JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
(JUDICIAL DEPARTMENT)

CRIMINAL APPEAL No.654/2022

Fayyaz Ahmad, etc. Vs The State, etc.

JUDGMENT

DATE OF HEARING: 23.02.2023.
APPELLANTs BY: Mr. Mujahid Iqbal, Advocate.
STATE BY: Ch. Asghar Ali Gill, Deputy Prosecutor General with Muhammad Asim ASI.

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MUHAMMAD AMJAD RAFIQ, J: - Fayyaz Ahmad Bhulka and Muhammad Shahzad along with 130 co-accused faced trial before Anti-Terrorism Court, Bahawalpur in case FIR No.191 dated 03.07.2012 under sections 302/ 353/ 224/225/ 295-B/324/ 435/ 436/ 395/148/149/ 458/ 186/427/ 201/ 337-A(2)/ 337-F(i) / 342 PPC read with section 7 Anti-Terrorism Act, 2997 registered at police station Chanigoth, District Bahawalpur and on conclusion of trial vide judgment dated 31.03.2022 along with twenty two co-accused, the present accused/appellants were convicted and sentenced as under:-

i) Rigorous imprisonment for three years each with a fine of Rs.50,000/- each under section 148 PPC, in case of default to further undergo three months SI;
ii) Imprisonment for life each under section 302(b)/149 PPC, also to pay Rs.300,000/- each as compensation under section 544-A Cr.P.C., in case of non-payment of compensation each one to further undergo six months SI;
iii) Imprisonment for life each under section 7 (a) of the Anti-Terrorism Act, 1997, also to pay Rs.200,000/- each as fine, in case of non-payment of compensation each one to further undergo six months SI;
iv) Rigorous imprisonment for two years each under section 337-A(i)/149 with further orders to pay daman to the tune of Rs.50,000/- each PPC to injured Naveed Mumtaz DSP for causing Injury No.1;
v) Rigorous imprisonment for one year each under section 337-F(i)/149 PPC with further orders to pay daman to the tune of Rs.50,000/- each to injured Naveed Mumtaz DSP for causing Injury No.2;
vi) Rigorous imprisonment for one year each under section 337-F(i)/149 PPC with further orders to pay daman to the tune of Rs.50,000/- each to injured Rizwan 934/C for causing Injury No.1 and 2;
vii) Rigorous imprisonment for two years each under section 337-A(i)/149 PPC with further orders to pay daman to the tune of

Rs.50,000/- each to injured Khan Muhammad SI for causing Injury No.1;

viii) Rigorous imprisonment for one year each under section 447-F(i)/149 PPC with further orders to pay daman to the tune of Rs.50,000/- each to injured Muhammad Kashif 134/C for causing Injury No.1;

ix) Rigorous imprisonment for two years each under section 353/149 PPC with fine of Rs.50,000/- each, in case of default to further undergo three months SI;

x) Rigorous imprisonment for five years each alongwith fine of Rs.50,000/- each under section 7(h) of the Anti-Terrorism Act, 1997, in case of non-payment to further undergo three months SI;

xi) Rigorous imprisonment for one year each with fine of Rs.50,000/- each under sections 342/149 PPC, in case of default to further undergo one month SI;

xii) Rigorous imprisonment for two years each with fine of Rs.50,000/- each under sections 427/149 PPC, in case of default to further undergo one month SI;

xiii) Rigorous imprisonment for ten years each with fine of Rs.100,000/- each under sections 449/149 PPC, in case of default to further undergo one year SI;

xiv) Rigorous imprisonment for ten years each with fine of Rs.100,000/- each under sections 436/149 PPC, in case of default to further undergo one year SI;

xv) Rigorous imprisonment for two years each with fine of Rs.50,000/- each under sections 225/149 PPC, in case of default to further undergo three months SI;

xvi) Rigorous imprisonment for ten years each with fine of Rs.100,000/- each under sections 7(d) of the Anti-Terrorism Act, 1997, in case of default to further undergo one year SI.

The convicts were further ordered to pay Rs.200,000/- each to Baqa Muhammad under section 544-A Cr.P.C, and in default to further undergo six months simple imprisonment each. They were also ordered to pay a compensation of Rs.100,000/- each under section 544-A Cr.P.C. to Ghulam Mohy-ud-Din Inspector and in case of non-payment to undergo six months simple imprisonment each. All the sentences were ordered to run concurrently and benefit of section 382- B Cr.P.C. was extended.

2. Briefly the facts of case, as mentioned in the F.I.R. (Exh.PP), lodged by Ghulam Mohy-ud-Din Inspector (P.W-7), are that: -

> On 03.7.2012 while posted as S.H.O at Police Station Chanigoth was present at Police Station with other police officials. Due to the facts and circumstances of case F.IR No.190/2012 registered u/s 295-B P.P.C, people were provoked and were raising slogans that accused of burning of Holy Quran should also be burnt at the place where he had burnt the Holy Quran. On hearing announcements in the Masajid, he informed high-ups through

