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IN THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio,*

Criminal Appeal No.54 of 2021
Conf. Case No.03 of 2021

Appellant: Mannan S/o. Hussain @ Hassan
through Mr. Munir Ahmed Khan,
Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Complainant: Haji Umar Khan through M/s.
Mushtaque Ahmed Jahangiri and
Sagheer Ahmed, Advocates.

Criminal Appeal No.52 of 2021

Appellant: Yousuf Khan S/o. Younus Khan
through Mr. Tahir-ur-Rehman
Tanoli, Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Complainant: Haji Umar Khan through M/s.
Mushtaque Ahmed Jahangiri and
Sagheer Ahmed, Advocates.

Criminal Appeal No.55 of 2021

Appellant: Basheer S/o. Hussain @ Hassan
through Mr. Munir Ahmed Khan,
Advocate.

Respondent: The State through Mr. Muhammad
Iqbal Awan, Additional Prosecutor
General.

Complainant: Haji Umar Khan through M/s.
Mushtaque Ahmed Jahangiri and
Sagheer Ahmed, Advocates.

Date of hearing: 09.02.2022.

Date of Announcement: 17.02.2022.

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, I:- The appellants Mannan S/o. Hussain @ Hassan, Basheer S/o. Hussain @ Hassan and Yousuf Khan S/o. Yonus Khan have preferred the instant appeals against the judgment dated 19.01.2021 passed by learned Ist Additional Sessions Judge (Model Criminal Trial Court) Karachi South in Special Case No.43 of 2020 arising out of Crime No.538/2019 u/s. 302/324/34 PPC registered at P.S. Darakhshan, Karachi whereby the appellants were convicted and sentenced by the learned Ist Additional Sessions Judge (Model Criminal Trial Court) Karachi South as under:-

1. Accused Mannan S/o. Hussain @ Hassan is convicted for committing murder of deceased Moosa and sentenced to death subject to confirmation by the High Court and he is also liable to pay compensation of Rs.6,00,000/- (Rupees Six Lacs) under section 544-A Cr.P.C. to the legal heirs of the deceased. In case of failure in payment of compensation, the accused would also suffer SI for (06) six months more. He is also convicted for committing an offence punishable under section 324 PPC and sentenced to suffer RI for 10 (Ten) years. He is also convicted for committing an offence under section 337-A(i) PPC for causing injuries to complainant Haji Umar and sentenced to suffer R.I for 02 (Two) years, while further directing to pay 'Damaan' in the sum of Rs.1,00,000/- to injured Haji Umar. He is also convicted for committing an offence under section 337-F(ii) PPC for causing injuries to injured Ahmed and sentenced to suffer RI for 03 (Three) years, while further directing to pay 'Damaan' in the sum of Rs.1,00,000/- to injured Ahmed. The sentences awarded to the accused except death sentence would run concurrently and benefit under section 382-B Cr.P.C. is also extended to him.
2. Accused Basheer S/o. Hussain @ Hassan is convicted for committing offence punishable under section 324 PPC and sentenced to suffer RI for 10 (Ten) years. He is also convicted for committing offence under section 337-A(i) PPC for causing injuries to complainant Haji Umar and sentenced to suffer RI for 02 (Two) years, while further directing to pay 'Damaan' in the sum of Rs.1,00,000/- to injured Haji Umar. He is also convicted for committing offence under section 337-F(ii) PPC for causing injuries to injured Ahmed and sentenced to suffer RI for 03 (Three) years, while further directing to pay 'Damaan' in the sum of Rs.1,00,000/- to injured Ahmed.
3. Accused Yousuf Khan S/o. Yonus Khan is convicted for committing offence punishable under section 324 PPC and sentenced to suffer RI for 10 (Ten) years. He is also convicted for committing offence under section 337-A(i) PPC for causing injuries to complainant Haji Umar and sentenced to suffer RI for

02 (Two) years, while further directing to pay 'Damaan' in the sum of Rs.1,00,000/- to injured Haji Umar. He is also convicted for committing offence under section 337-F(ii) PPC for causing injuries to injured Ahmed and sentenced him to suffer RI for 03 (Three) years, while further directing to pay 'Damaan' in the sum of Rs.1,00,000/- to injured Ahmed.

