

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CRIMINAL PETITION FOR LEAVE TO APPEAL No. -K/2024

Allah dino Kumbhar **PETITIONER/Complainant**

VERSUS

Ibrahim Alias Abu & Other..... **RESPONDENTS**

Court Appealed from: Impugned order dated: 22-12-2023 in Criminal Appeal No. 176 of 2012 passed by the Honorable High Court of Sindh Bench at Hyderabad.

Counsel for the Petitioner: IN PERSON

Counsel for the Respondent:

I N D E X

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C E R T I F I C A T E

Certified that I have prepared the above index and all necessary documents have been filed therein according to Supreme Court Rules.

Allah dino Kumbhar
Petitioner In Person

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Cr. P.L.A No. of 2024

Allahdino Kumbhar ----- PETITIONER/COMPLAINANT

VERSUS

Ibrahim alias Abu & Others ----- Respondents.

PROFORMA.

Name of complainant	Allahdino s/o Muhammad Soomar by caste Kumbhar, Resident of village Muhammad Soomar, Taluka Golarchi District Badin
Name of Petitioner/ accused	Allahdino s/o Muhammad Soomar by caste Kumbhar, Resident of village Muhammad Soomar, Taluka Golarchi District Badin
High Court Judgment	Dated 22-12-2023 passed in Cr. Appeal No.176/2012 whereby the conviction awarded to respondents.No.182 was set aside and have been acquitted by Learned High Court of Sindh Circuit Court Hyderabad
Cr. Appeal No.	S-176 of 2012
Offence U/S	302, 396 PPC
Sessions case No.	245 of 2009
Crime No.	16 of 2009
Case law	

PROSECUTION STORY.

The facts of the prosecution case as per FIR lodged by complainant Allahdino Kumbhar on 20.3.2009 at 0100 hours are that he has his own motorcycle of blank colour and has also flour Mill in Tarai

town and the same looked after by his brother Muhammad Yousif and Muhammad Ramzan. It is alleged that on 19.3.2009, in the morning his brother Muhammad Yousif and son Muhammad Ramzan went to Tural Town on his motorcycle and after finishing work in the evening his brother informed him on telephone that they after attending the marriage ceremony of Jago Machhi will return back at 10-11 PM at the house. He was present in his house, it was about 10.30 PM, Ahmed Khan Noohani informed him on telephone that he was present in his house. He heard some fire arm report and rushed at the place of vardat and saw Yousif Kumbhar and Ramzan Kumbhar having fire arm injuries and were lying dead on water towards western side. On receiving such information, the complainant, his brother Muhammad Hassan, Esso rushed there and saw the dead bodies lying in the water course having fire arm injuries His motorcycle, mobile phone of his son cash amount of Rs. 15000/ NIC of his son and mobile of his brother and his NIC were also missing and they have sure that during robbery, the culprits committed the murder of his brother Muhammad Yousif and Muhammad Ramzan. Thereafter, they called the foot tracker Chuan Hussain and Talib Khaskheli who disclosed that there are three culprits in the water and they boarded on motorcycle and ran-away They secured one live bullet and one empty from the place of vardat Then the complainant left his brother at the dead bodies and went to the police station and lodged such FIR.

Certified that proforma has been prepared by undersigned in accordance with the rules and instruction of court.

Karachi.



Dated: -01-2024

(ALLAH DINO KUMBHAR)

CNIC # 41101-3379053-9.

CELL # 0344-2206112.

POINT FOR DETERMINATION

- 1- Whether the judgment dated 22-12-2023 passed by learned Sing Bench of High Court of Sindh Circuit Court Hyderabad in Criminal Appeal No.S-176/20172 is illegal, perverse and based upon the misconception of facts?
- 2- Whether the judgment dated 17.05.2012 passed by the learned IIInd Additional Sessions Judge Badin convicting the respondents No.1 & 2 for life imprisonment was legal and lawful and liable to be maintained in accordance with law.
- 3- Whether the conviction & sentence awarded to respondents No.1 & 2 by learned trial court is liable to be maintained and judgment of Hon'ble High Court is liable to be set aside.
- 4- Whether the prosecution witnesses have fully supported the prosecution but both learned courts below did not consider such fact?
- 5- Whether accused were arrested by police in presence of private mashirs and secured crime weapon and Motorcycle used in the commission of offence but both learned courts below did not consider such fact?
- 6- Whether accused persons admitted their guilt before PW Lakhadino who in his 164 Statement disclosed such fact but both learned courts below did not consider the same?
- 7- Whether there is sufficient evidence/material on record against accused persons?
- 8- Whether the accused are liable to capital punishment being guilty of offence of dual murder of two innocent persons?

- 9- Whether the impugned judgment of the court below is against the law, equity, natural norms of justice and against the cannons of law.

FACTS.

The facts of the prosecution case as per FIR lodged by complainant Allahdino Kumbhar on 20.3.2009 at 0100 hours are that he has his own motorcycle of blank colour and has also flour Mill in Taral town and the same looked after by his brother Muhammad Yousif and Muhammad Ramzan. It is alleged that on 19.3.2009, in the morning his brother Muhammad Yousif and son Muhammad Ramzan went to Tural Town on his motorcycle and after finishing work in the evening his brother informed him on telephone that they after attending the marriage ceremony of Jago Machhi will return back at 10-11 PM at the house. He was present in his house, it was about 10.30 PM, Ahmed Khan Noohani informed him on telephone that he was present in his house. He heard some fire arm report and rushed at the place of vardat and saw Yousif Kumbhar and Ramzan Kumbhar having fire arm injuries and were lying dead on water towards western side. On receiving such information, the complainant, his brother Muhammad Hassan, Esso rushed there and saw the dead bodies lying in the water course having fire arm injuries His motorcycle, mobile phone of his son cash amount of Rs. 15000/ NIC of his son and mobile of his brother and his NIC were also missing and they have sure that during robbery, the culprits committed the murder of his brother Muhammad Yousif and Muhammad Ramzan. Thereafter, they called the foot tracker Chuan Hussain and

Talib Khaskheli who disclosed that there are three culprits in the water and they boarded on motorcycle and ran-away They secured one live bullet and one empty from the place of vardat Then the complainant left his brother at the dead bodies and went to the police station and lodged such FIR.

2. That, pursuant to the registration of the case, the accused Ibrahim @abu and Allahditto were arrested while accused Bhoongar, Parveez @ Paroo and Ismail were shown absconder in the challan sheet. Susequently, they were declared as proclaimed offender vide order dated 29.3.2010 (Exh. 2) vide statement of process Server ASI Malik. Muhammad of Police Station Kario Ghanwar.

3. That, after supplying the case papers to the accused as required under section 265-C Charge Exh.4 was framed against the accused for the offence punishable under section 396 read with section 302-B PPC, to which accused Ibrahim Abu and Allahditto pleaded not guilty and claimed to be tried vide their pleas Exh.5 and 6 on record.

4. That, prosecution examined PW-1 complainant Allahditto at Exh.09, who produced FIR bearing Crime No. 16 of 2009 vide Ex.9-A receipt of dead body vide Ex.9-B. P.W Ahmed Khan examined at Ex.10. P.W Dr. Nek Muhammad, Senior M.O Taluka Hospital Shaheed Fazil Rahu examined at Ex.11, who produced post Mortem report of deceased Muhammad Ramzan and Yousif, letter for conducting the post mortem reports, checking form of dead bodies of the deceased, receipt of cloth of the deceased vide Ex.11-A to 11-F.P.W ASI Liaquat Ali examined at Ex.12.P.W Muhammad Hassan examined at Ex.13. P.W Lakhadino examined at Ex.14, who produced 164 Cr.P.C statement vide Ex.15-A.

P.W Esso and Muhammad Ameen were given up by learned ADPP for the State vide his statements Ex.16 & 17 respectively. P.W SIP Abdul Ghani examined at Ex.18, who produced mashinama of arrest of the accused Abu, Roznamacha entries No.12, 17, 15 order dated 04.08.2009, 01.10.2009 vide Ex.18-A to F respectively. P.W Ghulam Hussain examined at Ex.19.P.W Ramzan examined at Ex.20. who produced: Danishnama, mashinama of producing bullet of Pistol, mashinama of place of vardat and dead bodies, mashinama of securing of cloths of the deceased vide Ex.20-A to 20-D. Co-mashir Muhammad Siddique was called by learned ADPP for the state vide his statement Ex.22. P.W Mushtaque Ali Tapedar of the beat examined at Ex.23, Who produced sketch of the place of vardat vide Ex.23-A to D respectively. P.W Muhammad Siddique examined at Ex.24. P.W Qasim examined at Ex.25, who produced mashinama of arrest and recovery vide Ex.25-A. P.W Ali Muhammad was given up by learned ADPP for the State vide his statement Ex.26. P.W SIP Hameedullah examined at Ex.27, who produced letter for preparing sketch of the vardat vide Ex.27, rough sketch of the vardat vide Ex.27-B.P.W Muhammad Akram examined at Ex.28, roznamacha entry No.7, 9 photo stat copy of FIR crime No.90 of 2009 U/S 13-D Arm Ordinance, ballistic Expert report and chemical Examiner report, letters for recording of 164 Cr.P.C vide Ex.28-A to 28-G. The side of the prosecution was closed by the learned ADPP for the State vide his statement Ex.29.

4. That, statements of accused were recorded under section 342 Cr.P.C at Ex.30 & 31. In their respective statements, the accused denied the allegations of prosecution and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their

defense. The accused Ibrahim produced copy order under section 249-A Cr.P.C passed in case no.56 of 209 St.Vs. Ibrahim @Abu U/S 13-D Arms Ordinance dated 11.5.2010, vide Ex.31.

5. That, learned trial court formulated the following points for determination:-

- a. Whether deceased Ramzan and Yousif died their un-natural death on account of receiving fire arm injuries on 19.3.2009 at 2200 hours?
- b. Whether at 2200 hours at Dhodhang Shah Curve on Tarai - Ghara road present accused along with absconding accused Bhoongar, Pervaiz @ Paroo and Ismail armed with deadly weapons restrained deceased Ramzan and Yousif put them under fear of death or hurt robbed them of motorcycle, mobile phone, NIC, cash Rs.15,000/- and caused them fire arm injuries and killed?

c. What should the Judgment be?

6. That, learned trial court after hearing the parties counsel, convicted respondents No.1 & 2 for rigors imprisonment for life vide judgment dated 17.05.2012 by passed by learned IInd Additional Sessions Judge Hyderabad while case against absconding accused namely Bhoongar, , Pervaiz alias Paroo and Ismail kept on dormant file.

7. That, respondents No.1 & 2 preferred criminal appeal No.S-176 of 2012 before the learned High Court of Sindh Circuit Court Hyderabad which has been allowed and acquitted the respondents No.1 & 2 vide judgment dated 22.12.2023, hence this criminal petition for leave to appeal on the consideration of following grounds:-

GRUNDS.

- 1- That, impugned judgment of learned High Court of Sindh Circuit Hyderabad is against the law, equity and natural norms of justice as such liable to be set aside.
- 2- That, there is no material contradiction in the evidence of prosecution witnesses and they have supported to each other on all the material facts of incident.
- 3- That, so far the question of relationship of witnesses is concerned, no animosity or grudge has been suggested by the defense counsel between the PWs and accused persons.
- 4- That, it is settled principle of law that interested witness is not to be called only having relationship with complainant party but he must have animosity with accused to have a motive to depose falsely against the accused persons.
- 5- That, admittedly at the time of incident, except the accused persons and PWs including deceased nobody was present there because incident was taken place at 2200 hours, therefore the ocular account of evidence furnished by eye witnesses is reliable, untrustworthy and inspiring confidence.
- 6- That, per record police arrested accused Ibrahim alias Aboo and called the complainant on 3.8.2009 at Police Station where complainant met with the accused Ibrahim who fallen on feet of complainant and requested for excusing in respect of the murder committed by him along with Bhoongar, Pervaz, Allahditto and Ismail.

