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Judgment Sheet
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Murder Reference No. 09 of 2021
(The State Vs. Muhammad Shahbaz)

Criminal Appeal No. 254 of 2021
(Muhammad Shahbaz Vs. The State and another.)

Criminal Appeal No. 729-J of 2017
(Muhammad Shakir Vs. The State and another.)

Criminal Appeal No.36 of 2018
(Muhammad Rafique Vs. The State and two others.)

J U D G M E N T

Date of hearing:	18.01.2023.
Appellants by:	Mr. Muhammad Imran Pasha, Advocate. The learned counsel also represented the respondent No.2 namely Muhammad Shakir in Criminal Appeal No.36 of 2018.
State by:	Ch. Asghar Ali Gill, Deputy Prosecutor General.
Complainant by:	Mr. Muhammad Sharif Bhatti, Advocate.

SADIQ MAHMUD KHURRAM, J.—Muhammad Shahbaz son of Syed Shabbir Hussain Shah and Muhammad Shakir son of Nazar Muhammad (convicts) were tried alongwith Rana Muhammad Irfan (since acquitted), the co-accused of the convicts, by the learned Sessions Judge, Lodhran in the case F.I.R. No. 92 of 2017 dated 25.04.2017, registered in respect of offences under sections 302,324,337-F(i), 337-F(iv), 337-F(v), 148 and 149 P.P.C. at the Police Station Galewal, District Lodhran for committing

the *Qatl-i-Amd* of Muhammad Qasim son of Imam Bakhsh(deceased). The learned trial court vide judgment dated 19.12.2017, convicted Muhammad Shahbaz son of Syed Shabbir Hussain Shah and Muhammad Shakir son of Nazar Muhammad (convicts) and sentenced them as infra:

Muhammad Shahbaz son of Syed Shabbir Hussain Shah:-

- i) Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Qasim son of Imam Bakhsh(deceased) and directed to pay Rs.300,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased and in case of default thereof, the convict was directed to further undergo six months of simple imprisonment. **The convict was ordered to be hanged by his neck till dead.**
- ii) Rigorous Imprisonment for ten years under section 324 P.P.C. as *Tazir* for attempting to commit *Qatl-i-Amd* of Muhammad Ramzan (PW-11) and directed to pay *fine* of Rs. 50,000/- and in default of payment of fine, the convict was directed to undergo further six months of simple imprisonment.

Muhammad Shakir son of Nazar Muhammad:-

- i) Rigorous Imprisonment for ten years under section 324 P.P.C. as *Tazir* for attempting to commit *Qatl-i-Amd* of Muhammad Ramzan (PW-11) and directed to pay fine of Rs. 50,000/- and in default of payment of fine, the convict was directed to undergo further six months of simple imprisonment.
- ii) Rigorous Imprisonment for ten years under section 324 P.P.C. as *Tazir* for attempting to commit *Qatl-i-Amd* of Muhammad Ramzan (PW-9) and directed to pay fine of Rs. 50,000/- and in default of payment of fine, the convict was directed to undergo further six months of simple imprisonment.

All the sentences awarded to the convicts were ordered to run concurrently by the learned trial court . The convicts were also extended the benefit available under Section 382-B of Code of Criminal Procedure, 1898 by the learned trial court.

Rana Muhammad Irfan, the co-accused of the convicts, was, however acquitted by the learned trial court. Muhammad Arsalan alias Munna ,another co-accused of the convicts,was also tried subsequently and acquitted by the learned trial court vide judgment dated 25.02.2019.

2. Feeling aggrieved, Muhammad Shahbaz son of Syed Shabbir Hussain Shah (convict) lodged Criminal Appeal No.254 of 2021, assailing his conviction and sentences. Feeling aggrieved, Muhammad Shakir son of Nazar Muhammad (convict) lodged Criminal Appeal No. 729-J of 2017 through jail, assailing his conviction and sentences. The learned trial court submitted Murder Reference No.09 of 2021 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah. The complainant of the case namely Muhammad Rafique filed Criminal Appeal No.36 of 2018 against the acquittal of the accused namely Rana Muhammad Irfan and the acquittal of Muhammad Shakir son of Nazar Muhammad from the charge under section 302 P.P.C. , however, Muhammad Rafique withdrew the Criminal Appeal No.36 of 2018 against the acquittal of the accused namely Rana Muhammad Irfan, but notice was issued to Muhammad Shakir son of Nazar Muhammad . We intend to dispose of the Criminal Appeal No. 254 of 2021, Criminal Appeal No. 729-J of 2017, Criminal Appeal No.36 of 2018 and the Murder Reference No.09 of 2021 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as narrated by Muhammad Rafique (PW-8), the complainant of the case are as under:-

“Stated that 25.04.2017, at about 10.45 am, I along with Muhammad Qasim, who is my nephew, Muhammad Ramzan s/o Allah

