

Stereo. H C J D A 38.

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

Murder Reference No. 172 of 2021.
(The State *versus* Muhammad Qasim)

Crl. Appeal No.75010-J of 2021
(Muhammad Qasim *versus* The State)

Crl. Appeal No.75588-J of 2021
(Muhammad Hashim *versus* The State)

Crl. Rev. No. 69106 of 2021
(Liaqat Ali *versus* The State etc.)

Crl. A. No. 79499 of 2021
(Liaqat Ali *versus* The State etc.)

JUDGMENT

Date of hearing: 24.05.2023.

Appellants by: Mr. Mehram Ali Bali, Advocate.

State by: Mr. Muhammad Waqas Anwar, Deputy Prosecutor General.

Complainant by: Mr. Muhammad Kamran-ur-Rashid, Advocate.

AALIA NEELUM, J: - The appellant-Muhammad Qasim (in Crl. A. No.75010-J of 2021) and Muhammad Hasim (in Crl. A. No.75588-J of 2021), both sons of Ghulam Muhammad, caste Mochi, resident of Chak No.764/GB, Tehsil Pir Mahal, District Toba Tek Singh were involved in case F.I.R. No.14 of 2019, dated 13.01.2019, registered under Sections 302/337-L(ii)/34 P.P.C., at P.S. Aroti, District Toba Tek Singh and was tried by the learned Sessions Judge, Toba Tek Singh. The learned trial court seized with the matter in terms of the judgment dated 13.10.2021 and convicted the appellants as under: -

- i) **Muhammad Qasim, son of Ghulam Muhammad (in Crl. A. No.75010-J of 2021),** was convicted under section 302(b) read with section 34 PPC and sentenced to **Death** for committing Qatl-e-Amd of Muhammad Riaz (the deceased), with the direction to pay compensation of Rs.5,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C, failing which the appellant-Muhammad Qasim would suffer SI for 06 months.
- ii) **Muhammad Hashim, son of Ghulam Muhammad (in Crl. A. No.75588-J of 2021),** was convicted under section 302 (b) read with section 34 PPC and sentenced to undergo imprisonment for life (as Tazir). He was further directed to pay an amount of Rs.5,00,000/- as compensation to the legal heirs of the deceased u/s 544-A Cr.P.C, failing which the appellant-Muhammad Hashim would suffer SI for 06 months.

2. Feeling aggrieved by the judgment of the learned trial court, Muhammad Qasim and Muhammad Hashim have assailed their conviction by filing the jail appeals bearing Criminal Appeal No.75010-J of 2021 and Crl. A. No.75588-J of 2021. The learned trial court also referred **M.R. No.172 of 2021** (The State. Vs. Muhammad Qasim) to confirm the death sentence awarded to the appellant-Muhammad Qasim. Whereas the complainant also filed Crl. Rev. No.69106 of 2021 qua sentence enhancement awarded to the appellant-Muhammad Hashim and Crl. A. No.79499 of 2021 against the acquittal of respondents No.2 & 3, namely Muhammad Kashif and Muhammad Sajid. As all the matters arising out of the same judgment of the learned trial court, therefore, these are being disposed of through consolidated judgment

3. The prosecution story, as alleged in the F.I.R (Ex. PM) lodged on the written application (Ex. PL) of Liaqat Ali (PW-11)-the complainant, is that on 12.01.2019, at about 1:00 p.m., an altercation took place between Asif and his son Umer Hayat over the dispute of drain water at his shop at Sindhilianwali. After the altercation, Muhammad Asif-the accused, went to his house immediately and gathered his brothers, namely Muhammad Qasim

(in Crl. A. No.75010-J of 2021), Muhammad Hashim (in Crl. A. No.75588-J of 2021), Muhammad Sajid (since acquitted), Muhammad Kashif (since acquitted) and his father namely Ghulam Muhammad, where all the accused persons after consultation developed consensus, i.e., the accused Ghulam Muhammad required his sons that Muhammad Riaz-the deceased, who was head of his family be murdered and he be taught a lesson for throwing the drainage water in the drain. On 12.01.2019 at about 02:00 p.m., Muhammad Qasim (in Crl. A. No.75010-J of 2021), Muhammad Hashim (in Crl. A. No.75588-J of 2021), Asif and Kashif while armed with Dangs, accused Sajid (since acquitted) while armed with Sairoo, left from their house while raising Lalkara to murder Muhammad Riaz, son of the complainant and rushed towards his house. The complainant Liaqat Ali (PW-11) and Muhammad Ashraf (PW-13) heard the accused persons while consulting with each other about the occurrence and also saw them while running towards his house. On this, the complainant (PW-11) and Muhammad Ashraf (PW-13) also went to rescue his son. The complainant's son, Muhammad Riaz, was found standing outside the house, and all the accused persons assaulted the complainant's son, namely Muhammad Riaz, who was deceased. The accused, Muhammad Sajid (since acquitted), while armed with Sairoo, inflicted a blow, which hit Muhammad Riaz-the deceased, on his right shoulder backside. After that, Muhammad Qasim, the appellant (in Crl. A. No.75010-J of 2021), inflicted a blow on Dang, hitting Muhammad Riaz in his left eye. Muhammad Hashim-the appellant (in Crl. A. No.75588-J of 2021), caused a Dang blow, which hit Muhammad Riaz on the right side of his head. Then, Muhammad Qasim- the appellant, gave a second Dang blow which hit Muhammad Riaz on his head right and back side, who fell on the ground. On this, Abdul Manan (given up PW) and Muhammad Sarfraz (PW-12), both sons of the complainant, also reached the spot to rescue their brother and witnessed the occurrence. The accused, Muhammad Asif, caught hold of Abdul Manan (given up PW) and raised Lalkara that who so ever came near would be done to death. On this, Muhammad Sarfraz (PW-12)