The sentences awarded to the accused appellants were ordered to run concurrently and the benefit of section 382-B Cr.P.C. was also extended to the accused persons.

2. The brief facts of the prosecution case as alleged in the FIR lodged by complainant Haji Umar Khan at Police Station Darakhshan are that his three sons worked at Sea View, Clifton, Karachi on different locations. On 26.08.2019 at about 2230 hours after receiving information about a quarrel between his nephew Daud and Yousuf and others, he (the complainant) rushed to the parking area, where accused Yousuf, Mannan, Basheer, Javed and Asghar Hussain alias Sain having pistols, churries and daggers attacked him and he received injuries. His sons Moosa aged about 25 years and Ahmed came to rescue him, who were also attacked by accused Mannan, Bashir, Asghar Hussain and Javed with Churri and daggers. As a result, his both sons received serious injuries and Moosa succumbed to the injuries on way to the hospital. Statement of complainant was recorded under section 154 Cr.PC. by the police in hospital.

3. During investigation, only accused Yousuf Khan S/o. Younus Khan was arrested and after completion of investigation, Challan was submitted against him showing accused Jawaidd Khan S/o. Younus Khan, Mannan S/o. Hussain @ Hassan, Basheer S/o. Hussain @ Hassan as absconders in column No.02 with red ink, while the investigating officer let off accused Asghar Hussain @ Sain S/o. Sajan Ali by placing his name in column No.02 of Challan with blue ink, due to lack of evidence. However, the learned Judicial Magistrate concerned took cognizance of the offence against all accused persons and joined Asghar Hussain @ Sain S/o. Sajan as accused in this case vide order dated 21.10.2019.

4. Record further shows that said absconding accused persons Jawaidd Khan, Mannan and Bashir were declared as proclaimed offenders under section 512 Cr.P.C. and proclamation proceedings under section 87 and 88 Cr.P.C. were also initiated against them after recording statements of the process server on oath. Thereafter, accused Jawaidd Khan S/o. Younus

Khan, Mannan S/o. Hussain @ Hassan, Basheer S/o. Hussain @ Hassan and Asghar Hussain @ Sain S/o. Sajan Ali were arrested, therefore, they joined trial.

5. After completion of investigation of the case, the I.O. submitted the charge sheet against the accused persons to which they pleaded not guilty and claimed trial.

6. The prosecution in order to prove its case examined 12 witnesses and exhibited various documents and other items. The statements of the accused were recorded under Section 342 Cr.P.C in which they denied all the allegations leveled against them. None of the accused examined themselves on oath under section 340(2) Cr.P.C. nor led any evidence in their defence.

7. After appreciating the evidence on record the trial court convicted the appellants and sentenced them as set out earlier in this judgment, hence, the appellants have filed these appeals against their convictions.

8. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 19.01.2021 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

9. Learned counsel for the appellants have contended that they are completely innocent of any wrong doing and have been falsely implicated by the police at the behest of the complainant party; that it was dark at night and that the eye witnesses were not in a position to correctly identify the appellants; that no recovery of any weapon was made from any of the appellants; that there are major contradictions in the prosecution evidence which renders it unreliable; that with regard to appellant Yousuf he is not given a specific role in the FIR and that the complainant made material improvements in his evidence in so far as it related to him and that for any or all of the above reasons the appellants by extending them the benefit of the doubt be acquitted of the charge. In support of their contentions they have placed reliance on the case of **Muhammad Mansha v. The State** (2018 SCMR 772).

