IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Jail Appeal No.D-51 of 2021

a/w Confirmation Case No.12 of 2021

Criminal Jail Appeal No.S-61 of 2021

Present:

Mr.Justice Khadim Hussain Tunio

Ms.Justice Tasneem Sultana

Appellants:	:	Ali Hyder and Rafi Raza through Mr. Muhammad Saad Qureshi, Advocate.
Respondent:	:	The State through Mr. Shawak Rathore, Deputy Prosecutor General:
Date of hearing	:	09-09-2025
Date of judgment	:	05.11.2025.

J U D G M E N T

TASNEEM SULTANA, J:- By this common judgment, we propose to decide the aforementioned Criminal Jail Appeals and the connected Confirmation Case/Death Reference transmitted by the learned Additional Sessions Judge-I, Model Criminal Trial Court (MCTC), Hyderabad ("Trial Court"), in terms of Section 374, Cr.P.C. Since these matters arise out of a common judgment, they have been heard together and are being disposed of through this single judgment.

Through Criminal Jail Appeals No. D-51 and S-61 of 2021, the appellants/accused, namely Ali Hyder and Rafi Raza, have challenged the judgment dated 03.04.2021, passed by the learned Trial Court in Sessions Case No. 621 of 2019, arising out of FIR No. 148 of 2019, registered at Police Station Qasimabad, Hyderabad, under Sections 302 and 34, PPC, whereby the appellants were convicted and sentenced in the following terms:

"i. **For offence under Section 302(b) r/w Section 34 PPC,** Accused Ali Hyder S/o Mumtaz alias Dholo by caste Khaskheli was sentenced to death, with order that he be hanged by neck till his death, for committing murder of deceased Nouman. Accused Ali Hyder was directed to pay an amount of Rs.100,000/= as compensation to legal heirs of deceased as provided under Section 544-A Cr.P.C. In case of his failure to pay the compensation amount, he will further undergo S.I. for six months. The amount of compensation, if recovered, will be disbursed amongst the legal heirs of deceased Nouman.

ii. **For offence under Section 302(b) r/w Section 34 PPC,** Accused Rafi Raza is sentenced to suffer R.I. for life. Accused Rafi Raza was directed to pay an amount of Rs.100,000/- (Rupees one lac) as compensation to the legal heirs as provided under Section 544-A Cr.P.C.; in case of his failure to pay the compensation amount, the accused will further undergo S.I. for six months. The amount of compensation, if recovered, will be disbursed amongst the legal heirs of deceased Nouman.

The benefit of Section 382-B Cr.P.C. was extended to the appellants.

2. Brief facts of the prosecution case, as narrated by the complainant Muhammad Azam are that he along with his maternal cousin Rashid Iqbal (mason) and Abdul Majeed (laborer) were working in under-construction Bungalow of Professor Roshan Ali Khaskheli situated at Abdullah Garden and the brother of complainant Nouman, aged about 28/29 years, was employed as a driver with Professor Roshan Ali. About one and half years prior to the incident, Nouman had contracted a love marriage with Mst.Bakhtawar, due to which her relatives appellant Ali Hyder and co-accused Ahsan extended murderous threats to him on which Nouman also obtained orders for protection from the Court at Mirpurkhas. On the day of incident i.e. 23-07-2019, while working at the bungalow, Nouman was sitting on a cot at about 1930 hours when noise was heard; Rashid Iqbal and Abdul Majeed came out and saw appellants Rafi Raza S/o Muhammad Sadiq Gul Muhammad, Ahsan S/o Kundo Khan Khaskheli (empty-handed), and Ali Hyder S/o Mumtaz alias Dholo (armed with a churri). It was alleged that Rafi Raza and Ahsan caught hold of Nouman while Ali Hyder, using abusive language, inflicted four churri blows with intent to commit his murder. Nouman fell down and the accused fled using abusive language. Nouman was shifted to Taluka Hospital Qasimabad where he succumbed to injuries; his body was

later taken to Civil Hospital for medico-legal formalities and burial. The complainant then lodged the FIR to the above effect.

3. After the usual investigation, police submitted the charge sheet under Section 173, Cr.P.C. against the present appellants while showing co-accused Ahsan as absconder. Having been supplied the requisite documents as provided under section 265-C Cr.P.C., on 10-03-2020, the Trial Court framed formal charge against the appellants at EX 04, to which they pleaded not guilty and claimed trial.

