Conviction upheld : Death reduced to life
Ocular evidence Trumps medical evidence
Unique piece of evidence such as belt.

100

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 534 of 2017
Confirmation Case No.11 of 2017

Present:

Mr. Justice Naimatullah Phulpoto
Mr. Justice Mohammad Karim Khan Agha

Appellant:	Liaquat Ali Khan S/o. Muhammad Yousuf presently confined in Central Prison, Karachi through Mr. Mehmood A. Qureshi, Advocate.
Respondent	The State through Mr. Farman Ali Kanasro, Additional Prosecutor General, Sindh.
Complainant	Through Mr. Arshad Mehmood and Ms. Farzana Saeed, Advocates

Date of hearing:	**06.02.2019, 19.02.2019 and 22.02.2019**
Date of Judgment:	**05.03.2019.**

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J.- Appellant Liaquat Ali Khan was tried by learned IXth Additional District & Sessions Judge, Karachi South in Sessions Case No.320 of 2009 arising out of Crime No.81/2009 registered at P.S. City Court, Karachi vide judgment dated 06.11.2017, the appellant was convicted under section 302(b) PPC and awarded death sentence subject to confirmation by this court with direction to pay compensation of Rs.100,000/- to the legal heirs of deceased Muhammad Arif (the impugned judgment). In case of default thereof to suffer SI for four months

2. The brief facts of the prosecution case are that complainant Muhammad Sabir reported to City Court Police Station at 11:15 hours on 22.05.2009 that his brother Said Nawaz who is an accused U/s. 302/392/353/34 PPC vide FIR No.202/2008, P.S. Jackson is pending before IInd Additional District & Session Judge Karachi West and he (Muhammad Sabir) came to the City Courts Karachi on 22.05.2009, with his brother Muhammad Arif to meet Said Nawaz as his (Said Nawaz's) case was fixed on the same day. At about 10:30 hours, opposite Block-E, City Court, (1) Muhammad Liaquat (2) Muhammad Yousuf and (3) Jehanzaib , who are brother and relatives of deceased Abid met us and

started abusing us. In the meantime Muhammad Yousuf and Jehanzaib caught hold of my brother Muhammad Arif, while accused Liaquat caused bullet injury on the chest of my brother with pistol, who got injured. During this incident, present police men and other people came and arrested all the three accused and recovered the pistol from accused Muhammad Liaquat. He went to police station along with police party who had arrested the accused persons. His report is against all the three accused who caused bullet injury to Muhammad Arif (deceased) who died from his bullet wounds. In short the accused persons above named in furtherance of their common intention and accused Liaquat Ali being armed with deadly weapon committed Qatl-i-Amd of deceased Muhammad Arif S/o. Muhammad Sadiq by inflicting fire arm injuries with deadly weapon, hence the present case.

3. After completing the usual investigation, the Investigation Officer submitted challan against the accused for trial according to law. The charge against the accused persons was framed and the accused persons pleaded not guilty and claimed for trial.

4. To prove its case the prosecution examined 06 witnesses and exhibited a number of documents and other relevant things.

5. The statement of the accused u/s. 342 Cr.P.C. was recorded wherein he denied all the allegations of the prosecution and professed his innocence. He examined himself on oath under section 340(2) Cr.P.C claiming that he had been falsely implicated in this case on account of enmity with the complainant party and examined one DW in his defense.

6. In a nutshell the case of the prosecution is that on 22-05-2009 at 10.30am the complainant was present with his brother Muhammad Arif at the city courts Karachi where his other brother Said Nawaz was facing a murder case as he had been accused of murdering the brother (Abid) of the accused Liaquat and had been brought from prison for his court case. Whilst the complainant and his brother Muhammad Arif were chatting in the court premises accused Yousaf and Jehanzaib grabbed hold of Mohammad Arif and accused Liaquat made direct firing with a fire arm at Muhammad Arif who fell down and died from the fire arm injury according to the post Mortem of PW MLO Dr. Abdid Channa. The

accused Liaquat and his co-accused were arrested from the spot and the pistol was recovered from accused Liaquat who eye witnesses being the complainant and PW Said Nawaz identified as firing at Muhammad Arif. An empty was recovered from the scene along with blood stained leaves and a piece of paper. According to the prosecution based on the eye witness testimony, other PW's, recoveries, and chemical report it was a clear case of Liaquat murdering Mohammed Arif in revenge for his brother Said Nawaz murdering Liaquat's brother Abid.