7- That, per P.W Lakhadino at Ex.14 produced his 164 Cr.P.C in which he has stated that:

on 15.10.2009, he along with Ameen, Ali Mohammad and Jumoon were present in the house of Jumoon situated in village Gul Mohammad Khaskheli. It was 9-00 PM, Jumoon went outside the house on some call of his guest. Then after little bit Jumoon returned back and invited them to see with guest at otaq situated in the same village. Then they accompanied with Jumoon went to the Otaq of Jumoon, there they met with accused Ibrahim alias Aboo, Allahditto and Ismail who disclosed that they along with two other accused namely Bhoonger Lashari and Paroo Hot killed Ramzan and Yousif Kumbhar at Dodo Shah Moor near Tarai on 19.3.2009 at 10-0 PM and they also requested to Jumoon for getting them apology from the heirs of both deceased.

8- That, above fact has not been denied by the learned counsel for the accused in their cross examination and it is settled law that a fact which has to be denied but not denied in cross examination amounts to its admission.

9- That, per case of Mohammad and others Vs The State reported in 1994 P.Cr LJ Karachi 2102, it has been observed that If a witness deposes on a fact in examination-in-chief & the correctness of said statements not challenged in cross-examination, the legal presumption would be that the said fact has been admitted by the party against whom the same has been brought on record.

10- That, in the case of "Farooque Khari Vs the State" reported in 2008 SCMR-917 (Supreme court of Pakistan) it has been held That:

-S.302-Conviction-Scope-Witnesses, number of requirement Conviction could be based on testimony of a single witness, if court was satisfied that witness was reliable-Emphasis would be on quality of evidence and not on its quantity.

11- That, Ocular evidence has been corroborated by the medical evidence, therefore, prosecution has successfully proved this

point by producing ocular evidence duly corroborated by the medical evidence.

- 12- That, on the point of recovery, mashir Mohammad Qassim produced mashinama of arrest and recovery at Ex.25-A, perusal of the same showed that SIO arrested the accused Ibrahim alias Aboo and Allahditto and conducted their personal search the SIO recovered one pistol of 30 bore along with two live bullet of 30 bare from accused Ibrahim alias Aboo and one LG Mobile of black colour along with sim from accused Allahdditto and also recovered motorcycle from possession of both accused The SIO Mohammad Akram sent the pistol cloth of both the deceased to the Chemical Examiner and Ballistic expert and the report was produced by SIO vide Ex.28-D&E SIO produced
- 13- That per Ballistic Expert one 30 bore crime empty was fired from the recovered pistol of 30 bore
- 14- That, per Dr Fazal Illahi Memon Director Laboratories and Chemical Examiner to the Government of Sindh Karachi in his Chemical report disclosed that the articles No.1 to 5 Earth, Sky and clothes were stained with human blood but this witness was not cross examined on this particular piece of evidence, therefore, this piece of evidence has gone un-rebutted and un-challenged.
- 15- That, no where it was suggested that there is any malice on the part of police and they have substituted the articles. The learned counsel for the accused has failed to cross-examine on the point of chemical report as well as ballistic expert report, which proved that they are involved in the commission of the offence.

- 16- That, learned appellate court below failed to consider ocular testimony is un-doubtful as all witnesses are natural,
- 17- That, all the witnesses supported the version of the complainant and evidence shows that this offence has been committed by the accused.
- 18- That, prosecution has proved its case without any reasonable doubt which was appreciated by learned trial court but learned appellate court below did not appreciate
- 19- That, the during the course of trial, the accused failed to shatter the prosecution evidence learned appellate court below did not consider such fact.
- 20- That, question of interested witness/evidence does not arise as the version of private witnesses is corroborated by the official witnesses.
- 21- That, learned trial court failed to consider that the FIR is only key of investigation and the version of prosecution witnesses is to be considered at the time of evaluating their evidence.
- 22- That complainant and his witnesses have supported the version of FIR and there are no any material contradictions in their evidence.
- 23- That, during cross examination, complainant denied all the suggestion in favour of accused persons but such fact was not considered by learned appellate court below.
- 24- That, during the trial the oral version is supported through documentary evidence which cannot be denied but this aspect of case has not been considered by learned appellate court below.

- 25- That, learned appellate court below did not consider the fact that evidence of the prosecution witnesses is consistent to each other on each and every point.
- 26- That, learned trial court did not consider that documentary evidence and oral account of the prosecution witnesses is supporting to each other and there is no conflict amongst them.
- 27- That, impugned judgment suffers from patent illegalities, hence liable to be set aside by this Honourable Court.
- 28- That, impugned judgment is based on conjectures, surmises, assumptions, suppositions, presumptions which have no basis in the eye of law.
- 29- That, learned trial court has not assigned any cogent, convincing, plausible reasons, grounds, lawful justification, explanation while passing the impugned judgment.
- 30- That, impugned judgment is totally misconceived, sketchy and without any reasoning hence liable to be set aside by this Honourable Court.
- 31- That, impugned judgment on the whole has no judicial value in the eyes of law and case has not been considered judicially by the learned trial court.
- 32- That, learned lower court has acted in the exercise of jurisdiction illegally and with material irregularities while passing the impugned judgment hence the same is liable to be set aside by this Honourable Court.

33- That impugned judgment is in utter disregard and violation of the various verdicts of law enunciated on the point hence merits to be declared as unwarranted by this Honourable Court.

34- That, much and more grounds will be urged at the time of hearing of this bail application with the graceful permission of this Honourable Court.

P R A Y E R

In view of above mentioned circumstances, it is therefore most respectfully prayed that by accepting this Criminal Petition leave may graciously be granted against the impugned judgment dated 22-12-2023 passed by the Hon'ble High Court of Sindh, Hyderabad in Criminal Appeal No.S-176/2012 and convict the respondents No.1 & 2 in accordance with law.

It is further prayed that by converting this petition into appeal the same may be allowed and impugned order dated 22-12-2023 may be set aside.

اللہ دینو کونہار

(ALLAH DINO KUNBHAR)
PETITIONER IN-PERSON
CNIC#41101-3379053-9
CELL#0344-2206112

Karachi, the
January, 2024

This is the first petition against the order of High Court of Sindh, Hyderabad passed on 22-12-2023

اللہ دینو

PETITIONER IN-PERSON

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10 JAN 2024
NOT APPLICABLE
FEES ESTIMATED ON: 10 JAN 2024
ESTIMATED FEES DEPOSITED ON: 10 JAN 2024
COPY MADE READY ON: 10 JAN 2024
STAMP SUPPLIED ON: 10 JAN 2024
COPY CERTIFIED ON: 10 JAN 2024
COPY DELIVERED ON: 10 JAN 2024
COPYING FEE (FLS) Rs. 70/-
URGENT FEE (FLS) Rs. 70/-
COMPILING FEE (FLS) Rs. 70/-
TOTAL 70/-

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NO BY: [Signature]

2700
11.6.12
In the High Court of Sindh
Hyderabad Circuit
PRESENTED ON: 11.6.2012
Criminal Appeal No. 6176 of 2012
Additional Section 11-

1. Ibrahim @ Abu S/o Khan Muhammad Hote
2. Allahditto S/o Ahmed Khaskheli
in presently confined in C.R. Hqs
APPELLANTS
VERSUS
Asha Judicial Confession
RESPONDENT

1. The State.
Crime No.16 of 2009,
Police Station Karlo Ganhwari,
Under Section 302, 396 PPC

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

Criminal Appeal No.S-176 of 2012

Appellant:

Ibrahim alias Abu through Mr. Mumtaz Sachal Awan, advocate.

Respondent:

The State through Mr. Siraj Ahmed Bijarani,
APG Sindh.

Complainant:

Allahditto through Mr. Zahid Ali Khoso, advocate.

Dates of hearing:

11.12.2023, 15.12.2023 & 18.12.2023.

Date of decision:

22.12.2023

JUDGMENT

KHADIM HUSSAIN TUNIO, J.- Through instant appeal, Ibrahim (“**the appellant**”) challenged the judgment dated 17.05.2012 (“**impugned judgment**”) passed by the-then Second Additional Sessions Judge, Badin (“**trial Court**”) in Sessions Case No. 245/2009 which culminated from FIR No. 16/2009 lodged with Police Station Kario Ganhwar u/s 302 and 396 of the Pakistan Penal Code (“**PPC**”). By way of the impugned judgment, he was convicted for the offence-punishable u/s 302(b) and 396 PPC and was sentenced to imprisonment for life. However, benefit of section 382-B Cr.P.C was extended to him.

2. The incident as set out in case is that on 19.03.2009, one Ahmed Khan Noohani found dead bodies of Yousuf Kumbhar and Ramzan Kumbhar, the complainant Allahditto Kumbhar's brother and son, respectively. He informed the complainant who arrived at the place of incident, identified the bodies, secured a live bullet and one bullet empty himself and went to the police station to disclose of such information. Appellant Ibrahim and co-convict Allahditto Khaskheli¹ were arrested by the investigating officer ("IO") while the rest remained absconders.

3. Upon completion of all requisite procedural formalities, a formal charge was framed against the appellant. Responding to

¹ Already served out his sentence and was released after payment of compensation amount.

the charge, the appellant asserted his innocence and pleaded not guilty.

4. At trial, prosecution examined fifteen witnesses, all of whom produced various documents in their evidence. Of these, the complainant Allahditto, Ahmed Khan, Muhammad Hassan, Lakhadino and Jumoo have provided an ocular account, the latter two in the shape of last-seen evidence while the accused were admittedly returning after the murder. Thereafter, prosecution side was closed. Statement of the appellant u/s 342 CrPC was recorded in which he denied all the allegations levelled against him and claimed to have been falsely implicated in the case while asserting that he had been tortured by the police. However, he neither examined himself on oath nor produced any evidence in his defence.

5. On conclusion of the trial, trial Court after hearing the learned counsel for the parties convicted and sentenced the appellant as stated in paragraph-1 (supra).

6. Learned counsel for appellant contended that the appellant were falsely implicated in the present case and that there are various contradictions in the evidence of the prosecution witnesses; that the only evidence available on the record against the appellant is last seen evidence; that the incident is unseen and unwitnessed and the trial Court has based its conviction on the basis of extra-judicial confession and last seen evidence, neither of which is sufficient for a conviction in the absence of ocular account; that the case of the prosecution is not free from doubt and benefit of the same is to go with the appellant as a matter of right. In support of his contentions, he has cited the cases reported as "Fayyaz Ahmad v. The State" (2017 SCMR 2026), "Khalid @ Khildi and 2 others v. The State" (2012 SCMR 327), "Noor Muhammad v. The State and another" (2010 SCMR 97), "Tahir Javed v. The State" (2009 SCMR 166), "Ghulam Akbar and another v. The State" (2008 SCMR 1064), "Wazir Muhammad and another v. The State" (2005 SCMR 277), and "Wazir Muhammad and another v. The State" (2005 SCMR 277).

7. Learned Assistant Prosecutor General Sindh and counsel for the complainant, in one voice, have supported the

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impugned judgment while contending that sufficient material is available on the record to connect the appellant with the alleged offence; that medical evidence has supported the prosecution case; that a pistol has been recovered from the appellant Ibrahim. Learned counsel for the complainant cited the case of "Mukhtar Alam v. Fazal Nawab and another" (2020 SCMR 618), "Nazir Ahmad and another v. The State" (1994 SCMR 58) and "Farooq Khan v. The State" (2008 SCMR 917) in support of the contentions.

8. I heard the learned counsel for the appellant and the learned APG assisted by the learned counsel for the complainant and perused the material available before me with their assistance. I have also given due consideration to the cases referred to by them.