4. To prove its case, prosecution examined seven witnesses. Dr.Imran (P.W-1 at Ex.5) produced police letter, lash chakas form, post-mortem report, and receipts (Ex.5/A to Ex.5/D). Complainant Muhammad Azam (P.W-2 at Ex.6) produced FIR (Ex.6/A). Rashid Iqbal (P.W-3 at Ex.7), Tapedar Maqbool Ahmed (P.W-4 at Ex.8) produced police letters and sketch (Ex.8/A & Ex.8/B). Roshan Ali (P.W-5 at Ex.9); Muhammad Eiden (P.W-6 at Ex.10) produced receipt, memo of dead body, site inspection memo, arrest memo, churri recovery memo, and clothes memo (Ex.10/A–10/G). SIP Ali Asghar (P.W-7 at Ex.11) produced entries, photographs, sketch of churri, chemical examination letters and report (Ex.11/A–11/Q). Thereafter, prosecution side was closed vide statement Ex.12.

5. Statements of the appellants under Section 342 Cr.P.C. were recorded at Ex.13 & 14 wherein they denied the allegations levelled against them and claimed to be innocent. Appellant Ali Hyder examined himself on oath under Section 340(2) Cr.P.C whereas appellant Rafi Raza has neither examined himself on oath to disprove the prosecution allegation nor ever led any evidence in his defense. Appellant Ali Hyder examined Mst. Bakhtawar and Bilawal in his defense at Exh.15 and Exh: 16 respectively and defense side was closed vide statement Ex.17.

6. The trial Court, after hearing learned counsel for appellants as well as ADPP for the State convicted the appellants and sentenced them as mentioned above vide impugned judgment.

7. Learned counsel for the appellants, inter alia, contended that the appellants are innocent and have been falsely implicated in this case; that the prosecution's version is highly improbable and

suffers from serious doubts; that the FIR was lodged after an unexplained delay of approximately three hours; that all the private witnesses examined are close relatives of the complainant, thereby rendering their testimony interested and unreliable; that the alleged crime weapon (chhurri) was not recovered from the possession of the appellants but was subsequently foisted upon them; that on the date and time of the alleged incident, appellant Ali Hyder was present at the hospital attending to his grandfather, a fact duly corroborated by defense witnesses Mst. Bakhtawar (wife of deceased Nouman) and Bilawal; that although the complainant alleged a motive, the prosecution failed to establish the same; that the presence of the alleged eye-witnesses at the scene of occurrence is doubtful; that the prosecution witnesses have made material improvements in their depositions; and that contradictions exist between the ocular account and the medical evidence. On these grounds, learned counsel prayed for the acquittal of the appellants.

8. Conversely, learned Deputy Prosecutor General (DPG) supported the impugned judgment and argued that the appellants were explicitly named in the FIR with distinct roles assigned to each in the commission of the offence; that appellant Rafi Raza, along with co-accused Ahsan, restrained the deceased Nouman, while appellant Ali Hyder inflicted four knife blows resulting in his death; that the delay in lodging the FIR was reasonably explained; that the medical evidence fully corroborates the ocular account; that the prosecution examined eye-witnesses who consistently and categorically implicated the appellants in the commission of the crime and their evidence inspires confidence; that the appellants voluntarily led to the recovery of the crime weapon (churri), and the FSL report thereof is positive. that the prosecution has successfully proved its case beyond reasonable doubt, and as such, the conviction and sentence awarded by the learned Trial Court do not warrant any interference by this Court.

9. We have heard the learned counsel for the pauper appellants as well as the learned Deputy P.G. and have examined the material available on record.

10. A meticulous perusal of the record reveals that the prosecution's case predominantly rests upon the ocular testimony of Muhammad Azam (P.W-2) and Rashid Iqbal (P.W-3). Both witnesses have rendered a consistent, cogent, and unwavering account of the occurrence, attributing specific and distinct roles to each accused. The complainant, Muhammad Azam (P.W-2), deposed that on 23-07-2019, at approximately 1930 hours, he, along with his maternal cousin Rashid Iqbal and Abdul Majeed, was engaged in construction work inside the under-construction bungalow of Professor Roshan Ali Khaskheli, while the deceased, Noman, was seated on a cot outside the premises. Upon hearing the cries of Noman, they immediately rushed out and witnessed the appellant Rafi Raza and absconding co-accused Ahsan caught hold the deceased from his arms, while appellant Ali Hyder, armed with a *chhurri*, inflicted four incised wounds, which subsequently proved fatal.

