

Stereo. H C J D A 38.

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

Murder Reference No.109 of 2022
(The State *versus* Nauman Ijaz)

Crl. Appeal No.30048-J of 2022
(Nauman Ijaz *versus* The State, etc.)

Crl. Appeal No.30043 of 2022
(Muhammad Asim *versus* The State, etc.)

JUDGMENT

Date of hearing: 17.11.2025.

Appellant by: Chaudhary Walayat Ali, Advocate.

State by: Rana Ahsan Aziz, Additional Prosecutor General.

Complainant by: Mr. Muhammad Imran, Advocate.

AALIA NEELUM, C.J.:- The appellant, Nauman Ijaz, son of Ijaz Ahmad, Caste Sheikh, resident of street No.4, Kamal Abad, District Faisalabad, has assailed his conviction and sentence recorded by the learned Additional Sessions Judge, District Faisalabad, vide judgment dated 31.03.2022 in case FIR. No.996-2019, dated 14.12.2019, offences under sections 302, 449, 34 of P.P.C, registered at the police station, Raza Abad, District Faisalabad, whereby the trial court convicted the appellant **under Section 302 (b) PPC** and sentenced to **Death** for committing Qatl-e-Amd of Mohsin Raza, with the direction to pay compensation of Rs.3,00,000/- as envisaged under section 544-A of Cr.P.C, which would be recovered as arrears of land revenue, and in case of default thereof, to undergo 06-months S.I. The appellant was also convicted under section 449 P.P.C. and sentenced to rigorous imprisonment for 07 years, with fine of Rs.75,000/- and, in case of default, to undergo 04 months S.I.

2. Feeling aggrieved by the judgment of trial court, Nauman Ijaz, the appellant, has assailed his conviction and sentence by filing the instant appeal bearing **Criminal Appeal No.30048-J of 2022**. The learned trial court also sent **M.R. No.109 of 2022** (The State vs. Nauman Ijaz) to confirm the death sentence awarded to the appellant, Nauman Ijaz. It is pertinent to mention here that the complainant also filed a **Crl. Appeal No.30043 of 2022** against the acquittal of respondents No.1 and 2. All the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. The prosecution story as alleged in the F.I.R (Ex. PB) lodged on the application (Ex.PE) of Muhammad Asim (PW-5)-the complainant is that on 14.12.2019, at about 12:00 Noon, the complainant (PW-5) along with his brother, Mohsin Raza (since dead) and Muhammad Shafique (PW-6) were present in the room of the house. Suddenly, the accused, Nauman Ijaz, along with an unknown accused person, while armed with their respective weapons, entered the house. Upon seeing the complainant party, the accused, Nauman Ijaz, raised a lalkara and made a fire shot which hit the right side of the abdomen of Mohsin Raza (since dead). The accused, Nauman Ijaz, made a second fire which landed on the left side of the belly of Mohsin Raza (since dead). Thereafter, the accused, Nauman Ijaz, made a third fire, which hit the left leg near the knee joint of Mohsin Raza (since dead), whereupon Mohsin Raza (since dead) fell. After that, the accused persons decamped from the place of occurrence while making aerial firing. The complainant (PW-5) and Muhammad Shafique (PW-6) took Mohsin Raza (since dead) to the hospital in an injured condition.

4. The motive behind the occurrence was that accused-Nauman Ijaz, used to tease the daughter of Muhammad Shafique, namely, Iqra, and when the brother of the complainant, Mohsin Raza (since dead), forbade him, he bore a grudge against Mohsin Raza (since dead), and resultantly, the alleged occurrence took place.

5. On 17.12.2019, Ali Akbar, A.S.I (PW-11) received information that Mohsin Raza, the injured, died at Allied Hospital, Faisalabad, whereupon he (PW-11) entered this information in the rapt Rozmancha vide rapt No.11, and altered the offence under section 324 PPC into an offence under section 302 PPC.

6. After registration of the case, the investigation of this case was conducted by Atique-ur-Rehman, S.I. (PW-10), who arrested the accused on 04.01.2020, and having found him guilty, prepared a challan under section 173 Cr.P.C. and sent the same to the court of competent jurisdiction while placing the names of all accused persons in Column No.3 of the challan. On 23.10.2020, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as fourteen (14) witnesses.