9. After a careful reappraisal of evidence, in the light of material contradictions I found going through the same as rightly pointed out by the counsel for the appellant, and a perusal of the other material available on the record, I have come to the irresistible conclusion that prosecution failed to establish the guilt of the appellant beyond a reasonable shadow of doubt. That so in light of the fact firstly the incident was unwitnessed. No one had seen the appellant Ibrahim be a part of the assailants that killed the deceased. The complainant came to know of the death of his brother and son ("**the deceased**") through PWs Ahmed Khan and Muhammad Hassan, both of whom recalled the incident as having initially heard gunshots and then going out to see the dead bodies. Undoubtedly, the case is of a robbery gone wrong as these PWs noted missing belongings of the deceased. None of the witnesses, as already observed, saw the actual incident unfolding. The other two witnesses namely, Lakhadino and Jumoon also did not witness the incident, rather deposed that the appellant had went to them to ask them to accompany him to the complainant where he admitted his guilt and sought forgiveness while admitting that they had tried to stop the deceased and get them off the motorcycles, but they did not do so and were shot. Reliance on such ocular account is of no help to the prosecution case and such account is no further consideration. Learned counsel for the appellant contended that

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[Signature]

this was a case of last-seen evidence which is incorrect. The present case has a better footing than a case of last-seen evidence as last-seen evidence would be one where the deceased was seen by the witnesses in the presence of the appellant and other assailants; that is not the case here. None of the witnesses deposed as to this aspect this case is un-witnessed.

10. As for the reliance on extra-judicial confessional of the appellant before the complainant and the witnesses, the same was made before PWs Jumoon and Lakhadino, but both these witnesses failed to disclose the time and date of when the said disclosure was made to them. The person who was allegedly brought by the appellant for the payment of compensation was also not examined. There is no cavil to the proposition that extra-judicial confession is a very weak type of evidence and reliance on the same alone in the absence of other corroboratory and straightforward evidence is not safe administration of justice.² Moreover, another reason why this extra-judicial confession was inadmissible is because the same was a joint confession before multiple people.³ The reason behind consideration of extra-judicial confession is because the same is bound to the words of the one such confession was allegedly made;⁴ to take it at face value means for such a witness to take on the role of the Judge which needs to be admonished. Alas, that is exactly what unfolded in the present case where the trial Court entirely relied on the extra-judicial confession made before two witnesses while ignoring the seminal judgment of the Supreme Court in the case of *Allah Ditta*⁵ where it was categorically held that extra-judicial confession alone could not be used as the sole basis of conviction, especially in cases involving the capital punishment. Where no ocular account is available, circumstantial evidence can be relied upon on the condition that such circumstantial evidence must be like an unbroken chain having unbroken links, where even a single link was broken, recording a conviction would be unsafe.⁶ Admittedly, the complainant himself

² See *Mst. Asia Bibi v. The State*, PLD 2019 SC 64

³ See *Muhammad Ismail v. The State*, 2017 SCMR 898

⁴ See *Nasir Javaid v. The State*, 2016 SCMR 1144

⁵ 2012 SCMR 184

⁶ See *Munawar Shah v. Liaquat Hussain*, 2002 SCMR 713

had recovered an empty bullet and a live bullet from the place of incident which he picked up himself instead of waiting for the police, contaminating the place of incident and diminishing the sanctity of such a recovery. Blood stained earth was recovered by the police at which time the complainant handed the recovered empty and the live bullet to the police. The mashir of recovery, PW-10 Ramzan, who was also declared hostile by the prosecution deposed that police had not sealed the bullet empty and the live bullet at the place of incident and also did not prepare the mashirnama at the place of incident. He also stated that he did not know the contents of the memo of recovery. The other mashir, PW-13 Muhammad Siddique, however, contradicted him on every aspect while also admitting that their signatures were obtained at the police station and the complainant also handed the empty bullet and the live bullet to the police at the station. Undoubtedly, this in itself destroys the credibility of the recovery of the blood stained earth, clothes of the deceased and the bullets recovered. Admittedly, a pistol had also been recovered from the appellant Ibrahim at the time of his arrest and mashir Qasim was examined in this regard who deposed that the said recovery of the pistol was made from Ibrahim and the memo in this regard was not read over to him rather LTIs on blank papers were obtained from him. This also strikes at the core of the prosecution case. The recovered pistol along with the crime empty was sent to the chemical examiner on 08.12.2009 whereas the pistol was recovered on 22.11.2009 and the empty was recovered on 19.03.2009. No record has been presented in terms of deposit of these in the malkhana, as such safe custody for such a prolonged period is doubtful coupled with the fact that these recoveries were also not sealed on the spot nor were the memos prepared therefor at the place of incident, leading to the unmistakable conclusion of the appellant Ibrahim's acquittal.

11. The findings of guilt of any accused must rest on sound evidence, viewed from any angle to be trustworthy and rested surely and firmly on the evidence produced and not conjectures or probabilities. Cases cannot be decided merely on high probabilities regarding the existence or non-existence of a fact to prove the guilt

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of a person because if that were the case, the golden rule of giving "benefit of doubt" to an accused would be reduced to a naught as held in the case of **Naveed Asghar**.⁷ Prosecution is under obligation to prove its case against the accused person at the standard of proof required in criminal cases, that being beyond reasonable doubt. Moreover, the benefit of any doubt is to be given to the accused person as of right, not as of concession as held in the landmark case of **Tariq Pervez v. The State**.⁸

12. For what has been discussed above, the guilt of the appellant has not been proven to the hilt and is not free from doubt. Therefore, captioned criminal appeal is allowed, the judgment impugned herein is set aside along with the conviction and sentence awarded to the appellant. The appellant is ordered to be released forthwith if not required in any other custody case.

Sd/- KHADIM HUSSAIN TUNIO,

JUDGE. 22.12.2023.

CERTIFIED TRUE COPY

(KHADIM HUSSAIN TUNIO)

HC Asstt. Secy. Registrar

High Court of Sindh,

Circuit Court Hyderabad.

2700
11.6.12
In the High Court of Sindh
Hyderabad Circuit

PRESENTED ON 11.6.2012
Criminal Appeal No. 176 of 2012

1. Ibrahim @ Abu S/o Khan Muhammad Hote

2. Allahditto S/o Ahmed Khaskheli

im presently confined at C.R. Hyd.

APPELLANTS

VERSUS

1. The State.

RESPONDENT

Crime No.16 of 2009,
Police Station Karlo Ganhwar,
Under Section 302, 396 PPC

Criminal Appeal U/S 410 Cr.P.C

Being aggrieved and dissatisfied with the impugned judgment dated 17.05.2012 pass by the learnt IInd Additional Session Judge, Badin (Re-State Versus Ibrahim @ Abu and others) in session case No.245 of 2009 whereby he convicted and sentenced the appellant for rigorous imprisonment of life however he extended benefit of 382-B, the appellants prefer present appeal and pray that this Honourable Court may be pleased to call record and proceedings of the learnt trial court and after examination and scrutiny as to its legality, validity, propriety and correctness, set aside the same and the appellants may be acquitted from the sentenced and conviction awarded to them by the learnt trial court on consideration of the following facts and grounds.

FACTS

1. Briefly, the facts of the prosecution case as per FIR lodged by complainant Allahditto Kumbhar on 20.3.2009 at 0100 hours are that he has his own motorcycle of black colour and has also flour Mill in Tarai town and the same looked after by his brother Muhammad Yousif and Muhammad Ramzan. It is alleged that on 19.3.2009, in the morning his brother Muhammad Yousif and son Muhammad Ramzan went to Tarai Town on his motorcycle and after finishing work in the evening his brother informed him on telephone that they after attending the marriage ceremony of Jago Machhi will return back at 10-11 PM at the house. He was present in his house, it was

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about 10.30 PM, Ahmed Khan Noohani informed him on telephone that he was present in his house. He heard some fire arm report and rushed at the place of vardat and saw Yousif Kumbhar and Ramzan Kumbhar having fire arm injuries and were lying dead on water towards western side. On receiving such information, the complainant, his brother Muhammad Hassan, Esso rushed there and saw the dead bodies lying in the water course having fire arm injuries. His motorcycle, mobile phone of his son cash amount of Rs.15000/ NIC of his son and mobile of his brother and his NIC were also missing and they have sure that during robbery, the culprits committed the murder of his brother Muhammad Yousif and Muhammad Ramzan. Thereafter, they called the foot tracker Ghuam Hussain and Talib Khaskheli who disclosed that there are three culprits in the water and they boarded on motorcycle and ran-away. They secured one live bullet and one empty from the place of vardat. Then the complainant left his brother at the dead bodies and went to the police station and lodged such FIR. Pursuant to the registration of the case, the accused Ibrahim @ abu and Allahditto were arrested while accused Bhoongar, Parveez @ Paroo and Ismail were shown absconder in the challan sheet. Susequently, they were declared as proclaimed offender vide order dated 29.3.2010 (Exh.2) vide statement of process Server ASI Malik Muhammad of Police Station Kario Ghanwar.

2. After supplying the case papers to the accused as required under section 265-C Charge Exh.4 was framed against the accused for the offence punishable under section 396 read with section 302-B PPC, to which accused Ibrahim @ Abu and Allahditto pleaded not guilty and claimed to be tried vide their pleas Exh.5 and 6 on record.

3. Prosecution examined PW-1 complainant Allahditto at Exh.09, who produced FIR bearing Crime No.16 of 2009 vide Esh.9-A receipt of dead body vide Exh.9-B.P.W Ahmed Khan examined at Exh.10.P.W Dr.Nek Muhammad, Senior M.O Taluka Hospital Shaheed Fazil Rahu examined at Exh.11, who produced post Mortem report of deceased Muhammad Ramzan and Yousfi, letter for conducting the post mortem reports, checking form of dead bodies of the deceased, receipt of cloth of the deceased vide Exh.11-A to 11-F.P.W ASI Liaquat Ali examined at Exh.12.P.W Muhammad Hassan examined at Exh.13.P.W Lakhadino examined at Exh.14, who produced 164

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Cr.P.C statement vide Exh.15-A.P.W Esso and Muhammad Ameen were given up by learned ADPP for the State vide his statements Exh.16 and 17 respectively. P.W SIP Abdul Ghani examined at Exh.18, who produced mashirnama of arrest of the accused Abu, Roznamacha entries No.12,17,15 order dated 4.8.2009, 1.10.2009 vide Exh.18-A to F respectively. P.W Ghulam Hussain examined at Exh.19.P.W Ramzan examined at Exh.20, who produced Danishnama, mashirnama of producing bullet of Pistol, mashirnama of place of vardat and dead bodies, mashirnama of securing of cloths of the deceased vide Exh.20-A to 20-D. Co-mashir Muhammad Siddique was called by learned ADPP for the state vide his statement Exh.22.P.W Mushtaque Ali Tapedar of the beat examined at Exh.23, Who produced sketch of the place of vardat vide Exh.23-A to D respectively. P.W Muhammad Siddique examined at Exh.24. P.W Qasim examined at Exh.25, who produced mashirnama of arrest and recovery vide Exh.25-A.P.W Ali Muhammad was given up by learned ADPP for the State vide his statement Exh.26.P.W SIP Hameedullah examined at Exh.27, who produced letter for preparing sketch of the vardat vide Exh.27, rough sketch of the vardat vide Exh.27-B.P.W Muhammad Akram examined at Exh.28, roznamacha entry No.7,9 photo stat copy of FIR crime No.90 of 2009 U/S 13-D Arm Ordinance, ballistic Expert report and chemical Examiner report, letters for recording of 164 Cr.P.C vide Exh.28-A to 28-G. The side of the prosecution was closed by the learned ADPP for the State vide his statement Exh.29.

4. Statements if accused were recorded under section 342 Cr.P.C at Exh.30 and 31. In their respective statements, the accused denied allegations of the prosecution and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their defense. The accused Ibrahim produced copy order under section 249-A Cr.P.C passed in case no.56 of 209 St.Vs.Ibrahim @ Abu U/S 13-D Arms Ordinance dated 11.5.2010, vide Exh.31.

5. Now the points for determination are framed as under:-
a. Whether deceased Ramzan and Yousif died their un-natural death on account of receiving fire arm injuries on 19.3.2009 at 2200 hours?
b. Whether at 2200 hours at Dhodhang Shah Curve on Tarai - Gharo road present accused along with absconding accused Bhoongar, Pervaiz @ Paroo and

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Ismail armed with deadly weapons restrained deceased Ramzan and Yousif put them under fear of death or hurt robbed them of motorcycle, mobile phone, NIC, cash Rs.15000/- and caused them fire arm injuries and killed?

c. What should the Judgment be?