11. During cross-examination, the defense put several queries to the complainant (P.W-2), which further elucidated the factual position. The witness candidly admitted that the accused were observed from a distance of 15–20 steps and that upon hearing the cries, they reached the place of incident within 30–40 seconds. He further stated that within one minute, P.W-3 Rashid Iqbal and Abdul Majeed also arrived at the scene. P.W-2 elaborated that they attempted to rescue the deceased, but appellant Ali Hyder, wielding the knife, threatened them and inflicted injuries upon the deceased within three to four minutes. In response to another query regarding the presence of a watchman, the complainant confidently clarified that the chowkidar had accompanied Professor Roshan Ali Khaskheli to the first floor to show him the construction work at that time.

12.Similarly, the testimony of Rashid Iqbal (P.W-3) fully corroborates the account furnished by the complainant. His evidence is in complete harmony with that of P.W-2, assigning distinct roles to each accused person. During cross-examination, P.W-3 admitted that when the deceased raised cries, he was working in a ground floor room, approximately 15–20 steps away from the accused. The ocular testimony of both witnesses finds

independent and substantial corroboration from the medical evidence, as the number, nature, and location of the injuries are in complete conformity with the weapon used and the manner of assault described by them. The presence of these witnesses at the scene of occurrence appears natural and probable, since the complainant was a laborer and the deceased a driver, both engaged at the same construction site. Their presence, therefore, cannot be regarded as fabricated or coincidental.

13. Furthermore, P.W-5 Professor Roshan Ali Khaskheli, the owner of the premises and employer of the deceased, arrived at the scene immediately after the incident and observed the deceased lying injured. Although not an eyewitness to the occurrence, his testimony lends material support to the ocular account by describing the immediate aftermath of the assault and confirming the presence of the complainant and other witnesses at the spot. During cross-examination, P.W-5 unequivocally affirmed the presence of the eyewitnesses and the watchman at the relevant time. He further stated that construction work was being carried out simultaneously on the ground, first, and second floors, and that upon hearing the cries, he reached the site within two minutes. He found the injured lying approximately 10 to 12 feet away from the bungalow and dispatched the chowkidar, Teekam, to the police station to convey information regarding the incident.

14. The foregoing evidence, when read collectively, strengthens the credibility and veracity of the ocular account furnished by P.W-2 Muhammad Azam and P.W-3 Rashid Iqbal. Both witnesses successfully withstood rigorous and searching cross-examination without deviating from their original stance. Their testimony reflects spontaneity, coherence, and consistency, leaving no scope for any inference of tutoring or fabrication. Their precise and confident responses concerning the distance, duration, and sequence of events demonstrate that they were direct eyewitnesses narrating facts personally observed. Their evidence stands substantially corroborated by the medical testimony, which confirms that the nature, number, and location of the injuries are in perfect conformity with the weapon used and the mode of assault described by them. Additional corroboration is found in the

statement of P.W-5 Professor Roshan Ali Khaskheli an educated, independent, and natural witness whose arrival immediately after the occurrence and observation of the scene further reinforces the ocular account and confirms the natural presence of the complainant and others.

15. It is an unassailable truth, that when eyewitnesses remain steadfast on material particulars, withstand cross-examination unshaken, and their version harmonizes with the surrounding circumstances, their testimony attains high probative value. The forthright and consistent manner in which these witnesses responded to the defense s' queries enhance their credibility and reinforces the reliability of their version, providing a firm foundation for the prosecution case. Both witnesses have rendered a consistent, coherent, and unwavering account of the occurrence, assigning distinct roles to each accused, which stands fully supported by the medical and circumstantial evidence discussed hereinafter.