tried to intervene for rescue, but the accused Muhammad Kashif (since acquitted), Muhammad Sajid (since acquitted), and Muhammad Hashim-the appellant (in Crl. A. No.75588-J of 2021), gave blows, which hit him on his left arm. Then accused, Muhammad Sajid (since acquitted), gave a blow of Sairoo, hitting Muhammad Riaz on his back. After that, Muhammad Kashif (since acquitted) inflicted a Dang blow which hit Muhammad Riaz on his left knee. The occurrence was witnessed by Liaqat Ali-the complainant (PW-11), and Muhammad Ashraf (PW-13). The accused fled away while extending threats of dire consequences. The complainant's son, Muhammad Riaz-the deceased, went out of his senses due to severe injuries; he was brought to RHC Sindhilianwali. Still, due to his precarious condition, he was referred to DHQ Hospital, Toba Tek Singh, and then to Allied Hospital, Faisalabad. The following day, at 04:00 a.m., Muhammad Riaz succumbed to the injuries.

4. The motive behind the occurrence was stated to be a dispute of drain water dated 11.01.2019 and the altercation between accused Muhammad Asif and his son. After that, all the accused persons, on the abetment of their father, injured his son, namely Muhammad Sarfraz, and also murdered his son, namely Muhammad Riaz.

5. After the incident, the complainant reported the matter to the police through his written application (Ex. PL), and after that, formal F.I.R (Ex. PM) was chalked out by Abdul Majid 613/HC (PW-8). After the registration of the case, the investigation of this case was conducted by Ghulam Mustafa-S.I (PW-14) and Zahid Hussain, SI (PW-15), who found the accused/appellants guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. On 16.05.2019, the learned trial court formally charge-sheeted the appellants, to which they pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as fifteen (15) witnesses.

6. Ocular account, in this case, has come out from the statements of Liaqat Ali (PW-11)-the complainant, Muhammad Sarfraz (PW-12), and Muhammad Ashraf (PW-13)-the eye witness, whereas Dr. Muhammad Babar Aslam (PW-7), who conducted the postmortem examination of Muhammad Riaz (the deceased) found the following injuries on his person:

INJURIES

- 1) A lacerated wound 2.5 x 1 cm on the back and right side of the head, 9 cm from the right ear.
- 2) A lacerated wound 4 cm x 1 cm on the right side of the head 6 cm from the right ear.
- 3) An abrasion measured 1 cm x 1 cm on the left eyebrow.
- 4.-a An abrasion 3 cm x 2 cm on the left thigh just above the left patella at the lower one-third area of the thigh.
- 4-b A contusion 4 cm x 2 cm on the back of the left chest at the lower one-third area.
- 4-c A contusion 6 cm x 2 cm on the back of the right chest in the upper one-third area. The wound was transverse in shape.
- 4.d A contusion 7 cm x 3 cm on the back and right side of the chest at the upper area of the right scapula.

After conducting the postmortem examination, the doctor opined that the cause of death, in this case, was due to injuries No.1,2,3,4-a, 4-b, 4-c, and 4.d, which were sufficient to cause of death in the ordinary course of nature, as they injured leading to damage the vital organs, i.e., brain, and leading to hemorrhage and shock with hypotension leading to cardiopulmonary arrest resulted from ultimate death. The probable time between injuries and death was within 14 hours, and between death and postmortem was about 06 hours and 25 minutes.

7. The learned ADPP gave up PWs-Rizwan, Abdul Manan, Umer Hayat, and Muhammad Imran as being unnecessary and, after tendering report of Punjab Forensic Science Agency (Ex. PX), closed the prosecution evidence.

8. The appellants, namely Muhammad Qasim and Muhammad Hashim, were also examined under Section 342 Cr.P.C., wherein they did not opt to appear as their witnesses in Section 340(2) Cr.P.C. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant-Muhammad Qasim (in Crl. A. No. 75010-J of 2021) made the following deposition: -

“It is a false case registered against me and my co-accused. All the private PWs are related interse and with the deceased and they deposed against me falsely due to enmity. The official PWs deposed against me in order to support the false prosecution, case the real facts are as under: -

“We and complainant party are neighborer, whereas, Muhammad Riaz deceased reside outside the village, on the way to Sindhilianwali town where he and Abdul Manan PWs run a shop. On 11.01.2019 complainant party thrown their filth of the drainage in front of our house and ill smell was spread, my sister in-law was ill due to which she was disturbed. My father Ghulam Muhammad requested Liaqat Ali complainant and his sons himself and through respectable of the village to remove the filth of drainage from the front of our house. Upon which Liaqat Ali and his sons felt insult as we were moen “(Kammi)” of the village and they belongs to landlord Jat brotherry of the village. On the next morning i.e 12.01.2019, my brother Muhammad Asif was crossing the bazar of Sindhiliawali where PWs Umer Hayat and Muhammad Imran along with two unknown persons stopped Muhammad Asif and beaten him through fists blows, due to which he became unable to walk. He called me and my brother there to bring him back to our house as he was unable to walk. Upon which, at about noon, I and my brother Muhammad Hashim were going towards Sindhilianwali in order to bring Muhammad Asif on our motorcycle bearing