phone and wireless and called for further police contingent whereupon Naveed Mumtaz DSP/SDPO along with police contingent variously armed while boarded on official vehicle also reached at Police Station. While taking safety measures, armed police officials were deputed on all four corners of roof top of Police Station, other police officials were deputed on the inner side of main gate of Police Station and gate was closed. Police officials were also made alert while providing them teargas equipment. There was a huge mob in shape of unlawful assembly while raising slogans that the person of committing burning of Holy Our'an be handed over to them and they would cause his murder by burning him at the same place. SDPO and S.H.O tried to get understand the public. Notables of the City Mehr Muhammad Siddique, Malik Khadim Kulyar, Khalid Gujjar, Sharif, Khuda Bakhsh and Ulema Karam Mufti Zubair, Mufti Abdul Hadi, Mufti Saeed Ahmad, Maulana Abdul Shakoor Farooqi and Nazar Hussain Saeedi also came there. After negotiations, the notables and Ulema Karam tried to convince the miscreants who had circled the Police Station and Saeed Khan Pathan, Muhammad Asghar son of Muhammad Nawaz caste Arain, Muhammad Adil son of Shair Muhammad Mohajer, Ejaz Ahmad son of Aslam Khan, Muhammad Ehsan, Muhammad, Rao Shair Muhammad, Abdul Ghaffar son of Abdul Sattar Arain, Zulfiqar Ali, Shabbir Muhammad Tariq son of Muhammad Shafi, Rao Khalid Mehmood Naib Nazim, Rafique Ahmad Panwar, Rasheed Ahmad Panwar, Maqsood Ahmad Arain, Muhammad Azam Panwar, Muhammad Akhtar sweet maker, Tariq Hotelwala, Muhammad Asif son of Habib Ahmad Rajput, Altaf Boharr, Faysal son of Idrees sweet maker, Fayyaz Ahmad Bhulka, Munir Ahmad son of Bashir Ahmad caste Panwar, Muhammad Shehzad son of Muhammad Hafeez, Muzammil Mohajer, Saeed alias Kalu Mohajer, Muhammad Chand son of Jam Fazal, Muhammad Asif son of Arif (cycle works) were leading the mob and other accused persons 2000/2500 in number, amongst those some were armed with weapons, some had bricks after breaking wall of Police Station, some were having cans of petrol and kerosene oil in their hands, were raising slogans. Ulema tried to pacify the accused persons (but failed) and went away. Meanwhile, Maulana Abdul Latif, Saeed wali Masjid started announcements on speakers of Masajid to provoke/instigate the public to gather (at Police Station). After departure of notables and Ulema Karam, said accused persons assaulted upon police and building of Police Station by bricks. They besieged them (police) in Police Station. Some of accused carrying fire arms started straight firing upon police and at the building of Police Station whereupon they (Police) made shelling of teargases in their self defence and to disperse the mob and also made aerial firing. Said accused persons with consultation and in prosecution of common object also burnt the official vehicles of DSP/SDPO No.2207 and official vehicles No.1431/BRL, 6723/BRK, vehicle of Elite Uch Sharif No.6385/BRM which were parked outside the Police Station. They also stole the wireless sets, walky-talky sets, four bullet-proof helmets, two mobile phones & wallets of officials by breaking the door pane of said official vehicles. Accused persons forcibly entered into the official quarter of Baqa Muhammad Wireless operator and looted his house-hold articles, dowry articles & gold ornaments of his daughters and also set on fire the remaining material of the house and also martyred the Holy Qur'an in the quarter by setting fire. Thereafter accused persons entered into his (S.H.O) official quarter, took away valuable/house-hold articles and broke the remaining articles. Accused persons then started pelting bricks upon police officials deputed on roof top and inside Police

Station. They broke main gate of Police Station by throwing bricks and then set on fire it with petrol. When police tried to put off fire, accused persons started severe pelting upon police, entered into Police Station by making straight firing and pelting. They broke the lock up of Police Station, took out said unknown accused person who had burnt Holy Qur'an, tried to set on fire the record of Police Station. The police tried to rescue the unknown accused but they made straight firing and pelting, due to which Naveed Mumtaz SDPO, Munir A.S.I reader SDPO, Azhar Ali 861/HC Elite Ahmadpur East, Khan Muhammad A.S.I, Muhammad Kashif 134/C driver, Ejaz 1367/C and Zulfiqar Ali PQR sustained serious injuries. Injured were shifted to Hospital after preparation of their injury statements. Other police officials saved their lives by taking shelters. Police also made aerial firing to rescue the unknown accused but accused persons forcibly boarded unknown accused of burning of Holy Qur'an on motorcycle, murdered him in the way, took him to Chanigoth Chakar and set him on fire where Muhammad Amin 609/C and Ghulam Sajjad 1209/C were present in plain clothes and they saw the occurrence. Meanwhile he (S.H.O) with other police contingent also reached there, tried to disperse accused persons and to rescue the unknown accused of burning Holy Qur'an, but till that time accused persons had already burnt him by putting tyres and dry woods on fire. He put off fire and shifted burnt dead body of said unknown prisoner to Ahmadpur East for postmortem examination under the escort of Ghulam Farid SI and Muhammad Amin 609/C., FIR was registered at 10.30 p.m. at police station.

3. The investigation of this case was conducted by nine police officers and finally a report under section 173 Cr.P.C., was submitted and accused persons were charge sheeted, to which they pleaded not guilty and claimed to be tried, whereupon, the prosecution produced twenty-six witnesses, which include Shahad Gull 404/C (PW-1) a formal witness from police, Dr. Muhammad Ajmal Bhatti (PW-2) who medically examined the injured namely Munir Ahmad, Khan Muhammad SI, Muhammad Iqbal SI, Naveed Mumtaz DSP, Muhammad Rizwan/C, Shoaib Akhtar 772/C, Zulfiqar Ali PQR, Muhammad Kashif 134/C, Azhar Ali/HC and Ejaz Ahmad 1367/C, Naveed Mumtaz DSP is injured/eye witness; Dr. Muhammad Arif Ghouri (PW-4) conducted postmortem of dead body of unknown deceased; Muhammad Rizwan 934/C (PW-5), Muhammad Kashif 134/C (PW-6) are injured eye witnesses; Ghulam Mohy-ud-Din Inspector (PW-7) is the complainant; Baqa Muhammad 2032/C (PW-8) is also an injured eye witness; Muhammad Arif 985/HC (PW-9) also had witnessed the occurrence; Muhammad Amin 609/C (PW-10) and Ghulam Sajjad (PW-11) are the witnesses of dragging of unknown person by the accused and setting said person on fire; Khan Muhammad SI (PW-12) is eye witness and also witness of certain recoveries; Muhammad Akram Saqib 2439/HC (PW-13)

is another formal witness; Sajid Hussain 1645/C (PW-14) is witness of recovery; Ghulam Farid SI (PW-15) had initiated the investigation in this case; Muhammad Nawaz Inspector (PW-16) apart from an eye witness, also conducted investigation of the case; Ghulam Haider 837/C (PW-17) is witness of recovery; Muhammad Arif Patwari (PW-18) is formal witness; Irshad Haider Bukhari Inspector (PW-19), Ejaz Hussain Inspector/Member JIT (PW-20), Muhammad Ikram Inspector (PW-21), Sarfraz Hussain Tarrar Inspector (PW-22), Ghulam Dastigir DSP (PW-23), Waseem Aslam Inspector (PW-24), Syed Hamid Hussain Inspector (PW-25) and Muhammad Iqbal Inspector (PW-26) had investigated the case. The prosecution tendered documents Exh.PA to Exh.PKK in evidence and closed its case. The accused when examined under section 342 Cr.P.C. they pleaded innocence and none from them opted to appear as their own witnesses on oath under section 340(2) Cr.P.C. however, they produced documents Ex.DA to Ex.DJJ, whereas, accused Muhammad Tufail also produced Dr. Abdul Rauf (DW-1) in his defence and the trial ended in the terms as detailed in the opening paragraph of this judgment.

