sufficient to establish the guilt of accused, if the same is confidence inspiring and trustworthy supported with other independent source of evidence because law requires quality of evidence not quantity to prove the charge. Reliance can be placed on the cases of ***Namoos Khan and another V. The State (2017 P.Cr.L.J 34)***, ***Behram V. The State (2015 YLR 150)*** and ***Niaz-ud-Din and another V. The State (2011 SCMR 725)***.

22. As regards to the contentions of learned advocate for the appellant that the witnesses are near relatives to the deceased and are interested therefore their evidence cannot be relied upon has no force as

in the instant matter, the eye-witnesses have sufficiently explained the date, time and place of occurrence as well as each and every event of the occurrence in clear-cut manners. The parties are known to each other as is evident from their evidence and this is a day time incident, so there was no chance of mistaken identity of the appellant. We would not hesitate that where the witnesses fall within the category of natural witnesses and detail the manner of the incident in a confidence-inspiring manner then only escape available to the accused/appellant is that to satisfactorily establish that witnesses are not the witnesses of truth but “**interested**” one. An interested witness is not the one who is relative or friend but is the one who has a motive to falsely implicate an accused. No substance has been brought on record by the appellant to justify his false implication in this case at the hands of the complainant party on account of the previous enmity. In this context, the reliance can safely be placed on the case of **Lal Khan v. State(2006 SCMR 1846)** wherein Honourable Supreme Court has held as under:-

... The mere fact that a witness is closely related to the accused or deceased or he is not related to either party, is not a sole criteria to judge his independence or to accept or reject his testimony rather the true test is whether the evidence of a witness is probable and consistent with the circumstances of the case or not.

In another case of **Farooq Khan v. The State(2008 SCMR 917)** Honourable Supreme Court has held as under:-

11. PW.8 complainant is real brother of the deceased who is a natural witness but not an interested witness. An interested witness is one, who has motive, falsely implicates 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 **Nazir v. The State PLD 1962 SC 269 and Sheruddin v. AllhajRakhio 1989 SCMR 1461.***

In another case of **Zulfiqar Ahmed & another v. State(2011 SCMR 492)**, Honourable Supreme Court has 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 the complainant and his witnesses. In the matters of capital punishments, the accused would not stand absolved by making a mere allegation of dispute/enmity but would require to bring on record that there had been such a dispute/enmity which could be believed to have motivated the “**natural witnesses**” in involving the innocent at the cost of the 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 in this case, particularly when it is a case of single accused. Reference may be made to the case of **Zahoor Ahmed v. The State(2007 SCMR 1519)**, wherein Honourable Supreme Court has held 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.

23. The important witness Jan Muhammad Mahar the journalist is the independent witnesses, having no enmity with the appellant and found that the extra-judicial confession recorded by him was true and voluntary. The PW Jan Muhammad during cross examination replied that when he was recording the statement in camera of the appellant in the lockup, there was no police official available in the lockup and further stated that accused was not under harassment as he observed, likewise SP investigation Iqbal din stated that at the time of recording the statement of the appellant he got removed his handcuff and turned out the other police staff from his office then made inquiry from accused. Ocular evidence is corroborated by medical evidence and with statement of Ms. Maria Shah (deceased) recorded by the police as well as journalist Jan Muhammad Mahar.

24. It is settled principle of law that a judicial or extra-judicial confession could be made sole basis for conviction of an accused, if the court was satisfied and had believed that it was true and voluntary and was not obtained by torture, coercion or inducement. Reliance is placed on the cases reported as PLD 2019 SC 64 and 2011 SCMR 1233.

25. Another important aspect of the case is motive which was setup in the FIR and prosecution has proved by producing trustworthy and confidence inspiring evidence. It is established from the evidence of eye

witnesses who we considered to be reliable, trustworthy and confidence inspiring that accused was demanding hand of the deceased Ms. MairaShah for marriage and on refusal, he had thrown the acid upon her. An individual on attaining majority age is statutorily by conferred a right to choose a partner, but no one can be compelled by force to marry against the wishes. But in the present case, despite rejection of proposal of appellant for marriage by deceased he demonstrated extreme violence by throwing acid upon the deceased.

26. It is settled by now that when the courts are deciding a criminal case they must keep in mind that they are also guardians of the citizens and that the complainant/victims' rights cannot be ignored and where in the evidence prosecution established its case beyond reasonable doubt then if there may some minor contradiction which always are available in each and every case as no one can give evidence like photograph such may be ignored, Reliance is placed on the case of **Zakir Khan V. The State (1995 SCMR 1793)**, wherein Honourable Supreme Court has held 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.”

27. We have carefully scanned the entire evidence produced by the prosecution and found that the prosecution proved its case against the appellant beyond a reasonable doubt by producing independent, trustworthy, reliable and confidence-inspiring evidence in the shape of oral evidence as well as medical evidence coupled with other corroborating evidence so also the statement of accused recorded by the independent witness Jan Muhammad Mahar the Journalist who had no enmity with the appellant to falsely implicated him in this case.

28. As to sentence a lenient view cannot be taken as the circumstances of this case indicate that the act of the appellant was gruesome and merciless. The deceased Maria Shah was a young girl aged about 24 years was deprived of her life only on the ground that she refused to marry with appellant ArslanSanjrani. Further the particular facts and circumstances of this case keeping in view the brutality of the crime, where one innocent young girl was murdered in the clinic by throwing acid upon her, the complete lack of mitigating circumstances and the presence of aggravating circumstances as mentioned above whereby the deceased received 6 separate burn injuries and the need to discourage such kind of offences which regrettably were most common and remain so, we are of the view that a deterrent sentence is the appropriate one. Reliance is placed on the case of **Dadullah V. State (2015 SCMR 856)**.

29. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant through ocular account furnished by eye-witnesses, which is corroborated by the

medical evidence coupled with circumstantial evidence. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by learned trial Court while passing the impugned judgment, which in our humble view is based on the appreciation of the evidence and the same does not call for any interference by this Court. Thus, the conviction awarded to the present appellant by learned trial Court is hereby maintained and the instant appeal filed by the appellant merits no consideration, which is **dismissed** accordingly, the death penalty is confirmed. Death Reference is answered in the **AFFIRMATIVE**.

JUDGE

JUDGE