No.1888/TSL, Model 2018 China made, when we reached in front of the shop of Muhammad Riaz deceased and Abdul Manan PW where they along with Muhammad Ashraf PW, Riaz (since deceased), Sarfraz and Zubaida Bibi w/o Riaz were present there while armed with dandas and sotas. They stopped us forcibly and attacked upon us. PW Muhammad Ashraf inflicted sota blow to me which landed on left side of my face due to said injury my jaw was broken. PW Abdul Manan also attacked upon me with hunter which hit at my left leg. Riaz (since dead) gave Sota blow to Hashim my brother, which hit at his left arm. Muhammad Ashraf PW again gave sota blow which hit on the left leg of the Hashim my brother. Muhammad Ashraf hold my brother Hashim from his beard and outrage the modesty of his beard and put him on the earth. Zubaida Bibi inflicted sota blow on my brother Hashim who was laying on the earth. Muhammad Ashraf again tried to made sota blow to me but his sota blow hit to Riaz (since dead).”

Soon after the occurrence, I and my brother went to P.S Aroti and narrated the occurrence to police. Abdul Hameed 613/MHC PW prepared out injury statements and he sent Jamshed 904/C with us to RHC Sindhilianwali where we were medically examined and our MLCs were issued. We were referred to DHQ Hospital Toba Tek Singh for further treatment and X-rays and I was further referred to Allied Hospital, Faisalabad, where I was admitted, treated and operated upon. We submitted application along with our MLCs and other relevant documents but police did not lodge FIR against Liaqat Ali etc. rather on the death of Muhammad Riaz instant false case was registered against me and my co-accused. The complainant party suppressed the real facts and injuries sustained by me and my brother Muhammad Hashim. Then my uncle Muhammad Ramzan complainant filed a petition u/s 22-a & 22-b Cr.P.C before the ex-officio Justice of Peace/ASJ Pir Mahal titled “Muhammad Ramzan vs. SHO P.S Aroti etc.” which was disposed off on 15.03.2019, with the direction that complainant may firstly approach Incharge complaint cell of police Toba Tek Singh. My uncle Muhammad Ramzan and our witnesses appeared before the Incharge Investigation Cell of Toba Tek Singh but neither they lodge FIR nor

constituted our cross-version. Therefore, my uncle filed cross private complaint. The complainant party given up Umer Hayat and Muhammad Imran, the stated PWs of motive part of the occurrence, even the complainant did not submit any application for summoning of my co-accused Muhammad Asif and Ghulam Muhammad nor filed any private complaint against them.”

In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant-Muhammad Hashim (in Crl. A. No.75588-J of 2021) made the following deposition: -

“It is a false case against me and my co-accused. Furthermore, I rely upon the answer of this question of my co-accused Muhammad Qasim.”

9. After evaluating the evidence available on record in light of arguments advanced by both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellants’ conviction in the above terms.

10. We have given our anxious and most thoughtful consideration to both sides’ rival submissions. We have minutely gone through the evidence on record.

11. The occurrence took place on 12-01-2019 at 02:00 p.m. in the area of Chak No. 764 G.B. Tehsil Pir-Mahal, situated within the jurisdiction of Police Station Aroti, District Toba Tek Singh, which is at a distance of five (5) kilometers from the place of occurrence. The formal F.I.R. (Exh. PM) was got registered on 13-01-2019 at 09:30 p.m., on the written complaint (Exh. PL) of Liaqat Ali (PW-11)-the complainant, father of the deceased-Muhammad Riaz, made on 13-01-2019 at 09:00 p.m of RHC Sindhilianwali. Notably, the occurrence took place at 02:00 p.m. on 12-01-2019. The distance between the police station and the place of occurrence was five (5) kilometers. In contrast, Liaqat Ali (PW-11)-the complainant, took nineteen (19) hours to report the incident to the police at RHC

Sindhilianwali, District Toba Tek Singh. The F.I.R. (Exh. PM) was got lodged by Liaqat Ali (PW-11)-the complainant, after a considerable delay of (19) hours without explaining the said delay. Liaqat Ali (PW-11)-the complainant deposed during examination-in-chief that: -

I got the docket and brought him to RHC Sindhilianwali. From where he was referred to DHQ Hospital, T.T. Singh. From DHQ Hospital, the injured was referred to Allied Hospital, Faisalabad. On 13.01.2019 at about 4.A.M Riaz succumbed to the injured at Allied Hospital, Faisalabad. I escorted the dead body from Allied Hospital, Faisalabad. I escorted the dead body from Allied Hospital, Faisalabad to RHC Sindhilianwali for post mortem. Police was also informed. Police reached at RHC Sindhilianwali. I got drafted computerized application Exh.PL and gave the same to Ghulam Mustafa Thanedar. On my application the instant case was registered.”

Liaqat Ali (PW-11)-the complainant has four sons except Riaz-deceased, and none reported the incident to the police. Liaqat Ali (PW-11)-the complainant deposed during cross-examination that: -

“Riaz deceased was shifted to P.S first and then to hospital. I alongwith my two/three sons went to P.S. We did not make any application to police at that time. We remained at P.S, 5 to 7 minutes and then proceed to hospital. When we shifted the injured to hospital I accompanied them.”