4. Learned counsel for the appellants states that offence of rioting require a precise intention of the participants to commit an intended offence and mob psychology is driven by heat and passion without any pre-concert, therefore, very root of formation of unlawful assembly is weak and it also had no support of proper identification of the appellants while committing such offence. Learned DPG though controverted the arguments but could not deny the fact that on the basis of similar evidence number of accused have been acquitted by the learned trial court as well as by this court.

5. Heard. Record perused. The contention of the appellants' counsel is required to be thrashed in order to see the fact-statement of offence of rioting as well as the nature of evidence required to prove such offence.

6. An offence is a statement of facts embodied in a section of law which are to be proved as required through the definition given in such section of law. We know 'riot' is a disturbance of the peace by several persons, assembled and acting with a common intent in exercising a lawful or

unlawful enterprise in a violent and turbulent manner. Bifurcating such definition into segments will show that disturbance of peace, like obstruction of roads, damage to property or injuries to persons, is to be proved by the evidence of illegal acts at the site, and that too by several persons, and if it was a lawful act then violent or turbulent manner shall be proved; both situations require that a pre-concert is to be proved for attracting common intent, or the circumstances which united the people to act with common intent at spur of the moment.

Riot, rout, and unlawful Assembly are related offences, yet they are separate and distinct. A ‘rout’ differs from a ‘riot’, in which the persons involved do not actually execute their purpose but merely move toward it. The degree of execution that converts rout into riot is often difficult to determine. Pakistan Penal Code, 1860 (PPC) also identifies the offence of rioting as given in section 146 which is as under;

> **146. Rioting;** Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Above section of law reflects that when force or violence will be used by an unlawful assembly with the intent mentioned therein then it would become an offence of rioting. In order to attract the offence of rioting, it is necessary to see the formation of unlawful assembly which is dealt u/s 141 of PPC as under;

> **141. Unlawful assembly**; An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is:-
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> First: To overawe by criminal force, or show of criminal force, the Federal or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or
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> Second: To resist the execution of any law, or of any legal process, or
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> Third: To commit any mischief or criminal trespass, or other offence; or
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> Fourth: By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or
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> Fifth: By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

> **Explanation:** An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

Above section clearly requires what sort of actions are to be proved for alleging that the offence has been committed.

7. Similarly in different laws, during the rioting certain other offences are also committed, requirement for proving such offences can be judged keeping in view the definition given in that law. e.g. offence of 'lynching' (Section 11-WW) under Anti-terrorism Act, 1997, Sabotage (section-20) under Maintenance of Public Order Ordinance, 1960, offences under Anti-National activities etc.

Lynching is an extrajudicial killing by a group. It is most often used to characterize informal public executions by a mob in order to punish an alleged transgressor, punish a convicted transgressor, or intimidate people. It can also be an extreme form of informal group social control, and it is often conducted with the display of a public spectacle (often in the form of a hanging) for maximum intimidation. Instances of lynchings and similar mob violence can be found in every society. Therefore, it can be said that lynching is a form of violence in which a mob, under the pretext of administering justice without trial, executes a presumed offender, often after inflicting torture and corporal mutilation.

The term '***lynch law***' refers to a self-constituted court that imposes sentence on a person without due process of law. Both terms are derived from the name of Charles Lynch (1736–96), a Virginia planter and justice of the peace who, during the American Revolution, headed an irregular court formed to punish loyalists.

Historically, the Vehmic courts of medieval Germany imposed some punishments that involved lynching, as did the Halifax gibbet law (execution of those guilty of theft valued over a specific amount) and Cowper justice (trial after execution) in the border districts of England. Resembling these cases were the Santa Hermandad constabulary in medieval Spain and pogroms directed against Jews in Russia and Poland, although in these cases there was support from legally constituted authorities.

The important thing about racial lynching and blasphemy is that they are forms of democratic violence and designed to assert majority dominance over the victims. Although the act of lynching itself is illegal, it has wide social acceptability and is framed in terms of vigilante justice. Vigilante justice has been practiced in many countries under unsettled conditions whenever informally organized groups have attempted to supplement or replace legal procedure or to fill the void where institutional justice did not yet exist.

8. Riot can be of two types, planned and unplanned, both require handling in different ways. Planned riot in terms of democratic violence pursuant to a political decision or in the form of social terrorism resorted to ventilate vengeance against blasphemous attempt, or a political decision or against a grave injustice. Such riot precedes a protest before it actually materialized therefore, more or less is in the form of informed decision to be tackled with care and caution for its proper prevention or at least management to lessen the miseries. Unplanned riots committed usually in a short socket which are difficult to prevent usually broke out at spur of the moment like in a factory, hospital, educational institution, in a village or during preventing a street crime and many other. To prove the individual offence during a rioting is one of the difficult tasks. Some private riots are also in place in our crime strategies, it is when more than five persons attack other party for commission of any offence and said riot is retaliated with the same force; such situation requires identification of parties as aggressor or aggressed upon so as to give premium, for exercising right of self defence, to diminish or vanish the criminal liability.