7. In a nutshell the case of the appellant is that he was not present at the time of the incident as he was at his home and in effect has produced Zakir as defense witness; that none of the eye witnesses were present and that he has been falsely implicated in this case due to enmity with the complainant party; that the police was acting at the behest of the complainant party and that the brother of the complainant (Said Nawaz who was also a PW eye witness) had murdered his brother Abid for which he was standing trial and that he had been falsely implicated in this case in order to pressurize his side into making a compromise with respect to the murder trial being faced by PW Said Nawaz.

8. Learned advocate for the appellant contended that one other co-accused had been acquitted by the trial court and as such the appellant was entitled to the same treatment; that there was a delay in filing the FIR which left room for concoction of the case against the accused; that there were only two eye witnesses in this case and the trial court in the impugned judgment had already rightly disbelieved the evidence of eye witness PW 3 Said Nawaz and with regard to the only other eye witness PW 1 Sabir his evidence could also not be safely relied upon as his evidence was contradicted by the medical evidence and that there was severe doubt as to his actual presence at the scene especially as his conduct did not appeal to reason in that he failed to accompany his injured brother's body to the hospital and instead waited to apprehend the accused; that there is no evidence as to who actually took the accused to hospital; that there was a 14 day unexplained delay in sending the recoveries to the ballistics expert; that there were contradictions in the evidence of the PW's; that there was no motive to kill the deceased as logically his grievance was with Said Nawaz who was present at the court and he had the opportunity to shoot him but he did not; that the case

property was not sealed at the spot and that PW 2 police man Aziz Anwar was a false witness and as such for any one or all of the above reasons the accused by extending to him the benefit of the doubt, which existed in this case, was entitled to be acquitted. In the alternative he contended that if this court was satisfied that the prosecution had proved its case against the accused to the required standard this was not a case which justified the death penalty as in this case only one shot was fired and there was no element of brutality involved. In support of his contentions he placed reliance on the cases of **Ghulam Mohy-ud-din alias Babu v. The State** (2014 SCMR 1034), **Mir Muhammad alias Miro v. The State** (2009 SCMR 1188), **Muhammad Riaz and others v. The State** (2017 SCMR 1871), **Saleem Uddin and others v. The State** (2011 SCMR 1171) and one unreported judgment passed in Special Cr. A.T. Jail Appeals No.58 to 61 of 2014.

9. On the other hand learned Additional Prosecutor General fully supported the impugned judgment and contended that the prosecution had proved its case beyond a reasonable doubt against the accused through the eye witness evidence which took precedence over the medical evidence and that eye witness PW 1 could be believed to the extent of the implication of the accused in this case; that the medical evidence of the cause of death corroborated the prosecution case; that the accused had been arrested at the spot and the pistol recovered from him and that the police evidence corroborated each other and thus the appeal should be dismissed. Learned APG when confronted by the court whether this case merited the death penalty candidly conceded that it did not as it seems that the accused acted out of provocation and that only one shot had been fired and this was not a brutal crime. In support of his contentions he placed reliance on the cases of **The State v. Muhamamd Aslam** (2002 P Cr. L J 113), **Amir Khan v. The State** (2000 SCMR 1885), **Muhammad Hanif v. The State** (PLD 1993 SC 895) and **Aurangzeb v. The State** (2005 P Cr. L J 1606).

10. Learned counsel for the complainant contended that the prosecution had proved its case beyond a reasonable doubt and that the death penalty was applicable in this case as it was a premeditated brutal murder; he conceded that the primary target of the attack was Said Nawaz

and that although the medical evidence was not wholly corroborative of the prosecution case this was not particularly relevant and as such submitted that the appeal should be dismissed and the conviction and death penalty upheld. In support of his contentions he placed reliance on **Danyal V The State**(2017 MLD 1197)

11. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 06.11.2017 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.