Muhammad Sarfaraz (PW-12), the injured witness and brother of the deceased, had not come up with facts. He (PW-12) has not deposed that soon after the incident, he was taken to the police station, his docket was issued, and through the police, he was medically examined. He (PW-12) deposed during his examination in chief that:-

“Accused persons fled away from the spot. I was not medically examined. Again said I was

medically examined. Soon after the occurrence I was shifted to RHC Sindhlianwali. Deceased Riaz was referred to DHQ hospital due to his serious condition”

12. Besides, during cross-examination, Muhammad Sarfaraz (PW-12) deposed that the police recorded his statement after two/three days after the occurrence. Muhammad Sarfaraz (PW-12) deposed during cross-examination that: -

“I got recorded my statement under section 161 Cr.P.C to the police after two/three days of the occurrence in our village at the place of occurrence.”

Muhammad Ashraf (PW-13), eye witness and nephew of the complainant also had not come up with facts. Muhammad Ashraf (PW-13) deposed during examination-in-chief that: -

“Accused fled away while raising Lalkaras. We took Muhammad Riaz to hospital, Sindhlianwali from where Riaz was referred to DHQ Hospital, Toba Tek Singh, where from he was referred to Allied Hospital, Faisalabad. On the next day at 4.00 AM Muhammad Riaz succumbed to the injuries.”

Muhammad Ashraf (PW-13), eye witness and nephew of the complainant, deposed during cross-examination that: -

“We reached RHC Sindhilianwali at about 2:30 P.M. We remained at Hospital for about half an hour. I did not sign any paper at Hospital. I accompanied Riaz injured to the DHQ Hospital, Toba Tek Singh. The injured remained at DHQ Hospital for about half an hour then he was referred to Allied Hospital, Faisalabad. I also accompanied to Faisalabad. I did not sign any paper at Allied Hospital, Faisalabad.”

The FIR (Ex. PM) was lodged at 9:30 a.m. in a given case; as per the FIR (Ex. PM), the occurrence took place at 02:0 p.m. on 12.01.2019, and Liaqat

Ali (PW-11)-the complainant reported the incident through written complaint (Ex. PL) to Ghulam Mustafa, S.I. (PW-14)-Investigating Officer at 09:00 a.m. on 13.01.2019 who referred the complaint (Ex.PL) to Police Station, based on which, formal FIR (Ex.PM) was chalked out on the same day at 01:45 a.m. In a given case, it is open to the prosecution to indicate reasons for the delayed reporting of the incident to the police. Even the entire prosecution evidence is silent that who informed Ghulam Mustafa, S.I. (PW-14)-Investigating Officer about the incident. Liaqat Ali (PW-11)-the complainant deposed that the police were informed. This has to be established by evidence. However, who reported to the police and when same was not stated. It is admitted that Liaqat Ali (PW-11)-the complainant, did not go to the police station to report the incident. Liaqat Ali (PW-11)-the complainant deposed during cross-examination that: -

“Cell phone Number given on the application Exh.PL was in my use. I did not make any telephone call on 15 regarding this occurrence.”

To determine whether the FIR was lodged when it is alleged to have been recorded, the Courts generally look for certain external checks. It has been noticed that in the inquest report (Ex. PK), the names of Liaqat Ali (PW-11)-the complainant, Muhammad Ashraf (PW-13), and Muhammad Sarfaraz (PW-12) have not been mentioned. Any of these witnesses does not sign the inquest report (Ex. PK). The absence of those details indicates that the prosecution story was still in an embryo state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-timed. In our opinion, on account of the infirmities, as noticed above, the FIR has lost its value and authenticity, and it appears to us that the same has been ante-timed and had not been recorded till the inquest proceedings were over by Ghulam Mustafa, S.I. (PW-14)-Investigating Officer. It gets support from the recovery memo of the last worn clothes of the deceased (Ex. PA), the recovery memo of injury statement of the deceased (Ex. PJ), and the un-scaled site plan (Ex. PU),

from which it reveals that after writing “بنام” space was left blank. Ghulam Mustafa, S.I (PW-14)-Investigating Officer admitted during cross examination that “left blank against the word Biaan” This suggests that until receiving the deceased's last worn clothes by Ghulam Mustafa, S.I. (PW-14)-Investigating Officer, the FIR was not in existence, the Roznamcha was withheld, and the ante-timed FIR was registered. Dr. Muhammad Babar Aslam (PW-7) deposed that the post-mortem examination of the dead body was conducted at 10:55 a.m. on 13.01.2019. The death occurred at 04:30 a.m. on 13.01.2019; the dead body was received in the dead house at 09:00 a.m. Police documents were received at 10:35 a.m. on 13.01.2019. FIR (Ex. PM) was chalked out at 09:30 a.m., but the same was not produced before Dr. Muhammad Babar Aslam (PW-7). Dr. Muhammad Babar Aslam (PW-7) deposed during cross-examination that: -

“It is correct that except injury statement Exh.PJ and inquest report Exh.PK, no other document was produced before me. ---- Dead body was received at 09.00 AM whereas police papers were received at 10.35 AM, then I conducted autopsy at 10.55 AM. Muhammad Aslam and Muhammad Asghar appeared before me of their own. It is correct that I did not mention their CNIC numbers and their relationship with the deceased. --- It is correct that pages No.1 and 3 of inquest report Exh. PD did not bear my stamp and signature. Volunteered that in endorsed Exh. PK at page No.3. It is correct that my signature and stamp are affixed at the bottom of page No.2. There is blank space at the middle of said page.”