6. I have heard learned Mr. Muhammad Arif Nizamani, learned ADPP for the State, Assisted by Mr. Muhammad Nawaz Jamali, learned counsel for the complainant, M/s Muhammad Iqbal Qassar and Mumtaz Talpur, learned counsel for the accused and have gone through the evidence available on record.

Hence this appeal on the following grounds.

GROUND S

1. That the impugned judgment of learnt trial court is opposed to law, facts of the case, principle of criminal justice and material available on record, therefore is not maintainable and liable to be set aside.
2. That learnt trial court failed to consider that non head scene the accused at the time of incident even it is admitted fact that the incident was totally un-scene.
3. That the learnt trial court failed to consider that medical evidence cannot prove guilt of accused but it can corroborate with seats of injuries kind of weapons but cannot connect the accused with such incident are crime.
4. That the learnt trial court while passing judgment considering the presumptions and failed to consider that during course of examination the Chief of the witnesses to tried to improve the case against the appellants.
5. That the learnt trial court failed to consider that the totally ocular evidence was silent as non head scene the accused persons at the spot and even the complainant says that at the place of incident there were foot prints of three accused then how nominated five accused in case which amounts that the case was doubtful.

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6. That learnt trial court failed to consider that extra Judicial confession is weak type of evidence and such type of evidence has no weight in the eyes of law then how learnt trial court believed it in a favour of prosecution.

7. That learnt trial court failed to consider that the appellants were arrested by the police after 8 months of incident and there was no date of extra Judicial confession then how the learnt trial court believed.

8. That the learnt trial court failed to consider that complainant stated that blood was lying in ditch whereas witness namely Muhammad Hassan says that blood was on the road which contradictory statement of witnesses showing doubts the present of witnesses.

9. That the learnt trial court failed to make out finding in the judgment which shows that the judgments pass by the-learnt trial court without findings.

10. That under such circumstances in which prosecution totally failed to establish the guilt of appellant / accused beyond reasonable doubts, the conviction and sentence awarded by the learnt trial court is not sustainable under the law.

11. That the learnt trial court failed to consider that when there was no eye witness of incident then how the learnt trial court believed that appellants / accused have committed such offence in which he convicted the appellants / accused for the light imprisonment.

12. That prosecution story set up in the FIR and deposed in the court does not inspire confidence to connect the appellants / accused even the learnt trial court in the judgment admitted that there was no eye witness of the incident but he failed to consider in the favour of appellants / accused.

13. That the case of prosecution is deeply shrouded in a doubt and mystery and the prosecution miserably failed to bring home the charge level against the appellants / accused.

14. That the judgment pass by the learnt trial court is non reading a misreading of the facts.

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15. That the appellants / accused are quiet innocent and the prosecution has failed to prove their case against the appellants beyond reasonable doubts and the learnt the trial court instead of extending the benefit of doubt to the appellants has absolved in a favour of prosecution.

16. That the case against the appellants / accused is false, fabricated and fictitious, does not appeal to the senses of prudent mind to convict the appellants / accused who are quiet innocent.

17. That from reading of the face of judgment of learnt trial court it comes in the prudent mind that it is not speaking one and no cogent ground and reasons have been given by the learnt trial court while convicting the appellants / accused.

18. That the learnt trial court is also failed to follow the version of Holy Prophet (Peace be upon him) in which guide lines were given to the judges that "Mistake of a Judge (Qazi) to acquit ten real culprits is better than to convict an innocent person".

19. That further grounds will be agitated at the time of arguments on appeal.

20. That appeal is in time.

21. That CTC of impugned judgment is attached the herewith.

22. This prayers is made in the interest of justice.

HYDERABAD

Dated: 11.06.2012

ADVOCATE

FOR THE APPELLANT

CERTIFIED TO BE TRUE COPY

(KALAMU BROHI)

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REGULATIONS

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Ex: 33

IN THE COURT OF 2ND ADDITIONAL SESSIONS JUDGE, BADIN

Sessions Case No. 245 of 2009

STATF VS

1. Ibrahim alias Abu s/o Khan Mohammad Hote.
2. Allahdittu s/o Ahmed Khaskheli.
3. Bhaongar s/o Dodo Lashari.
4. Parveez alias Pareo s/o Iqbal Hote.
5. Ismail s/o Khan Mohammad Hote

CRIME NO.16 OF 2009 POLICE Station Kario
Ganbhar under section 302(b). 396 PPC

MR. MOHAMMAD ARIF NIZAMANI, LEARNED ADPP FOR THE STATE, ASSISTED BY MR. MOHAMMAD NAWAZ JAMALI, ADVOCATE FOR COMPLAINANT, M/S MOHAMMAD IOBAL QASSAR AND MUMTAZ ALI TALPUR ADVOCATE FOR THE ACCUSED.

17-05-2012.

JUDGMENT.

The above named accused were sent up by Kario Ganhwar police to face their trial in crime No. 16 of 2009 registered at Police Station Kario Ganhwar for offence punishable under section 302(b), 396 PPC.

396 PPG.

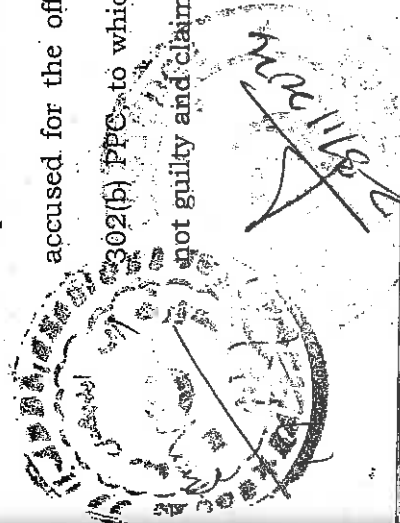
2. Briefly the facts of the prosecution case as per FIR lodged by complainant Allahditto Kumbhar on 20.3.2009 at 0100 hours are that he has his own motorcycle of black colour and has also flour Mill in Tarai town and the same looked after by his brother Muhammad Yousif and Mohammad Ramzan. It is alleged that on 19.3.2009, in the morning his brother Mohammad Yousif and son Mohammad Ramzan went to Tarai town on his motorcycle and after finishing work in the evening his brother informed him on telephone that they after attending the marriage ceremony



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of Jago Machhi will return back at 10-11 PM at the house. He was present in his house, it was about 10.30 PM, Ahmed Khan Noohani informed him on telephone that he was present in his house. He heard some fire arm report and rushed at the place of vardat and saw Yousif Kumbhar and Ramzan Kumbhar having fire arm injuries and were lying dead on water towards Western side. On receiving such information, the complainant, his brother Mohammad Hassan, Esso rushed there and saw the dead bodies lying in the water course having fire arm injuries. His motorcycle, mobile phone of his son cash amount of Rs.15000/- NIC of his son and mobile of his brother and his NIC were also missing and they have sure that during robbery, the culprits committed the murder of his brother Mohammad Yousif and Mohammad Ramzan. Thereafter, they called the foot tracker Ghulam Hussain and Talib Khaskheli who disclosed that there are three culprits in the water and they boarded on motorcycle and ran away. They secured one live bullet and one empty from the place of vardat. Then the complainant left his brother at the dead bodies and went to the police station and lodged such FIR. Pursuant to the registration of the case, the accused Ibrahim alias Aboo and Allahditto were arrested while accused Bhoongar, Parveez alias Paroo and Ismail were shown absconder in the challan sheet. Subsequently, they were declared as proclaimed offender vide order dated 29.3.2010 (Exh.2) vide statement of process Server ASI Malik Mohammad of Police Station Karlo Ganhwar.

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Prosecution examined PW-1 complainant Allahditto at Exh.09, who produced FIR bearing Crime No.16 of 2009 vide Exh.9-A, receipt of dead body vide Exh.9-B. P.W Ahmed Khan examined at Exh.10. P.W Dr.Nek Mohammad, Senior M.O Taluka Hospital Shaheed Fazil Rahu examined at Exh.11, who produced post Mortem report of deceased Mohammad Ramzan and Yousif, letter for conducting the post mortem reports, checking form of dead bodies of the deceased, receipt of cloth of the deceased vide Exh.11-A to 11-F. P.W ASI Liaquat Ali examined at Exh.12. P.W Mohammad Hassan examined at Exh.13. P.W Lakhadino examined at Exh.14, who produced 164 Cr.P.C Statement at Exh.14-A. P.W Jumoon examined at Exh.15, who produced his 164 Cr.P.C statement vide Exh.15-A. P.W Esso and Mohammad Ameen were given up by learned ADPP for the State vide his statements Exh.16 and 17 respectively. P.W SIP Abdul Ghani examined at Exh.18, who produced mashirnama of arrest of the accused Abu, Roznamacha entries No.12, 17, 15, order dated 4.8.2009, 1/10.2009 vide Exh.18-A to F respectively. P.W Ghulam Hussain examined at Exh.19. P.W Ramzan examined at Exh.20, who produced Danishnama, mashirnama of producing bullet of pistol, mashirnama of place of vardat and dead bodies, mashirnama of securing of cloths of the deceased vide Exh.20-A to 20-D. Co-mashir Mohammad Siddique was called by learned ADPP for the State vide his statement Exh.22. P.W Mohammad Khan Police Constable examined at Exh.21. P.W Mushtaque Ali Tapedar of the beat examined at Exh.23, who produced sketch of the place of vardat vide Exh.23-A to D respectively. P.W Mohammad Siddique examined at Exh.24. P.W Qassim examined at Exh.25, who produced mashirnama of arrest and recovery vide Exh.25-A. P.W Ali Mohammad was given up by learned ADPP for the State vide his statement Exh.26. P.W SIP Hameedullah examined at Exh.27, who

22/11/2009

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5. Statements of accused were recorded under section 342 Cr.P.C at Exh. 30 and 31. In their respective statements, the accused denied allegations of the prosecution and claimed their innocence. However, they did not examine themselves on oath nor led any evidence in their defence. The accused Ibrahim produced copy order under section 249-A Cr.P.C passed in Case no.56 of 209 St.Vs.Ibrahim alias Abu u/s 13-D Arms Ordinance dated 11.5.2010, vide Exh.31.

6. Now the points for determination are framed as under:-

1. Whether deceased Ramzan and Yousif died their natural death on account of receiving fire arm injuries on 19.3.2009 at 2200 hours?
2. Whether on 19.3.2009 at 2200 hours at Dhodhang Shah Curve on Tarai -Gharo road present accused along with absconding accused Bhoongar, Pervaiz alias Paroo and Ismail armed with deadly weapons restrained deceased Ramzan and Yousif put them under fear of death or hurt robbed them of motorcycle, mobile phone, NIC, cash Rs.15000/- and caused them fire arm injuries and killed?

3. What should the Judgment be?

7. I have heard learned Mr. Mohammad Arif Nizamani, learned ADPP for the State, Assisted by Mr. Mohammad Nawaz Jamali, learned counsel for the complainant, M/S Muhammad Iqbal Qassar and

Mumtaz Talpur, learned counsel for the accused and have gone through the evidence available on record.

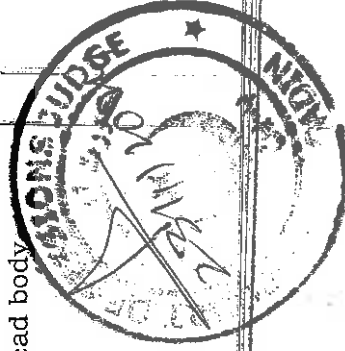
8. My findings on the above noted points and reasons for the same are as under:-

POINT NO. 1.