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

13. Before dealing with the instance case and assessing the evidence before us it is relevant to mention that initially there were two other co-accused in this case along with the accused. Co-accused Muhammad Yousaf died during the course of the trial and as such proceedings were abated against him whereas co-accused Jehanzaib who allegedly grabbed hold of the deceased but did not fire at him was acquitted vide the impugned judgment.

14. In our view based on the evidence on record, in particular that of the MLO and other PW's, it is not disputed that the deceased Mohammed Arif was murdered by firearm injury at the City Court Karachi on 22-05-2009 at about 10.30am.What is in dispute is the person that murdered him.

15. At the outset we observe that the co-accused was acquitted because he played a different role in the murder to the accused in this case and eye witness PW 1's evidence was disbelieved to this extent and likewise eye witness PW 3 however in this case there is much more evidence against the accused whose case is on a completely different footing and as such the co-accused acquittal is of no benefit to the accused especially as under Pakistani law at this point in time the principle of *falsus in uno falsus in omnibus* is not applicable and it is left to the courts to sift the grain from the chaff in order to reach a just conclusion. In this respect reliance is placed on **Munir Ahmed V State** (2019 SCMR 79).Thus the fact that eye

witness PW 1's and PW 3's evidence was not believed in respect of certain aspects does not mean that we cannot rely upon it in respect of other aspects if we find it to be trust worthy, reliable and confidence inspiring in respect of these other aspects.

16. In this case there are two eye witnesses whose evidence we need to appreciate. The first is the complainant PW 1 Mohammed Sabir who is the brother of the deceased. He is not a chance witness as he had gone to the city court to meet his brother Said Nawaz who was facing trial and who had been produced from prison custody that day in order to appear before the court. He saw Liaquat shoot his brother from a short distance. The incident took place in broad day light and he knew the accused Liaquat who was arrested from the spot and as such the question of misidentification does not arise. He recorded his FIR 45 minutes after the incident and names accused Liaquat in the FIR giving him a specific role. The question is whether we believe Sabir's evidence? The only potential chink in Sabir's evidence is that there was enmity between Liaquat's side and Sabir's side as Sabir's brother had killed Liaquat's brother and to a certain extent the medical evidence which we shall come to later. However based on the clarity of Sabir's evidence we do not consider these slight chinks sufficiently weighty to lead us to disbelieve Sabir's evidence in respect of accused Liaquat based on the considerations mentioned above and especially as Sabir was not damaged let alone destroyed in cross examination. In fact we find Sabir's evidence to be trust worthy, reliable and confidence inspiring.

17. Sabir's evidence is also corroborated by the evidence of his brother PW 3 Said Nawaz who was standing trial for the murder of Liaquat's brother. He witnessed Liaquat shoot Arif from the first floor of E Block. He is an accused in a murder case, the distance from which he witnessed the incident was further than complainant Sabir's, he did not record his S.161 Statement for a period of 14 days although this was probably because he was in jail, in his S.161 statement he says "that he came to know" of the direct firing and murder of his brother although the IO who recorded his statement states in his evidence that this mis-recording of Said Nawaz's statement was his mistake, and like Sabir he was not damaged let alone destroyed during cross examination. Thus, although for the reasons mentioned above **we give very little weight** to this eye

witness's evidence however we do not disbelieve his evidence completely which largely corroborates the evidence of the other eye witness complainant Sabir and can at least be believed to the extent that he saw accused Laiquat, who he knew, on the day and time of the incident with a pistol and thus give some weight to this aspect of his evidence. In the recent Indian supreme court case of **Balvir V State of Madhya Pradesh** dated 19-02-2019 which also concerned a murder where one of the eye witnesses was facing criminal charges and also had enmity with one of the accused it was held as under in material part at para 17;