7. After the closure of prosecution evidence, the appellant was examined under Section 342 of Cr.P.C., wherein neither he opted to appear as his own witness in terms of Section 340 (2) Cr.P.C. nor to produce any evidence in his defence. In response to a particular question that why this case was against him and why the PWs had deposed against him, the appellant-Nauman Ijaz, made the following deposition: -

“It has come in the evidence of prosecution witnesses that Iqra PW daughter of Shafique PW was a trainee in a beauty parlor situated at a distance of 2 or 3 streets from the house of Shafique PW. The parents of Iqra and also her brother Zahid were against her training. Moreover, Tayyaba sister of Iqra PW was allegedly abducted and case F.I.R. No.508/19, dated 01.05.2019, under sections 365-B, 376, 148, 149 PPC, police station, Raza Abad was registered on the instance of Mst. Nasreen wife of Shafique PW. Due to these circumstances, the relatives and some of their opponents were deadly against the family of Shafique PW. The complainant Muhammad Asim and her deceased brother Mohsin are not relatives of Muhammad Shafique PW but despite that they used to visit them frequently. Neither Shafique PW nor Zahid, brother of Iqra initiated for registration of this case, despite the fact

that occurrence allegedly took place in their house. Rather it was registered on the application of Asim PW who is resident of Mullan Pur Chak No.77/JB (as per his CNIC), situated at a distance of about 25 KM. There is no conflict between the family of Nauman Ijaz and Muhammad Shafique PW. The complainant has involved innocent Nauman Ijaz accused just to save their honour, in connivance with police, as the actual culprit could not be traced. Neither the PWs nor the accused were present on the spot on the alleged day of and time of occurrence.”

8. After recording evidence and evaluating the evidence available on record in the light of the arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant’s conviction in the afore-stated terms.

9. We have heard the arguments advanced by the learned counsel for the parties and have minutely perused the record on the file.

10. In the instant case, the occurrence took place on 14.12.2019 at about 1.15 p.m., whereas the distance between the place of occurrence and the police station is one (1) kilometer. Whereas in the instant case incident was not reported at the Police Station, rather Ali Akbar ASI (PW-11) met Muhammad Asim (PW-5), complainant at Allied Hospital, Faisalabad, at 1:15 p.m., who received the complaint (Ex.PE) endorsed the police “Karvai” at 1:15 p.m. on 14.12.2019 and referred the same to Police Station through Muhammad Umair Aslam 6114/C (PW-12) for lodging of a formal FIR based on which Kashif Ali 5741/MHC (PW-3) chalked out the formal FIR (Ex.PB) at 1:40 p.m. on 14.12.2019. The entire criminal case depends on the first information recorded in the complaint before the police, and the entire evidence depends on that document. According to the prosecution, Muhammad Asim (PW-5), the complainant, took his brother, Mohsin Raza, to the Allied Hospital, Faisalabad, for medical treatment. The relevant portion of the examination-in-chief of Muhammad Asim (PW-5), the complainant is as under:-

“We thereafter took our brother Mohsin Raza for providing him medical facility to Allied Hospital, Faisalabad.”

Muhammad Asim (PW-5), the complainant, deposed during cross-examination that:-

“Police reached at the spot at 2:00 PM. I informed the police regarding the occurrence by making telephonic call. I made call to rescue 15 to inform about the occurrence. After making call to rescue 15, Ali Akbar S.I reached at the hospital. Volunteered that position of my brother was critical that's why, we had shifted him to Allied Hospital. We reached hospital at about 10:30 PM. Application was drafted by computer operator, sitting outside the allied hospital. I signed the said application at one 01:40/01:45 PM. Application was presented to Ali Akbar S.I. Ali Akbar S.I came at the spot at 02:00 PM after his interaction with us in the hospital. ----- The information of the occurrence furnished to police by me at about 12:00 Noon by making a call to rescue 15. ---- Police did not arrive at the spot in my presence. The police met me for the first time after the occurrence at about 1/1.15 at Allied Hospital, Faisalabad. The police official who met me at Allied Hospital, Faisalabad, were Ali Akbar A.S.I and other constables.”

Similarly, Muhammad Shafique (PW-6) deposed during examination-in-chief that:-

“I alongwith Asim thereafter took Mohsin Raza for providing him medical facility to Allied Hospital, Faisalabad.”