Lawyers and prosecutors say that the problems posed by riotous crime begin with the difficulty in determining, with the specificity and corroboration required for prosecution, who did what. Even when evidence is developed detailing an individual's participation amid the chaos of a mob, it can be much harder to fit his actions to the closely defined categories and degrees of criminal culpability than if he had committed a crime alone or as part of an extensively planned group action. Concepts like "state of mind" and "acting in concert," often keys in determining guilt and challenging

enough to apply in orderly episodes, are even tougher in a tumultuous context. In those situations, things happen so fast and human perceptions are so imprecise that it's difficult to assign blame in a manner which permits a prosecutor to prove a case beyond a reasonable doubt; on the defense side, there is a valid fear that prosecutors will charge people with minor participation in a serious event and because the judges sometimes are so outraged at the event, they will sweep those people into the guilty category. Burdens arise for prosecutors because "the criminal law focuses on intent to commit a crime, and when a mob acts, in essence it becomes a beast with an intent of its own that is hard to attribute to any individual members. Basic problem is that the law evolved with the notion that crimes were committed by individuals or with the notion of conspiracy liability, and one can't really say that about people acting together in a mob. It's extremely hard to prove acting-in-concert in a mob situation. It means having a state of mind similar to or compatible with another person's that aims toward a criminal goal, and the actions must indicate there was this agreement, even a tacit one.

In order to prevent mob violence though police in their training centers teach the officers /trainees different subjects such as mob psychology, handling of vulnerable groups, negotiation skills, stress management and so on. In terms of field training, they are taught modern arrest techniques that need minimal use of force, use of anti-riot equipment, mob dispersal methods, first aid and evacuation procedures. We know even such trainings and modern equipment are not enough to control violent mobs. What is needed is the building of people’s trust in police and the country’s criminal justice system. The people take law in their hands because they think the culprits will go unpunished. The mobs are encouraged by the fact that hardly anybody involved in acts of collective violence is punished, and it is the perception that the bigger the number of people involved the safer they are from the law.

9. It is essential that by now a focus be made to collect evidence that could help to prove the offence of rioting; to achieve this end, it is necessary to see what requirements are in place in law/rules to prove an offence of

rioting. A course has been suggested in High Court Rules & Orders; relevant formation is reproduced as under;

Chapter 4: trial in riot cases
High Court Rules & Orders Volume-III

1. Careful handling required.-- Riots resulting in serious injuries or even death are of frequent occurrence in this Province, and cases relating to such riots require very careful handling. A large number of persons is generally involved and the evidence is often entirely of a partisan character. There is, moreover, great danger of innocent persons being implicated along with the guilty, owing to the tendency of the parties in such cases to try to implicate falsely as many of their enemies as they can.

2. Court's duty to ascertain the true version.—The parties generally give widely divergent versions of the riot and in such cases the Police usually prosecute members of both the parties and place the divergent versions and the evidence in support thereof before the Court. It is for the Court to ascertain in such cases which of the two versions is correct and the Court cannot shirk this duty on the ground that the Police did not ascertain which of the stories was true.

3. Right of self-defence.—When both parties deliberately engage in a fight no question of the right of self-defence arises. But, otherwise, the question as to which of the parties was the aggressor and which was acting in self-defence becomes of vital importance and the Court must do its best to arrive at a finding thereon for the party acting in self-defence cannot be held to be guilty of any offence unless the right of private defence is exceeded (see sections 96-106, Pakistan Penal Code.)

4. Separate trials when both parties are prosecuted.-When both parties to a riot are prosecuted, the two cases must be tried separately and evidence in one case cannot be treated as evidence in the other, even with the consent of the parties. Similarly judgements in such cases should be written separately and the evidence in the one case should not be imported into the judgment in the other. Even when the Court is careful enough not to mix up the evidence, the mere fact of its having written one judgment furnishes the convicts with a ground of appeal.

5. Case of each accused should be separately sifted.—In recording evidence in riot cases, care should be taken to bring out distinctly as far as possible the connection of each of the accused with the crime and the actual part played by him. In the judgment the evidence against each of the accused should be discussed separately along with the evidence produced by him in defence (if any), and should be scrutinized with care. The possibility of innocent persons being falsely implicated should be always borne in mind. The mention or omission of the name of an accused person in the First Information Report, when such report is made promptly by an eyewitness, and the presence or absence of injuries on his person are worthy of consideration in this respect, though these are, of course, by no means conclusive.

6. An unlawful assembly, its common object and use of violence must be proved.—A charge of rioting presupposes the existence of an unlawful assembly with a common object as defined in section 141 of the Pakistan Penal Code. No charge of rioting can be sustained against any person unless it is proved that he was a member of such an unlawful assembly, and that one or more members of the assembly used force or violence in prosecution of its common object. It is, therefore, advisable to refer to the unlawful assembly, its common object, and the use of violence in the charge, so that the essential ingredients of the offence are not lost sight of.

> **7. Joint liability of accused**.- Section 149 of the Pakistan Penal Code, makes every member of an unlawful assembly constructively liable for offences committed by other members in prosecution of the common object of the assembly. If the number of offenders is ultimately found to be less than five, this section will not be applicable, but joint liability may still arise by virtue of section 34 of the said Code, if it is found that the act constituting the offence was committed in `furtherance of the common intention of all'. When no joint liability can be established, each accused person can be held responsible for his own acts. (See 61 PR 1887, 52 ILR Cal. 197).
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> **8. Sentences when several offences are committed**.- When a number of offences are committed by members of an unlawful assembly in the course of the riot in prosecution of their common object, each member is guilty not only of rioting but of every other offence committed by himself or by the 36 other members of the unlawful assembly. Under section 35 of the Code of Criminal Procedure he is liable to be punished separately for each of such offences, subject to the provisions of section 71 of the Pakistan Penal Code. Section 35 of the Criminal Procedure code enables the Court to make the sentences for two or more of such offences concurrent. The appropriate sentence in the case of each accused person must, of course, be determined in view of all the circumstances of the crime and the actual part played by him. (See 4 PR 1901)

We know courts through precedents also throw light on nature of proof required to establish an offence committed during a mob violence; therefore, some precedents showing certain material as sufficient or otherwise, are given below for reference;

"ABDUL ALIM alias ABDUL alias ABDUL AWAL AND 22 OTHERS versus THE STATE" **(1971 P Cr.LJ 123):-**

Importance of FIR;

> *"In a case of mob violence like the present one much importance cannot be attached to the First Information Report though there are authorities which speak of the importance of the First Information Report being the first written information about the occurrence to the authority concerned. In this view of the matter, we find no substance in the contention of Mr. Abdus Salam Khan that the F. I. R: in the present case is not a bona fide and genuine document as regards the accused named therein."*

