

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No. D-11 of 2020

Confirmation Case No.07 of 2020

Before:

Justice Khadim Hussain Tunio

Justice Tasneem Sultana

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| Appellant | Tarique Aziz Through Mr. Muhammad Saad Saeed Qureshi advocate |
| Respondent | The State Through Mr. Shawak Rathore Deputy Prosecutor General |
| Complainant. | Nemo |
| Date of hearing | 30.09.2025 |
| Date of decision & Announcement. | 25.11.2025. |

J U D G M E N T

TASNEEM SULTANA- J: - By this common judgment, we intend to dispose of Criminal Jail Appeal No. D-11 of 2020 alongwith Confirmation Reference No. 07 of 2020 transmitted by the learned trial Court pursuant to Section 374, Cr.P.C., both matters having been heard together. Through the aforesaid Criminal Jail Appeal, the appellant, Tarique Aziz, has impugned the judgment dated 04.02.2020 penned down by the learned Vth Additional Sessions Judge/MCTC, Shaheed Benazirabad (Trial Court), in Sessions Case No. 402 of 2017, arising out of FIR No. 17 of 2017 registered at Police Station Daur under Sections 302, 449 and 34, PPC, whereby the appellant was convicted under Section 302(b), PPC and sentenced to death, with a direction that he be hanged by the neck until dead. He was further directed to pay compensation in the sum of Rs. 300,000/- to the legal heirs of the deceased in terms of Section 544-A, Cr.P.C., and in default thereof to undergo simple imprisonment for a period of six months. In addition, the appellant was convicted under Section 449, PPC and sentenced to rigorous imprisonment for five years along with a fine of Rs. 20,000/-, and in default of payment of fine to undergo simple imprisonment for a further period of three months. The benefit of Section 382(b), Cr.P.C. was extended to the appellant.

2. Brief facts of the prosecution case are that on 12.02.2017, the complainant, Waqar Ali Soomro, lodged FIR at Police Station Daur, stating that his sister, Mst. Rukhsana, was married to the accused, Tarique Aziz Soomro, and from the said wedlock three children were born. Approximately two and a half years prior to the incident, Mst. Rukhsana obtained a decree of divorce from Tarique Aziz through the Court on account of domestic disputes, and since then she had been living in the complainant's house along with her children. The accused, being aggrieved by such separation, had allegedly extended threats that he would kidnap Mst. Rukhsana or murder one of her brothers. On 12.02.2017 at about 1130 hours, the complainant, along with his maternal uncles Muhammad Faroque and Hajan Soomro, his brother Manzoor Ali, and his sister Mst. Rukhsana, was present at their residence when the accused Tarique Aziz and an unidentified co-accused, both armed with pistols, forcibly entered the house. By pointing their weapons, they directed the inmates to remain silent. The accused Tarique Aziz allegedly apprehended Mst. Rukhsana by her arm and attempted to drag her away, declaring that he would kill her. When the complainant party resisted and raised cries, the accused Tarique Aziz, with the intention to commit murder, fired upon them, causing two firearm injuries to Manzoor Ali on the right side of his chest, resulting in his collapse. Meanwhile, neighbours including Ameer Ali and others attempted to apprehend the accused persons, but the unidentified accused pushed Ameer Ali, causing him to strike against a wall and sustain an injury to his left arm. Thereafter, both accused resorted to aerial firing, boarded their grey-coloured car, and fled towards the southern side. Manzoor Ali was immediately shifted to Daur Hospital, where he succumbed to his injuries.

3. After completion of the usual investigation, the police submitted the challan under Section 173, Cr.P.C., against the accused Tariq Aziz, showing accused Muhammad Fareed as an absconder in red ink. The case of the accused Tariq Aziz, who was in custody, was bifurcated from that of the absconding accused Muhammad Fareed. Having been supplied with the requisite documents as provided under Section 265-C, Cr.P.C., the Trial Court to frame a formal charge against the present appellant, to which he pleaded not guilty and claimed trial.