> *"PW-3 has denied being involved in any criminal case; however, he has admitted that proceedings under Section 110 Cr.P.C. were initiated against him.* ***Testimony of PW-3 cannot be doubted on the ground that he is involved in criminal case or that he is inimical towards Balvir Singh and Harnam Singh. It is pertinent to note that name of PW-3 has been mentioned even in the FIR that he had gone with deceased Mohan on the motor cycle. The antecedents of the prosecution witnesses cannot be the ground for doubting their version".*** (bold added)

18. Thus, when taken together **with very little weight being given to the evidence of PW 3 Said Nawaz** we find this eyewitness evidence, especially that of PW 1 Mohammed Sabir to be trustworthy, reliable and confidence inspiring and we consider that we may convict the accused based on this evidence provided that it is corroborated/supported by some other evidence. In this respect reliance is placed on the case of **Muhammad Ehsan v. The State** (2006 SCMR 1857)

19. In our view the fact that the FIR was lodged promptly within 45 minutes after the incident does not give sufficient time for concoction or falsification even if the PS was close and based on the particular facts and circumstances of the case, where the accused was arrested on the spot. Furthermore, there is no reason why the police witnesses would falsify their evidence in order to benefit the complainant who they did not know. If anything once the police found out that the accused was a fellow police officer they are likely to have been more inclined to cover up for him and save his skin in order to protect one of their own rather than falsify evidence against him. In addition none of the police PW's were chance witnesses; all of them were natural witnesses who were on duty at the city

courts. The reason why PW 1 eye witness Sabir did not immediately take his brother to hospital can be explained by the fact that his brother died on the spot as per the post mortem report and thus he was more concerned that the killer be apprehended. It may be asked as to why the accused did not attempt to make his escape good after shooting the deceased but the answer most probably lies in the fact that, as disclosed in the evidence, he was already surrounded by the police. It appears that he avoided killing his main target which was Said Nawaz because he was chained to a police officer whereas his (Said Nawaz's) brother Arif was the easier target.

20. With regard to corroboration/supportive evidence the medical evidence reveals that the deceased was killed by fire arm (which is the prosecution case); that a firearm was recovered from the accused when he was arrested on the spot; that natural PW Aziz Anwar saw Liaquat with a firearm prior to his arrest and the wounded deceased who had been shot in the chest and PW Akbar Hussain recovered the pistol from the accused from the place of the incident; **significantly** at the time of his arrest a police belt was also recovered from the accused Liaquat with buckle No.22517 who was a policemen by his own admission a fact that would not have been known by the arresting police PW's who is his own evidence (Liaquat) has admitted that his buckle No. Is 22517 which is the same as the one on the belt which was recovered at the time of his arrest and as such this belt in our view could **not** have been planted by the police which gives further **unique support** to the fact that the accused Liaquat was arrested at the spot; that the time of death from the time of post mortem was about 4 hours which fits in with the prosecution case; that only one empty was recovered at the scene which fits in with the prosecution case that only one shot was fired; that leaves and a piece of paper recovered from the scene were found to have human blood on them as per findings of the chemical report; that the evidence of the police PW's is generally corroborative of each other and fits into the case of the prosecution; that most of the relevant police entries have been made by the police; that all the S.161 statements were recorded on the day of the incident and thus ruling out the possibility of concoction **except** PW Said Nawaz the eye witness **whose evidence we have given very little weight** to and as such we have no doubt that the appellant was arrested from the spot based on the evidence as opposed to him being at home. This is more

so as both accused Liaquat and the other co-accused had good reason to be at the city courts at the time of the incident as they had come to attend the murder trial of their brother Abid whereby PW Said Nawaz was the accused in that case which was proceeding at the city court that day and as such they knew PW Said Nawaz would be present who was their main target as it was he who had murdered Liaquat's brother. The co-accused Yousaf and Janhanzaib were yet to give evidence against PW Said Nawaz and as such the presence of Liaquat and the other co-accused at the time and place of the incident was natural and was not out of place.; **Significantly** Liaquat's sole alibi witness was a cousin who had not come forward before the trial and in our view is a put up witness whose evidence cannot be relied upon as being truthful. Furthermore, in effect the accused had put up a special defense of alibi and as such the onus fell on him to prove his defense which in our view he has woefully failed to do. Reliance in this regard is placed on **Muhammed Javed V State** (2015 SCMR 846) Although we accept that the onus still rests on the prosecution to prove its case beyond a reasonable doubt.