In the same lines, Iqra (PW-7) deposed during the examination-in-chief. Ali Akbar A.S.I. (P.W-11) deposed during his examination-in-chief that on receiving information of the incident, he, along with other police officials, reached Allied Hospital, Faisalabad, where he received a written complaint (Ex. PE) from Muhammad Asim (PW-5), the complainant. Ali Akbar A.S.I. (P.W-11) deposed during cross-examination that:

“It is correct that time on my police proceeding is mentioned by me is 1:15 PM.”

Muhammad Umair Aslam 6114/C (PW-12) deposed during cross-examination that:-

“Ali Akbar ASI handed over to me complaint
Exh.PE at about 01:15 PM at Allied Hospital.”

In the light of the prosecution's evidence, it has come to record that the Muhammad Asim (PW-5), the complainant took his brother Mohsin Raza, the then injured to the Allied Hospital, Faisalabad to save his life and there he met Ali Akbar ASI (PW-11), the investigating officer, to whom he reported the incident through a written complaint (Ex.PE). This prosecution story conflicts with the documentary evidence. The documentary evidence, i.e., medico-legal certificate (Ex.PQ), shows that Mohsin Raza was taken to the Government General Hospital, GM Abad, Faisalabad, by his brother Sohail and Adnan Amin, 1787/Constable, where Mohsin Raza received medical treatment. His arrival time is recorded as 12:20 PM in the relevant column, and his examination is conducted at that time. Along with this, the column in which the date of the police docket court order is written, FIR No. 996/2019, is mentioned. Whereas FIR (Ex. PB) was registered at 01:40 p.m. on 14.12.2019. Dr. Nasir Hussain (PW-13) deposed during examination-in-chief that on 14.12.2019 at about 12:20 PM, he medically examined Mohsin Raza. The undisputed documentary evidence must prevail over the oral evidence. In the present case, the undisputed documentary evidence is the medico-legal certificate (Ex.PQ); therefore, the medico-legal certificate (Ex.PQ) should be given preference over the overall oral evidence of the prosecution witnesses i.e. Muhammad Asim (PW-5), the complainant, Muhammad Shafique (PW-6), Iqra (PW-7), Ali Akbar A.S.I. (P.W-11) and Muhammad Umair Aslam 6114/C (PW-12). A man may lie, but documents do not" is a cardinal legal principle for evaluating evidence. Dr. Nasir Hussain (PW-13) deposed and also mentioned in the medico-legal certificate (Ex.PQ) that a copy of the medico-legal certificate (Ex.PQ) was received by "Sohail". Relevant portion of cross-examination of Dr. Nasir Hussain (PW-13) is as under:-

“I have mentioned the name of Sohail, who
received the MLC from me.”

Dr. Nasir Hussain (PW-13) deposed during the cross-examination that:-

“The examinee was vitally unstable and semi-conscious state. The examinee was in critical condition at that time.”

Ali Akbar, A.S.I. (P.W-11), the investigating officer, deposed during his testimony that he recorded the dying declaration of Mohsin Raza, who was then injured. He (PW-11) deposed that upon receiving information of the occurrence, he went to the Allied Hospital, Faisalabad; After receiving a written complaint (Ex. PE), he sent it to the police station at 01:15 p.m. on 14.12.2019; After that, he proceeded to the place of the occurrence, securing blood through cotton from the place of the occurrence, five crime empties P5/1-5 of pistol 30-bore, prepared recovery memos, and recorded statements of the prosecution witnesses regarding recovery proceedings; and on the same day he (PW-11) recorded statement of Mohsin Raza, then injured. From the deposition of Ali Akbar A.S.I. (P.W-11), the investigating officer, it reveals that he recorded the statement of Mohsin Raza on the same day after visiting the place of occurrence. Ali Akbar A.S.I. (P.W-11), the investigating officer, deposed during the cross-examination that:-

“I did not seek information from Doctor before recording the statement of injured Muhammad Asim. I recorded the statement of injured Mohsin Raza at Allied Hospital, Faisalabad outside the emergency.”