9. On this point, apart from the evidence of complainant Allahdino, P.Ws Ahmed Khan, Muhammad Hassan, Lakhadino, Jumoon, the material and relevant evidence of the Medico Legal Officer who conducted post mortem over the dead bodies of deceased Muhammad Ramzan and Yousif. Prosecution has examined Dr. Nek Muhammad Jamali, who in his evidence has deposed that on 20.3.2009, he was posted as Senior Medical Officer at Taluka Hospital Shaheed Fazl Rahu. On that date, he received the dead bodies of deceased Muhammad Ramzan son of

Allahdino and Yousif son of Soomar for conducting the post mortem. He also received police letter No.16 of 2009 dated 20.3.2009 and checking form of the dead bodies of the deceased through PC Mohammad Khan Buckle No.402 of Police Station Kario Ganhwar. First he started post mortem of dead body of deceased Mohammad Ramzan which was identified by Allahdino, father and Ahmed Noohani neighbour. He started post mortem at 3.30am on the same date and completed at 4.30 a.m on the same date. The dead body was of a middle aged man with average built lying in mortuary of Taluka Hospital S.F.Rahu. Both eyes were partially opened, mouth partially opened, hairs of scalp, front area of skull, eye brows, nose, face were blood stained. Both arms were lying straight. Both legs were extended. No ligature marks seen around the neck. Rigor mortis started to develop. No post mortem lividity seen. He found the following injuries on

the dead body



1. Lacerated wound measuring 0.25 cm x 0.25 cm into gutter hole with inverted edges blackish margin over the right frontal region of the skull with sign of profuse bleeding.

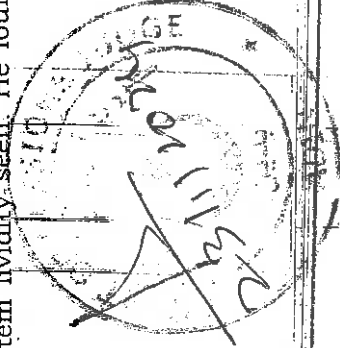
2. Lacerated wound measuring 0.25 cm into 0.25 cm x gutter hole with averted edges blackish occipital region of the skull with the sign of profuse bleeding.

Both the injuries were anti mortem in nature and were

caused by fire arm weapon. On external examination, he found Head/ face and neck. On dissecting the skull, the fracture found at the injuries No.1 and 2 and the brain matter was staining with clotted blood. All the other organs were healthy and normal. The time between injury and death was immediate and time between death and post mortem was about 6 hours. He was of the opinion that cause of death of the deceased was due to the injuries over the vital region of the skull caused by fire arm. After post mortem, the dead body of the deceased Ramzan was handed over to the same police constable Mohammad Khan along with clothes of the deceased were blood stained sky blue. colour of shirt and Shalwar with white Azarband.

He then started post mortem of the dead body of the deceased Yousif son of Soomar which was identified by Allahdino Kumbhar uncle and Ahmed Noohani neighbourer. He started post mortem at 4.40 a.m on the same date and completed at 5.30 am on the same date. The dead body was of middle aged man with average built lying in mortuary of Taluka Hospital Shaheed Fazil Rahu. Both eyes were partially opened, mouth partially opened, hairs of scalp, front area of skull, eye brows, nose, face were blood stained. Both arms were lying straight. Both legs were extended. No ligature marks seen around the neck. Rigor mortis started to develop. No post mortem lividity seen. He found the following injuries on

the dead body.



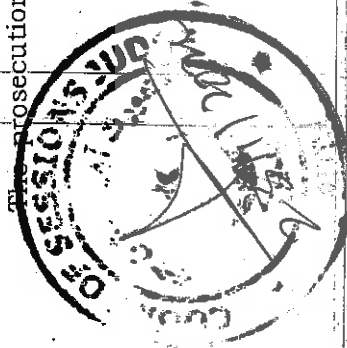
1. Lacerated wound measuring 0.25 cm x 0.25 cm into gutter whole with inverted edges blackish margin over the left maxillary region of the face with the sign of profuse bleeding.
2. Lacerated wound measuring 0.75 cm into 0.75 cm x gutter hole with averted edges blackish margins over the lower part of the mid of the occipital region of the skull with the sign of profuse bleeding.

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Both the injuries were ante mortem in nature and were caused by fire arm weapon. On internal examination, he found Head/ Face and neck: - On dissecting the skull, the fracture found at the injuries No.1 and 2 and the brain matter was staining with clotted blood. The other entire organs are healthy and normal. The time between injury and death was immediate and time between death and post mortem was about 7 hours. He was of the opinion that cause of death of the deceased was due to the injuries over the vital region of the skull caused by fire arm. After post mortem, the dead body of the deceased Yousif was handed over to the same PC Mohammad khan along with clothes of the deceased which were blood stained brown colour of shirt and shalwar with the line Shadows and white Azarband. He issued such post mortem reports of both deceased and produced the same vide WExh.11-A and 11-B and admitted the contents and signatures thereof. This witness was cross-examined by learned counsel for the accused but they have not disputed the death of deceased Muhammad Ramzan and Yousif as un-natural, therefore, I hold that the prosecution has proved that the deceased Mohammad Ramzan and Yousif died due to un-natural death. Accordingly this point has been proved beyond reasonable doubt; hence the same is answered in "affirmative".

POINT NO. 2.

evidence.



Hno

1. Ocular evidence.
2. Medical evidence.
3. Recovery.

OCULAR EVIDENCE.

10. The ocular account has been furnished by complainant Allahdino, P.Ws Ahmed Khan, PW Mohammad Hassan, P.W Lakhadino, P.W Jumoon Kumbhar. Complainant Allahdino in his evidence at Exh. 09 deposed that this incident took place on 19.3.2009. His son Mohammad Ramzan and brother Mohammad Yousif used to go on his motorcycle to their flour Mill at Tarai where they used to work. On the date of incident, they also went to their flour mill on motorcycle. It was about 5 or 6 pm, his brother Mohammad Yousif informed him on phone that they were going to attend the marriage ceremony of Chhango Machhi situated near Kathan Wari Mori at Imam Wah. He remained at his house. On the same date at about 10.30 pm, Ahmed Noohani called him on mobile phone that he was present at home and on hearing firing towards curve of Dodheeing Shah Dargah he went there and saw that his son Ramzan and brother Yousif were lying dead having fire arm injuries. On this, he along with his brothers Mohammad Hassan and Esso went to the place of incident where, they saw the dead bodies of his son Ramzan and brother Yousif. They saw that his motorcycle was not there. Mobile phones with them were also not in their pockets. His son Ramzan had taken cash Rs.15000/- which was with him and the same was not available in his pocket. He left his brothers with dead bodies and he went to inform police at PP Tarai who informed to their police Station Kario Ganhwar. Thereafter, he came at Place of incident where police of police Station Kario Ganhwar and other peoples came. They saw that vehicle lights that his son had injury on his fore head while his brother Yousif had injury on his face by fire arms. Raj Peri Talib and Ghulam



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Hussain Also came there and they saw foot prints of three culprits beside the road. They also found one empty of bullet and one live bullet at the place of incident. Thereafter, on the same night on 20-3-2009 at 0100 hours he went to police station Kario Ganhwar and lodged such FIR. Police came at the place of incident and inspected the dead bodies and then took dead bodies to Golarchi Hospital for post mortem. He also handed over the empty of bullet and live bullet to Police at the place of incident. After post mortem the dead bodies were returned to them. He produced the FIR as

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Exh.09-A and receipt as Exh.9-B which are same, correct and bears his signatures. He had lodged FIR against un-known persons as he had not enmity with any person. Thereafter, police called him on 3.8.3009 at police station saying that they had arrested the culprits of offence. He went there and saw accused Ibrahim alias Aboo. He made enquiry from accused Ibrahim who informed him that they were five persons. He was along with Bhoongar, Prvez Ali, Allahditto and Ismail. He told that they tried to stop the motorcycle of deceased but they did not stop and there was exchange of fight with them. He told that he fired from pistol upon Ramzan which hit him on his fore head who fell down. He told that he asked Bhoongar that

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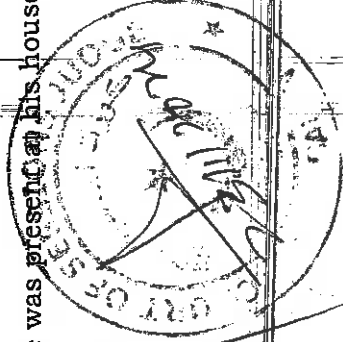
they had been identified hence they should kill the other person on which Bhoongar fired upon Yousif. Thereafter, they took cash Rs.15000/- one LG mobile Phone and NIC; from pocket of Ramzan and from Yousif and one Nokia mobile and so also motorcycle and then went away. He then fallen on his feet for excuse. Accused Ibrahim alias Aboo and Allahditto also went to his cousin Jumoon for getting exoneration. Thereafter, accused also brought their women and Quran Sharif to him for exoneration. Accused Aboo alias Ibrahim and Allahditto present in Court are same. Thereafter, he accompanied police and pointed out accused Ibrahim and Allahditto at



250 35
Borhi Mori, where police arrested accused and recovered motorcycle from them. Police recovered pistol from Ibrahim and mobile Phone LG of his son from, Allahditto. Thereafter, he got released the motorcycle from Court which he identified the same in Court is same. He identified the accused present in Court are same.

250 11. PW Ahmed Khan at Exh. 10 deposed that on the night of incident he was present at his house in village Ahmed Khan Noohani. It was about 10-0 PM, when he heard fire arm reports towards southern side from his house on which he went towards firing on his motorcycle when he reached at the curve on the road near Dargha Dhodheeing Shah on western side from curve he saw two dead bodies lying in a ditch near the road. There was bleeding from the injuries of deceased persons. He identified those dead bodies one of Ramzan and other was of Yousif. Ramzan had fire arm injury on his fore head while Yousif had injury on his face. Both were dead. There was bleeding from their injuries. They were their village peoples. Thereafter, he informed the complainant Allahdino father of Ramzan one mobile phone. Thereafter, Allahdino along with his brothers Esso and an other came on their motorcycle. They also saw the dead bodies. There was no motorcycle present at the place of incident. The foot prints of three persons were present at the place where the dead bodies were lying. Thereafter, Allahdino went to inform police about the incident. Thereafter, police came there and saw the dead bodies. Thereafter, police recorded his statement. He identified the accused present in Court are same.

260 12. PW Mohammad Hassan in his evidence Exh. 13 deposed that this incident took place about 14-15 months back. At the time of incident, he was present at his house. On the night of incident at about 10



pm Ahmed Noohani informed him on phone that his brother Yousif and nephew Ramzan were murdered on Gharo road at the curve of Dodhing Shah. On this he and his brother Allahdino went at the place of incident and saw both the persons lying dead in the ditch beside road. Ramzan had fire arm injury on fore head and his brother Yousif had fire arm injury on the right side of face. Their motorcycle was missing as well as cash and mobile phone and NICs from their pocket were also missing. Ahmed Khan also came there who informed them that he was present at his home situated at the block distance from the place of incident when he heard fire arm shots on which he came at the place of incident and saw the dead bodies and then informed them. Both the deceased used to work on their flour Mill in Tarai on motorcycle and used to return together to home on motorcycle. On the night of incident they went to marriage ceremony in village Chango Machhi to attend the marriage ceremony of his son. On that date they informed them on the telephone at 7 pm that they will come late as they were going to village ceremony. The Police also came there. They then took dead bodies to Golarchi Hospital where post mortem was conducted and then they brought dead bodies to Golarchi hospital where post mortem was conducted and then they brought the dead bodies to their house. They also took one live bullet and one empty bullet from the place of incident which they gave to the police. Thereafter, he along with Allahdino went to Police Station Kario Ganhwar where Allahdino lodged such FIR. There were foot prints of three persons at the place of incident. Police recorded his statement. Thereafter, Allahdino and Ibrahim alias Iboo brought Quran Sharif and minor babies at their home that they have committed offence and they may be exonerated. Iboo also disclosed that Bhoongar and Paroo his relatives were of Rani pur who told them that they



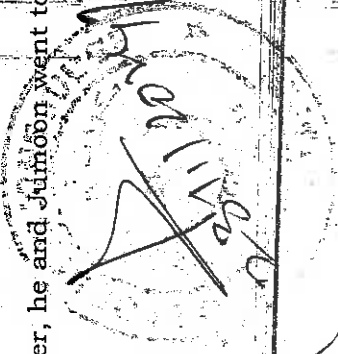
should knock money from some robbery. He also disclosed that he told them that Kumbhars have sold their flour mill hence they are going to rob them. They also brought Adam Abro to them to receive five lacs for exonerating them. He identified the accused Ibrahim alias Aboo and Allahditto present in Court are same.