21. We accept that there may be some contradictions in the evidence of the PW's however in our view these are not material contradictions and are minor in nature and are not sufficient for us to disbelieve the PW's when all the other evidence and facts and circumstances surrounding the case are considered. In this respect reliance is placed on **Zakir Khan & others v. The State** (1995 SCMR 1793)

22. It appears that the motive for the murder was on account of a long standing enmity between the respective parties which has come on record and is also potentially revenge for Said Nawaz murdering the brother of Liaquat hence he has murdered Said Nawaz's brother Muhammed Arif as he turned out to be an easier target than the intended target of Said Nawaz who was chained to a policeman which shows at the very least an indirect motive on the part of the appellant to murder the deceased.

23. The only slight concern which we have, but which in our view, does not mean that the prosecution has failed to prove its case against the accused beyond a reasonable doubt, which we are of the view it has done, is the fact that the firearm entry wound to the deceased came from the back of the chest of the deceased and exited from the front of the chest

which in our view does not seem to be entirely consistent with the prosecution evidence. However we are of the view that this discrepancy is not in and of itself sufficient to extend the benefit of the doubt to the accused especially as the wound was to the chest and the only issue is the direction of the bullet, namely whether the bullet entered from the front of the body or the back **and in such cases ocular evidence provided it is trust worthy, reliable and confidence inspiring shall take precedence over corroborative and support evidence such as medical evidence** as in this case if the two are to a certain extent contradictory. In this respect reliance is placed on the case of **Muhammed Riaz V Muhammed Zaman** (PLD 2005 SC 484) where it was held that even if the eye witness evidence slightly differed from the medical evidence this was no ground to disbelieve the eye witness evidence in the following terms at P.491

> *"We having examined the evidence in detail find that the reasons given by the High Court for disbelieving the presence of witnesses at the spot were highly speculative, flimsy and artificial. The conclusion that the injuries on the person of deceased were the result of one shot which was probably not fired from front and medical evidence was inconsistent to the ocular account of eye-witnesses was also not based on sound reasons. The statement of doctor to the effect that the injuries were the result of single shot, being only an opinion which may or may not be correct and would not be sufficient to discard the direct evidence and suggest the non presence of eye-witnesses at the spot. **The conflict of medical evidence with ocular account in respect of number and nature of injuries may be relevant to ascertain the role of an individual accused in the occurrence but this is not a valid ground to disbelieve the eye-witnesses and exclude their evidence from consideration. We may observe that even if it would be assumed that injuries were result of single shot, still in the facts of the present case, it would be difficult to suggest that witnesses were not truthful or the respondents were not responsible for the crime."*** (bold added)

24. Like wise in the case of **Muhammed Hanif** (Supra) it was held as under at P.899;

> ***"The expert's evidence may it be, medical or that of Ballistic Expert,*** *is entirely in the nature of confirmatory or explanatory of direct or other circumstantial evidence,* ***but if there is direct evidence as in the instant case, which is definite, trustworthy, the confirmatory evidence is not of much significance. In any case, it cannot outweigh the direct evidence."*** (bold added)

25. Again in the case of **Amir Khan** (Supra) in terms of ocular evidence outweighing corroborative/supportive evidence such as medical evidence it was held as under at P.1888;

> *"It has time and again been held by the superior courts that if a bald statement of a medical expert is opposed to the proved and admitted confidence inspiring and reliable account of the eye-witnesses or other material and trustworthy evidence on record, then the latter are to be preferred against the former."*

26. An identical view was also taken in the recent Indian supreme court case of **Balvir V State of Madhya Pradesh** dated 19-02-2019 when there was a slight difference between the ocular evidence and the medical evidence at Para's 26 and 27 in the following terms;