Dr. Muhammad Babar Aslam (PW-7) deposed during cross-examination that:-

“It is correct that except injury statement Ex.PJ and inquest report Ex.PK, no other document was produced before me....Dead body was received at 09:00 AM whereas police papers were received at 10:35 AM, then I conducted autopsy at 10:55 AM. Muhammad Aslam and

Muhammad Asghar appeared before me of their own. It is correct that I did not mention their CNIC numbers and their relationship with the deceased.

There is no plausible explanation for why the incident was reported delayed for nineteen (19) hours. Liaqat Ali (PW-11)-the complainant took time in drafting the complaint and deposed during cross-examination that: -

“I got drafted the application from computer center situated at Sindhlianwali Chowk. I do not remember the name of computer operator. I did not produce the said writer to the I.O during investigation.”

From the deposition of Liaqat Ali (PW-11), the complainant reveals that after bringing back the dead body of Muhammad Riaz, the deceased, he went to Sindhilianwali Chowk and composed the complaint (Ex. PL). The complainant (PW-11) took him in drafting the complaint (Ex. PL). Delay in reporting the incident also leads to the conclusion that the F.I.R. was recorded with a delay and the F.I.R. had not been recorded at the time it is claimed to have been recorded. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story, including the presence of the complainant and eye witness at the scene of occurrence. Delay lodging the FIR often results in embellishment, a creature of an afterthought. Considering all these facts, we have no hesitation in concluding that the prosecution has not been able to prove on record that the incident was reported when it was claimed to have been recorded.

13. As per the prosecution version put forth in the written complaint (Ex. PL), FIR (Ex. PM), and deposed by Liaqat Ali (PW-11)-the complainant that after receiving injuries, Muhammad Riaz (deceased) then injured became unconscious and he (PW-11) got his docket and brought him to RHC Sindhilianwali. Liaqat Ali (PW-11)-the complainant deposed during cross-examination that: -

“Riaz deceased was shifted to P.S. first and then to hospital.”

Muhammad Sarfaraz (PW-12) and Muhammad Ashraf (PW-13) have not deposed that after the occurrence, they took Muhammad Riaz (deceased), then injured first, to the police station. Dr. Muhammad Babar Aslam (PW-7) deposed during examination-in-chief that: -

“Stated that on 12.01.2019, I was posted as Medical Officer RHC Sindhlianwali. On the same day, I medically examined Muhammad Riaz s/o Liaqat Ali, caste Jat, resident of Chak No.764/GB Tehsil Pir Mahal at 02.40 PM, brought by Muhammad Hussain 487-C.

Brief History:

“That we were draining out the sewerage water of our house when Qasim and Hashim etc, attacked me with “dandas” (clubs) and injured me.”

Examination and Clothes: blood stained.

Physical Examination: He was vitally stable.

From the contents of the injury statement of Muhammad Riaz (Ex. PE), it reveals that Muhammad Riaz (deceased), then injured, stated that مسمی غلام محمد

”وغیرہ نے مضروب کیا ہے. Similar is written in the injury statement of Muhammad

Serfaraz (PW-12). In the injury statement and application for conducting a postmortem examination of the dead body of Muhammad Riaz-deceased

(Ex. PJ), it was mentioned that مسمی محمد ریاض ولد لیاقت قوم جٹ سکنہ چک 764 گ ب کو مسمیان “

” محمد قاسم ولد غلام محمد قوم موچی سکنہ چک 764 گ ب کا ڈنڈوں، سوٹوں سے مضروب کر کے قتل کرنا بیان ہوا ہے۔

A dying declaration was not got recorded. In all injury statements and MLC (Ex. PD) Muhammad Riaz (deceased), then injured, different statements were written about who caused injuries on his person. To ascertain whether the statement of Muhammad Riaz (then injured) was authentic and correct, in the sense that it was the statement of Muhammad Riaz (then injured) and that

whatever he said had been correctly recorded, we examined the prosecution evidence and also gone through the MLC (Ex. PD) Muhammad Riaz (then injured) as in who's presence statement was made and found that Liaqat Ali (PW-11)-the complainant was present with Muhammad Riaz (then injured) as he (PW-11) signed the affidavit of MLC (Ex. PD) of Muhammad Riaz. Dr. Muhammad Babar Aslam (PW-7) deposed during examination-in-chief that:-

“Exh. PD is the original carbon copy of MLC and Exh.PD/1 is the sketch of injuries which are in my handwriting and bear my signatures. I also endorsed Exh.PE, the injury statement of Muhammad Riaz.”

Moreover, it is clear that at least the dying declaration of the deceased-Muhammad Riaz, was not in the picture, and Dr. Muhammad Babar Aslam (PW-7) has not specifically stated that he wrote the statement of Muhammad Riaz (then injured) in the column meant for a brief history of the MLC. This being the position, we are of the view that there is a great deal of doubt surrounding the question of correctness and authenticity of the entries made in the injury statement of Muhammad Riaz (Ex. PE), injury statement and the application for conducting a postmortem examination of the dead body of Muhammad Riaz-deceased (Ex. PJ) and MLC (Ex. PD) that who caused injuries on the person of Muhammad Riaz-deceased. Such a state of affairs casts severe doubts on the prosecution's version.