10. On the other hand learned APG appearing on behalf of the State as well as learned counsel for the complainant have fully supported the impugned judgment. In support of their contentions, they have contended that there are six eye witnesses, two of whom sustained injuries, during the attack and murder of Musa whose evidence is reliable, trust worthy and confidence inspiring who have been able to correctly identify the appellants as being the persons who attacked the complainants side and murdered Musa; that the medical evidence corroborates the eye witness evidence; that the conduct of the appellants in attacking the complainant and his sons shows a clear intent to commit murder and the common intention of the accused and as such the appeals be dismissed. In support of their contentions they have placed reliance on the cases of **Islam Sharif v. The State** (2020 SCMR 690), **Muhammad Yaqoob v. The State** (2021 SCMR 1387), **Zakir Khan and others v. The State** (1995 SCMR 1793), **Noor Muhammad v. The State** (1999 SCMR 2722), **Muhammad Afzal v The State** (2003 SCMR 1678), **Zia Ullah v The State** (2021 SCMR 1507), **Zahid Imran v The State** (PLD 2006 SC 109), **Muhammad Nadeem alis Deemi v The State** (2011 SCMR 872), **Muhammad Mansha v The State** (2001 SCMR 199), **Zulfiqar Ahmad v The State** (2011 SCMR 492) and **Ijaz Ahmad v The State** (2009 SCMR 99).

11. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellants, and the impugned judgment with their able assistance and have considered the relevant law including the case law cited at the bar.

12. Based on our reassessment of the evidence of the PW's, especially PW eye witnesses, the other witnesses including medical evidence, recovery of human blood at the scene of the incident we find that the prosecution has proved beyond a reasonable doubt that Musa Khan (the deceased), Haji Umar Khan and PW 9 Ahmed Khan were attacked by assailants and received injuries through butt and knife/dagger blows with the injuries to the deceased proving fatal on or about 25.08.2019 at about 2330 hours at main sea view service road parking area canteen No.2 to 3 Phase V DHA Karachi.

13. The only question left before us therefore is who carried out the attack on Haji Umar Khan and Ahmed Khan and the deceased by pistol but and knife blows which lead to the injuries to Haji Umar Khan and Ahmed Khan and the murder of the deceased at the said time, date and location?

14. After our reassessment of the evidence we find that the prosecution has proved beyond a reasonable doubt the charge against the appellants for which they were convicted for the following reasons;

(a) That the FIR was lodged with promptitude being 4 ½ hours after the incident whereby the appellants are all named in the FIR as carrying out the attack on the complainant, Ahmed Khan and Musa who were injured with Musa dying on account of the injuries which he sustained in the attack. Even if there was considered to be a slight delay in lodging the FIR this is explained by the fact that the complainant was injured and needed to receive treatment in hospital and attend to his son who was brought dead to the hospital and thereafter the FIR was lodged. With respect to an explained delay in lodging the FIR not being fatal to the prosecution case reliance is placed on the case of **Muhammad Nadeem alias Deemi v The State** (2011 SCMR 872).

(b) In our view the prosecution's case rests on the evidence of the eye witnesses to the assault on the complainant and Ahmed Khan and murder of the deceased whose evidence we shall consider in detail below;

(i) **Eye witness PW 1 Haji Umar Khan.** He is the complainant in the case and is the father of the deceased. According to his evidence his three sons, PW 9 Ahmed, Esa and the deceased used to work at sea view which is corroborated by PW 6 Abdul Salam. That on 25.08.2019 at about 2230 he had gone to sea view and was with his son Ahmed at his cabin when he was informed that a dispute had taken place between his nephew PW 10 Dawood and appellant Yousaf which is corroborated by PW 9 Ahmed Khan at the parking area of sea view near canteen two and he went there. PW 10 Dawood corroborates the quarrel. When he reached there Dawood and Yousaf were not present. After about five minutes five persons came out of a rush of people who he identified as the appellants along with Asghar who was acquitted by way of compromise during the trial and Jawaid who did not stand trial and was declared a Proclaimed Offender (PO) with Asghar and Bashir having pistols and Manan, Jawaid and Yousaf having knives. He knew all of the appellants and the other two as they all worked at sea view which has not been contradicted during his evidence. All the appellants and the two others assaulted him during which he sustained a knife injury on his head and fell down. He then saw his son PW 9 Ahmed