11. From the above deposition of Ali Akbar A.S.I. (P.W-11), the investigating officer reveals that he recorded the statement of Mohsin Raza, who was then injured outside the emergency of Allied Hospital, Faisalabad. Whereas the Anesthesia notes Ex.PS/1-42 of Allied Hospital, Faisalabad (available at page 200 of the paper book) reveal that Mohsin Raza, then injured, was admitted to the hospital on 14.12.2019 at 12:45 p.m., and UOP (stands for Urine Output) was started and observed from 01:00 p.m. till 08:00 p.m. The Anesthesia record Ex.PS/1-42 of Allied Hospital, Faisalabad (available at page 201 of the paper book) reveals that Mohsin Raza, then injured, was under observation since 1:00 p.m. on 14.12.2019. In the present case, admittedly, the alleged dying declaration was not made to any doctor or independent witness, but only to Ali Akbar A.S.I. (P.W-11), the investigating officer, who, as stated above, arrived at

the hospital after visiting the place of occurrence and the outside emergency ward. When Mohsin Raza was already injured and under the supervision of the Anesthesia doctors from 12:45 p.m. on 14.12.2019 onward. Allied Hospital (FMU), Faisalabad, Accident & Emergency mortality summary Ex.PS/1-42 (available at page 177 of the paper book) shows that the patient was transferred to the ICU in a shock state, with inotropic support and a ventilator. This suggests that Mohsin Raza was not lying outside the emergency ward, and he was in an unconscious condition with oxygen tubes having been inserted in his nostrils. Mohsin Raza was not in a fit condition to make the declaration before Ali Akbar A.S.I. (P.W-11), the investigating officer. The evidence of the alleged oral dying declaration by the deceased Mohsin Raza to Ali Akbar A.S.I. (P.W-11), the investigating officer relied upon by the prosecution and not accepted by the trial court, was, in our view, not strong, satisfactory, or convincing enough to establish that the deceased Mohsin Raza was in a fit condition to make an oral declaration to Ali Akbar A.S.I. (PW-11) before his death. In the circumstances mentioned above, the presence of Muhammad Asim (PW-5), the complainant at the place of occurrence, is highly doubtful. Muhammad Asim (PW-5), the complainant, deposed during examination-in-chief that he was present at the house of Muhammad Shafique (PW-6) with his brother, Mohsin Raza, when the incident occurred. Muhammad Asim (PW-5), the complainant, deposed during cross-examination that he used to meet Muhammad Shafique (PW-6) every day or after 4/5 days before the occurrence; it was his routine. But at the same time, he expressed his ignorance of the fact that he did not know about the teasing by the appellant of Iqra Bibi (7), the daughter of Muhammad Shafique (PW-6). He (PW-5) also deposed that in the days of the occurrence, he resided at Ghulam Muhammad Abad, which was at a distance from the place of the occurrence 3/3 ½ kilometers, and Muhammad Shafique (PW-5) is a friend of theirs (complainant and deceased). Muhammad Asim (PW-5), the complainant, deposed during cross-examination that:-

“---Muhammad Shafique PW is our friend, not relative. House of Muhammad Shafique PW is situated in Street No.23, Raza Abad, Faisalabad City. At present we all the family members are residing in

Sadar Bazar, Ghulam Muhammad Abad. My this address is not mentioned in my CNIC, however, the address of our village Chak No.77/JB Mullanpur is mentioned there. At the time of occurrence, we were residing at Ghulam Muhammad Abad. The distance between the place of occurrence and the place of my residence at Ghulam Muhammad Abad is about 3/3 1/2 KM. ---- There was no special occasion in the house of occurrence on the fateful day. --- It is not in my knowledge that Shafique was ever approached at any forum while complaining against Numan Ijaz regarding teaching his daughter Iqra. I also never complained at any forum in writing by alleging that accused Nauman teased Iqra daughter of my friend Muhammad Shafique PWs. Volunteered this fact was for the first time disclosed to me by Shafique PW on the date of occurrence, prior to the occurrence---I used to visit house of Shafique PW daily or after 4/5 days prior to the occurrence. ----- The application for registration of criminal case was got typed by me from the computer operator, sitting outside Allied Hospital, Faisalabad. I have not consulted with PWs Iqra and Shafique regarding contents of said application. Soon after the drafting of said application I told Iqra and Shafique that they have been cited as witnesses. I have mentioned my address at application Exh.PE as resident of Chak No.77/JB Mullan Pur. Whenever I joined the investigation I mentioned my same address before the police. ----- The distance between Raza Abad and 77/JB Mullan Pur is about 30 to 35 KM. Place of occurrence is situated in Raza Abad colony. I have mentioned in my application Exh.PE Shafique is dear to me (Aziz)."