14. As per the prosecution case, the occurrence was initiated on 12.01.2019 at 01:00 p.m. accused Asif (not summoned to face trial) made a quarrel with the complainant's son Umar Hayat (not produced) at Sindhilianwali in the shop of Umar Hayat due to the drainage of water from the drain. After that, teaching lessons for quarreling and interrupting the crossing of water from the drainage, the appellants, along with their co-accused (since acquitted) while raising slogans to murder Muhammad Riaz-deceased, went to the house of Muhammad Riaz-deceased, who was

standing outside his home where the appellants, along with their co-accused (since acquitted) caused injuries to him. To prove the ocular account, the prosecution produced Liaqat Ali (PW-11)-the complainant, Muhammad Sarfaraz (PW-12), and Muhammad Ashraf (PW-13). Liaqat Ali (PW-11)-the complainant deposed during cross-examination that: -

**“It is correct that residence of Riaz deceased is situated in Killa No.1 Square No.15. We purchased Killa No.15, Fifteen years back and Riaz deceased was residing there. My house is situated at a distance of 2 ½ Acres from the house of Riaz deceased. ---
- All my sons except Riaz deceased are residing with me. Riaz deceased was electrician and his shop was situated at Adda Sindhlianwali. Adda Sindhlianwali is situated at four kilometers from my house.”**

Muhammad Sarfaraz (PW-12) deposed during cross-examination that: -

“The house of Riaz situated at a distance of about two Acres from my house. ---- The house of Ashraf PW is situated at the distance of one Acre from our house.”

Muhammad Ashraf (PW-13), eye witness and nephew of the complainant, deposed during cross-examination that: -

“Liaqat Ali complainant is my real Chacha. My house is at the distance of 1 ½ acres from the house of Liaqat Ali. There is continuous residences between my house and house of Liaqat Ali. The house of Riaz deceased is situated out of village Abadi in the agricultural land towards eastern side from our house. There is residential area between my house and house of Riaz deceased as well as Liaqat Ali, the complainant.”

Ghulam Mustafa, SI (PW-14)-the Investigating Officer deposed during cross-examination that: -

“The place of occurrence is situated towards south from the main metaled road which leads from Chak No.764/GB to Adda Sindhlianwali. The level of said road is 1 ½ feet in height from the agricultural land. The place of occurrence as mentioned by in Exh.PU is crop of garlic. I had mentioned the grocery shop of Abdul Munan towards west from the place of occurrence. I had shown a tube-well of Muhammad Riaz deceased further towards west and then I had not shown the direction from which the assailants were reached at the place of occurrence. I had not shown the vehicle through which the assailant departed from the place of occurrence. I had also not shown as to whether the assailants departed from the place of occurrence on foot or through vehicle. I had not shown the houses of complainant and witnesses in Exh.PU. Place of occurrence is situated outside but near the village Abadi in the agricultural land. I had shown the agricultural land of Mukhtar Ahmed Guru, towards north of the place of occurrence. Said Mukhtar Ahmed Gru, did not join investigation at the time of my first visit in support of complainant’s version.....I did not prepare site plan of drainage which was mentioned by the complainant in his application Exh.PL. I did not visit the above said place i.e. drainage, in order to ascertain the motive part of occurrence. No body from the village including Chowkidar, Lambardar, Councillor, Chairman Usher Zakat Committee or Chairman of Water Committee, joined investigation in order to support the motive part of the occurrence. Complainant did not produce before me copy of any application which was given by him to Public Health Department or any other Government Department about the issue of drainage.”

Liaquat Ali (PW-11)-the complainant stated that the occurrence occurred in front of Muhammad Riaz-deceased's house. The un-scaled site plan (Ex. PU) reveals that the incident happened in the garlic field adjacent to the grocery Shop of Abdul Manan. Shabbir Hussain Halqa Patwari (PW-5) prepared scaled site plans (Ex. PD and Ex. PD/1) on 27.01.2010, fifteen days after the occurrence, and deposed during cross-examination that: -

“In particulars of the place of occurrence with reference to Square number and Killa number, I did not mention the number of Chak in which square number and Killa number shown falls. Name of the owner of Killa No.1, Square No.15 is not mentioned in map. Names of owners of adjoining land were not mentioned. I did not show the crops standing over the surrounding fields. I did not mention specific role of the accused over any points shown in the map. I have not shown any shop on the western side of the Killa No.1. Whatever I was told by the complainant and witnesses I mentioned the same in map.”

The prosecution version was that the appellants and their co-accused attacked Muhammad Riaz-the deceased, in front of his home. But above stated testimony of the witnesses shows that the incident occurred in garlic fields. From the place of occurrence, the Investigating Officer did not secure the blood-stained earth. Liaquat Ali (PW-11)-the complainant deposed during cross-examination that:-

“The clothes of Riaz were stained with blood, however, no blood was present at the place of occurrence. I rescued my son with the help of my other sons. My clothes were also stained with his blood. The clothes of the witnesses might be stained with blood.”

The blood was oozing from the injuries, and the clothes of the complainant and car were stained with blood. Ghulam Mustafa, SI (PW-14), visited the spot, and no blood was found, which makes the place of occurrence doubtful. As far place of the motorcycle is

concerned, Zahid Hussain S.I. (PW-15)-investigating officer, deposed during cross-examination that: -

“The Halqa Patwari took rough notes of place of occurrence in my presence. It is correct that the complainant and PWs did not point out any motorcycle which was used by the accused persons. They also did not point out any place where the accused fell down from their motorcycle after departing from stated place of occurrence. The place of occurrence is situated in agricultural land outside the village. The halqa patwari did not mention the name of owner of square No.15 as well as Killa No.1 in scaled site plan Exh.PG and Exh.PB/1. During my investigation, I did not prepare the site plan of place, regarding motive part of the occurrence. No lumberdar, chowkidar, counselor of the village or officials of the public health joined my investigation regarding the motive part of the occurrence. According to my case diaries, I never visited the place regarding the motive part of the occurrence. Witness volunteered that I have visited the above said place but did not mention this fact in my investigation.”