come there who was assaulted by the appellants and two others and became injured. Thereafter he saw his deceased son come towards them when PO Jawaid caught hold of his arms from the back where after appellant Manan stabbed the deceased who then fell down. He then got up and saw that the deceased was seriously injured and he took him in a rickshaw to a hospital where he was pronounced dead on arrival.

He was a natural witness and not a chance witness and had no enmity or ill will which would lead him to falsely implicate the accused. He was attacked by the appellants and the other two whose faces were not masked and he knew them all and as such despite the lack of light from such a close distance i.e. next to them whilst he was being beaten, then watched his other son PW 9 Ahmed being beaten by them and then saw appellant Manan stab the deceased whilst being held by the PO Jawaid he would have had more than sufficient time and closeness to recognize and correctly identify the appellants and the other two who were all named in his promptly lodged FIR as taking part in the attack on him, PW 9 Ahmed and the deceased and as such based on the particular facts and circumstances of this case despite there being poor light we have no doubt that the complainant has been able to correctly identify the appellants and the two others and hence there was no need for any identification parade.

He recorded his S.161 eye witness statement within one day of the incident and although there has been some minor improvements in his evidence from his FIR we do not consider these to be material especially as the complainant by his own admission was illiterate and would have no idea how much detail to put in his FIR and S.161 Cr.PC statement. The fact that none of the other eye witnesses were named in the FIR based on the particular facts and circumstances of this case as the complainant did not know who the other eye witnesses might be we do not consider this omission as being of particular significance or in any way undermining the evidence of this eye witness. With regard to the poor light reliance is placed on **Islam Sharif's case** (Supra) where it was held as under at para 4;

"It is in evidence that the petitioner as well as the deceased lived in the same rural neighbourhood; dispute over the house has been raging since the year 1982 and, thus, it can be safely assumed that the both sides were well acquainted with each other. Fajjar prayer is held shortly before dawn with the recession of darkness; in such a situation identification of the culprit by the witnesses, proceeding in close proximity with the deceased, in the month of September, particularly in view of long standing acquaintance, cannot be viewed with suspicion".

Likewise it was held in the case of **Muhammed Yaqoob** (supra) P.1390 as under with regard to identification and light;

"Darkness by itself does not provide immunity to an offender if the witnesses otherwise succeed to capture/ascertain his identity through available means mentioned in the crime report".

The Supreme Court took the same position vis a vis light and identification in the case of **Nasrullah Khan V State** (2010 SCMR 881).

The fact that all the eye witnesses have stated about the poor light in our view tends to show their honesty as not a single one has stated otherwise which might have been expected in order to improve their case against the appellants and others.

Admittedly the eye witness was related to the deceased who was his real son however it is well settled by now that evidence of related witnesses cannot be discarded **unless** there is some ill will or enmity between the eye witnesses and the accused which has not been proven in this case by any reliable evidence. In this respect reliance is placed on the cases of **Ijaz Ahmed V The State** (2009 SCMR 99) **Nasir Iqbal alias Nasra and another v. The State** (2016 SCMR 2152).

We find that the eyewitness gave his evidence in a straight forward and natural manner and was not dented during cross examination.