Recognition and identification of the accused

> *"Mr. Abdul Salam has argued that in a large-scale violence by a frenzy mob numbering 2000 or 3000, it is impossible to recognize which member of that frenzy mob was doing what and he (Mr. Abdus Salaam Khan) has further argued that in a case like this, T. I. parade ought to have been hold for identification of the accused. He has, therefore, contended that it is to be presumed that T. I. parade was not held because it was not possible for any one of the prosecution witnesses to identify any member out of that frenzy mob. We have already noticed that a large number of police officers and policemen were involved in the occurrence. They named some of the accused persons in their evidence and also correctly identified them. This shows that they know at least some by name as well as by face otherwise they could not name them at all. Moreover, their evidence does not stand alone. There is the evidence of local witnesses regarding the recognition of the accused as participants to the occurrence and assailants of the police party. There is hardly any force in the contention that the local witnesses did not know the accused specifically-named by them in their evidence and also identified them during the trial. If the assailants are known persons and recognised by name as well as by face, no question of T. I.*

parade arises at all: Though all the accused, appellants were not recognised by each of the witnesses to the occurrence or by the same number of witnesses, still the evidence regarding the recognition is quite reliable.

"ALI RAZA alias PETER and others Versus The STATE and others" **(2019 SCMR 1982):-**

"What is established beyond doubt in the first crime report, is massive violence suffered by four individuals, though with a reticent reference to the robbers, two in number, without details/identities of those who lynched them shortly thereafter. Prosecution's complete silence on deaths and injuries as well as details collateral therewith occurring within same time and space, in the second First Information Report as well as during the trial, is most intriguing. Similarly, deceased' armed detour for a morning walk, on a motorbike, with undigested food in their stomachs, to be confronted by a mob, is a story that may not find a buyer. In the absence of whole truth, ". . . . . the Court must not be deterred by the incompleteness of the tale from drawing the inferences that properly flow from the evidence and circumstances" Syed Ali Bepari v. Nibaran Mollah and others (PLD 1962 SC 502). Available evidence on the record does not allow any hypothesis to substitute anyone else, being responsible for the first incident other than the deceased of the present case, subsequently fallen prey to the wrath of a mob with the appellants being at the helm. Defense objection on the admission of forensic evidence, establishing appellants' identity as well as participation in the crime does not hold much water."

"In the totality of circumstances, given appellants' different backgrounds, in a limited time space, interpolation, substitution or editing of forensic material, seemingly immune from human interference, could not have been possibly manipulated and thus constitutes a piece of evidence too formidable to be shaken through a bald assertion alone, therefore we entertain no manner of doubt that the appellants are responsible for what befell upon the deceased and thus notwithstanding the enormity of their own conduct the appellants cannot be exonerated for their recourse to violence upon the deceased. Prosecution of offences, to the exclusion of all others, is a State prerogative and sentencing the offenders is a judicial province. Accused of most heinous or gruesome offence is entitled as of right, to a fair trial by a tribunal designated by law with a meaningful opportunity to vindicate and defend his position both before the prosecuting authority as well as the Court. Collective human wisdom, since times immemorial has not been able to evolve a better or more humane procedure to prosecute and convict offenders other than due process of law, with procedural safeguards under Constitutional guarantee of fair trial, to hand down sentences mandated thereunder on the preponderance of legal evidence, without compromising on the principle of inherent human dignity. Retributive torture, that too by mobs through street justice, would not only have most de-humanizing impact on our society but also triggers chaos and anarchy as is evident in the present case besides being violative of Constitutional mandate. Vendetta cannot equate itself with justice. It is devoid of solemnity inherent in the process of law, leaving an offender as a victim, an object of sympathy at the end of the day, without judicial certainty about his guilt, therefore the appellants cannot be allowed to go scot free without a tag."

"*BABA JAN versus The STATE*" **(2016 YLR 88):-**

The occurrence is basically of the offences of sections 147, 148, 149, 427, 436, 353 and 448, P.P.C. Prosecution story shows that about 700 or 800 persons gathered in front of United Bank (UBL) or Karakuram Cooperative Bank (KCBL) Aliabad Hunza, turned into an illegal mob entailing to the occurrence. Very strangely, the learned trial court has convicted appellant although none of the PWs are charging the appellant for any of the above offences. In a case of rioting by a mob, every

member of the mob is responsible for the occurrence, while in the case in hand, the learned trial court has accepted selection of appellant for trial, by the prosecution. In such a case, to sustain a conviction for rioting, it is essential for prosecution first to prove the existence of an unlawful assembly with a common object and then to prove that one or more members of the assembly used violence or force in furtherance of the common object. The prosecution evidence is silent about the common object of the alleged rioters. None of the above PWs are stating about any kind of common object of the rioters. None of the PWs have charged appellant for any of the offences of above sections. The PWs, who have even charged the appellant, have stated about mere presence of the appellant in the mob. Mere presence of the appellant at the place of occurrence is never sufficient to prove that he shared the common object of the unlawful assembly. The provisions of the above referred sections do not require conviction and punishment merely on the basis of only presence or identification of the appellant as member of the mob. None of the PWs have stated that appellant did any act amounting to offence of any of the above sections.

"*MUHAMMAD AZAD AND 6 OTHERS versus THE STATE*" **(1970 SCMR 780)**

"*It is noteworthy that these three witnesses have not said a word about the rest of the incident, or of the manner in which any other person on the prosecution side came by his injuries. From this circumstance, two conclusions may be justifiably drawn. The first is that these witnesses are not touched to any appreciable extent by the conflict between the two voting camps which developed into hostilities on this occasion. Secondly, their evidence makes it plain that despite the description given of the incident in the initial report, the assaults which took place including those which have been made the subject matter of convictions in the present case were not part of a general attack by several hundred persons on several hundred other persons, but are to be regarded as sporadic or isolate assaults which occurred at some distance from the polling station, and perhaps on the fringes of the front between the two opposing groups."*

"……The contention that these six persons can only be held responsible on the evidence, for the consequences of their individual acts is obviously untenable, since the attacks upon Tikka Khan, Abdul Aziz and Bhag Ali are clearly proved to have been the concerted work of the persons who have been named above, acting in groups. The application of section 149, P. P. C. in the circumstance of the case may not be entirely appropriate, for, as has been seen already, the indications are that the injuries of the individual members of the complainant-party were not the result of a massed attack by four hundred persons on four hundred others, but the attacks on these persons were included in a number of sporadic assaults, and they cannot be regarded safely otherwise than in isolation from each other. But joint responsibility of the nature for which provision is made in section 34, P. P. C. clearly attaches to those who joined in the attack upon a particular individual, to the extent that his injuries were the reasonable and natural consequence of the attack."