16. There can be no denial to legally established principle of law that it is always the direct evidence which is material to decide that on 23-07-2019 at 19.30 hours at under construction house of Professor Roshan Ali Khaskheli (plot No. 541, Abdullah Garden Phase 1), the appellant Rafi Raza and co accused Ahsan caught hold the deceased Nouman from arms while appellant Ali Hyder inflicted four incised wounds three on left lower ribs and one on the upper lateral surface of right buttock in furtherance of their common intention. The failure of direct evidence is always sufficient to hold a criminal charge as 'not proved', but where the direct evidence holds the field as well, it stands well with the test of its being natural & confidence-inspiring. The requirement of independent corroboration is a rule of abundant caution, not a mandatory rule to be applied invariably in each case. Reliance can safely be placed on the case of Muhammad Ehsan vs. the State (2006 SCMR-1857), wherein the Hon'ble Supreme Court of Pakistan has held that; -

> *"5. It be noted that this Court has time and again held that the rule of corroboration is rule of*

> *abundant caution and not a mandatory rule to be applied invariably in each case rather this is settled principle that if the Court is satisfied about the truthfulness of direct evidence, the requirement of corroborative evidence would not be of much significance in that, as it may as in the present case eye-witness account which is unimpeachable and confidence-inspiring character and is corroborated by medical evidence".*

17. The direct evidence, *as* detailed above, is in the shape of evidence of complainant Muhammed Azam (PW2) and Rashid Iqbal (PW3). The complainant Muhammad Azam and PW3 Rashid Iqbal, both are eyewitnesses who, at the relevant time were working inside the under construction bungalow which was 15\20 steps away from the scene of crime where an unfortunate incident took place during evening time at 07.30 p.m, therefore, the presence of eyewitnesses at the venue of occurrence at the relevant time is natural who *otherwise* categorically stuck with their claim from beginning that they were working inside under construction bungalow whereas deceased was driver at the same bungalow sitting on the cot in front of the bungalow (*place of incident).* These witnesses *legally* cannot be termed as **chance witnesses** rather would fall within category of **'natural witnesses.** We would not hesitate that the *evidence* of a **'natural witness'** carries worth, because *first* part i.e. ***his presence at spot in support of his claim to have witnessed the incident'*** is not disputed. Needless to mention that in absence of *first* part such a witness would never qualify the requirement, necessary for direct evidence as required by Article-71 of Qanun-e-Shahadat Order, 1984. There had never been a *serious* challenge to such claim of these witnesses hence the status of these witnesses to be **natural witnesses** was established. Here, we would add that we are conscious that status of one being **natural witness** would never necessarily stamp him to the witness of truth but would always be subject to tests of reasonableness which too are within satisfaction of the Court. For these witnesses are to give the details of incident in a manner which is believable to a *prudent* mind. Reliance is placed on the case of *Abid Ali & 2 others v. The State* 2011 SCMR 208 wherein it is held as:

> *21. To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be a universal*

> *principle that in every case interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on the scene of crime and that he is making true statement. A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement which is illogical and unbelievable, no prudent man despite his nobility would accept such statement.*

18. In the instant matter, both the eyewitnesses have sufficiently explained the date, time and place of occurrence as well as every event of the occurrence in clear cut manners. In addition to this, both the eyewitnesses have also explained the mode and manner of taking place the occurrence qua the culpability of the appellants Ali Hyder and Rafi Raza. Although, they were cross-examined by the defense at length, wherein the learned counsel for the defense asked multiple questions to shatter their confidence and so also presence at the scene of occurrence but could not extract anything from both of them and they remained consistent on all material points. The parties are known to each other, so there was no chance of mistaken identity of the appellants. We would not hesitate that where the witnesses fall within category of **natural witnesses** and detail the manner of incident in a confidence inspiring manner then *only* escape available to the accused is that to *satisfactorily* establish that witnesses, in fact, are not the witnesses of ***truth*** but **'interested'** ones**.**

19. An interested witness is not the one who is a relative or friend but the one who has a motive to implicate an accused falsely. The reliance can safely be placed on the case of ***Lal Khan v. State*** **2006 SCMR 1846** wherein at Rel. P-1854 it is held as:

> *... 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** it is observed as:

> *"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. Allhaj Rakhio 1989 SCMR 1461.***

In another case of ***Zulfiqar Ahmed & another v. State*** **2011 SCMR 492**, it is held as: -

> *...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 1) 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.*