4. To discharge its burden of proof, the prosecution examined eight witnesses. PW-1, Dr. Abdul Qayoom Shaikh, examined at Ex.07, produced the post-mortem report of the deceased at Ex.07-B and the MLC of injured Ameer Ali at Ex.07-D. PW-02, the complainant Waqar Ali Soomro, examined at Ex.08, produced the FIR at Ex.08-B. PW-03, injured witness Ameer Ali, was examined at Ex.09. PW-04, Mst. Rukhsana, was examined at Ex.10. PW-05, mashir Zohaib Ali, examined at Ex.11, produced various memos. PW-06, SIP Syed Shahan Shah, was examined at Ex.12. PW-07, Tapedar Ghulam Shabir, examined at Ex.13, produced the sketch of the place of incident at Ex.13-A. PW-08, the Investigating Officer Inspector Maqsood Ahmed Channa, examined at Ex.14, produced the ballistic expert report at Ex.14-E and the chemical examiner's report at Ex.14-F.

5. Statement of appellant under Section 342 Cr.P.C was recorded at Ex.16, wherein he denied all the allegations leveled against him by the prosecution and while pleading innocence claimed his false implication by the complainant. However, he neither examined himself on oath nor produced any defense witness.

6. The Trial Court after hearing the learned counsel for the appellant as well as ADPP for the State convicted the appellant and sentenced him vide impugned judgment dated 04.02.2020.

7. Learned counsel for the Appellant, inter alia, contended that FIR was lodged with due deliberation and consultations; that presence of alleged witnesses at site is doubtful and appellant cannot be convicted on such doubtful evidence; that though motive has been alleged by the complainant but same could not be proved by the prosecution; that prosecution witnesses have made improvements in their evidence; that there are contradictions in ocular account and medical evidence; that the alleged crime weapon was sent to the forensic laboratory with delay and that nothing incriminating was recovered from the possession of appellant but alleged recovery of crime weapon was foisted upon him; that all the private witnesses are close relatives of complainant; that the bullet taken from the dead body was not sent to ballistic expert. He prayed for acquittal of the appellant-accused.

8. Despite service and fixed date, none appeared on behalf of the complainant. Whereas Learned DPG has supported the

impugned judgment and contended that appellant is nominated in FIR with specific role of straight firing which resulted in committing death of an innocent person; that the incident is of daylight, as such there is no chance of mistaken identity; that delay in registration of FIR was explained well; that the ocular account is fully supported by the medical evidence; that prosecution examined three eye-witnesses including injured, who have fully implicated the appellant with the commission of offence; that appellant voluntarily got recovered the crime weapon and FSL report thereof is positive and that all the prosecution witnesses remained consistent and fully implicated the appellant with the commission of subject crime. He prayed for dismissal of appeal and confirmation of death sentence.

9. We have heard the learned counsel for the appellant as well as learned DPG and scanned the material available on record.

10. In the instant matter, the appellant stands charged with the murder of his former brother-in-law, namely Manzoor Ali (hereinafter referred to as "the deceased"), which allegedly occurred within the premises of the complainant's house, in the presence of the complainant Waqar Ali (PW-2), Mst. Rukhsana (PW-4), and the injured witness Ameer Ali (PW-3). The prosecution case primarily rests upon the ocular account furnished by these witnesses, each claiming direct perception of the incident resulting in the death of the deceased.

11. PW-2 Waqar Ali, the complainant and real brother of the deceased, deposed that on 12.02.2017, at about 11:30 a.m., he was present at his residence along with his brother Manzoor Ali, their sister Mst. Rukhsana, and their maternal uncle Muhammad Farooque, when the appellant, armed with a pistol and accompanied by two unknown persons, forcibly entered their house. Upon entry, the appellant caught hold of Mst. Rukhsana by her arm and threatened to kill her, uttering words of anger emanating from their prior marital discord. The complainant, his brother Manzoor Ali, and their uncle immediately intervened to rescue her, whereupon the appellant, infuriated and undeterred, raised his weapon and fired two shots, both hitting the deceased on the right side of his chest. The deceased fell to the ground while bleeding profusely and succumbed to his injuries.

12. During cross-examination, PW-2 remained firm and consistent on all material particulars. Although the defense sought to question the presence of family members and the location of occurrence, such cross-examination impliedly acknowledged that the incident indeed took place inside the complainant's residence at the stated time and that the deceased had sustained firearm injuries therein. The suggestions advanced by the defense, rather than undermining the witness's credibility, in fact reinforced the prosecution's account regarding the presence of the parties and the sequence of events.