"*SRI JAGADISH DEORI vs The STATE OF ASSAM"* ***(Crl.A.No.177/2016, Crl.A.No.329/2018, Crl.A.7/2019, Crl.A.(J)89/2019 and Crl.A.(J) 90/2019.***

92. Reverting back to this case it is held that common intention to assault could be inferred from the conduct of the mob. The mob stormed into the courtyard of the deceased and pulled him out along with his wife and sons. It could be deciphered that the appellants who were also members of the mob, at least, had the common intention to assault the injured persons and the deceased. It is worth reiterating that no contradictions could be elicited through the cross-examination of PW-2 and PW-3 to rebut their evidence that they were assaulted by the appellants. It has already been held in the foregoing discussions that the FIR was

lodged by a family member who was not present in the place of occurrence and so the names of the appellants were not mentioned in the FIR.

93. In the instant case PWs-2, 3, 7 and 9 have clearly identified the appellants who were present in the dock while they were facing trial. The other witnesses have also identified the appellants who were present in the dock. PW- 2, PW-3 and the deceased were relentlessly attacked by a large mob. They could very well identify the appellants who were co-villagers, but it is next to impossible for them to specifically describe each and every blow and the weapon used at the time of the incident. It is not humanly possible that the witnesses could remember vividly which appellant assaulted on what part of the body. Evidence of an injured witness must ordinarily be ranked high.

State of U.P vs Dan Singh,(SC). ***1998 (1) CLJ (Criminal) 18.***

With respect to existence of unlawful assembly, it was held;

"It is possible that there was no unlawful assembly in existence at the time when the `doli' was stopped. Nevertheless, as per the evidence of all the eye witnesses, a large number of villagers had gathered there and they had with them lathis and sticks. According to the explanation to Section 141 I.P.C. and assembly which is not unlawful when it assembles may subsequently become an unlawful assembly. As observed by this Court in Lalji & Ors. Vs. State of U.P., 1989(1) SCC 437 "that common object of the unlawful assembly can be gathered form the nature of the assembly, arms used by them and the behaviour of the assembly at or before the scene of occurrence. It is an inference to be deduced from the facts and circumstances of each case". What has happened in the present case is precisely what has envisaged in the explanation to Section 141 I.P.C. With Khima Nand being injured, all hell broke loose. A cry was raised that the doms should be burnt and killed, and this is precisely what happened. the marriage party was assaulted by the villagers. Six of the members of the marriage party were burnt, five of them having been locked inside the house of the only Dom resident of the village whose house was also burnt. Eight others were pursued and then mercilessly beaten and were killed elsewhere in the village. We fail to appreciate how anyone, under the circumstances, can possibly come to the conclusion that an unlawful assembly having the common object of killing the Doms did not exist when fourteen people have been killed without the use of any weapon more lethal than a stick or stone. Considering the number of injuries on the persons who had died, it is evident that a large number of persons must have taken part in the assault.

Tracking the members of unlawful assembly

This brings us to the next question as to who were the persons who were members of this unlawful assembly. it is no doubt true that some of the villagers may have been present at the time of the occurrence who were mere spectators and could not be regarded as being members of the unlawful assembly. It also happens, when people are killed during a riot, there may be a possibility of the incident being exaggerated or some innocent persons being named as being part of the assailants party. This may happen wittingly or unwittingly. But just because there may be some inconsequential contradictions or exaggeration in the testimony of the eye witnesses that should not be a ground to reject their evidence in its entirety. In the cases of rioting, where there are a large number of assailants and a number of witnesses, it is but natural that the testimony of the witnesses may not be identical. What has to be seen is whether the basic features of the occurrences have been Before we deal with the testimony of these witnesses, it will be important to bear in mind that in the present case the conviction is being sought under Section 302 I.P.C. with the aid of Section 149 I.P.C.. The two essential ingredients of this Section are that there must be a commission of an offence by any member of unlawful assembly and that such offence must be committed in prosecution of common object of that assembly or

must be such as the members of that assembly knew to be likely to be committed. It is also a well-settled law (see Masalti Vs. State of Uttar Pradesh, AIR 1965 SC 202) that it is not necessary for the prosecution to prove which of the members of the unlawful assembly did which or what act. In fact as observed in Lalji's case (supra) "while overt act and active participation may indicate common intention of the person perpetrating the crime, the mere presence in the unlawful assembly may fasten vicariously criminal liability under Section 149".

Mr. Lalit is right in submitting that the witnesses would be revengeful as a large-scale violence had taken place where the party, to which the eye witnesses belonged, had suffered and it is, therefore, necessary to fix the identity and participation of each accused with reasonable certainty. Dealing with a similar case of riot where a large number of assailants who were members of an unlawful assembly committed an offence of murder in pursuance of a common object, the manner in which the evidence should be appreciated was adverted upon by this court in Masalti's case (supra) at page 210 as follows:

> *"Then it is urged that the evidence given by the witnesses conforms to the same uniform pattern and since no specific part is assigned to all the assailants, that evidence should not have been accepted. This criticism again is not well founded. where a crowd of assailants who are members of an unlawful assembly proceeds to commit an offence of murder in pursuance of the common object of the unlawful assembly, it is often not possible for witnesses to describe accurately the part played by each one of the assailants. Besides, if a large crowd of persons armed with weapons assaults the intended victims, it may not be necessary that all of them have to take part in the actual assault. In the present case, for instance, several weapons were carried by different members of the unlawful assembly, but it appears that the guns were used and that was enough to kill 5 persons. In such a case, it would be unreasonable to contend that because the other weapons carried by the members of the unlawful assembly were not used, the story in regard to the said weapons itself should be rejected. Appreciation of evidence in such a complex case is not doubt a difficult task; but criminal courts have to do their best in dealing with such cases and it is their duty to sift the evidence carefully and decide which part of it is true and which is not."*

One more principle which was laid down in Masalti's case (supra), and which would be applicable here, is that where a "court has to deal with the evidence pertaining to the commission of an offence involving a large number of offenders and a large number of victims, it is usual to adopt the test that the conviction could be sustained only if it is supported by 2/3 or more witnesses who give a consistent account of the incident. In a sense the test may be described as mechanical; but it cannot be treated as irrational or unreasonable".

