

Judgment Sheet

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Criminal Appeal No.67614 of 2019

(Ihsan Illahi alias Shani v. The State & another)

and

Murder Reference No.33 of 2020

(The State v. Ihsan Illahi alias Shani)

JUDGMENT

Date of hearing: 03.04.2025

Appellant by: M/S Ch.Tariq Mahmood Ghuman & Muhammad Shahzad Saeed, Advocates assisted by Mr.Maqbool Ahmad Qureshi, Advocate/defence counsel at State expenses.
Complainant by: Mr. Fahad-ur-Rehman, Advocate.
State by: Rana Ahsan Aziz, Additional Prosecutor General.

Abher Gul Khan, J. Ihsan Illahi alias Shani (appellant) involved with case FIR No.391/2017 dated 02.11.2017 registered under Sections 302,324 & 34 PPC at Police Station Ganda Singh Wala, District Kasur, was tried by learned Additional Sessions Judge/Judge MCTC, Kasur. Trial court *vide* judgment dated 02.11.2019 convicted and sentenced the appellant in the following terms:-

Under Section 302(b) PPC to suffer death sentence as *ta'zir*. He was also directed to pay compensation of Rs.5,00,000/- in terms of Section 544-A, Cr.P.C. to the legal heirs of Muhammad Sufian (deceased) and in default of payment of compensation to undergo simple imprisonment for six months.

Challenging his conviction and sentence, Ihsan Illahi alias Shani (appellant) filed **Criminal Appeal 67614 of 2019** whereas trial court forwarded a reference which was numbered as **Murder Reference No.33 of 2020** under Section 374 Cr.P.C. to seek confirmation or rejection of the death sentence imposed on the convict, Ihsan Illahi alias Shani. Both these matters are being decided through this single judgment.

2. Epitomized facts of the case of the prosecution put forward in the shape of complaint (Exh.PD) presented by Shaukat Ali (PW.7) on the basis of which FIR (Exh.PA) was registered are that he is resident of Mauza Burj Kalan and serving in Health Department as Naib Qasid. On 01.11.2017 at about 2:00 p.m., his son Muhammad Sufian was sitting on his grocery shop. Meanwhile Ihsan Illahi along with an unknown accused armed with pistols suddenly emerged there. Ihsan Ilahi in order to kill Sufian made five straight fire-shots which landed on his right side of abdomen, left wrist, right knee, left buttock and left foot. The unknown accused continued making firing just to create terror. The occurrence was witnessed by his sons Akram and Ghazanfar Ali. The motive behind the occurrence was that the complainant had already got registered two FIRs i.e. 116/2014 under Sections 324,109 & 34 PPC and 297/2017 under Section 324 PPC at Police Station Ganda Singh Wala and in the said cases Ihsan Ilahi was declared proclaimed offender.

3. After the incident Shaukat Ali complainant (PW.7) presented application (Exh.PD) before Mohsin Raza SI (PW.1) on the basis of which FIR (Exh.PA) was chalked out. Subsequent thereto, the investigation of the instant case was entrusted to Naseer Ahmad ASI (PW.13) who on 02.11.2017 along with other police officials reached at the place of occurrence and inspected the spot. He recorded the supplementary statement of the complainant to the effect that Akram and Ghazanfar who were eyewitnesses informed him about the incident. From the spot, he secured blood stained swabs through memo Exh.PH. He collected five crime empties of .30 bore pistol vide memo Exh.PG. He also prepared unscaled site plan (Exh.PR). Thereafter he visited DHQ Hospital, Kasur where medical officer handed over to him wearing clothes of the injured Sufian which were secured vide memo Exh.PJ. On 15.11.2017 he obtained non-bailable warrants

of arrest of the appellant (Exh.PP) and handed over to Ashraf Constable for execution.