Whereas Muhammad Shafique (PW-6) deposed during examination-in-chief about the place of residence of Muhammad Asim (PW-5), the complainant

"----Muhammad Asim and Mohsin Raza sons of Mushtaq, residents of Chak No.77/JB Mullan Pur, Faisalabad came to meet us and we were sitting in the residential room of our house---"

He (PW-6) also deposed during cross-examination that:

"----Deceased Mohsin Raza and his brother Muhammad Asim came together at the scene crime fifteen minutes prior to the occurrence. House of Muhammad Asim/complainant is at a distance of 3/4

four kilometers from my house. Mohsin deceased and Muhammad Asim complainant were residing in the same house during the days of occurrence. Deceased was friend of my son Muhammad Zahid that is why we were on visiting terms. My son Muhammad Zahid works in motor market. ----- My house is situated in a public thoroughfare. Deceased and complainant used to visit out house once or twice in a week and sometimes after a week---

Iqra (PW-7), an eyewitness, deposed contrary to Muhammad Asim (PW-5), the complainant, and Muhammad Shafique (PW-6) about the reason for the visit of the complainant and the deceased and her presence at the time of the occurrence.

Iqra (PW-7), an eyewitness, deposed during cross-examination that:-

“-----The complainant Asim and deceased Mohsin Raza are friend of my father and brothers---At the time of occurrence my elder brother was also present in the house namely Muhammad Zahid. The accused Nauman Ijaz used to tease me prior 2/3 months from the occurrence. I told my parents about the teasing of Nauman Ijaz one week prior to the occurrence. Neither any Punctiat was held by my father nor any application was filed to the police in this regard by my father or brother. -----”

She (PW-7) also deposed during cross-examination that:

“-----On 13.12.2019 my father telephonically called Mohsin Raza regarding the teasing of Nauman Ijaz to me. For this purpose on 14.12.2019, Muhammad Asim and Mohsin Raza came to our house---

Ali Akbar A.S.I. (P.W-11), the investigating officer, deposed during the cross-examination that:-

“-----According to the application submitted by the complainant Asim the address of complainant Asim is mentioned as Chak No.77/GB Mullan Pur, Faisalabad---

The testimony of the prosecution witnesses revealed that the address given by the complainant (PW-5) regarding his residence is not supported by documentary evidence. In this regard, too, there is a contradiction in the statements of the prosecution witnesses. Muhammad Asim (PW-5), the complainant, stated that at the time of the incident, Iqra Bibi (PW-7) was in the

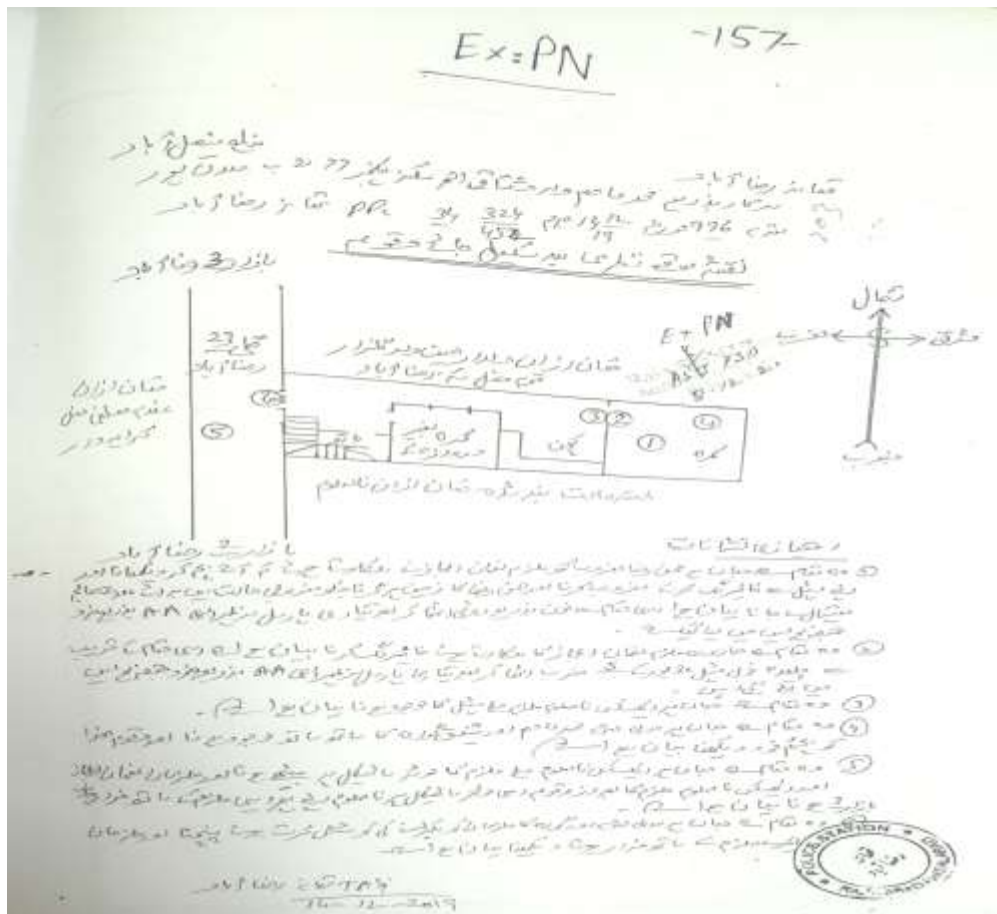
kitchen. There was an open window between the room wall and the kitchen, through which she saw the incident, while Iqra Bibi (PW-7) stated that she was sitting in the room where the incident occurred. Ali Akbar ASI (PW-11), the investigating officer, says that in the unscaled site plan (Ex. PN), he did not mark the point where Iqra Bibi was present. Ali Akbar ASI (PW-11), the investigating officer, admitted that he did not sign the unscaled site plan (Ex. PN); however, it is his handwriting. Ali Akbar, ASI (PW-11), the investigating officer, deposed during examination-in-chief that:-