Tribhuvan Nath vs State, (Delhi) (DB) ***1995 CriLJ 1215***.

(18) The short question which arises for consideration is whether the appellants could be treated to be members of the said mob which was having the unlawful object of murdering the Sikhs and looting and arousing their shops and houses. From the testimony of Public Witness 1 and Public Witness 2, it is apparent that the appellants had come to ask the Sikhs residing in the locality to cut their hair so that they may not be noticed as Sikhs who could be the targets of the unruly mob which might come and kill the Sikhs. If that is so, it is not possible to agree with the inference drawn by the learned Additional Sessions Judge that when the actual rioting mob came at about 3.30 P.M. and assaulted the Sikhs, these appellants also became members of the mob sharing the said unlawful object of the said mob. After all, no overt act has been imputed to the appellants by Public Witness 1 and Public Witness 2 that the appellants had either instigated the mob or had led the mob or had performed any other act which could show that when the mob came, which

assaulted Himmat Singh, these appellants came to share their common unlawful object of the said mob. There is no statement made by these Public Witness 1 and Public Witness 2 that the appellants had indulged in any rioting, arousing or looting of the properties and valuables of the Sikhs.

(19) Mere presence of appellants in the mob at the time the mob came, in our view, would riot lead to any inference that the appellants had become members of the said mob sharing the unlawful objects of the said mob.

(20) In Bishambar Bhagat Vs. The State of Bihar, it was held that mere presence of a person at the place where the members of an unlawful assembly have gathered for carrying out their illegal common object does not incriminate him but the question is one of fact in each case as to whether a person happens to be innocently present at the place of occurrence or was actually a member of the unlawful assembly.

(21) Similarly in Mutha Naicker Vs. State of Tamil Nadu, , the Supreme Court held that whenever in uneventful rural society something unusual occurs, more so where the local community is faction ridden and a fight occurs amongst factions, a good number of people appear on the scene not with a view to participating in the occurrence but as curious spectators. In such an event, mere presence in the unlawful assembly should not be treated as leading to the conclusion that the person concerned was present in the unlawful assembly as a member of the unlawful assembly.

(22) Same ratio had been repeated by the Supreme Court in case of Ghanshyam Vs. State of Uttar Pradesh.

10. To further dilate upon the requirement of evidence and the defences, it is necessary to throw in light some facts and sort of material to be collected and attended during the course of investigation or trial.

- In case of planned or unplanned riot, police can resort to powers available under sections 127 to 131-A of Cr.P.C. to disperse unlawful assembly and can also claim protection u/s 132 Cr. P.C. against an offence if committed by the police during such prevention. In a somewhat similar situations, powers are also regulated u/s 4 & 5 of the Anti-terrorism Act, 1997. Police can also claim exoneration pursuant to section 76, 79, 80 or 81 of PPC (general exceptions) and shelter under Article 172 of Police Order, 2002. In all such situations, action in good faith as defined u/s 52 of PPC is to be proved by the police.

- For prevention of planned riot, a tactical plan should be arranged so that all law enforcement officials and officers are well acquainted with transportation facilities, its routes, communication procedures and command & control personnels in headquarters. copy of such Notifications/orders must be made available with reports u/s 173 Cr. P.C.

- To identify the protesters or the members of unlawful assembly, police can use coloured water guns and can make available images or videos for its use as evidence before the court. Though it is difficult to install CCTV cameras at the site of agitation yet like devices can be used to

video graph the episode of agitation. Such video clips can be retrieved from the system with the help of forensic experts as per requirement of law and evidence in the form of photogrammetry test can be made available.

- Where there is government installed CCTV camera, like as under Safe City Authority Act, the footages can be collected from concerned office after observance of full protocols under the law.

- Similar process for obtaining digital evidence can be resorted to if available in any forms like event video graphed by general public through any cell phone or by media men after converting it into admissible format of evidence. So much so videos relating to events, displayed on air through TV channels or social media can also be made available as evidence after obtaining it from PEMRA through a formal process sanctioned by law.

- The police should be instructed for the use of Polaroid cameras (which should be made available to them) to photograph arrestees and arresting officers at the time of arrest. When arrestees are being processed prior to arraignment, at least two pictures of the arrestee should be taken; one for the police records and the second to accompany the court papers in order to eliminate identification problems in court if the arrestee gave a false name.

- Instructions should be issued that notations should be made on the photographs regarding time, place, and circumstances of the arrest. Names of news media photographers should be noted so that their photographs and video-tapes will be available for use at the time of trial.

- Transportation personnel should be instructed not to accept an arrestee without an accompanying photograph and the name of the arresting officer.

- Law enforcement officers should be equipped with tape recorders and bull horns, particularly if the demonstration is a non-violent one. This can be of great value in preserving warnings given at the scene for future use in court. Furthermore, to prevent or minimize injury, the bull horn can be used to warn demonstrators of intent to use tear gas or the chemical MACE.

- Law enforcement officers can familiarize themselves with the appropriate statutory offences, which are usually committed during a riot, in consultation with the prosecution office well in advance so as to meet pre-charge procedures for collection of required evidence.

- Conspiracy evidence of such rioting is also required during the trial for making chain of events intact which could be made available, apart from other methods, with the sanction as mentioned in Investigation for Fair Trial Act, 2003.

- Public notice/demonstration by the police to call for any information or evidence with respect to commission of such offence in order to prove the source of information open or privileged, and copy of such notice be tendered in evidence.