13. P.W Lakhadino at Exh.14 deposed that on 15.10.2009,

he along with his brother Ali Mohammad, Amin and Jumoon Kumbhar were

300 present at the house of Jumoon Kumar as a guest. It was about 9 pm, when there was call out side the house of Jumoon on which Jumoon went out side. After some time Jumoon returned to home and informed them that some people have come, they want to talk with them. Thereafter, they all went to otaq where they saw accused Aboo, Allahditto and Ismail. They told Jumoon that they have murdered his relatives Ramzan and Yousif hence he should accompany them to the parents of deceased for exoneration. On this Jumoon told them that he will ask his relative / Parents of the deceased and then he will inform them. Accused Aboo further told that Bhoongar and Paroo of upper Sindh came to him who told that they have no fare for return to home hence they should knock money

300 from some one. He further disclosed that he informed them that there is no other person but Kumbhars have sold their flour mill who were having amount hence they will knock money from them. Aboo further disclosed that thereafter, they went at Doodhing Shah curve where they were sitting when at 10-0 pm deceased came there on motorcycle and they wanted to rob them but they resisted and he told that they had also identified them hence they should be killed. Aboo disclosed that he fired from pistol upon Ramzan while Bhoongar fired upon Yousif and caused their murder. Thereafter, he and Jumoon went to Allahditto and disclosed the above facts



32p

and told him that the accused were requesting for exoneration. Accused Aboo also disclosed that they robbed cash Rs.15000/- and mobile phone from the deceased. Thereafter, accused did not turn up. His statement was rerecorded by the police. His statement was also recorded before Civil Judge and JM Golarchi at Badin. He produced his statement under section 164 Cr.P.C and identified the signature and contents thereof. He also identified the accused Aboo and Allahditto present in Court are same.

14. P.W Jumoon at Exh.15 deposed that the same facts as disclosed by P.W Lakhadino. He too stated that on 15.10.2009 he was present at his house. On that night Ali Mohammad, Lakhadino and Amin came at his house as his guest. At about 9 -0 PM, when there was call to him out side the house. He went out of house, where he saw accused Aboo ,

33p

Allahditto and Ismail who met him and told him that they want to talk with him. He left them at his otaq and went to house and informed the guests about the same. Thereafter, he and above named guests came to otaq. Accused Aboo told that Ramzan and Yousif were murdered by them and Allahdino is his relative hence they get them exonerate from Allahdino. Abo further disclosed that his guests Bhoongar and Gulser of upper Sindh came to him who told him that they had no fare for return to their home hence they should knock money some where. Aboo further disclosed that he told his guest that Ramzan and Yousif had sold out their flour Mill and they can Knock money from them. Aboo further disclosed that thereafter they came at Dodhing Shah curve where deceased came on motorcycle whom they tried to rob on which they made resistance and he told his companions that as the deceased identified him hence they should kill them , thereafter, he caused pistol shot to Ramzan and Bhoongar fired upon Yousif who died .

He also disclosed that thereafter, they took search of

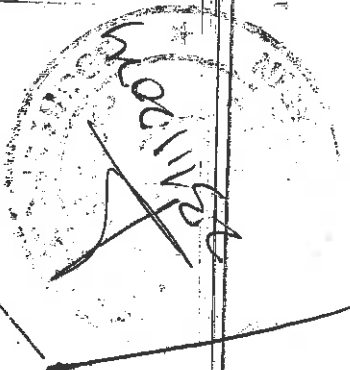
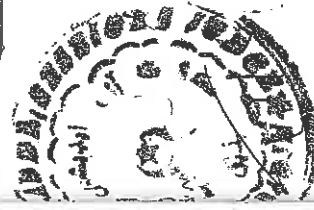


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382834p

the deceased and took out cash rupees fifteen thousand, mobiles and NICs and papers from them. The accused talk him that he should help for their exoneration. He replied them that he should talk with his relatives complainant and then he will reply them. Thereafter, they disclosed these facts to Allahdino. Thereafter, police recorded his statement. His statement was also recorded before Civil Judge and JM Golarchi at Badin, which he produced as Exh.15-A and admitted the contents and LTI, Photograph and NIC thereof.

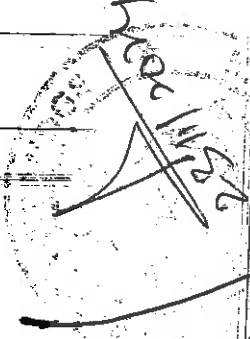
15. From the perusal of entire evidence of the prosecution witnesses, it reveals that no doubt there is no eye witnesses of the alleged incident but the accused Ibrahim alias Aboo and Allahditto made their extra Judicial confession before Lakhadino, Ali Mohammad, Amin and Jumoon that they have committed the alleged murder of the deceased. The prosecution have examined Lakhadino and Jumoon who in their respective evidence have implicated the accused in the commission of the alleged incident. The accused have failed to show any malice or enmity against both the above witnesses. Both the above witnesses have corroborated their evidence with each other. There is no material contradiction and inconsistency in their evidence on the material facts of the prosecution case. Besides, the ocular evidence has also been fully supported and corroborated by the Medical evidence. The medical evidence has been discussed in point No. 1 hence it is not repeated here.. The medical evidence has not been denied or challenged by the defence as discussed in the earlier point. The learned defence counsel while arguing has submitted that there is contradiction in the evidence of PWs. He has also submitted that both the witnesses are relatives of the complainant and interested and no independent witness has been examined by the prosecution. I have



considered the evidence of witnesses and submissions of the learned counsel for the accused with due care and caution.

16. The contradictions as pointed out by the learned defence counsel are minor and the same are naturally to occur due to passage of time, particularly when the witnesses are illiterate persons belonging to rural area but even then there is no material contradiction in their evidence and they have supported each other on all the material facts of the incident. So far, question of relationship of witnesses is concerned; no animosity or grudge has been suggested by defence counsel between the PWs and accused prior to incident. The interested witness is not to be called only having relationship with complainant party but he must have any animosity with accused and having motive to depose falsely against the accused. But in this case not a single question was put to witnesses that they had any previous enmity with the accused prior to the incident. Even, at the time of incident except the accused and above named PWs including deceased no body was present there because the incident had taken place at 2200 hours and nothing has come on record that any other person either had arrived at the time of incident or after the incident when the accused persons ran away. Therefore the ocular account of evidence furnished by eyewitnesses is reliable, trustworthy and inspiring confidence. The reliance is placed on the case of Muhammad Asif alias Assa Vs the State reported in 2009 YLR 498 wherein it has been held as under:

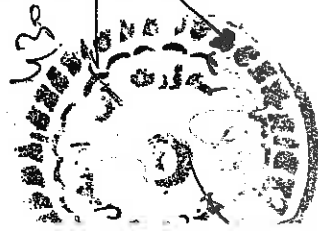
"No previous enmity existed between the parties—Minor discrepancies and slight improvements in the statements of witnesses due to passage of time would neither vitiate the trial nor cause any significant dent in the ocular testimony—Evidence of eyewitnesses could not be discarded merely because of their relationship with the deceased.



41
In the case of Muhammad Nadeem alias Demi Vs the State reported in 2008 YLR 1681 it has been held as under:

41a
S-302—Appreciation of evidence—Independent witnesses—scope—Independent person / witnesses of a murder case do not come forward to depose against accused out of fear of reprisals—Mere fact that witnesses are related to deceased does not ipso facto imply that their testimony has to be discarded

42a
17. In the instant case, the whole evidence brought on record by the prosecution which it reveals that police arrested accused Ibrahim alias Aboo and called the complainant on 3.8.2009 at Police Station where complainant met with the accused Ibrahim who fallen on feet of complainant and requested for excusing in respect of the murder committed by him along with Bhoongar, Pervaz, Allahditto and Ismail. The accused Ibrahim alias Aboov released on bail on 19.3.2010 so also accused Allahditto was released on bail on 4.2.2010. P.W Lakhadino at Exh.14 produced his 164 Cr.P.C in which he has stated that 15.10.2009, he along with Ameen, Ali Mohammad and Jumoon were present in the house of Jumoon situated in village Gul Mohammad Khaskheli. It was 9-00 PM, Jumoon went out side the house on some call of his guest. Then after little bit Jumoon returned back and invited them to see with guest at otaq situated in the same village. Then they accompanied with Jumoon went to the Otaq of Jumoon, there they met with accused Ibrahim alias Aboo, Allahditto and Ismail who disclosed that they along with two other accused namely Bhoonger Lashari and Paroo Hot killed Ramzan and Yousif Kumbha at Dodo Shah Moor near Tarai on 19.3.2009 at 10-0 PM and they also requested to Jumoon for getting them apology from the heirs of both deceased. Such statements 164 Cr.P.C have produced by these witnesses Lakhadino and Jumoon which are placed on record vide Exh.14-A and 15-



427 42

A. This fact has not been denied by the learned counsel for the accused in their cross examination. It is settled law that a fact which has to be denied but not denied in cross examination amounts to its admission. I, therefore, respectfully relied upon the case of Mohammad and others Vs. The State reported in 1994 P.Cr.L.J Karachi 2102, wherein it has been observed that:-

440

If a witness deposes on a fact in examination -in-chief & the correctness of said statements not challenged in cross-examination, the legal presumption would be that the said fact has been admitted by the party against whom the same has been brought on record.

In the case of "Farooque Khan Vs the State" reported in 2008 SCMR-917 (Supreme court of Pakistan) it has been held as under:-

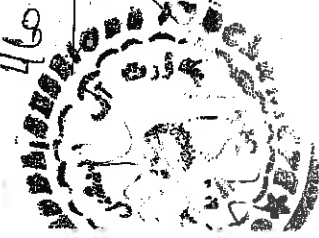
--S.302—Conviction—Scope—Witnesses, number of—requirement—Conviction could be based on testimony of a single witness, if court was satisfied that witness was reliable—Emphasis would be on quality of evidence and not on its quantity.

450

18. In view of the above discussion, I have come to the conclusion that evidence of the complainant and other two PWs is believable, truthful and inspiring confidence. They have supported each other on all the material facts of the prosecution case and there is no material contradiction or inconsistency in their evidence. Ocular evidence has been corroborated by the medical evidence as discussed above. Therefore, prosecution has successfully proved this point by producing ocular evidence duly corroborated by the medical evidence, which has already been discussed under point No.1, therefore, there is no need to discuss again.

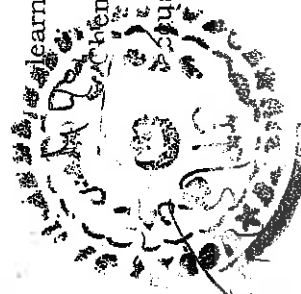
460

19. RECOVERY. On this piece of evidence, the prosecution has examined mashir Mohammad Qassim, SIO Mohammad Akram. The mashir Mohammad Qassim produced mashirnama of arrest and recovery at Exhy.25-A perusal of the same would show that SIO arrested the accused



Ibrahim alias Aboo and Allahditto and conducted their personal search the SIO recovered one pistol of 30 bore along with two live bullet of 30 bore from accused Ibrahim alias Aboo and one LG Mobile of black colour along with sim from accused Allahdittto and also recovered motorcycle from possession of both accused. The SIO Mohammad Akram sent the pistol, cloth of both the deceased to the Chemical Examiner and Ballistic expert and the report was produced by SIO vide Exh.28-D & E. SIO produced Ballistic Expert report with the opinion of Assistant Inspector General of Police Forensic Division Sindh Karachi, one 30 bore crime empty now marked as C was fired from the above mentioned 30 bore pistol and also Dr.Fazal Illahi Memon Director Laboratories and Chemical Examiner to the Government of Sindh Karachi in his Chemical report disclosed that the articles No.1 to 5 Earth, Sky blue colour Qameez of deceased Mohammad Ramzan, Sky blue colour Shalwar with Nara of Mohammad, Greenish Brown colour Qameez and Greenish Brown colour Shalwar with Nawa of deceased are stained with human blood. This witness was not cross examined on this particular piece of evidence; therefore, this piece of evidence has gone un-rebutted and un-challenged. He has also denied the suggestion of learned defence counsel that the recovery was foisted upon accused. He also denied that all the mashirnama were prepared at Police Station.