20. Thus, mere relationship of these eyewitnesses with the deceased *alone* would not support the plea of the appellants that their testimonies are not worth believing. In matters of capital punishments, the accused would not stand absolved by making a mere allegation of false implication\ money *dispute* but would require to bring on record that there had been such a money dispute or enmity which could be believed to have motivated the **'natural witnesses'** in involving the *innocent* at the cost of escape of **'real culprits'.** We would add that where the **natural witnesses** are blood-relations then normally the possibility of substitution becomes *rare.* In the instant matter, the complainant is the real brother of deceased while other eye-witness is paternal cousion of deceased hence it does not appear to be believable that they both agreed in substitution of real culprits with innocents (appellants) when *undeniably* the time of incident is 19.30(7.30Pm)during summer season,it is often still dusk and there is still usable daylight, incident and these witnesses are falling within category of **natural witnesses.** Reference may be made to the case of ***Zahoor Ahmed v. The State*** **2007 SCMR 1519** wherein it is observed as:-

> *6. ... The petitioner is a maternal-cousin of thedeceased, 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.*

21. In instant matter there has been brought nothing on record by the defense while enjoying opportunity of cross-examination as well leading defense which could make it believable that there had been such a *grave* reason for a complainant or eyewitnesses to involve appellants *falsely* at cost of safe escape of killer of deceased. Nothing came out from the record which may reflect that the appellants were falsely implicated by the complainant party. On the contrary the complainant party claimed that appellant Ali Hyder and co accused used to extend murderous threat to deceased who contracted love marriage with Mst Bakhtawer (DW1). She is their close relative and therefore, he was done to death brutally by the accused party on the eventful date, time and place. Thus, we find no substance in such plea of the appellants.

22. The minor discrepancies not touching the substratum of the case rather signify natural testimony and negate the possibility of tutoring or fabrication. The doctrine of *falsus in uno, falsus in omnibus* has never been accepted as a sound rule in our legal system; the Court is duty-bound to sift the grain from the chaff and to rely upon that portion of testimony which stands corroborated by independent circumstances. Reference is made to the case of ***Zulfiquar Ahmed & Ors* (2011 SCMR 492).** It is not the discrepancy or discrepancies which could be pressed for an acquittal but the defence has to bring on record the **contradictions** which too should be of a nature to cut at root of the prosecution towards their **presence** and **manner of incident.** Reference is made to the case of ***Ravi Kapur vs State of Rajhistan*** 2013 SCMR 480 wherein it is observed as: -

> *.. It is a settled principle that the variations in the statements of witnesses which are neither material nor*

> *serious enough to affect the case of the prosecution adversely are to be ignored by the court...It is also a settled principle that statements of the witnesses have to be read as a whole and the court should not pick up a sentence in isolation from the entire statement and ignoring its proper reference, use the same against or in favour of a party. The contradictions have to be material and substantial so as to adversely affect the case of the prosecution. Reference in this regard can be made to ....*

23. The direct evidence also finds corroboration from the medical evidence as regard cause of death and timing of incident. The evidence of medical officer Dr. Imran (PW-01), who conducted postmortem examination on the dead body of deceased Nouman, has been observed four incised wounds, three located on the left lower ribs and one on the upper lateral surface of the right buttock and opined that injuries Nos. 1 and 2 were each sufficient, in the ordinary course of nature, to cause death, as they had damaged vital organs including the lung and kidney. The cause of death was determined to be shock and haemorrhage resulting from injury to vital organs by a sharp-edged weapon.

24. This evidence is further reinforced by the circumstantial proof relating to the recovery of the blood-stained chhurri at the instance of appellant Ali Hyder, who voluntarily led the police to the adjacent plot (Plot No. 541) near the place of occurrence, from where it was recovered , the investigating officer also secured samples of blood-stained earth from the scene of occurrence, which, upon chemical examination, were found to contain human blood crossponding with that detected on the deceased s' clothes and the recovered churri.The prosecution witnesses have remained unwavering in their depositions regarding the specific roles attributed to the appellants on all material aspects of the case, and their crebility could not be impeached during cross- examination. The presence of the appellants at the place of occurrence thus stands firmly established through trustworthy ocular testimony, which finds full corroboration from medical and forensic evidence, leaving no material infirmity in the prosecution s' case. Thus, this also strengthened the direct evidence. The reliance is placed upon case of **Zahoor Ahmed Vs. the State (2017 SCMR-1662),** wherein the Hon'ble Supreme Court of Pakistan has held that;-