> *"26. **It is well settled that the oral evidence has to get primacy since medical evidence is basically opinionative.** In **Ramnand Yadav v. Prabhu Nath Jha and others** (2003) 12 SCC 606, the Supreme Court held as under:-*
>
> > *"**17. So far as the alleged variance between medical evidence and ocular evidence is concerned, it is trite law that oral evidence has to get primacy and medical evidence is basically opinionative.** It is only when the medical evidence specifically rules out the injury as is claimed to have been inflicted as per the oral testimony, then only in a given case the court has to draw adverse inference".*(bold added)
>
> *The same principle was reiterated in **State of U.P. v. Krishna Gopal and another** (1988) 4 SCC 302, where the Supreme Court held "that eyewitnesses' account would require a careful independent assessment and evaluation for their credibility which should not be adversely prejudged making any other evidence, including medical evidence, as the sole touchstone for the test of such credibility".*
>
> *27. The inconsistencies pointed out in the evidence of eye-witnesses inter se and the alleged inconsistencies between the evidence of eye-witnesses and that of the medical evidence are minor contradictions and they do not shake the prosecution case. **The evidence of eye witnesses are the eyes and ears of justice. The consistent version of PWs 2, 3 and 13 cannot be decided on the touchstone of medical evidence".*** (bold added)

27. Learned counsel for the appellant has contended that the FSL report was not put to the accused during his S.342 Cr.PC statement for his explanation and as such it cannot be used to form the basis of his conviction. We agree with the contention of learned counsel for the appellant. It appears from the record that no FSL report was received and perhaps that is why a specific question was not put to the accused on this point whilst recording his S.342 statement even though it seems that such a report has partly been relied upon in the impugned judgment to convict the accused. It is settled law, as alluded to earlier in **Muhammed Hanif's case** (Supra) that an FSL report is only a corroborative/supportive piece of evidence and we are of the view that even if we exclude the FSL report from consideration there is more than sufficient evidence on record being the eye witness evidence of PW 1 Sabir which we have already held to be trust worthy, reliable and confidence inspiring as corroborated by other evidence such as medical, chemical and the evidence of other PW's to show that the prosecution has proved its case against the accused beyond a reasonable double which is our finding in this case. In this regard in the case of **Muhammed Javed V State** (2015 SCMR 846) it was held as under at Para 3:

> *"The said version of the prosecution was deposed about before the learned trial court by as many as three eye-witnesses who were natural witnesses and they had consistently pointed their accusing fingers towards none other than the present petitioner as the sole perpetrator of the alleged murder. The ocular account furnished by the said eye-witnesses had received full support from the medical evidence. The motive asserted by the prosecution was admitted by the petitioner in so many words at every stage of the investigation and the trial. Two crime-empties secured from the place of occurrence had matched with the pistol recovered from the petitioner's custody at the spot.* ***Although the learned counsel for the petitioner has tried to dig holes in the positive report of the Forensic Science Laboratory in respect of matching of the crime-empties with the recovered pistol yet the case of the prosecution based upon the ocular account corroborated by the motive and supported by the medical evidence is so strong that even if the recovery of pistol and its matching with the crime-empties are omitted from consideration still the strength of the prosecution's case against the petitioner is not materially affected.***".(bold added)

28. We have already found the complainant eye witness to be a trustworthy, reliable and confidence inspiring and as was held in the case

of **Zulfiqar Ahmad and another v. The State** (2011 SCMR 492), the ultimate test of veracity of the witness is the inherent merit of his own statement which we find in this case to be full of merit when placed in juxtaposition with the prosecution case and the particular facts and circumstances of this case and other evidence on record.