On 19.11.2017 Sufian injured succumbed to the injuries and the task of investigation was assigned to Iftikhar Ahmad SI (PW.12). On 19.11.2017 he visited DHQ Hospital, Kasur inspected the dead body, prepared inquest report (Exh.PM), drafted application for postmortem examination (Exh.PN), prepared injury statement (Exh.PO) and handed over the corpse to Akhtar Hussain Constable along with relevant documents for autopsy. The non-bailable warrants of arrest of the appellant already entrusted to Muhammad Ashraf Constable for execution were received, which again were entrusted to Akhtar Hussain Constable for execution on 22.11.2017. On 15.01.2018 Akhtar Hussain returned to him non-bailable warrants of arrest of the appellant un-executed on the basis of which on 13.03.2018 he obtained proclamation (Exh.PQ). On 18.01.2019 the appellant was nabbed in another case by Shafqat Ali ASI and on the same day he formally arrested him in the instant case. On 30.01.2019 the appellant made disclosure and in pursuance thereof led to the recovery of pistol (P.1) which was taken into possession through memo Exh.PF. On 20.02.2019 he handed over the file to SHO for preparation of report under Section 173 Cr.P.C.

4. The prosecution produced 14 witnesses in total to prove its case against the appellant. Dr.Mohsan Raza Shirazi (PW.6) and Dr.Sami Ullah furnished the medical evidence, Shaukat Ali complainant (PW.7) narrated the tale of occurrence as per contents of the FIR, Ghazanfar Ali (PW.8) and Muhammad Akram (PW.9) entered appearance in the witness box as witnesses of ocular account, whereas, Iftikhar Ahmad SI (PW.12) and Naseer Ahmad SI (PW.13) investigated this case. The remaining PWs were more or less formal and acted according to the law to aid and support the investigation.

5. On 01.11.2017 Dr.Mohsan Raza Shirazi (PW.6) at about 3:20 p.m. conducted the medico legal examination of Muhammad Sufian and noted the following injuries:-

- (i) An entry wound measuring 0.5 cm x 0.5 cm margin inverted present on left side of abdomen DNP. Advice x-ray abdomen.
- (ii) A. An entry wound measuring 0.5 cm x 0.5 cm margin inverted present on outer side of left forearm. 5 cm from wrist joint. Advice x-ray left forearm.
B. An exit wound margin everted margin 2 cm x 1 cm present on inner side of left forearm. Advice x-ray left forearm. AP let view.
- (iii) An entry wound measuring 0.5 cm x 0.5 cm margin inverted present on inner side right knee joint. Advice x-ray right knee joint.
- (iv) A. an entry wound measuring 0.5 cm x 0.5 cm margin inverted present on outer side of left upper leg 7 cm from knee joint. Advice x-ray left upper leg.
B. An exit wound measuring 1.5 cm x 1.5 cm margin everted present on back side of left upper leg 8 cm from knee joint. Advice x-ray left upper leg.
- (v) A grazing wound measuring 2 cm x 1 cm present on outer and inner side of left foot muscle injured.

The doctor declared injury No.5 as 337-F (iii) PPC i.e. "*ghyr-jaiyah-mutalahimah*" and rest of the injuries were KUO for x-ray and operation notes. The doctor opined that there was no possibility of fabrication.

6. On 19.11.2017 at about 7:30 p.m. Dr.Sami Ullah (PW.11) conducted the autopsy of Sufian and observed the following injuries:-

- 1. An entry wound measuring .5 x .5 cm with inverted margins present on left side of abdomen.
- 2-A. An entry wound measuring .5 x .5 cm present on inner and front side of left forearm.
- 2-B. A stitched wound measuring 3 x .5 cm present on back side of the forearm.
- 3-A. An entry wound 1 x .5 cm present on outer side of left thigh.
- 4-A. An entry wound measuring .5 x .5 cm present on lateral side of right lower leg.
- 4-B. An exit wound measuring 3 x 1 cm present on inner side or right knee joint.

According to the opinion of the doctor, the cause of death was shock and haemorrhage and injuries to vital organs. The doctor

described the duration between injuries and death was within 19-days and between death and postmortem was within 5-8 hours.