Bachayya and Muhammad Ramzan s/o Allah Wasayya both my cousin in relation were irrigating our own land in Bohar Boghay Shah, Suddenly accused persons namely Muhammad Shahbaz Shah s/o Shabbir Shah armed with pistol 30-bore Muhammad Shakir s/o Nazzar Muhammad armed with pistol 30- bore along with their three unknown accused persons each armed with pistol 30-bore reached and after breaking the watercourse started irrigating their land. On this, Muhammad Qasim tried to stop them. Shehbaz Shah made a straight fire from his pistol which hit Muhammad Qasim in front of his chest who fell on the ground. When I, Muhammad Ramzan s/o Allah Bachayya, and Muhammad Ramzan s/o Allah Wasayya step forward to rescue him, Shahbaz accused made second fire shot which hit on the right leg's thigh of Muhammad Ramzan s/o Allah Bachayya, Muhammad Shakir made a fire shot which Muhammad Ramzan s/o Allah Wasayya on the right upper arm, Muhammad Shakir made second fire shot which hit on the right thigh of Ramzan s/o Allah Bachayya. Whereas, three unknown accused persons who were familiar to us by faces and later on their names were known to us. Among them one unknown person made a straight fire shot the same landed on the left upper arm of Ramzan s/o Allah Bachayya. Second unknown accused made a fire shot which hit Ramzan s/o Allah Wasayya on the right leg's thigh. Third fire shot was made by third unknown accused and the same hit on the left thigh of Ramzan s/o Allah Bachayya. In the meanwhile the accused persons made firing. On the hue and cry and on the noise of firing PWs namely Muhammad Shaffi and Muhammad Azam attracted the spot, on seeing the witnesses four persons who were standing near the Khoh Meer Wala also started firing and the above accused persons fled away from the spot along with said four persons on motorcycles. I along with PWs tried to rescue Muhammad Qasim who had succumbed to the injuries till then at the spot. Whereas, PWS Muhammad Ramzan s/o Allah Wasayya and Muhammad Ramzan s/o Allah Bachayya got also severely injured. Motive behind the occurrence is that we had a dispute over irrigation water. Above named accused persons have done a great wrong by committing murder of Muhammad Qasim and injuring Muhammad Ramzan s/o Allah Wasayya and Muhammad Ramzan s/o Allah Bachayya. Thereafter, the police attracted at the scene of crime and I submitted the complaint application Ex.PB for the registration of case to the police.

On 02.06.2017, one of the three unknown accused persons was identified by me as Rana Muhammad Irfan who was nominated by me through application ExP-Q

On 28.07.2017, I made second application ExP-R to the I.O and nominated two of the accused persons namely Arslan, whose fire had hit the left thigh of Muhammad Ramzan s/o Allah Wasayya and Arshad, whose fire hit on the left leg of Muhammad Ramzan s/o Allah Bachayya. Moreover, in the said application I have also assigned role to Irfan accused, whose fire was hit on the left upper arm of Muhammad Ramzan s/o Allah Bachayya.”

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the accused were sent to face trial. The learned trial court framed the charge against the accused on 24.10.2017 and reframed the same on 11.12.2017, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got statements of as many as **thirteen** witnesses recorded. The ocular account of the case was furnished by Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12). Abdul Rehman 47/HC (PW-2) stated that on 19.07.2017, he received a sealed parcel said to contain a pistol and two live bullets from the Investigating Officer of the case, which parcel, on 20.07.2017, he handed over to the Investigating Officer of the case for its onward transmission to the Punjab Forensic Science Agency, Lahore and on 19.09.2017, he received a sealed parcel said to contain a pistol and two live bullets from the Investigating Officer of the case which parcel , on 30.10.2017, he handed over to the Investigating Officer of the case for its onward

transmission to the office of the Punjab Forensic Science Agency, Lahore.

Talib Hussain 57/HC (PW-3) stated that on 25.04.2017, he recorded the formal F.I.R (Exh.PC) and also received the last worn clothes of the deceased, a sealed parcel said to contain empties from the Investigating Officer of the case and on 24.05.2017, he handed over the said sealed parcel said to contain the empties to the Investigating Officer of the case for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Rao Intzar Ahmad Patwari, (PW-5) prepared the scaled site plan of the place of occurrence (Exh.PG). Abdul Hameed, SI (PW-4) investigated the case on 25.04.2017 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court. Ghulam Rasool (PW-13) stated that on 25.04.2017, Muhammad Shahid 726/C handed over the last worn clothes of the deceased to the Investigating Officer of the case. Shoaib Qaisar, SI (PW-10) investigated the case from 25.04.2017 till 11.10.2017, arrested the appellant namely Muhammad Shakir on 11.07.2017, arrested the appellant namely Muhammad Shahbaz on 11.09.2017 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Muhammad Imran Hashmi (PW-7) examined, who on 25.04.2017 was posted as Medical Officer R.H.C. 53/M and on the same day, conducted the post-mortem examination of the dead body of Muhammad Qasim son of Imam Bakhsh(deceased). Dr. Muhammad Imran Hashmi (PW-7), on examining the dead body of Muhammad Qasim son of Imam Bakhsh(deceased) observed as under:-

“DESCRIPTON OF INJURIES.