29. As mentioned earlier the police officer PW's were natural witnesses and their evidence which is corroboratory based on the time, place and manner of occurrence and who had no reason to falsely implicate the accused can be relied on to convict him in a capital case. In this respect reliance is placed on the case of **Sharafat Ali V The State** (SCMR 2016 28) which held as under at P.30

> *"From the spot, police had collected certain empties. These empties along with weapon recovered from the appellant were sent to the office of Forensic Science Laboratory and according to the report, the said empties matched with the weapon recovered from the appellant.* ***During trial, five police officials had appeared as eye-witnesses. They remained firm on all major particulars of the case i.e. date, time and place of occurrence and despite lengthy cross-examination their credibility could not be shaken. The PWs had no enmity with the appellant to falsely implicate him in the case. The incident had taken place at 5.30 am whereas the FIR was registered on the same day at 6.00 am i.e. after thirty minutes of the occurrence wherein the appellant was specifically nominated with a specific role. Such a promptly lodged FIR excludes any chance of false implication."*** (bold added)

30. Thus, based on the evidence on record we have no doubt in our mind that the prosecution has proved its case beyond a reasonable doubt in respect of the appellant Liaquat committing the offense so charged and uphold the impugned judgment in this respect.

31. With regard to sentencing in the case of **Muhammad Riaz and others v. The State** (2017 SCMR 1871) where the deceased only suffered a single fire arm injury (as in this case) which led to the High Court reducing the sentence from death to life imprisonment the sentence of the High Court was upheld by the Supreme Court in the following terms at page 1874 paragraph-5,

> *"4. Firstly, we will take up Criminal Appeal No.151-L of 2009.* ***Muhammad Ishfaq, respondent No.2 was attributed single fire shot on the person of Muhammad Iqbal (deceased) and there was no***

allegation of repetition of firing. ***The learned Division Bench of the Lahore High Court in para-8 of the impugned judgment has given valid reasons for reducing the death sentence awarded to Muhammad Ishfaq, respondent No.2 and converting the same into life imprisonment.*** *Upon our own independent assessment of the material available on the record, we do not find any reason for interference in the discretion exercised by the learned Division Bench of Lahore High Court in their appellate jurisdiction. Therefore, there is no merit in this appeal which is dismissed.* (bold added)

32. In the recent Supreme Court case of **Ghual Mohy-Ud-Din V State** (2014 SCMR 1034) it was held that where the judges entertain some doubt albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment at P.1043 Para 20 and 21 in the following terms;

"20. Albeit, in a chain of case-law the view held is that normal penalty is death sentence for murder, however, once the Legislature has provided for awarding alternative sentence of life imprisonment, it would be difficult to hold that in all the cases of murder, the death penalty is a normal one and shall ordinarily be awarded. If the intent of the Legislature was to take away the discretion of the Court, then it would have omitted from clause (b) of section 302, P.P.C. the alternative sentence of life imprisonment. ***In this view of the matter, we have no hesitation to hold that the two sentences are alternative to one another, however, awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case.*** *There may be multiple factors to award the death sentence for the offence of murder and equal number of factors would be there not to award the same but instead a life imprisonment. It is a fundamental principle of Islamic Jurisprudence on criminal law to do justice with mercy, being the attribute of Allah Almighty but on the earth the same has been delegated and bestowed upon the Judges, administering justice in criminal cases, therefore, extra degree of care and caution is required to be observed by the Judges while determining the quantum of sentence, depending upon the facts and circumstances of particular case/cases.*

21. A single mitigating circumstance, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. ***If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far***

as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed. (Bold added)

33. Thus, keeping in view the above Supreme Court authorities based on the particular facts and circumstances of this case in particular where a single shot was fired at the deceased, hot words had been exchanged between the opposing parties prior to the incident, the motive for the murder of the deceased appears to be indirect and no FSL report was produced by the prosecution at trial which we deem to be mitigating circumstances in this case coupled with the submissions by learned counsel for the appellant **and APG** that this was a case of life imprisonment as opposed to the death penalty we hereby covert the death sentence awarded to the appellant Liaquat to imprisonment for life and the confirmation reference in respect of Liaquat is answered in the negative and to this extent only is Liaquat's sentence in the impugned judgment altered which is otherwise upheld. The compensation which is payable shall remain in tact. The appellant however shall be entitled to the benefit of S.382 (B) Cr.PC

34. The appeal is therefore dismissed and the sentence varied as above and disposed of in the above terms with the confirmation reference being answered in the negative.

Arif