Thus, for the reasons mentioned above we find the evidence of the eyewitness to be reliable, trustworthy and confidence inspiring and we believe the same **especially with regard to the correct identification of the appellants and the two others as the persons who attacked him and his son PW 9 Ahmed and the deceased and appellant Manan stabbing and murdering the deceased whilst PO Jawaid held the deceased's arms** and can convict on the evidence of this eye witness alone provided that there is some corroborative/supportive evidence. In this respect reliance is placed on the cases of **Muhammad Ehsan v. The State** (2006 SCMR 1857). As also found in the cases of **Farooq Khan v. The State** (2008 SCMR 917) and **Niaz-ud-Din and another v. The State and another** (2011 SCMR 725). That what is of significance is the quality of the evidence and not its quantity and in this case we find the evidence of this eyewitness to be of good quality.

(ii) **Eye witness PW 9 Ahmed Khan.** He is the brother of the deceased and runs a cigarette cabin near Canteen No.2 sea view. In his evidence he corroborates the evidence of the complainant as being with him at his cabin on 25.08.2019 at about 2200/2300 hours when the complainant was informed about the quarrel with his cousin Dawood (the quarrel is

corroborated by PW 10 Dawood in his evidence as being with appellant Yousuf). He was informed that some one was beating his father so he went to the pointed place and saw his father lying on the ground and being beaten by the appellants and the two others (including appellant Yousaf). Appellant Bashir caused a Butt blow to his head (which ties in with Bashir having a pistol) and some one also gave him a dagger blow to his back. He fell down and saw PO Jawaid catch hold of the deceased from his back and appellant Manan give a dagger blow to the deceased's abdomen. His cousin Jabrael took him to PS Darakhshan for a medical certificate before proceeding to Jinnah Hospital for treatment.

The same considerations apply to him as to eye witness PW 1 Haji Umar Khan who he corroborates in all material respects except that he gave his S.161 eye witness statement 14 days after the incident which is explained by the fact that he was too badly injured to give his statement on the day of the incident as confirmed by the MLO and IO and remained in hospital for at least 3 days.

(iii) Eye witness PW 7 Qayyum Khan. He is an independent witness. According to his evidence on 25.08.2019 at about 2300/2315 hours he was on duty with the deceased at gate No.1 of parking area sea view when he was informed that father/complainant of the deceased and his brother PW 9 Ahmed was being beaten by appellant Manan and his companions. He and the deceased then travelled by motor bike to the pointed place where he saw the complainant and PW 9 Ahmed on the ground in injured condition. Two of the persons he saw were armed with pistols whilst the three others had daggers. He knew all the accused. He saw the deceased get down from his bike and PO Jawaid grab hold of the deceased from the back and then saw appellant Manan stab the deceased in the abdomen with a dagger. He gave his S.161 Cr.PC eye witness statement the next day and the same considerations apply to him as to eye witness PW 1 Haji Umar Khan and eye witness PW 9 Ahmed Khan except that he was not even related to the deceased.

(iv) Eye witness PW 2 Jibrael. He was working as gate keeper of gate No.3 of parking area near canteen No.2 sea view on the day of the incident (25.08.2019) when at 2300/2315 hours he was informed that PW 9 Ahmed and the complainant had been involved in a quarrel at gate No.2 at parking area of sea view. He went to the pointed place and saw the complainant and PW 9 Ahmed injured and on the ground. He then saw PO Jawaid catch hold of the deceased and saw appellant Manan cause dagger blow to the abdomen of the deceased. He saw the complainant take the deceased in a rickshaw to JPMC. He took PW 9 Ahmed to PS Darakhshan for a medical certificate and then to JPMC and then to civil hospital as is corroborated by PW 9 Ahmed. He

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was a natural witness as opposed to a chance witness. He gave his eye witness S.161 Cr.PC statement one day after the incident. He knew the accused and the same considerations apply to him as to the other eye witness mentioned above who he corroborates in all material respects in connection with the injury to the complainant and PW 9 Ahmed and the murder of the deceased by appellant Manan.