7. After the conclusion of prosecution evidence, Ihsan Ilahi alias Shani (appellant) was examined under section 342 Cr.P.C. during which he was asked the questions arising out of the prosecution evidence but he denied almost all such questions while pleading his innocence and false implication with the case. Appellant opted not to make statement under Section 340(2) of Cr.P.C., however produced certain documentary evidence in his defence. On the conclusion of trial, Ihsan Ilahi (appellant) was convicted and sentenced as afore-stated, hence the instant criminal appeal and murder reference.

8. It is contended by learned counsel for the appellant that there is a delay of about 31-hours in lodging the FIR for which no plausible explanation was tendered by the prosecution. The witnesses who entered appearance before the Court to narrate the ocular account are chance witnesses and they failed to prove their presence at the place of occurrence. The eyewitnesses made material improvements with dishonest intention in order to strengthen the prosecution case. There are glaring contradictions between the medical and ocular account. The motive set out in the FIR remained unproved. The recovery of pistol is also of no use for the prosecution as the same was foisted upon the appellant in violation of provisions of Section 103 Cr.P.C. In the said circumstances, it was argued that since the prosecution could not prove its case against the appellant beyond scintilla of any doubt, hence the conviction and sentence awarded to the appellant are liable to be set-aside.

9. On the other hand, learned law officer well assisted by learned counsel for the complainant argued with vehemence that after the occurrence the foremost priority for the complainant was to save the life of his son, thus the delay occasioned in the registration of FIR was due to shifting the injured to the hospital.

The eyewitnesses successfully proved their presence at the place of occurrence. The medical evidence is in line with the ocular account. After the occurrence the appellant remained absconder for a long period and such conduct of the appellant is sufficient to establish his guilt. The motive in this case is well established. The positive report of PFSA through which the crime empties secured from the spot were matched with the weapon recovered from the appellant is yet another factor to establish his culpability. In such situation, it was urged that the conviction and sentence awarded to the appellant need no interference from this Court.

10. We have gone through the case file, heard pro and contra arguments of the learned counsel for the parties well assisted by the Additional Prosecutor General and perused the record.

11. It evinces from the perusal of record that the case in hand is arising out of an occurrence which took place on 01.11.2017 at about 2:00 p.m. in Mauza Burj Kalan situated at a distance of 4-kilometers from Police Station Ganda Singh Wala, District Kasur. The law regarding this occurrence was set into motion through written application (Exh.PD) of Shaukat Ali (PW.8) presented before Mohsan Raza SI (PW.1) on 02.11.2017 at about 9:30 p.m. in the police station which was transformed into formal FIR (Exh.PA). From this aspect, it manifests that the matter was reported to police with the delay of about 31 hours. We have thoroughly scanned the record and have failed to find out any explanation for such an unwarranted delay in the registration of FIR. It spells out from the record that the prosecution though made an endeavour to cover this delay by portraying that firstly Muhammad Sufian in injured condition was taken to DHQ Hospital, Kasur for the purpose of medical treatment from where he was referred to General Hospital, Lahore, thus the delay in reporting the matter to the police is ignorable. However, in this regard, it is noticed that when Muhammad Sufian injured was shifted to DHQ Hospital, Kasur, he was given medical treatment

by Dr.Mohsan Raza Shirazi (PW.6) and according to Dr.Mohsan Raza, the injured was brought by Muhammad Ashraf 485/HC on 01.11.2017 at about 3:20 p.m. To bring the injured to the hospital by a police official shows that the matter had already come in the knowledge of the police within 1-hour and 20-minutes. However, it was not the case of prosecution that the complainant tried to get recorded his statement to police who refused to reduce into writing to set the criminal law into motion. Apart from the statement of injured who gave the medical history to doctor regarding the criminal assault by two unknown persons till filing of complaint, no version was recorded by the complainant to police while nominating the accused with specification. It is the claim of the prosecution that two eyewitnesses saw the incident and they informed it to the complainant. The question in such circumstance arises that what precluded the eyewitnesses to keep mum for about 31-hours in reporting the crime to the police, is mystery and goes against the prosecution. Moreover, Shaukat Ali (PW.7) during cross-examination categorically admitted that he got drafted the application from an individual from district court/Katchari at Kasur. As this is an important aspect, hence an excerpt from the cross-examination of Shaukat Ali (PW.7) is being reproduced hereunder:-

“I was in service and posted at RHC Ganda Singh Wala, Kasur. I got drafted application for the registration of FIR from Katchari. I got drafted application for registration of FIR on the second day of occurrence and I have got drafted application Ex.PD without taking the dictation of anyone and advice.”