Liaqat Ali (PW-11)-the complainant deposed during cross-examination that: -

“We did not make any application regarding the previous occurrence took place on 11.01.2019. We also did not move any application to Public Health Department regarding dispute of drainage. We did not yet make any application regarding quarrel between Asif and Umar Hayyat on 12.01.2019, prior to this occurrence.”

The bone of contention is the flow of drainage water through the drain. Where the drain was situated has not been proved by the prosecution. All the material was liable to be considered by the investigating officers. Police failed to investigate the motive part of the present case. The neighbor of the accused person Muhammad Ramzan filed a private complaint titled

“Ramzan versus Liaqat Ali etc.” (Ex. DD) on 01-09-2021 with the version that Liaqat Ali (PW-11)-the complainant put dirty drainage material outside the house of the accused party which caused the incident. Dr. Muhammad Babar Aslam (PW-7) deposed during cross-examination that: -

“It is correct that on 12.01.2019 at 2.30 P.M, Jamshed Ahamd 904-C produced before me Muhammad Qasim, accused with injury statement. He was examined at 2.45 P.A vide MLC Exh. DA which is in my handwriting. Qasim was referred to DHQ Hospital, Toba Tek Singh after initial examination. There is no possibility of fabrication of injuries of the victim. Duration of injuries was 2 to 3 hours and found to be caused with blunt weapon. It is correct on receiving the report of Radiologist, I declared injury No.1 Shajja Hashima. My final report Exh. DA/1 is in my handwriting. I also endorsed the injury statement Exh. DB. On the same day Hashim, accused was also produced before me for medical examination by the said constable and I examined him at 02.30 PM. MLC Exh. DC of this victim is in my handwriting. No chance of fabrication was observed.”

Liaqat Ali (PW-11)-the complainant deposed during cross-examination that: -

“After four/five minutes, the accused Qasim and Hashim also came to hospital for their medical examination. They were also examined by the same doctor who examined the deceased Riaz..... I did not incorporate in the application that Qasim and Hashim were also injured.”

Muhammad Serfaraz (PW-12) deposed during cross-examination that: -

“I did not come into my knowledge that Qasim and Hashim were also injured. It is correct that accused party filed a private complaint which was fixed for today in this court. My name is written on the serial No.6 of the accused persons in the complaint. The house of the

accused are situated adjacent to our house. I did not join the investigation of this case.”

Muhammad Ashraf (PW-13), eye witness and nephew of the complainant, deposed during cross-examination that: -

“I did not get record to the I.O that Hashim and Qasim were also injured during the occurrence. Volunteered that I do not know regarding their injuries. It is correct to suggest that my volunteer portion is false. I do not know the same doctor who examined Riaz, later-on examined the injured Qasim and Hashim accused.”

Ghulam Mustafa S.I. (PW-14)-investigating officer also deposed during cross-examination that: -

“On my first day of investigation, I also visited P.S, Arrotti. Abdul Majeed was Moharrer of P.S Arrotti. I had recorded his statement during investigation. It was not in my knowledge after interrogation of said Abdul Majeed that he prepared injury statements of Muhammad Qasim and Muhammad Hashim accused on 12.01.2019. Volunteered that he did not tell me about said injury statements. ----- Injury statements of Muhammad Riaz deceased (in injured condition) and Sarfraz PW are present on file. It is correct that both injury statements were prepared by Abdul Majeed Moharrar on 12.01.2019.”

Abdul Majeed 613-HC (PW-8) deposed during cross-examination that: -

“On 12.01.2019 I was on duty. On the said date I prepared injury statement of Muhammad Qasim accused at police station. Qasim had told me that he has been injured by Abdul Manan etc. Injury statement Exh. DB is in my handwriting. On the same day I prepared injury statement of Hashim accused, who had told me that he has been injured by Sarfraz etc.”

The defence version, not a confession and exculpatory in which the accused-appellants had denied the guilt, could not be used as evidence to prove their guilt. Besides, the injuries of grave nature received by the accused-Muhammad Qasim, during the same occurrence would indicate a fight between both parties. In such a situation, the question of the genesis of the fight, that is to say, the events leading to the fight and which party initiated the first attack, assumes great importance in reaching the ultimate decision. It is here that needs to explain the injuries of serious nature received by the accused in the course of the same occurrence arises. When the explanation is given, the correctness of the reason is liable to be tested. If there is an omission to explain, it may lead to the inference that the prosecution has suppressed some of the relevant details concerning the incident. Ultimately, the factum of non-explanation of injuries must be kept in view while appreciating the evidence of prosecution witnesses. So also, where the defence version accords with probabilities to such an extent that it is difficult to say which version is true, then the factum of non-explanation of the injuries assumes greater importance. Much depends on the quality of the evidence adduced by the prosecution. Returning to the present situation, admittedly independent and reliable evidence, including the dying declaration of the deceased, is not available on the record. The injuries on the person of the appellants are proved by the MLC (Ex. DC) and through Dr. Muhammad Babar Aslam (PW-7). The complainant has four sons (excluding the deceased) and a nephew, but none had reported the incident to the police. Liaqat Ali (PW-11)-the complainant admitted during cross-examination that:-

“Accused Asif and Ghulam Muhammad were not found involved in the occurrence during investigation. We did not make any application for the summoning of Asif and Ghulam Muhammad during the trial. We also did not file a private complaint against them.”