13. PW-4 Mst. Rukhsana, being the most natural witness and the person whose dissolved marital relationship with the appellant provided the motive, narrated a vivid and consistent account of the occurrence. She stated that the appellant entered the house armed with a pistol, caught her by the arm, and, upon intervention by her brothers, fired two shots at Manzoor Ali. She also explained the motive, stating that the appellant had been issuing threats following her obtaining khula and residing with her brothers. Her presence at the scene was natural, and her testimony bears clear marks of direct perception and personal anguish rather than malice or vengeance. She further deposed that the appellant fled from the scene while resorting to aerial firing.

14. Her testimony remained consistent and coherent even under cross-examination; she categorically denied suggestions of false implication or animosity. Her evidence, though emotionally charged, was devoid of exaggeration and found corroboration from the statements of her brother Waqar Ali and neighbor Ameer Ali in all material aspects. The defense's attempt to discredit her version on the basis of prior marital discord remained unsubstantiated, as no contradiction or surrounding circumstance was brought forth to support such a claim. The defense neither denied her presence at the scene nor disputed that the appellant had entered the house and addressed her directly an implicit admission of the appellant's presence and participation in the incident. The defense stance thus inadvertently affirmed the domestic setting, the motive arising from post-khula resentment, and the act of firing, all of which stand corroborated by the medical and forensic record.

15. PW-3 Ameer Ali, a neighbor residing opposite the complainant's house, testified that upon hearing cries, he rushed to

the scene and witnessed the appellant armed with a pistol firing at Manzoor Ali. When he attempted to apprehend the appellant, he was pushed against a wall and sustained injury. His presence is natural, and his injury serves as a strong corroborative circumstance establishing his truthfulness. The memo of injuries (Ex. 11-E) and the corresponding medical certificate substantiate his version. The law accords special weight to the testimony of an injured witness, as a person who has himself suffered in the same occurrence is ordinarily presumed not to falsely implicate another. His statement remained straightforward, unwavering, and consistent with the complainant's version.

16. During cross-examination, while the defense attempted to question his presence, its line of inquiry about the time, place, and sequence of firing within the complainant's house again impliedly conceded that the occurrence indeed transpired there, resulting in the fatal injuries to Manzoor Ali. The witness consistently maintained that he had reached the spot upon hearing cries, had seen the appellant firing upon the deceased, and had himself sustained injury while attempting to apprehend him. His evidence, therefore, provides firm corroboration to the prosecution's case.

17. In the present matter, both eye-witnesses, the complainant Waqar Ali (PW-2) and Mst. Rukhsana (PW-4), the ex-wife of the appellant, have adequately and consistently explained the date, time, and place of occurrence, as well as each material event transpiring during the incident, in a clear and unequivocal manner. They have further elaborated upon the mode and manner in which the occurrence took place, directly attributing culpability to the appellant Tariq Aziz and an unidentified co-accused. Both witnesses were subjected to lengthy cross-examination, during which learned defence counsel put forth various questions aimed at undermining their credibility and challenging their presence at the crime scene. However, nothing material was elicited to create doubt regarding their testimony; they remained firm and consistent on all essential aspects of the incident. As the parties were well-known to each other, the possibility of mistaken identity does not arise. In circumstances where the witnesses qualify as natural witnesses to the occurrence and narrate the incident in a confidence-inspiring and coherent manner, the only viable defence available to an accused would be to satisfactorily establish that witnesses are not truthful but are, in fact,

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

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

18. In the case of **Farooq Khan v. The State (2008 SCMR 917)**, the Honourable Supreme Court observed that “PW-8, the complainant, being the real brother of the deceased, is a natural witness and cannot, on that basis alone, be treated as an interested witness. An ‘interested witness’ is one who, due to some motive or prior enmity, falsely implicates an accused. It is a well-settled rule that the testimony of a related witness may be safely relied upon where no motive is established for false implication, as mere relationship with the deceased is not sufficient to discard the witness. The governing principles for evaluating the evidence of an interested witness were delineated in Nazir v. The State (PLD 1962 SC 269) and Sherfuddin v. Allhaj Rakhio (1989 SCMR 1461).” This precedent reaffirms that a witness who is related but lacks any demonstrated animus or motive does not fall within the category of “interested,” and their testimony may be accepted if otherwise confidence-inspiring.