We have minutely gone through the record and failed to find out the name of the person from whom the complainant got drafted the complaint (Exh.PD). Furthermore, neither the scribe of the complaint was produced before the Investigating Officer nor at trial stage to prove that he drafted the complaint (Exh.PD) at the dictation of the complainant. It is also observed that admittedly

the complainant was not an eyewitness of the incident and whatever he mentioned in the complaint (Exh.PD) was told to him by the alleged two eyewitnesses i.e. Ghazanfar Ali (PW.8) and Muhammad Akram (PW.9). In these circumstances, the delay of 31-hours in chalking out the FIR raises eyebrow regarding the authenticity of the prosecution case. As per settled principles laid down for the appraisal of evidence, the delay in reporting the matter to the police gives rise to possibility of concoction and fabrication of facts mentioned in the crime report warranting more cautious approach from the court. In this regard, reference can be made to the case reported as Wajahat Ahmed and others v. The State and others (2016 SCMR 2073) wherein the Supreme Court of Pakistan held as under:-

“It has been observed by us that the occurrence in this case (as per contents of FIR and Private Complaint) took place on 26.10.2010 at 1.30 p.m. However, the matter was reported to the police by complainant Sajwar Ahmed (PW1) through a written complaint (Ex.PA) on 27.10.2010, whereupon formal FIR (Ex.CW-8/A) was registered at 6.15 p.m. i.e. after one day, our hours and forty five minutes of the occurrence. The complainant has not been able to sufficiently explain the delay in lodging the FIR. Rather in his cross-examination he has stated that he along with his injured wife visited PS Gogera at about 1.30/2 PM on 26.10.2010 i.e. almost immediately after the occurrence but did not make any statement regarding the occurrence. The failure of complainant (PW1) to report the incident to the police when he visited the police station along with his injured wife (deceased Mst. Surayya Bibi) casts serious doubt on the veracity of his statement made before the learned trial Court.”

12. The ocular account in this case was furnished by two eyewitnesses, namely, Ghazanfar Ali (PW.8) and Muhammad Akram (PW.9). The perusal of FIR (Exh.PA) reveals that besides the afore-said witnesses, the incident seemed to have been witnessed by Shaukat Ali complainant (PW.7). However, as per record on the very next day of registration of FIR, the complainant Shaukat Ali (PW.7) made supplementary statement to the effect that he had not seen the occurrence and whatever he narrated in the FIR was told to him by the remaining two eyewitnesses. This

fact even was admitted by the two eyewitnesses during their cross-examination. In such situation, we are inclined to discard the statement of Shaukat Ali (PW.7) out of consideration.

With regard to the statements of Ghazanfar Ali (PW.8) and Muhammad Akram (PW.9), it would be important to mention here that both are real brothers of Muhammad Sufian (deceased). According to them, on 01.01.2017 at about 2:00 p.m. their brother Muhammad Sufian was sitting on his grocery shop when Ihsan Illahi (appellant) and one unknown accused equipped with pistols came there. Ihsan Ilahi (appellant) fired five straight shots at him which landed on his right side of abdomen, left wrist, right knee, left buttock and left foot. The unknown accused was ascribed the role of firing shots so as to create terror. However, during cross-examination the complainant admitted the fact that:-

“On 01.11.2017 when the police arrived at the alleged place of occurrence I and my sons Ghazanfar and Akram have not recorded any statement regarding the alleged occurrence before police.”