“----Stated that on 14.12.2019, I was posted as A.S.I at police Station Raza Abad---”

Whereas at the bottom of the unscaled site plan (Ex. PN), it is mentioned:

Handwritten text: 14/12/2019

The scanned copy of the unscaled site plan (Ex. PN) is as follows:-



12. We have also noted that at the bottom of the written complaint (Ex.PE), the recovery memo of crime empties (Ex.PC), the recovery memo of blood-stained cotton (Ex.PD), Ali Akbar ASI (PW-11), the investigating officer mentioned his designation as “ASI”, which also throws clouds of doubt on the deposition of Ali Akbar ASI (PW-11), the investigating officer. The deposition of the above-said prosecution witnesses established that the motive for the incident was also not proved, as an FIR was registered regarding the kidnapping of Muhammad Shafique (PW-6)’s daughter, Tayyaba, on 01.05.2019 under section 365-B PPC and in such circumstances if the appellant was teasing or harassing the second daughter, i.e., Iqra Bibi (PW-7), it was not possible to take this matter lightly and not report it. In the presence of a daughter's abduction case, the teasing or harassment of the other daughter of Muhammad Shafique (PW-6), which has been going on for two consecutive months, is not something the parents can ignore and not act against the appellant. The conflict between the documentary evidence and the witnesses' statements was so serious that it reached the root of the matter and knocked the bottom out of the prosecution's case. Muhammad Shafique (PW-6) deposed that the deceased was a friend of his son Muhammad Zahid, that is why they were on visiting terms. Muhammad Asim (PW-5), the complainant, deposed during cross-examination that:-

“---Muhammad Shafique PW is our friend, not relative. House of Muhammad Shafique PW is situated in Street No.23, Raza Abad, Faisalabad City. At present we all the family members are residing in Sadar Bazar, Ghulam Muhammad Abad. My this address is not mentioned in my CNIC, however, the address of our village Chak No.77/JB Mullanpur is mentioned there. At the time of occurrence, we were residing at Ghulam Muhammad Abad. The distance between the place of occurrence and the place of my residence at Ghulam Muhammad Abad is about 3/3 ½ KM. ----- There was no special occasion in the house of occurrence on the fateful day. ---”

13. Thus, it was established from the evidence of Muhammad Asim (PW-5), the complainant, and Muhammad Shafique (PW-6) that “Zahid” was a friend of the deceased. On the fateful day, he was present in the house; therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of

Qanun-e-Shahadat Order, 1984, that had “Zahid”, been joined in the investigation and appeared in court as a witness. His testimony would have been unfavorable to the prosecution. Reliance is placed on a case reported as “The State and others v. Abdul Khaliq and others” (PLD 2011 SC 554).