(v) **Eye witness PW 3 Gul Muhammed.** He is an independent witness. He used to run a corn cart at canteen No.2 sea view. On 25.08.2019 he was working at his corn cart when at about 2300/2315 hours he saw a rush of people at gate No.2 parking area. He went there and saw the appellants and two other persons who he knew. He saw them beat the complainant and his son PW 9 Ahmed who were lying on the ground in an injured condition. He saw the deceased arrive with PW 7 eye witness Qayyum Khan on a motor bike. When the deceased got down from the motor bike PO Jawaid caught hold of him from back and appellant Mannan stabbed the deceased with a dagger in his abdomen and as such he corroborates PW 7 Qayyum Khan's evidence. Out of fear he did not intervene and closed his corn cart and went home. He gave his S.161 eye witness Cr.PC statement the next day and is a natural as opposed to a chance witness who had no enmity with any of the appellants and had no reason to falsely implicate them in this case. He corroborates in all material respects all the other above referred to eye witnesses in connection with the injuries to the complainant and PW 9 Ahmed and the murder of the deceased and the same considerations apply to him as to the other eye witnesses mentioned above.

(vi) **Eye witness PW 4 Samar Khan.** He was the rickshaw driver who took the complainant and his deceased son to hospital. He is an independent witness. According to his evidence on 25.08.2019 he dropped a passenger at sea view at about 2230 hours and was waiting for a fare at gate No.2 sea view. He saw a group of people in a circle beating an old man who fell to the ground and the group of people then started to beat a young boy who also fell to the ground injured. There after he saw two boys come on one motorbike and the person sitting on the back of the motor cycle got off and one of the accused persons caught him from the back while another of the accused persons gave a dagger blow to him in the abdomen. People shifted the injured boy who came on the motorbike to his rickshaw and thereafter he took the injured boy and two other persons towards Jinnah Hospital. At Bilawal Chowrangi he heard the people in the back of the rickshaw say that the boy had expired and called him Musa. He dropped them off at Jinnah Hospital and gave them his phone number. He identified the three appellants in court as being those who assaulted the complainant party.

He was a natural independent witness who had no enmity with the appellants and had no reason to falsely implicate

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them in this case and gave his S.161 eye witness statement the next day. He did not name the appellants as he had never met them before which is quite natural and honest. He corroborates the evidence of the complainant especially in so far as it relates to the complainant taking the deceased from the scene of the incident to the hospital in injured condition but because he did not know the appellants and did not appear before an identification parade to identify the appellants we believe his evidence so far as he witnessed the incident but give little, if any weight, to his in court identification of the appellants which has been deprecated by the Supreme Court.

As such based on the eye witness evidence we have no doubt that the PW eye witnesses have correctly identified the appellants in attacking and beating the complainant and PW 9 Ahmed and in respect of appellant Manan murdering the deceased especially as the appellants do not even deny their presence at the scene of the incident during cross examination and only claim that they could not be identified correctly due to the darkness which due to the close proximity of the attack to the eye witnesses especially the complainant and PW 9 Ahmed who were injured during the attack we find to be of no assistance to the appellants based on the particular facts and circumstances of this case.

Thus, based on our believing the evidence of the PW eye witnesses and their correct identification of the appellants what other supportive/corroborative material is their against the appellant? Keeping in view the legal position that such evidence is only a rule of caution/prudence in the face of reliable and trust worthy eye witness evidence especially as in this case there are 6 eye witnesses who we have found to share such attributes and have correctly identified the appellants. In this respect reliance is placed on the case of **Muhammed Afzal (Supra)**

(c) PW 6 Abdul Salam and PW 8 Muhammed Tufail when they heard of the incident rushed to JPMC where they saw the complainant and PW 9 Ahmed in injured condition shortly after the incident. PW 10 Dawood took the injured PW 9 to hospital after he witnessed the incident in an injured condition and as such corroborate the injuries to the complainant and PW 9 Ahmed at the hospital.

(d) PW 5 Dr. Ejaz Ahmed who examined the complainant, PW 9 Ahmed and carried out the post mortem of the deceased corroborates the injuries caused to the injured complainant and PW 9 Ahmed and the offence which such injuries amount to under the law and the deceased as given by the eye witnesses and that the cause of death of the deceased was through a sharp weapon.