Similarly, during cross-examination Ghazanfar Ali (PW.8) acknowledged that neither he, his brother Akram nor their father made any statement or provided information to the police about the incident on 01.11.2017. In this backdrop, we have made an in-depth analysis of the statements of the two eyewitnesses and found that while appearing before the trial court, both of them made dishonest improvements and omissions in their statements. According to Ghzanfar Ali (PW.8), he along with his brother Muhammad Akram (PW.9) was standing outside the shop of one Ahmad. Ghazanfar Ali further stated that after the occurrence he and his brother informed their father about the incident and all the three escorted Sufian in injured condition to hospital. Such stance of Ghazanfar Ali (PW.8) was confronted with his police statement (Exh.DD) where it was not so recorded. Contrarily, Muhammad Akram (PW.9) during cross-examination took the stance that he along with his brother was present at the shop of his brother

Sufian. During cross-examination he also stated that in his statement (Exh.DE) he took the stance that five fire shots hit on left side of abdomen, left wrist, thigh of left leg, left foot and upper side of knee of right leg of Sufian. However, when such portion of cross-examination was confronted with his police statement (Exh.DE) the specifications of locale and seat of injuries were not found therein. Besides above omissions, the statements of the two PWs are further found polluted with numerous other improvements and omissions. By doing so, Ghazanfar Ali (PW.8) and Muhammad Akram (PW.9) compromised their integrity thereby left a big question mark over their credibility. It would be of great advantage to make reference to the observation of the Supreme Court of Pakistan regarding the legal status of a witness who is found guilty of having made dishonest improvements, expressed in the case reported as *Ibrar Hussain and others (2007 SCMR 605)* as under:-

“It is settled law that person making contradictory statements cannot be held worthy and credence as law laid down by this Court in Muhammad Shafique Ahmad’s case PLD 1986 SC 471. It is a settled law that witness making improvements and changing version as and when suited according to the situation then such type of improvements were found deliberate and dishonest, therefore, cause serious doubt on the veracity of such witness.”

We have also noted that as per statement of Dr. Mohsin Raza Shirazi (PW.6) the injured was brought to hospital by Muhammad Ashraf 485/HC, however the name of none of the eyewitness is mentioned in the MLC (Exh.PC). This feature makes it clear that had any of the eyewitness been present at the place of occurrence his name would have been reflecting in the MLC prepared by Dr.Mohsin Raza Shirazi (PW.6). It has also been observed by this Court that both the eyewitnesses along with the complainant in their examination-in-chief stated that they shifted the injured to hospital in injured condition. For ready reference, an extract from

the examination-in-chief of Shaukat Ali (PW.7) is mentioned hereunder:-

“I along with my both sons escorted Sufyan in injured condition to DHQ Hospital Kasur by boarding him on ambulance along with police.”

However, during the course of cross-examination, all the three witnesses took a somersault by stating that the injured was shifted to hospital through Rescue-1122. In this regard, a portion from the cross-examination of Shaukat Ali (PW.7) is reproduced hereunder:-

“I along with my sons Ghazanfar and Akram PWs boarded on the same 1122 vehicle and reached at DHQ Hospital Kasur at 3:00, 3 ½ P.M.”

Furthermore, neither the driver of ambulance nor that of Rescue-1122 appeared in the witness box during trial. Likewise, no documentary evidence or record from Rescue-1122 was presented during trial. During cross-examination all the afore-mentioned three witnesses miserably failed to address the afore-mentioned shortcoming and did not give any answer, which may inspire confidence. In case reported as *Qadir Bakhsh and another v. State and another* [PLJ 2003 Cr.C. (Quetta) 157 (DB)], a learned Division Bench of Quetta High Court acquitted the accused wherein the person who brought the deceased to the hospital was not produced during trial with the following observation:-

“It had come on record that Abdul Sattar who took the deceased in Suzuki Pick Up informed the complainant about the said incident; Abdul Sattar is a very material and important witness but he has not been examined which further creates a dent in the prosecution case and presumption would be that had he appeared, he would not have supported the prosecution version.”

13. The ocular account is also belied by the medical evidence produced by Dr.Mohsan Raza Shirazi (PW.6) and Dr.Sami Ullah (PW.11). According to record, Dr.Mohsan Raza Sherazi (PW.6) on 01.11.2017 at about 3:20 p.m. medically examined Muhammad Sufain deceased (in injured condition) and issued MLC (Exh.PC).