Liaqat Ali (PW-11)-the complainant had not produced Umer Hayat as a witness, with whom Muhammad Asif quarreled at 01:00 p.m. on

12.01.2012. Therefore, an adverse inference is to be drawn within Article 129 (g) of Qanun-e-Shahadat, 1984, that had Umer Hayat appeared as a witness, his testimony would have been unfavorable to the prosecution. Reliance is placed on the case reported as “The State and others v. Abdul Khaliq and others” (PLD 2011 SC 554). The defense version cannot be considered for establishing the presence of the accused persons on the spot. Where the prosecution evidence was discarded, the defence taken by the accused had to be believed or disbelieved in toto. The defence plea taken by the appellants and their co-accused has not been proved. However, it is a settled principle of law for the prosecution to stand on its legs. It was for the prosecution to prove the charge beyond any shadow of doubt. Moreover, the trial can not benefit from the weakness of the defence plea. In the case of “Shera Masih and another v. The State” (PLD 2002 SC 643), it has been held that: -

“---Defence plea of the accused even if is not supported by any evidence direct or circumstantial and is discarded being improbable, still it will not be a circumstance to prove the guilt of an accused and the prosecution has to establish its case by standing on its own legs.”

All the above-narrated facts and circumstances lead this Court to only one conclusion that the whole prosecution case seems to be hinging upon conjectures and surmises, and it had severely failed to show incriminating, corroborative/independent evidence to bring home guilt of the accused in the case of capital charge. It must be realized that the well-established rule of criminal justice is that the 'fouler the crime higher the proof. The learned trial court was not justified in convicting the appellants while basing upon such un-trustworthy, uncorroborated evidence, and the conviction passed by the learned trial court in the circumstances is against all canons of law recognized for the dispensation of criminal justice. As per dictates of the law, the benefit of every doubt is to be extended in favor of the accused. In

the case of “Muhammad Akram v. The State” (2009 SCMR 230), it has been held as under: -

“--Benefit of doubt---Principles---

For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts. ---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.”

It is a golden principle of law that the Court should let off a hundred guilty but should not convict one innocent person. In the case of “Ayub Masih v. The State” (PLD 2002 SC 1048), it has been held by the Hon’ble Supreme Court of Pakistan that:-

“----It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which can not be ignored while dispensing justice in accordance with law. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”.

In simple words it means that utmost care should be taken by the Court in convicting an accused. It has further been held in “The State v. Mushtaq Ahmed” (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic law and is enforced rigorously in view of the saying of the Holy Prophet (P.B.U.H) that the “mistake

of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent”.

15. Based on the discussion made above, the only conclusion which may be arrived at is that the prosecution has failed to establish the guilt of the appellants beyond all reasonable doubts and the findings came by the learned trial court and recording conviction thereon could not be sustained and are liable to be set aside. We, therefore, accept in toto Criminal Appeals No.75010-J of 2021 & 75588-J of 2021 filed by Muhammad Qasim and Muhammad Hashim, the appellants. As a result, the conviction and sentence recorded by the learned trial court vide judgment dated 13.10.2021 is set aside. The appellants, namely Muhammad Qasim and Muhammad Hashim, are ordered to be acquitted of the charge in the case of F.I.R. No.14 of 2019, dated 13.01.2019, under Sections 302/337-L(ii)/34 PPC, registered at Police Station Aroti, District Toba Tek Singh. The appellant-Muhammad Qasim (in Crl. A. No.75010-J of 2021) and Muhammad Hasim (in Crl. A. No.75588-J of 2021), both sons of Ghulam Muhammad, caste Mochi, resident of Chak No.764/GB, Tehsil Pir Mahal, District Toba Tek Singh are directed to be released forthwith if not required in any other case.

Murder Reference No.172 of 2021 was forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, answered in **NEGATIVE**.

16. So far as Criminal Revision No.69106 of 2021 seeking enhancement of the sentence of respondent No.2 is concerned, for the above-stated reasons, the same has no weight, which is accordingly dismissed.

17. So far as **CRIMINAL APPEAL No.79499 of 2021** seeking a conviction of respondents No.2 and 3, namely Muhammad Kashif and Muhammad Sajid, is concerned, we have noted that respondents No.2 and 3 were attributed injuries on the non-vital parts of the persons of Muhammad Riaz and Muhammad Sarfraz. For what has been discussed above in the light of prosecution, medical, and documentary evidence, the acquittal of

respondents No.2 and 3 does not suffer from any illegality to call for our interference with the impugned judgment to the extent of respondents No.2 and 3. 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 completely 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 is attached to his case. The acquittal order cannot be interfered with, whereby a charged earns double 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 bring on record adequate incriminating evidence against respondents No.2 and 3, which connects them with the alleged crime. The learned trial Judge has advanced valid and plausible reasons for recording acquittal in favor of respondents No.2 and 3. The judgment of acquittal does not call for any interference. Consequently, we find no merit in this Criminal Appeal bearing No.79499 of 2021, which is, as a result of this, dismissed as being without merits.

(Muhammad Amjad Rafiq)
Judge

(Aalia Neelum)
Judge

Approved for reporting.

Judge

Judge

*This judgment was dictated,
Pronounced 24.05.2023, prepared
and signed on 20.06.2023.*

**Tariq*