14. Moreover, there are sufficient contradictions, improvements, discrepancies, and omissions regarding the mode and manner of the occurrence at the relevant time. Iqra Bibi (PW-7), during the course of cross-examination, deposed as under:-

“---I did not get recorded in my statement under section 161 Cr.P.C before the Investigating Officer that we were sitting in the residential room of our house. I got recorded in my statement under section 161 Cr.P.C that the second fire of accused Nauman Ijaz was hit on the left side of his abdomen. Confronted with Exh.DA where the word “left” is not mentioned. I got recorded in my statement that the third fire shot made by accused Nauman Ijaz hit the Mohsin Raza deceased on the left leg near the knee joint. Confronted with Exh.DA where the word “knee joint” is not mentioned. I got recorded in my statement under section 161 Cr.P.C the time and date of occurrence is not mentioned---Both the accused Nauman Ijaz and Zubair manage to escape from the place of occurrence while riding on the motorcycle of accused Aftab. Confronted with Ex.DA where the name of the accused persons are not mentioned.-----”

15. Thus, it becomes clear that there are significant contradictions in the alleged eyewitness's statement. In such circumstances, the presence of the alleged eyewitness at the spot seems doubtful. The story narrated by the prosecution witness becomes wholly doubtful, and she cannot be believed. However, based on the alleged eyewitnesses' testimony, the trial court erred in convicting the accused-appellant. The Hon'ble Supreme Court of Pakistan in the case of “Muhammad Rafique and others v. The State and others” (2010 SCMR 385) held as under:-

“This Court in the case of Saeed Muhammad Shah v. State 1993 SCMR 550 observed that if a witness improves his statement on material aspects of the case

then such improvement is not worthy of reliance and the evidence of such witness requires corroboration. In the case of Khalid Javed v. State 2003 SCMR 1419 while reiterating the above rule, it was further observed that such witness is to be considered to be wholly unreliable and it is not advisable to place explicit reliance upon his evidence.”

16. This also casts doubt on the authenticity of the versions given by Muhammad Asim (PW-5), the complainant, Muhammad Shafique (PW-6), and Iqra Bibi (PW-7).

17. As regards the recovery of the pistol 30-bore (P-3) along with four alive bullets (P-4), the only incriminating evidence, on the disclosure and pointing of the appellant-Nauman Ijaz and positive report of Punjab Forensic Science Agency (Ex.PU) is concerned, we have noted that the pistol 30-bore (P-3) was recovered on 12.01.2020 from one house situated at Mohallah Madina Park and same was secured through recovery memo (Ex-PL) was deposited with the Kashif Ali 5741/MHC (PW-3) of Police Station for its safe custody in the *Malkhana* on 14.01.2020. Similarly, Ali Akbar ASI (PW-11), the investigating officer, secured five crime empties (P5/1-5) on 14.12.2019 and handed them over to Kashif Ali 5741/MHC (PW-3). Kashif Ali 5741/MHC (PW-3) handed over a parcel said to contain crime empties to Muhammad Amin S.I. (PW-4) on 19.12.2019. Kashif Ali, 5741/MHC (PW-3) deposed during examination-in-chief that:-

“---On 19.12.2019, a sealed parcel said to contain crime empties was handed over to Muhammad Amin, S.I. for its onward transmission to the office of P.F.S.A Lahore, intact---”

Muhammad Amin S.I. (PW-4) deposed during examination-in-chief that:-

“----Stated that on 19.12.2019, I have received a parcel said to contain 5 crime empties of pistol 30 bore from the Moharrar Kashif Ali, 5741/MHC for its onward transmission to the office of P.F.S.A Lahore. The said parcel remained intact with me. The I.O recorded my statement u/s 161 Cr.P.C in this regard”

Atique-Ur-Rehman S.I. (PW-10), investigating officer, deposed during examination-in-chief that:-

“----On 20.12.2019, I recorded the statements of Muhammad Amin S.I and Kashif Ali 5741/C under section 161 Cr.P.C regarding bloodstained cotton and sealed parcel of crime empties for keeping in safe custody, of Malkhana as well as for its onward transmission to the office of P.F.S.A Lahore---”