> *"4. The ocular account in this case consists of Muhammad Khan complainant (PW-06) and Shahbaz (PW-07). They gave specific reasons of their presence at the place of occurrence as, according to them, they along with the deceased were proceeding to harvest the sugarcane crop. Although they are related to the deceased but they have no previous enmity or ill-will against the appellant and they cannot be termed as interested witnesses in the absence of any previous enmity. They remained consistent on every material point. The minor discrepancies pointed out by the learned counsel are not helpful to the defense because with the passage of time such discrepancies are bound to occur. The occurrence took place in broad daylight and both parties knew each other so there was no mistaken identity and in absence of any previous enmity there could be no substitution by letting off the real culprit specially when the appellant alone was responsible for the murder of the deceased. The evidence of two eye witnesses was consistent, truthful and confidence inspiring. The medical evidence fully supports the ocular account so far the injuries received by the deceased, time which lapse between the injury and death and between death and postmortem. Both the Courts below have rightly convicted the appellant under section 302(b), PPC."*

25. In the present matter, the incident was promptly reported, as the FIR was lodged on the same evening, thereby eliminating any likelihood of consultation, deliberation, or fabrication. The prompt registration of the FIR reinforces the authenticity of the prosecution version and enhances its evidentiary worth. The prosecution witnesses have consistently deposed that accused Ali Hyder, armed with a chhurri, along with co-accused Rafi Raza and absconding accused Ahsan, jointly participated in the commission of the offence resulting in the death of Noman. Their testimony stands corroborated by medical and circumstantial evidence, including the recovery of the weapon and the corresponding forensic report. As the prosecution's case primarily rests upon ocular testimony, the determination of guilt hinges upon the credibility, coherence, and reliability of the eyewitnesses, duly supported by medical and surrounding circumstances.

26. As regards the recovery of the crime weapon, the learned defense counsel argued that the churri was not recovered from the appellants but was foisted upon them. This contention, however, finds no support from the record. The recovery memo (Ex. 10/E) and the deposition of P.W-6 Muhammad Eiden establish that appellant Ali Hyder himself led the police and mashirs to a plot near Jamia Masjid and produced a blood-

stained churri. The weapon was duly sealed at the spot, forwarded for chemical examination through proper channel, and the Chemical Examiner's report (Ex. 11/Q) confirmed the presence of human blood. Such recovery, effected in accordance with law and witnessed by independent mashirs, constitutes a significant incriminating circumstance connecting the accused with the offence. No irregularity, procedural lapse, or mala fide in the recovery proceedings has been shown that could cast doubt upon its genuineness. The recovery thus proved.

27. The record further reveals that appellant Ali Hyder recorded his statement on oath under Section 340(2), Cr.P.C.,in his defence. He also produced two witnesses, namel Mst Bakhtawar (D.W-1) and her brother Bilal (D.W-2), to substantiate his plea of alibi. The appellant Ali Hyder, while appearing as his own witness, reiterated his defence that on the day of occurrence, i.e. 23.07.2019, he was present in his native town Tando Jan Muhammad and not at the place of incident. He stated that around 6:30 p.m. he, along with his uncle Ahsan and cousin Bilawal, had taken their ailing grandfather to Dr. Ashok Meghar Hospital, where they remained until the patient's condition improved and then brought him back home. D.W-1 Bakhtawar, wife of the deceased, appeared as defence witness for accused Ali Hyder. She deposed that on 23-07-2019, at Maghrib time, she was present at her house and spoke with her mother on the phone, who informed her that their grandfather was unwell and was being taken to hospital by Bilawal and the appellant Ali Hyder on a motorcycle. She asserted that Ali Hyder had not murdered her husband. In cross-examination, she admitted that she had not herself seen the accused at the hospital and that her statement was based only on what her mother had told her. She also admitted that she had not mentioned this fact in any earlier statement before court and that she was living with her mother at the time of deposition. From the contents of her evidence, it is evident that the witness had no personal knowledge of the movements of appellant Ali Hyder at the relevant time. Her version, being entirely founded upon what she allegedly heard from her mother, is hearsay in nature and therefore carries little evidentiary weight.D.W-2 Bilal corroborated her version and affirmed that he

too had accompanied Ali Hyder to the hospital on the relevant evening, thereby attempting to fortify the plea of alibi.