11. Coming back to the case in hand, as shall be seen from the above narration of facts, according to the prosecution case itself the mob consisted of about 2000/2500 persons and in order to establish the ocular account eight prosecution witnesses namely Naveed Mumtaz DSP (PW-3), Muhammad Rizwan Constable (PW-5), Muhammad Kashif Constable (PW-6), Ghulam Mohy-ud-Din Inspector (PW-7), Baqa Muhammad Constable (PW-8), Muhammad Arif HC (PW-9), Muhammad Khan SI (PW-12) and Muhammad Nawaz Inspector (PW-16) were assigned the duty to pin point, nominate and assign the roles to the accused. While going through the statements of above witnesses it has been observed that only three prosecution witnesses have named Fayyaz Ahmad and five have nominated Muhammad Shahzad to be the members of the mob, with no further specification about their role. In a situation portrayed by the prosecution, it was near to impossibility that amongst such a huge number of perpetrators the witnesses could identify these accused/ appellants; while observing so, we are influenced by the fact that none from the mob was arrested at the spot who could have helped the prosecution to point out and name the persons from the crowd and further it was also not brought on the file through the statements of any of such witnesses that the accused who were nominated by them, had any criminal credentials or otherwise, they were known to the witnesses prior to the occurrence. On these particulars lines the prosecution witnesses were cross-examined by the defence and it came to light that none of these witnesses were the residents of the locality, they had no business or property in the said area and some of these witnesses in clear terms admitted that the accused persons who had been named by them were not familiar to them prior to the occurrence and they also could not disclose the source from where they knew the names of the accused appellants. Though, one of the

witnesses namely Khan Muhammad SI (PW-12) tried to explain that one Saboor Press Reporter had taken the footages and with the help of said footages the people of the area and other accused had named the assailants, but if this plea is admitted then said Saboor Press Reporter could be the best witness in the hands of the prosecution, but neither said Press Reporter was shown any where in the FIR nor was produced in the witness box to lend corroboration to the prosecution case.

12. We are conscious of the fact that ocular account was sought to be corroborated through CD as well as photographs by Abdul Saboor, a Press Reporter and according to some of the prosecution witnesses this was the source by which they could identify the assailants and there is no cavil to the proposition that Article 164 of the Qanun-e-Shahadat Order, 1984 as well as provisions of Electronic Transactions Ordinance (LI of 2002) have smoothened the procedure to receive such evidence subject to restrictions/limitation provided therein as held in the case *"ALI RAZA alias PETER and others versus The STATE and others*" **(2019 SCMR 1982),** but as observed above said Abdul Saboor was neither joined in the investigation process nor was produced in the dock. So much so, these pieces of evidence were not sealed into parcels and no forensic test was got conducted to know that such CD/photographs were of such items and contained genuine or edited material.

13. Keeping in mind the peculiar facts and circumstances of the case, even if we believe the entire prosecution case with regard to different step by step modes of occurrence, the brutality unleashed by the mob, irrespective of the fact that it may be unplanned or without premeditation, has devastating impact on the society and also plays a vital role in tarnishing overall image of the country in the whole world. Having said that, primarily it would remain the obligation of the prosecution to establish the charge in such a manner that all hypotheses about the innocence of the culprits are vanished and the right of every accused to fair trial shall always remain the hallmark. In this respect, we would like to reproduce the relevant portion from the judgment of Hon'ble Supreme Court of Pakistan in the above-referred *Ali Raza's case* **(2019 SCMR 1982),** which reads as under: -

> *Prosecution of offences, to the exclusion of all others, is a State prerogative and sentencing the offenders is a judicial province. Accused of most heinous or gruesome offence is entitled as of right, to a fair trial by a tribunal designated by law with a meaningful opportunity to vindicate and defend his position both before the prosecuting authority as well as the Court. Collective human wisdom, since times immemorial has not been able to evolve a better or more humane procedure to prosecute and convict offenders other than due process of law, with procedural safeguards under Constitutional guarantee of fair trial, to hand down sentences mandated thereunder on the preponderance of legal evidence, without compromising on the principle of inherent human dignity. Retributive torture, that too by mobs through street justice, would not only have most de-humanizing impact on our society but also triggers chaos and anarchy as is evident in the presence case besides being violative of Constitutional mandate. Vendetta cannot equate itself with justice. It is devoid of solemnity inherent in the process of law, leaving an offender as a victim, an objection of sympathy at the end of the day, without judicial certainty about his guilt…."*

In the instant case, it is manifest that in series of events the occurrence triggered the outrage, instantaneously swaying upon the accused, otherwise, having no motive or axe to grind. It is this spontaneity whereunder the mob resorted to violence seemingly without premeditation. In such a situation, even if the occurrence is believed as it has been tabled by the prosecution, the important and foremost question was the identity of the accused persons, but here in this case the prosecution failed to establish the identity of the accused appellants either by the testimonies of ocular account or by any other means.

14. Last but not the least, on the same set of evidence, co-accused namely Muhammad Adil, Mubashir Fazal alias Chand, Muhammad Tariq, Muhammad Rafiq, Muhammad Asghar, Muhammad Tufail, Rasheed Ahmad, Muhammad Ehsan, Maqsood-ul-Hassan, Altaf Hussain and Muhammad Ejaz, whose cases were not different from the case of present accused appellants have already earned acquittal from this Court through judgment passed in Criminal Appeals bearing Nos.224/2022, 225/2022, 252/2022 & 259/2022; thus in addition to the fact that on merits the prosecution could not establish its case against the present accused/appellants, they are also entitled to get benefit of the principle of "*falsus in uno falsus in omnibus" (false in one thing, false in all*). Reliance is placed on the cases reported as "*Notice to Police Constable Khizar Hayat son of Hadait Ullah*" **(PLD 2019 SC 527)** and "*PERVAIZ KHAN and another versus The STATE*" **(2022 SCMR 393).**

15. For what has been discussed above, in the instant case the prosecution has totally failed to establish the charge against the accused/appellants beyond any shadow of doubt and it is trite that to extend benefit of doubt to an accused person, it is not necessary that there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused. Reliance is placed on the cases reported as *"MUHAMMAD MANSHA versus The STATE"* **(2018 SCMR 772)** and "*MUHAMMAD IMRAN versus The STATE*" **(2020 SCMR 857).** Consequently, criminal appeal is allowed and the accused/appellants are acquitted of the charges. They shall be released forthwith if not required in any other case. The case property, if any, shall be disposed of in accordance with law and the record of the trial court be sent back immediately.

(SADIQ MAHMUD KHURRAM)
JUDGE.

(MUHAMMAD AMJAD RAFIQ)
JUDGE.

Approved for reporting

JUDGE.

JUDGE.

Javed*