18. Even no evidence on record was available to show that the five crime empties (P5/1-5) secured on 14-12-2019 were deposited with the office of the Punjab Forensic Science Agency on 20-12-2019. There is no link evidence adduced in this case to find that the five crime empties (P5/1-5) were deposited by Muhammad Amin S.I. (PW-4) with the office of the Punjab Forensic Science Agency on 20.12.2019. The report of the Punjab Forensic Science Agency (Ex.PU) reveals that crime empties were submitted by Muhammad Amin, S.I. (PW-4), on 26.12.2019. Whereas Muhammad Amin S.I. (PW-4) deposed that he deposited the parcel of crime empties with the Punjab Forensic Science Agency on 20.12.2019. So, tampering with the prosecution's evidence cannot be ruled out at this stage. This further creates doubt, and the prosecution's story weakens. We are, therefore, of the view that the recovery of pistol 30-bore (P-3) and positive report of Punjab Forensic Science Agency (Ex.PU) are of no avail to the prosecution. Accordingly, the appellant deserves to be given benefit of doubt and findings in this regard are to be set aside and the same are set aside.

19. From the facts and circumstances narrated above, we are persuaded to hold that the prosecution has not proved its case against the accused beyond a reasonable doubt, as there are many gaps in the prosecution's story. In the present case, the possibility of the occurrence not being witnessed by both prosecution witnesses cannot be ruled out; as such, the conviction and sentence recorded by the learned trial court cannot be sustained. Reliance has been placed on the case reported as **“Muhammad Akram v. The State”** (2009 SCMR 230) wherein the Hon’ble Supreme Court of Pakistan held that:-

“Even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes

him entitled to the benefit, not as a matter of grace and concession but as a matter of right.”

20. Therefore, from the evidence on record, we find that a reasonable doubt exists in the prosecution's version. The genesis of the occurrence has been concealed. The occurrence has not taken place as deposed by the PWs. The ocular evidence is also not proved beyond a reasonable doubt. The PWs also cannot be held as reliable witnesses. Therefore, giving the benefit of doubt to the appellant, **Crl. Appeal No. 30048-J of 2022 filed by Nauman Ijaz, the** appellant, is **accepted in toto**. Resultantly, the conviction and sentence recorded by the learned trial court vide judgment dated 31.03.2022 is **set aside**, as a consequence whereof, the appellant-Nauman Ijaz is ordered to be **acquitted of the charge** in case F.I.R. No.996-2019, dated 14.12.2019, offences under sections 302, 449, 34 of P.P.C, registered at the police station, Raza Abad, District Faisalabad,, and he (the appellant-Nauman Ijaz) is directed to be released forthwith if not required in any other case.

21. **Murder Reference No.109 of 2022** is answered in the **negative**, and the sentence of death awarded to Nauman Ijaz, son of Ijaz Ahmad, Caste Sheikh, resident of street No.4, Kamal Abad, District Faisalabad, is **not confirmed**.

22. As far as **Crl. Appeal No. 30043 of 2022** against the acquittal of respondents No. 1 and 2, Aftab Ahmad and Muhammad Zubair is concerned, for what has been discussed above in the light of prosecution evidence, medical evidence, and documentary evidence, the acquittal of respondents No. 1 and 2, Aftab Ahmad and Muhammad Zubair, does not suffer from any illegality to call for the interference of this Court with the impugned judgment. We have also taken note of the settled principle of criminal jurisprudence that unless it can be shown that the lower court's judgment is perverse or that it is entirely illegal. No other conclusion can be drawn except the guilt of the accused, or misreading or non-reading of evidence, resulting in a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence attaches to their case. The acquittal order cannot be

interfered with, thereby affording an accused double the presumption of innocence, as held in **Muhammad Mansha Kausar** v. **Muhammad Ashgar and others** (2003 SCMR 477). In this case, the prosecution has not been able to present on record adequate incriminating evidence against respondents No. 1 and 2, Aftab Ahmad and Muhammad Zubair, which connects them to the alleged crime. The learned trial Judge has advanced valid and plausible reasons for recording an acquittal in favor of respondents No. 1 and 2, Aftab Ahmad and Muhammad Zubair. The judgment of acquittal does not call for any interference. Consequently, we find no merit in **Crl. Appeal No. 30043 of 2022** is hereby **dismissed** as being without merit.

(Abher Gul Khan)
Judge

(Aalia Neelum)
Chief Justice

Approved for reporting.

Judge

Chief Justice

This judgment has been
dictated, pronounced on
17.11.2025, prepared,
and signed on
26.11.2025
A.S.Khan