28. The testimony of appellant Ali Hyder and his defence witnesses, though considered in its entirety, appears self-serving as they did not produce any hospital record, prescription, or medical staff to prove the grandfather's illness or treatment, nor any witness to verify his presence at Tando Jan Muhammad at the relevant time, there is uncorroborated, and devoid of credible proof. The plea of alibi being a special defense carries a strict burden of proof upon the appellant, which must be established through convincing and reliable material to exclude the possibility of his presence at the scene. The appellant's bare assertion fails to meet that standard; therefore, the inherent reliability required to outweigh the consistent and confidence-inspiring evidence of the prosecution.

29. It is an axiom of law, embodied in the maxim *"Affirmanti non neganti incumbit probation* that the burden of proof lies upon him who affirms, not upon him who denies that the responsibility to establish a plea of alibi squarely rests upon the accused, who must substantiate it at least on the touchstone of preponderance of probabilities. Mere assertions, unbacked by credible or documentary evidence, cannot prevail against trustworthy ocular and medical testimony. Human conduct and ordinary prudence repel the notion that the complainant and his relatives would expose themselves to the rigours of cross-examination and the peril of false implication in a capital charge merely to settle a personal score. The defence version, being artificial, unconvincing, and unsupported by material proof, fails to create any reasonable doubt in the prosecution's case and is, therefore, discarded. **Accordingly, the plea of alibi stands disproved by the record.**

30. Admittedly parties were well known to each other as appellant Ali Hyder is real cousin of wife of deceased Nouman, question of false implication in the case does not arise. Besides perusal of cross-examination of prosecution witnesses reveal that no suggestion whatsoever was put to them that they had falsely implicated the appellants. This omission is material. The defense, during trial, was under an obligation to confront the prosecution witnesses, specially eyewitnesses with the plea of false implication

if such was the case. Failure to do so amounts to admission of their testimony to that extent. The defense plea of false involvement is therefore an afterthought and cannot be entertained at the appellate stage. Consequently, the evidence of the prosecution witnesses, specially eyewitnesses, retains full evidentiary value, and the conviction based on their testimony stands well-founded.

31. The evidence on record unequivocally establishes that while appellant Ali Hyder inflicted the fatal injuries with the chhurri, appellant Rafi Raza and absconding co-accused Ahsan caught hold of the deceased from arms , thereby facilitating and enabling the commission of the offence. It is now a settled exposition of law that for the application of Section 34, P.P.C., proof of prior planning or elaborate premeditation is not essential; it is sufficient if the criminal act is committed in furtherance of a common intention, whether formed prior to or during the occurrence. The collective conduct of the appellants, their joint participation, and their mutual support at the time of the offence leave no manner of doubt that they acted in concert to accomplish a shared object, thereby attracting the full operation of Section 34, P.P.C., and rendering each equally liable for the consequence of the act. In matters of joint liability, section 34, P.P.C, provides that where a criminal act is done by the several persons in furtherance of their common intention of all, each of such person are liable for that act in the same manner as it was done by him alone., Therefore, participation can be inferred from consistent, corroborated circumstances showing shared intention and presence . Reliance is placed on the case of **Sh. Muhammad Abid VS State (2011 SCMR 1148),** wherein the Hon'ble Apex Court has observed as under:

> *"10. Once it was found that accused persons had common intentions to commit crime, it was immaterial as to what part was played whom, as vicarious liability was that who had stood together, must fall together. The question what injuries were inflicted by a particular accused in cases to which section 34 P.P.C. applies is immaterial, the principle underlying the section being that where two or more persons acted with a common intention each is liable for that act committed as if it had been done by him alone".*

32. The evidence of prosecution witnesses remained consistent on all material particulars despite rigorous cross examination. Minor

variations in peripheral details, such as times or distance are natural in human recollection and do not diminish credibility. On the contrary, complete uniformity might have suggested tutoring. These minor inconsistencies have hallmarks of genuine testimony. Reliance is placed on the case of Aqil v.The State reported in 2023 SCMR 831.