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

“...It is well settled by now that merely on the ground of inter se relationship the statement of a witness cannot be brushed aside. The concept of ‘interested witness’ was discussed elaborately in case titled Iqbal alias Bala v. The State (1994 SCMR 1) and it was held that ‘friendship or relationship with the deceased will not be sufficient to discredit a witness particularly when there is no motive to falsely involve the accused.’”

Thus, the mere relationship of these eye-witnesses with the deceased is insufficient to sustain the appellant’s plea that their testimonies are not worth believing. In matters of capital punishments, an accused would not stand absolved b making a mere allegation of dispute or enmity; he is required to establish, through credible material on record, the existence of such dispute or enmity as could

reasonably motivated otherwise natural witnesses to implicate an innocent person and thereby allow the real culprits to escape. We would add that where the natural witnesses are blood relations of the deceased, then normally the possibility of substitution becomes rare. In the instant matter, the complainant is the real brother of the deceased, while the other eye-witness is sister of deceased. Hence it does not appear to be believable that they both agreed in substitution of real accused with an innocent (appellant) when undeniably it is a broad daylight incident and these witnesses are falling within the category of natural witnesses. Reference may be made to the case of **Zahoor Ahmed v. The State (2007 SCMR 1519)** wherein it is observed as:-

“The petitioner is a maternal-cousin of the deceased, so also the first cousin of the deceased through paternal line of relationship and thus, in the light of the entire evidence it has correctly been concluded by the learned High Court that the blood relation would not spare the real culprit and instead would involve an innocent person in the case. Further it has rightly been observed that it was not essential for the prosecution to produce each of the cited witnesses at the trial.”

20. In instant matter there has been brought nothing on record by the defense while enjoying opportunity of cross-examination as well leading defense which could make it believable that there had been such a grave reason for a complainant or **Ex-wife'** to involve appellant falsely at cost of safe escape of killer of her/his brother. Nothing came out from the record which may reflect that the deep-rooted enmity was existing between the parties and motive behind the occurrence was only that sister of the deceased Mst. Ruksana was married to the accused/appellant Tarique Aziz Soomro and from such wedlock she has three children. About two and half years prior to the incident, Mst. Ruksana obtained divorce from Tarique Aziz through Court on grounds of domestic dispute and since then she had been living in complainant's house along with her children. The appellant Tarique Aziz being annoyed over such separation, had extended threats that he would kidnap Mst. Ruksana or murdered one of her brothers. On the day of incident, he/appellant entered into the house along with one unknown accused and try to kidnap Mst Ruksana to kill her. The deceased brother tries to save her but, he was done to death brutally by the accused/appellant. Thus, we do not find substance in such plea that on account of previous matrimonial dispute he has been implicated in this case.

21. The direct evidence also finds corroboration from the medical evidence as regard cause of death and timing of incident. It is evident from the evidence of medical officer Dr. Abdul Qayoom Shaikh (PW-01) who conducted postmortem examination on the dead body of deceased Manzoor Ali, that claimed timing as well cause of death (weapon) stood corroborated. The medical evidence furnished by Dr. Abdul Qayoom Shaikh fully supports the ocular account. He found a firearm entry wound on the right side of the chest, the bullet having damaged vital organs and caused internal bleeding, opining that the injury was ante-mortem and sufficient to cause death in the ordinary course of nature. The description of injuries exactly matches the manner of assault described by the witnesses. The injury sustained by Ameer Ali was confirmed through the investigation officer and memos, further corroborating his presence at the scene. The site plan and physical inspection also correspond with the witnesses' description of the place and positions. Thus, this also strengthened the direct evidence. The reliance is placed upon case of **Zahoor Ahmed Vs. the State (2017 SCMR-1662)**, wherein the Hon'ble Supreme Court of Pakistan has held that; -

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

22. The First Information Report was lodged promptly, without any discernible delay. The incident took place at approximately 11:30 a.m., and after shifting the injured to the hospital and completing the requisite legal formalities, including the

post-mortem examination, the complainant lodged the FIR the same evening at about 9:00 p.m. The report was duly recorded as Crime No. 17 of 2017 at Police Station Daur. The ocular account stands materially corroborated by compelling circumstantial and forensic evidence. The Investigating Officer (PW-08, Inspector Maqsood Ahmed Channa) secured two empty 30-bore cartridges and blood-stained earth from the place of occurrence, sealed under memo Ex.11-C. Upon ballistic examination, the empties were confirmed to have been discharged from the pistol recovered from the possession of the accused at the time of arrest. The Chemical Examiner's report further verifies that the deceased's clothes and the collected earth bore human blood. These scientific findings, independent of and consistent with the ocular testimony, form a coherent and unbroken chain of corroborative circumstances, firmly connecting the accused to the commission of the offence.