20. I have carefully considered the cross examination of learned defence counsel, no where he has suggested that there is any malice on the part of police and they have substituted the articles. The learned counsel for the accused has failed to cross-examine on the point of chemical report as well as ballistic expert report, which proved that the accused are involved in the commission of the offence. The ocular testimony



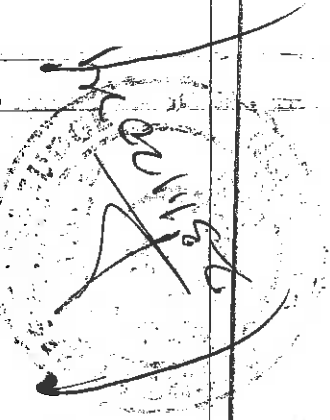
is fully corroborated with medical evidence and recovery, which connect the accused in the commission of the alleged incident. This piece of evidence has also fully implicated the accused in the commission of the alleged incident. Since, there is no eye witness of the offence committed by the accused at spot but from the admission of the accused before the complainant and P.Ws proved their guilt in the commission of the alleged incident.

21. From the record, it appears that the evidence of prosecution witnesses is straight forward, inspiring confidence and no any major contradictions have been brought on record by defence to discredit their evidence. The ocular testimony, circumstantial evidence is in conformity with the medical evidence supported of motive. However, learned defence counsel has pointed out some discrepancies in the evidence of witnesses but in my opinion they are minor in nature and the same is gratuitous in order to help the accused as such, it is proved on record beyond reasonable doubt that the accused Ibrahim alias Aboo and Allahditto alongwith absconding accused on 19.3.2009 at 2200 hours at Dhondhang Shah curve on Tarai-Gharo road duly armed with fire arm weapon restrained deceased Ramzan and Yousif and put them under fear of death or hurt robbed them of motorcycle, Mobile Phone, NIC and caused them fire arm injuries and killed them. This point is, therefore, answered in

Affirmative.

POINT NO.3.

22. The result of above discussion is that the prosecution un-ambiguously lead to the chain of events and the manner of occurrence and leave no room for doubt to arrive at the conclusion that the prosecution through ocular evidence of complainant Allahdino and P.Ws Lakhadino and



520 Jumoon and Medical evidence and recovery have fully proved the guilt of the accused persons. It is proved that the accused during dacoity with deceased Mohammad Yousif and Ramzan committed their murder, therefore, I hereby convict the accused Ibrahim alias Aboo and Allahditto and sentenced them to suffer R.I for life imprisonment for the offence Punishable under section 302(b) read with section 396 PPC. The benefit of section 382-B Cr.P.C is extended to the accused. The accused Ibrahim alias Aboo and Allahditto are present on bail, their bail bonds stand cancelled and surety discharged and accused are remanded to Central Prison Hyderabad through District Jail Badin to serve out the sentence. So far as the case against the absconding accused Ehoongar, Pervaiz alias Paroo and Ismail be kept on darmonth file, till they are arrested and brought before this Court.

Announced in open Court.

Given under my hand and seal of the Court this 17th day of May 2012.

534

sd - 17/5/12
(INAYATULLAH MEMON)
I/C 2ND ADDL. SESSIONS JUDGE BADIN

PROPERTY ORDER

The blood stained mud, blood stained cloths of

deceased Mohammad Yousif and Ramzan are valueless and the same be destroyed after expiry of appeal period. The pistol is un-licensed and the same be also confiscated in District Armoury Badin, after expiry of appeal period.

542

sd - 17/5/12
(INAYATULLAH MEMON)
I/C 2ND ADDL. SESSIONS JUDGE BADIN

copy prepared by
Shah Nawaz Copy
copy compared by
17/5/2012

(Fandiaz Heston)

Certified to be a true copy
Bashir Ahmad
Officer Superintendent
District & Sessions Court Badin.

کورٹ میں جناب سول جج اینڈ J/M صاحب گولاڑی ایچ ایٹ بدین کے حصر

۶۹

ابتدائی اطلاعی رپورٹ بنسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

نمبر 16/09

تھانہ کڑیو گھنور

ضلع بدین

تاریخ وقت وقوع 19/03/2009

وقت تقریباً 2200 بجے

1-	تاریخ وقت رپورٹ 20-03-2009 @0100 hrs	6	تھانہ سے روانگی کی تاریخ وقت	-
2-	نام و سکونت اطلاع دہندہ و مستیت 0306-8294886	الھذو ولدیت محمد سوار ذات کبہار رہائشی گاؤں محمد سوار کبہار دیھہ دفتری تحصیل بدین		
3-	مختصر کیفیت جرم (مع دفعہ) مع مال اگر کچھ کھو گیا کیا ہے۔	17/4 Hord		
4.	جائے وقوعہ سے فاصلہ تھانہ اور سمت	دودنگ شاہ موڑ ترانی گھڑ پور ڈوس PS کے مشرق جنوب سمت مفاصلہ تقریباً 15 کلومیٹر دیھہ میرا تحصیل ایس ایف راہو		
5-	کاروائی متعلقہ تفتیش اگر اطلاع درج کرنے میں دیر ہوئی تو اس کی وجہ بیان کی جائے۔	پولیس کی طرف سے کوئی بھی تاخیر نہیں ہوئی		

S/d

Civil Judge & J M Golarchi

I/CPP Tarai علی پتھو ASI

صحیح

عہدہ

جناب عالی۔ فریاد ہے کہ میں اپنے موٹر سائیکل حامل اسپڈ کلر بلک نمبر Nil چیمپس نمبر 7001538 SR7001538 انجن نمبر D1677 ہے جو میرا بیٹا محمد رمضان چلاتا ہے اور ہمیں اپنی آنے کی چکی شہر ترانی میں ہے میرا بھائی یوسف کبہار عمر تقریباً 38 سال اور محمد رمضان کبہار عمر تقریباً 42 سال جو کہ چکی سنبھالتے ہیں کل مورخہ پر صبح کو سویرے میرا بھائی یوسف اور بیٹا محمد رمضان جو کہ چکی چلانے کے لیے ہماری موٹر سائیکل پر ترانی گئے چکی پر کام کرنے کے بعد شام کو مجھے اپنے بھائی یوسف اور اپنے موبائل فون کے ذریعے اطلاع دیا کہ ہم جاگوا چھی کی شادی کی دعوت میں جارہے ہیں وہاں سے رات کو 10/11 بجے واپس گھر آئیں گے پھر ہم گھر ہی تھے کہ رات کو وقت تقریباً ساڑھے دس بجے احمد خان نوحانی موبائل کے ذریعے اطلاع دی کہ میں گھر تھا کہ رات کے وقت تقریباً 10 بجے دودنگ شاہ موڑ ترانی گھڑ پور ڈوس کی آواز ہوئی میں جلدی موٹر سائیکل پر وہاں گیا دیکھا کہ روڈ کے مغربی سمت دائر میں یوسف کبہار اور محمد رمضان کبہار والوں کو فائر لگے ہوئے تھے جو کہ فوت ہوئے پڑے تھے احمد خان کی ایسی اطلاع ملنے پر میں اور میرے بھائی محمد جن اور عیسو کبہار والے گھر سے نکل کر اطلاع والی جگہ دودنگ شاہ موڑ ترانی گھڑ پور ڈوس پر پہنچے جہاں پر ہم نے دیکھا کہ میرے بھائی یوسف اور اس کا بیٹا محمد رمضان کبہار دائر میں پڑے فوت ہو گئے تھے رمضان کو پیشانی پر فائر لگا تھا اور یوسف کو گال پر فائر لگا ہوا تھا سر زمین پر ہماری والی موٹر سائیکل نہیں تھی اور میرے بیٹے رمضان کی LG موبائل فون نمبر 03465610496 اور ان کا شناختی کارڈ اور گھر سے لیے ہوئے پئے 15000 روپے اس کی جیب میں نہیں تھے اور میرے بھائی یوسف کا نوکیا کمپنی کا فون نمبر 03462891598 اور اس کا شناختی کارڈ جیب میں نہیں تھے ہمیں یقین ہوا کہ کسی نامعلوم ڈاکو نے ڈکیتی کر کے میری بھائی یوسف اور بیٹے محمد رمضان کو مزاحمت پر فائرنگ کر کے مار کر خون کیا ہے۔ ڈکیتی کرنے والے جو ابدار فرار ہو گئے پھر ہم پینچا پتی پیری غلام حسین خالصٹی اور طالب خالصٹی کو بلوا کر سر زمین دیکھی جو راج پیری نے ظاہر کیا کہ تین ڈکیتی کرنے والوں کے پاؤں لگے ہوئے ہیں جو کہ ڈکیتی کی ہوئی موٹر سائیکل پر سوار ہو کر فرار ہو گئے ہیں سر زمین سے ایک پھسل کی زخمہ گولی اور ایک فائر

23-01-2024
23-01-2024

23-01-2024
23-01-2024

30-15-15-60

Imtiaz Hussain
Rtc Khewra

23-01-2024

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23:33

IN THE COURT OF 2ND ADDITIONAL SESSIONS JUDGE, BADIN
Sessions Case No. 245 of 2009

STATE
VS

- 1.
- 2.
- 3.
- 4.
- 5.

Ibrahim alias Abu s/o Khan Mohammad Hote.
Allahditto s/o Ahmed Khaskheli.
Bhoongar s/o Dodo Lashari.
Parveez alias Paroo s/o Iqbal Hote.
Ismail s/o Khan Mohammad Hote

CRIME NO.16 OF 2009 POLICE Station Kario
Ganhwar under section 302(b), 396 PPC

Accused.

mael
7/23

C-p-02

CHARGE SHEET

District

Charged Sheet No.

200

In First Information No.

سنہ 200

Police Station

Name, address and occupation of complainant or informant

Name and addresses of accused persons not sent up for trial whether arrested or not arrested, including absconders and persons who have absconded

Name and addresses of accused persons up for trial

Property (including weapons) found, with particulars of where, when and by whom found and whether forwarded to magistrate

Name and address of witnesses

Charge of offence and circumstances connected with it, concise and in plain language, and section of the Criminal Code

فرادی یا خبر
ڈپنٹر جو نالو
مکرت

فرادی یا خبر
ڈپنٹر جو نالو
مکرت

In custody
On bail
recognizance

پیشگی مال (مختار سمیت)
تین سو مال و ہر تھیل
تین کٹائی و مٹھائی
لٹرو و مابین لٹرو
موتھری ویر بار

فرادی یا خبر
ڈپنٹر جو نالو
مکرت

فرادی یا خبر
ڈپنٹر جو نالو
مکرت

المنیو پیتھ فریڈ سوما راجہ کھنیا دین چو کے سوما راجہ کھنیا
فریڈ سوما راجہ کھنیا دین چو کے سوما راجہ کھنیا

فرادی یا خبر
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مکرت

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ڈپنٹر جو نالو
مکرت

23/11/2004

396. 307. 120/B 335 P.P.