33. The judicial doctrine ordinarily prescribes that the punishment for an offence of *Qatl-i-Amd (murder)* is death, which is to be awarded as a matter of course except where the Court finds mitigating circumstances warranting the imposition of a lesser sentence. The record reflects that deceased Nouman had contracted a love marriage with Mst. Bakhtawar, who was related to the appellant Ali Hyder and co- accused Ahsan, about one and a half years prior to the incident. The prosecution asserted that this union provoked resentment among the appellants, leading them to extend threats of dire consequences and thereby furnishing a motive for the crime. It was further alleged that, owing to such threats, the deceased and his wife had approached the Court at Mirpurkhas for protective relief. However, this claim was disowned by Mst. Bakhtawar (D.W-1 at Ex.15), the wife of the deceased, she admitted her marriage and the filing of an application at Mirpurkhas, categorically denied having sought protection against appellant Ali Hyder, her real cousin. When a motive advanced by the prosecution is contradicted or weakened by a material witness, its evidentiary value becomes doubtful. Nevertheless, failure to prove motive is not *per se* fatal to a prosecution case otherwise supported by direct, trustworthy, and confidence-inspiring ocular evidence. The investigation regarding the alleged controversy between the parties is completely silent, as no documentary proof has been produced by the complainant either during investigation or at the close of trial which may justify the motive behind the occurrence. In such circumstances, when the motive remains unproved, the Honourable Apex Court in several pronouncements has consistently held that the failure of prosecution to establish motive may react against the sentence of death, even when conviction for murder stands maintained.

The reliance in this regard is placed on the case of ***Haq Nawaz v. The State (2018 SCMR-21)***, wherein the Honorable Supreme Court of Pakistan has held that.

> *"3. After hearing the learned counsel for the parties and going through the record we observed that the High Court had categorically concluded that the motive set up by the prosecution had not been proved by it. The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of prosecution may react against a sentence of death passed against a convict on the charge of murder and a reference in this respect may be made to the cases of Ahmed Nawaz v. The State (2011 SCMR-593), Iftikhar Mehmood and another v. Qaisar Iftikhar and others (2011 SCMR-1165), Muhammad Mumtaz v. The State and another (2012 SCMR-267), Muhammad Imran @ Asif v. The State (2013 SCMR-782), SabirHussain alias Sabri v. The State (2013 SCMR-1554), Zeeshan Afzal alias Shani and another v. The State and another (2013 SCMR-1602), Naveed alias Needu and others v. The State and others (2014 SCMR-1664), Muhammad Nadeem Waqas and another v. The State (2014 SCMR-1658), Muhammad Asif v. Muhammad Akhtar and others (2016 SCMR-2035) and Qaddan and others v. The State (2017 SCMR-148).*

34. In the above circumstances punishment provided under Section 302(b) PPC as *Tazir* is either death or imprisonment for life, both sentences are available under this head, but the circumstances are not spelt out in section 302 (b) PPC, in which case either of the two punishments can be awarded. We are fortified on this point with the case of ***Muhammad Sharif v. The State (PLD 2009 Supreme Court-709)*** whereby the Honourable Supreme Court has elaborated the similar question as under.

> *"It has been seen and observed from the perusal of the various proceeding in relation to section 302 PPC in particular its clause (b), that there are a choice and discretion with the Court to inflict punishment with death or imprisonment for life as tazir having regard to the facts and circumstances of the case".*

35. In view of above discussion, the conviction of appellant Ali Hyder for offence under section 302 (b)/34 PPC is maintained but on account of mitigating circumstances involved in the present case, his sentence to death on the charge of murder of deceased Noman is commuted to imprisonment for life. He is also directed to pay compensation of Rs.100,000/= as compensation to the legal heirs of the deceased, and in default thereof, to suffer S.I for six months more. The conviction and sentence awarded by learned trial Court to the appellant Rafi Raza for offence under section 302

(b)/34 PPC is maintained. He shall Suffer R.I for life and pay an amount of Rs.100,000/= as compensation to legal heirs of the deceased and in case of default in payment thereof, he shall suffer S.I for six months more. The benefit of Section 382-B Cr.PC is also extended in favour of the appellants. With the above modification in the sentence of appellant Ali Hyder, these appeals are dismissed.

36. As regards Confirmation Case No. 12 of 2021, in view of our decision to commute the death sentence of appellant Ali Hyder to imprisonment for life, the reference made under Section 374, Cr.P.C. is answered in negative

JUDGE

JUDGE