23. The testimony of the Investigating Officers and the mashirs further strengthens the prosecution's case. PW-05 Zohaib Ali and PW-06 ASI Shahan Shah corroborated the conduct of the post-occurrence formalities, including inspection of the dead body, preparation of the danishtnama, and recovery of blood-stained earth and empty cartridges from the place of incident. PW-07 Ghulam Shabir, the Tapedar, prepared the site sketch, which aligns with the ocular version narrated by the witnesses. PW-08 Inspector Maqsood Ahmed, the Investigating Officer, deposed regarding the recovery of the pistol and live rounds from the possession of the accused Tarique Aziz. These articles were forwarded for ballistic and chemical analyses, the results of which confirmed the presence of human blood and established that the recovered empties had been fired from the weapon attributed to the accused. Cumulatively, such evidence leaves no reasonable doubt as to the culpability of the accused.

24. The prosecution has also succeeded in proving motive through trustworthy evidence. The appellant's wounded pride arising out of the khula obtained by Mst. Rukhsana, coupled with his repeated threats of vengeance, provided the psychological foundation for the commission of crime. His act of entering the complainant's house while armed, forcibly seizing Rukhsana, and subsequently firing upon her brother was not an impulsive gesture or reaction, but a calculated manifestation of deep seated resentment. The sequence of events, together with the fatal placement of the injuries, excludes

any hypothesis of accident or provocation and instead unmistakably demonstrates a deliberate intention to cause death.

25. The ocular, medical, and circumstantial evidence collectively constitute a complete, coherent, and unbroken chain pointing unerringly toward the guilt of the appellant. The defence has offered nothing more than a bald denial, which holds no probative value when assessed against the cogent, consistent, and trustworthy evidence adduced by the prosecution. The presence of an independent injured witness, Ameer Ali, coupled with the mutually corroborative testimonies of the complainant and Mst. Rukhsana, further supported by the medical findings, leaves no room for doubt. The prosecution has, therefore, successfully established beyond the shadow of doubt that the appellant, actuated by resentment and wounded pride, unlawfully entered the complainant's house, fired upon Manzoor Ali causing his death, and inflicted injuries upon Ameer Ali during the same occurrence.

26. As regards the minor contradictions and discrepancies referred to by learned defense counsel is concerned, it is by now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. Reliance is placed in the case of **Zakir Khan V. The State (1995 SCMR 1793)**, relevant paragraph is reproduced as under: -

"13. The evidence recorded in the case further indicates that all the prosecution witnesses have fully supported each other on all material points. However, emphasis has been laid by Mr. Motiani upon the improvements which can be found by him in their respective statements made before the Court and some minor contradictions in their evidence were also pointed out. A contradiction, unlike an omission, is an inconsistency between the earlier version of a witness and his subsequent version before the Court. The rule is now well established that only material contradictions are to be taken into consideration by the Court while minor discrepancies found in the evidence of witnesses, which generally occur, are to be overlooked. There is also a tendency on the part of witnesses in this country to overstate a fact or to make improvements in their depositions before the Court. But a mere omission by witness to disclose a certain fact to the Investigating Officer would not render his testimony unreliable unless the improvement made by the witness while giving evidence before the Court has sufficient probative force to bring home the guilt to the accused."

27. The upshot of the above discussion is that the prosecution has successfully established its case against the appellant through an ocular account furnished by eyewitnesses, which is corroborated by the medical evidence coupled with circumstantial evidence. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view is based on proper appreciation of the evidence and same does not call for any interference by this Court. Thus, the conviction and sentence awarded to the appellant by the learned trial Court are hereby **maintained** and the appeal filed by the appellant merits no consideration, which is **dismissed** accordingly.

28. As a result of the above findings, the reference bearing **Confirmation Case No.** 7 of 2020 submitted by the learned trial Court for confirmation of death sentence to the appellant Tarique Aziz is answered in the **AFFIRMATIVE**.

JUDGE

JUDGE