(e) The fact that no recovery was made from any of the appellants is not relevant as appellant Manan was arrested 6 weeks after the incident in another case and would therefore have no weapon on him when he was arrested in this case as he was already in jail.

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(f) That all the PW's are consistent in their evidence and even if there are some contradictions in their evidence we consider these contradictions as minor in nature and **not** material and certainly **not** of such materiality so as to effect the prosecution case/evidence and the conviction of the appellants. In this respect reliance is placed on the cases of **Zakir Khan V State** (1995 SCMR 1793) and **Khadim Hussain v. The State** (PLD 2010 Supreme Court 669). The evidence of the PW's provides a believable corroborated unbroken chain of events from the complainant being informed about the quarrel with PW Dawood with the complainant going to where Dawood was meant to be to the complainant and PW 9 being attacked and beaten by the appellants and two others to the deceased hearing of the attack on his father to his going to the scene in order to save his father to the deceased being grabbed by PO Jawaid and being stabbed by appellant Manan in the abdomen to the complainant trying to take the injured deceased to hospital by rickshaw to the death of the deceased by a sharp object as confirmed by the post mortem of the deceased and to the arrest of the appellants.

(g) That the police PW's had no enmity or ill will towards the appellant and had no reason to falsely implicate them in this case and in such circumstances it has been held that the evidence of the police PW's can be fully relied upon. In this respect reliance is placed on **Mushtaq Ahmed V The State** (2020 SCMR 474).

(h) That it does not appeal to logic, commonsense or reason that a father would let the real murderer of his son get away scott free and falsely implicate an innocent person by way of substitution.

(i) Undoubtedly it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defence case to see if it at all can cast doubt on or dent the prosecution case. The defence case is one of false implication simpliciter. None of the appellants gave evidence on oath or called a DW in order to cast doubt on the prosecution case. Thus in the face of reliable, trust worthy and confidence inspiring eye witness evidence of the appellants being involved in the beating and causing serious injury to the complainant and PW 9 Ahmed and appellant Manan murdering the deceased and other supportive/corroborative evidence we disbelieve the defence case.

15. Thus, based on the above discussion especially in the face of reliable, trust worthy and confidence inspiring eye witness evidence and other corroborative/supportive evidence mentioned above we have no doubt that the prosecution has proved its case against the appellants beyond a reasonable doubt for the offences for which they have been convicted and hereby maintain their convictions.

16. With regard to sentencing we note that it is not a universal rule that the death sentence should not be handed down if no motive is proved as

each case must be judged on its own particular facts and circumstances. In this respect reliance is placed on the case of **Noor Mohammed** (Supra). In this case the appellants without apparent reason beyond a quarrel set upon the complainant and PW 9 Ahmed and seriously injured them through pistol butts and daggers and knives and as such all the appellants had committed the offence of S.324/149/34/337-A(i) and 337-F(ii) PPC when the acts of the appellants are considered in their assault on the complainant and PW 9 Ahmed with pistol butts and knives/daggers along with the medical evidence concerning the injuries to the complainant and PW 9 Ahmed by such a violent assault with intent to kill.

17. That appellant Manan murdered in a brutal fashion and in cold blood a young man in the prime of his life with his future ahead of him in a busy sea side area in front of the public **and in front of his father** and as such we do not find that this case based on its own particular facts and circumstances warrants any leniency from this court and rather as was held in **Dadullah V State** (2015 SCMR 856) a deterrent sentence is justified to deter such mindless murders in front of the public at the seaside where young families go to enjoy themselves rather than being kept away in fear on account of such incidents.

18. Thus, for the reasons mentioned above we dismiss the appeals and uphold all the convictions and sentences handed down to each of the appellants in the impugned judgment and answer the confirmation reference in respect of appellant Manan in the affirmative.