Perusal of the MLC (Exh.PC) unfolds that Dr.Mohsan Raza noted four entry wounds on left side of abdomen, left forearm, right knee joint and left upper leg. However, we have observed that Dr.Mohsan Raza Shirazi (PW.6) in examination-in-chief stated that Muhammad Sufian (deceased) in injured condition was brought by Muhammad Ashraf 485/HC with the "**history of fight, firearm injury hit by two persons**". He also stated that the injured was "**vitally stable well oriented in time and space**". Firstly, we would like to observe here that according to the doctor, the injured received injuries as a result of fight and not due to the criminal assault launched by anybody. Secondly, as per prosecution's own case the complainant had already got registered two FIRs against the appellant who was none other than paternal cousin of the deceased. Thus there was no question of mistaken identity but the injured did not disclose the name of the appellant before the doctor. Even Dr.Mohsan Raza (PW.6) during cross-examination admitted that had the injured told the name of any person he would have mentioned the same in brief history. Since this is an important aspect, a relevant portion of cross-examination of Dr.Mohsan Raza is being reproduced hereunder:-

"The brief history was narrated to me by the injured himself. The injured did not disclose the name of person with whom the fight had taken place. Similarly the injured had not told the names of any person who caused firearm injuries alleged to him. When I examined the injured he was in senses. Had the injured been told the name of any person in his brief history to me the same must have been mentioned in the MLC by me."

It has further been noted by us that after the incident Muhammad Sufian (deceased) remained alive for almost 18-days and according to Dr.Mohsan Raza Shirazi (PW.6) he was stable but no application was moved by any of the Investigating Officer to record his statement. Such conduct of the Investigating Officer also makes the prosecution case highly doubtful.

Dr. Sami Ullah (PW.11) though while conducting postmortem examination of the deceased noted four entry wounds

as mentioned by Dr.Mohsan Raza Shirazi (PW.6) in MLC, however, during cross-examination he categorically admitted the variation and location of injuries between the MLC and PMR on the body of the deceased. As this is a very significant factor, hence it is considered appropriate to mention hereunder the relevant portion of the cross-examination of Dr.Sami Ullah (PW.11):-

“I have perused the alleged MLC of then injured Sufian prior to conduction of PMR. It is correct that injury 2-A mentioned in MLC is outer side of left forearm whereas the injury No.2A mentioned by me in PMR reflects that it was located on inner and front side of left forearm. It is correct that as injury No.2-B mentioned by me in the PMR reflects that it was on the backside of forearm whereas the same injury is mentioned in MLC at inner side of left forearm. It is correct that as MLC injury No.3 indicates that it was on the inner side of right knee joint whereas injury No.3 mentioned in PMR reflects that it was on outer side of left thigh. It is correct that there is an injury No.3-B which is an exit mentioned in PMR on the backside of left thigh whereas as per PMR injury No.4-A as an entry wound was located on lateral side of right lower leg whereas as per MLC this injury was located and seated at the outer side of left upper leg 7 cm from knee joint. As per PMR injury No.4-B as an exit wound was located on inner side of right knee joint whereas according to MLC this injury was located on the backside of left upper leg 8 cm from knee joint.”

In these circumstances, the medical evidence is also of no help to the prosecution. Now, it is an established principle that the medical evidence serves as a form of corroborative piece of evidence. It can validate the version of the prosecution regarding the location and nature of injury, the type of weapon involved in the incident and the time elapsed between death and postmortem examination. However, it does not establish the identity of the perpetrator. Reliance is placed upon the case reported as *Muhammad Tasaweer v. Hafiz Zulkarnain and two others (PLD 2009 Supreme Court 53)* wherein the Supreme Court of Pakistan held as under:-

“It is also settled law that medical evidence may confirm the ocular evidence with regard to the seat of injury, nature of the injury, kind of weapon used in the occurrence but it would not connect the accused with the commission of the crime.”