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District Badin
Charge Sheet No. 84/2009
Date: 07/12/2009

IN THE COURT OF CIVIL JUDGE & J/M GOLARCHI@BADIN
Challan REPORT 17/4 HOD CRPC

PS Kario Ghanwar
FIR No. 16/09 17/4 HOD CRPC
Dated: 20-07-2018

دی	طران			تفصیل پر اپری	تفصیل گواہان	حقیقت ایف آئی آر و تفتیش 396, 3021, 120/B, 535 PPC
	مقرر	C/آر میٹھ پر	ضمانت پر			
<p>(1) بھوگر ولدیت دودو ذات اقبال شاہی گاؤں اقبال موت نزد صوبہ ویدو ضلع نیر پور نیرس (2) پر پور علی عرف پر ولدیت اقبال ذات موت باگٹی (3) ایلن ولدیت خان محمد ذات موت باگٹی مراد علی موت باگٹی علی موت دھو دار یا سو تحصیل دھو دار یا سو بدین (2) احمد ذات احمد ذات خا صخی رہائشی دھو بکڑا تحصیل دھو بدین</p>	<p>(1) ابراہیم عرف ابو ولدیت خان محمد موت مراد علی موت دھو دار یا سو تحصیل دھو دار یا سو بدین (2) احمد ذات احمد ذات خا صخی رہائشی دھو بکڑا تحصیل دھو بدین</p>	IN	<p>(1) فریادی کالم نمبر 1 والا۔ (2) محمد حسن ولدیت سوار کبہار (3) عیسو ولدیت سوار کبہار (4) احمد خان ولدیت حاجی جنید نوحانی رہائشی گاؤں اپنا تحصیل گولارچی (5) C/402 محمد خان IT کڑیو گھنور (6) مشیر محمد رمضان ولدیت محمد سوار خا صخی رہائشی سوار خا صخی دیھ دفری تحصیل بدین (7) تمیدار دیھ ملیر ابو (8) MO نیک محمد جمالی تحصیل اسپتال S.F راہو (9) ASI لیاقت علی پنخور / ترائی (10) SiP حمید اللہ مین IT کڑیو گھنور (11) SiP عبدالغنی ہالپوٹو IT کڑیو گھنور (12) ASI غلام حسین چانڈیو IT کڑیو گھنور (13) جمع ولدیت ہاشم کبہار رہائشی گل محمد خا صخی (14) لکھاڈنو عرف لاکو ولدیت خمیسو کبہار (15) امین ولدیت سوار کبہار (16) علی محمد ولدیت خمیسو کبہار۔ جناب امین ایم شکیل جٹ سول جج J/M گولارچی ایٹ بدین۔ SiP محمد اکرم راجپوت کڑیو گھنور</p> <p>R/W</p> <p>مشیر محمد قاسم کبہار، پیری غلام حسین خا صخی، مشیر صدق ولدیت عرض خا صخی</p>	<p>فریاد ہے کہ میں اپنے موٹر سائیکل ہائی اسپڈ کلر بلیک نمبر Nil چیمپس نمبر SR7001538 انجن نمبر D1677 ہے جو میرا بیٹا محمد رمضان چلاتا ہے اور ہمیں اپنی آنے کی چکی شہر ترائی میں ہے میرا بھائی یوسف کبہار عمر تقریباً 38 سال اور محمد رمضان کبہار عمر تقریباً 42 سال جو کہ چکی سنبھالتے ہیں کل مورخہ پر صبح کو سویرے میرا بھائی یوسف اور بیٹا محمد رمضان جو کہ چکی چلانے کے لیے ہماری موٹر سائیکل پر ترائی گئے چکی پر کام کرنے کے بعد شام کو مجھے اپنے بھائی یوسف اور اپنے موبائل فون کے ذریعے اطلاع دیا کہ ہم جاگوا چکی کی شادی کی دعوت میں جا رہے ہیں وہاں سے رات کو 10/11 بجے واپس گھر آئیں گے پھر ہم گھر ہی تھے کہ رات کو وقت تقریباً ساڑھے دس بجے احمد خان نوحانی موبائل کے ذریعے اطلاع دی کہ میں گھر تھا کہ رات کے وقت تقریباً 10 بجے دودنگ شاہ موٹر ترائی گھڑ روڈ پر فائرنگ کی آواز ہوئی میں جلدی موٹر سائیکل پر وہاں گیا دیکھا کہ روڈ کے مغربی سمت واٹر میں یوسف کبہار اور محمد رمضان کبہار والوں کو فائر لگے ہوئے تھے جو کہ فوت ہوئے پڑے ہوئے تھے احمد خان کی ایسی اطلاع ملنے پر میں اور میرے بھائی محمد جنم اور عیسو کبہار والے گھر سے نکل کر اطلاع والی جگہ دودنگ شاہ موٹر ترائی گھڑ روڈ پر پہنچے جہاں پر ہم نے دیکھا کہ میرے بھائی یوسف اور اس کا بیٹا محمد رمضان کبہار واٹر میں پڑے فوت ہو گئے تھے رمضان کو پیشانی پر فائر لگا تھا اور یوسف کو گال پر فائر لگا ہوا تھا سر زمین پر ہماری</p>		

والی موٹر سائیکل نہیں تھی اور میرے بیٹے رمضان کی LG موبائل فون نمبر 03465610496 اور ان کا شناختی کارڈ اور گھر سے لیے ہوئے پینے 15000 روپے اس کی جیب میں نہیں تھے اور میرے بھائی یوسف کا نوکیلی کا فون نمبر 03462891598 اور اس کا شناختی کارڈ جیب میں نہیں تھے ہمیں یقین ہوا کہ کسی نامعلوم ڈاکو نے ڈکیتی کر کے میری بھائی یوسف اور بیٹے محمد رمضان کو مزاحمت پر فائرنگ کر کے مار کر خون کیا ہے۔ ڈکیتی کرنے والے جو ابدار فرار ہو گئے پھر ہم بچا پیری غلام حسین خا صغیلی اور طالب خا صغیلی کو بلوا کر سرزمین دیکھی جو راج پیری نے ظاہر کیا کہ تین ڈکیتی کرنے والوں کے پاؤں لگے ہوئے ہیں جو کہ ڈکیتی کی ہوئی موٹر سائیکل پر سوار ہو کر فرار ہو گئے ہیں سرزمین سے ایک ہینسل کی زندہ گولی اور ایک فائر ہینسل کھول کے ملے پھر میں اپنے بھائیوں کو سرزمین پر فوجیوں کے پاس چھوڑ کر میں وہاں سے نکل کر ابھی حاضر ہو کر فریاد کرتا ہوں کہ تین نامعلوم ڈکیتی کرنے والے جو ابداروں نے میرے بھائی یوسف اور بیٹے محمد رمضان سے موٹر سائیکل موبائل فون، روک رقم، پینے اور کارڈ مندرجہ ذیل نمبر والے ڈکیتی کی ہے اور مزاحمت پر جو ابداروں نے ان کو ہینسل کے فائر کر کے خون کیا ہے فریادی ہوں کہ تفتیش ہو۔

تفتیش جناب عالی۔ جیسا کہ یہ کیس مورخہ 09-03-20 پر فریادی لکھنؤ کھتیار حاضر ہو کر ASL لیاقت علی پنہور کے پاس داخل کر کے مزید تفتیش کے لیے اس وقت کے SIP حمید اللہ میمن کے سپرد کی دوران تفتیش SIP حمید اللہ میمن اس کیس کے فریادی کی طرف سے سرزمین سے ہاتھ کیے ہوئے ایک فائر کیا ہوا اور ایک زندہ ہینسل 30 بور کی گولی پیش کرنے کا مشیر نامہ تیار کر کے بروقت اس جرم کی جائے واردات پر پہنچ کر نقش اپنی تحول میں لے کر مشیر نامہ مشیر رمضان خا صغیلی اور صدیق خا صغیلی کے روبرو تیار کر کے مشیر نامہ نقش اور سرزمین کا تیار کیا اور نظری نقش تیار کیا فوجیوں کی نقش کے جدا جدا لاش چکاس اور واردات تیار کر کے C/42 محمد خان کے روبرو اس کے سپرد کر کے پوسٹ مارٹم کے لیے تحصیل اسپتال ایس ایف راہور دانہ کیے اور اسی ہی تاریخ کیس کے گواہان ہر ایک محمد حسن، عیسو کبہار، احمد نوحانی، پیری غلام حسین اور طالب خا صغیلی والوں سے بیان رکارڈ کیے اور اسی تاریخ کو C/42 محمد خان کے سے اس جرم میں بیان رکارڈ کر کے اور اس کے لیے ہوئے نقشوں کی رجسٹر اور کر ایہ ہوئے پوسٹ مارٹم دوران ملی ہوئی پوسٹ مارٹم داخل کاروائی کیا اور پوسٹ مارٹم لیٹر بھی لکھا ہوا ہے۔ اور اس کیس کے اصلی جو ابدار جلد نہ ملنے پر مورخہ 09/05/13 کو اس کیس کو (A) کلاس کے تحت نکال کر کے کورٹ کیا اور سری لکھنے کے لیے جمع کروائی گئی اسی دوران اس کیس کی تفتیش کے دوران SIP عبدالغنی ہالپوڈ کے کورس میں آرڈر کے بعد ASL غلام حسین مورخہ 10/29 جو ابدار ابو صوت کو گرفتار کر کے ریمانڈ کے لیے کورٹ میں پیش کیا مگر کورٹ نے ضامن کے بعد چھوڑا مگر اسی دوران اس کیس میں دوسرے گواہ کے لیے پتہ ملا اور ضلع خیر پور میرس سے تفتیش کی SIP عبدالغنی ہالپوڈ کے کورس میں آرڈر کے بعد ASL غلام حسین مورخہ 10/29 کو مزید گواہان ہر ایک جمع، علی محمد، لکھاؤ اور صدیق کبہار والوں سے بیان رکارڈ کیے جن کے پاس جو ابدار فیصلے کے لیے آئے جرم کا اقرار کیا جس کے بعد ان مزید گواہان SIP محمد اکرم بیان 144 پک کے لیے پیش کیے جو کورٹ نے جو ابدار کے روبرو 164 پک رکارڈ کر کے پیش کرنے کا کہا جس کے بعد مورخہ 09/11/22 پر اس کیس کے دو اصلی جو ابداروں کو ڈھونڈ کر ڈکیتی کیا ہوا موبائل فون ہاتھ کر کے واردات میں استعمال کی ہوئی ہینسل اور گولیاں ہاتھ کر کے مشیر نامہ گرفتاری تیار کر کے مزید کیس کے جو ابدار ابراہیم عرف ابو کے خلاف قلم 029 13/D کا درج کیا اور ان کا کورٹ سے مورخہ 11/23 کو سیشن کورٹ سے ریمانڈ حاصل کیا۔ ایک روز جڈ ہینسل ریمانڈ ملا اور گواہان 11/24 ملی 24/11 کو گواہان نے بیان رکارڈ کیے اور ملزمان کے بھی بیان رکارڈ کیے جو کہ جرم کے قبولہ ہوئے ہیں جس کے بعد اس کیس کے مزید گواہان کے بیان رکارڈ کرنے اور مزید دور روز مہلت حاصل کی جو اس کیس کا وقت پہلے ہی لیا ہوا ہے جس کے لیے اس کیس کی ساری تفتیش اور گواہان سے ملی گواہی اور برآمد کی ہوئی پراپٹی اس کیس کے تمام جو ابداروں پر جرم کی ثابتی ہوئی انصاف کی بہتری کے لیے رجوع کیا جاتا ہے۔ 2/5 کر کے کورٹ سے رجوع کیا جاتا ہے جو کورٹ میں کیس چلا کر انصاف کی بہتری ہو سکے

(1) جناب عالی۔ اس کیس کی ایف آئی آر کاپی کورٹ میں عرض کی ہوئی ہے اس کیس کے جو ابداروں پر چالان کرنے جتنی ثابتی ہو گزری ہے اس کیس کے جو ابداروں کو دینے کے لیے گواہان کی کاپیاں شامل عرض، اس کیس میں لیا گیا ریمانڈ اور واسطیدار کاغذات شامل عرض ہیں۔

تفصیل چالان

تاریخ وقت وقوعہ	تاریخ وقت رپورٹ	جائے وقوعہ	مقرر ملزمان	تاریخ وقت گرفتاری	جائے گرفتاری
19-03-09@2200 Hrs	20/03/2009@0100Hrs	دوڈنگ شاہ موڑ دھ ملیر اترائی گھر روڈ	02	22/11/09@1430Hrs	بروہمی موڑی
جو ابدار ریمانڈ میں ہے	جو ابدار ABS	چالان تیار ہوا		پیش ہو گا	
28/11/09@25/1/09	(3)	25/11/09		26/11/09	