14. In order to look for any further corroboration, we have gone through the motive part of the prosecution case and have found that at the time of registration of F.I.R as well as during the trial, a specific motive was taken up. It spells out from the record that the motive was canvassed as the registration of two criminal cases i.e. FIR No.116/2014 under Sections 324,109 & 34 PPC and FIR No.297/2017 under Section 324 PPC both registered at Police Station Ganda Singh Wala, against the appellant and in both the cases he was proclaimed offender. In this regard, it is observed that in support of projected motive, except oral assertion, no material was placed on record. It needs no scholarly discussion that the registration of previous criminal cases, purportedly registered against the appellant, could easily be proved by tendering in evidence the copies of FIRs. It is intriguing to observe that what to talk of placing on record the copies of said FIRs, the PWs failed to give its particulars while appearing before the trial court. However, complainant Shaukat Ali (PW.7) during cross-examination admitted that the appellant is not convicted in any of the criminal cases registered against him. He further admitted that while lodging the FIR (Exh.PD) he mentioned that he got registered the two FIRs, however one was registered by him and the other was got registered by his son Muhammad Akram (PW.9). During the course of cross-examination, the complainant admitted that the sister of the appellant is the wife of Sanaullah son of complainant who kicked her out along with children and she filed a petition under Section 491 Cr.P.C. whereby she obtained the custody of her children from Sessions Judge. In such circumstances, the petition under Section 491 Cr.P.C. filed against complainant's son Sanaullah can also be considered a factor for the false implication of the appellant in the instant case. Needless to mention here that the motive on occasions provides corroboration to the case of prosecution and often becomes a root cause for the false implication of an accused

and for this reason is always considered as a double-edged weapon. Guidance in this regard can be sought from the case reported as *Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652)*, wherein the Supreme Court of Pakistan held as under:-

“The motive is always a double-edged weapon. The complainant Sultan Ahmad (PW9) has admitted murder enmity between the parties and has also given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse.”

15. Insofar as the positive report of PFSA (Exh.PS) through which the pistol recovered from the appellant matched with five crime empties secured from the spot is concerned, we have observed that the complainant as well as the two eyewitnesses during their respective cross-examination specifically admitted that on 01.11.2017 police prior to the registration of FIR visited the crime scene, however no crime empty was secured from the spot at the time of first visit of police. On account of relevancy, the portions from the cross-examination of the afore-mentioned three witnesses are reproduced below in verbatim:-

Shaukat Ali (PW.7)

“When Police firstly visited on 01.11.2017 the alleged place of occurrence no any crime empty was recovered from the alleged place of occurrence.”

Ghazanfar Ali (PW.8)

“It is correct that no any crime empty of any alleged weapon was recovered on the day of alleged occurrence at the time visit of place of occurrence in our presence.”

Shaukat Ali (PW.9)

“It is correct that the police visited the alleged place of occurrence on 01.11.2017. It is further correct that no any alleged crime empty was recovered on 01.11.2017 from the alleged place of occurrence.”

According to the first Investigating Officer, namely Naseer Ahmad SI (PW.13), he visited the spot on 02.11.2017 and took into possession blood stained cotton and five crime empties of .30 bore pistol through recovery memos Exh.PH & Exh.PG

respectively. In this regard, Naseer Ahmad SI also prepared site plan (Exh.PR), the perusal of which unfolds that he collected five crime empties from Point-D which is a thoroughfare situated in front of the shop of the deceased. Admittedly, he visited the spot after more than one and a half day of the incident and the place of recovery of crime empties is a thoroughfare. Hence, it seems not plausible that the crime empties remained lying at the spot, which were not taken into notice by police on 01.11.2017 and nobody removed the same in spite of free public movement. Prosecution also produced Muhammad Abbas 704/HC (PW.5) who deposed that on 02.11.2017 Naseer Ahmad ASI handed over to him two sealed parcels said to contain blood stained cotton and crime empties of pistol .30 bore which he kept the same in safe custody in Malkhana and on 08.12.2017 he handed over the above said parcel to Naseer Ahmad ASI for depositing the same in the office of PFSA. However, Naseer Ahmad ASI did not utter a single word regarding the fact that on 02.11.2017 he handed over the parcel of crime empties to Muhammad Abbas 704/HC (PW.5) and took the said parcel from him on 08.11.2017 for depositing the same in the office of PFSA. In the wake of this fact, the positive report received from the PFSA is of no use to the prosecution because the chain of safe custody is missing, which creates serious doubt about the recovery of the .30 bore pistol alleged to be used as a weapon at the crime scene. Reference in this context may be made to the case reported as *Kamal Din alias Kamala v. The State* (2018 SCMR 577) wherein the Supreme Court of Pakistan discarded the positive report of FSL with the following observation:-

“As regards the alleged recovery of a Kalashnikov from the appellant's custody during the investigation and its subsequent matching with some crime-empties secured from the place of occurrence suffice it to observe that Muhammad Athar Farooq DSP/SDPO (PW18), the Investigating Officer, had divulged before the trial court that the recoveries relied upon in this case had been affected by Ayub, Inspector in an earlier case and, thus, the

said recoveries had no relevance to the criminal case in hand. Apart from that safe custody of the recovered weapon and its safe transmission to the Forensic Science Laboratory had never been proved by the prosecution before the trial court through production of any witness concerned with such custody and transmission.”

16. Learned counsel for the complainant has argued that the appellant remained absconder for a considerable period and proclamation proceedings under section 87 Cr.P.C (Exh.PQ) were initiated against him so this aspect reflects about the guilt of the appellant. In this regard it is observed that in our country people absconds not merely because of the fact that they are guilty but due to fear and torture of the police. Even otherwise the abscondment of an accused is the corroborative piece of evidence and in cases where direct evidence fails, corroborative piece of evidence is of no avail. In this regard guidance is sought from the observation of Supreme Court of Pakistan expressed in case titled as Rasool Muhammad v. Asal Muhammad and 3 others (1995 SCMR 1373), which for reference sake is being reproduced hereunder:-

“.....Furthermore, disappearance of a person named as, murderer/culprit after the occurrence, is but natural, whether named rightly or wrongly. Absconce per se is not a proof of the guilt of an accused person it may, however, create suspicions against him but suspicions after all are suspicions.”

17. The resume of afore-mentioned discussion is to the effect that the prosecution failed to prove its case against Ihsan Ilahi alias Shani (appellant) because the two eyewitnesses compromised their integrity by making dishonest improvements in their statements, the delay of 31-hours in registering the FIR remained unexplained, the victim did not disclose the name of the culprit/appellant to the first medical officer, the positive report of PFSA is inconsequential and the motive was not properly proved. Even otherwise, it is settled principle of law that if there exists even a single factor that raises doubt qua the prosecution case it is considered sufficient for the acquittal of accused. The case in hand

is filled with numerous lacunas that reflect significant doubts about the prosecution narrative. Reliance is placed upon the cases reported as Tariq Pervaiz v. The State (1995 SCMR 1345) and Muhammad Akram v. The State (2009 SCMR 230). In the former cited judgment, the Supreme Court of Pakistan acquitted an accused with the following observation:-

“The concept of benefit of doubt to an accused person is deep-rooted in our country. For giving him benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.”

18. For the reasons mentioned hereinabove, we allow **Criminal Appeal No.67614 of 2019** while giving benefit of doubt in favour of Ihsan Ilahi alias Shani (appellant), set-aside his conviction and sentence and as a necessary corollary he stands acquitted of the charge. He shall be released forthwith if not required to be detained in any other criminal case. Resultantly, **Murder Reference No.33 of 2020** is answered in the **NEGATIVE** and death sentence awarded to Ihsan Ilahi alias Shani (convict) is **NOT CONFIRMED.**

(AALIA NEELUM)
CHIEF JUSTICE

(ABHER GUL KHAN)
JUDGE

APPROVED FOR REPORTING

(ABHER GUL KHAN)
JUDGE

The order was announced on 03.04.2025, the judgment has been dictated, prepared and signed on 07.04.2025
 Najum*