On examination of body after removing clothes there was small hole at level of epigastrium black colored with burnt skin (wound of entry) of round shape. Route of bullets passing after dissection. I saw stomach was slightly touch by bullet but lower part of heart, bullet was present at the lateral side of left chest at level of fifth rib.

INJURY NO.1.

Wound that was present at epigastrium level just 04-cm below xephisternum (sic) margins of wound that was inverted wound of entry

.....

Opinion

According to my opinion after careful external and internal examination of dead body the cause of death in this case is hemorrhagic shock, which is due to fire arm injury which is ante-mortem.

Probable time that elapsed between injury and death was within five minutes, between death and post mortem 08 to 12 hours..”

On the same day, Dr. Muhammad Imran Hashmi (PW-7), also medically examined Muhammad Ramzan son of Allah Bachayya (PW-11) . Dr. Muhammad Imran Hashmi (PW-7), on examining Muhammad Ramzan son of Allah Bachayya (PW-11) observed as under:-

“INJURY No.1

Wound of fire arm. Wound of entry lower side forearm located below axial and wound of exit lateral anterior side of fire arm. Referred to BVH, Bahawalpur.

INJURY NO.2.

Wound of entrance just below hip margin inverted and sound of exit present medial side of thigh. Injury KUO, referred to BVH, Bahawalpur.

After surgical notes no bone fractures of femur.

There was no possibility of fabrication in the above, both injury No.1 & 2 were declared as fire arm injuries. Entry and exit were present on both the injuries..”

On the same day, Dr. Muhammad Imran Hashmi (PW-7), also medically examined Muhammad Ramzan son of Allah Wasayya (PW-09) . Dr. Muhammad Imran Hashmi (PW-7), on examining Muhammad Ramzan son of Allah Wasayya (PW-09) observed as under:-

INJURY NO.1. KUO

Wound of about 5 cm X 5 cm present on medial aspect of right mid thigh. Bone exposed and injury is of fire arm.

INJURY NO.2. KUO

Wound of about 0.5 cm X 0.5 cm present on the right anterior superior iliac supine.

INJURY NO.3.

Wound of about 0.5 cm X 0.5 cm present over right heel (sic) .

INJURY NO.4.

Wound of about 2 cm X 2 cm in medial aspect of hip.

INJURY NO.5.

Wound of about 0.5 cm X 0.5 cm left forearm below elbow join.

INJURY NO.6.

Wound of about 1 cm X 1 cm on medial aspect of left thigh.

INJURY NO.7.

Left shaft of humerus fracture.

SAMPLE SENT FOR LABORATORY

No

POSSIBILITY OF FABRICATION;

No

KIND OF WEAPON USED

Fire arm.”

The prosecution also got Dr. Shahid Riaz (PW-1) examined, who on 25.04.2017 was posted as Senior Registrar, Orthopedic Ward , BV hospital Bahawalpur and on the same day, medically examined Muhammad Ramzan son of Allah Bachayya (PW-11) . Dr. Shahid Riaz (PW-1), on examining Muhammad Ramzan son of Allah Bachayya (PW-11) observed as under:-

“ DESCRIPTION OF WOUNDS ”

1. Wound of about 5X5cm on medial aspect of right mid thigh
2. Wound of about 0.5X0.5 cm present on the right anterior superior iliac spine
3. Wound of about 0.5X0.5 cm over the right heel
4. Wound of about 2X2 cm on the medial aspect of left mid thigh
5. Wound of about 0.5x0.5 cm in the left forearm about 5cm below the elbow.
6. Wound of about 1X1 cm on the medial aspect on left thigh near the inguinal area.”

The prosecution also got Dr. Noman Ashraf (PW-6) examined, who on 25.04.2017 was posted as Medical Officer , Surgical Ward No.2 , BV hospital Bahawalpur and on the same day, medically examined Muhammad Ramzan

son of Allah Wasayya (PW-9). Dr. Noman Ashraf (PW-6), on examining Muhammad Ramzan son of Allah Wasayya (PW-9) observed as under:-

“ I. On the right thigh 1 one wound on lateral side.

II. Two lacerated wounds 2 one wound on the medial side.”

7. On 04.12.2017, the learned Assistant District Public Prosecutor gave up the remaining prosecution witness as being unnecessary and closed the prosecution evidence after tendering in evidence the reports of Punjab Forensic Science Agency, Lahore (Exh. P.Z. and Exh. P.Z/1).

8. After the closure of prosecution evidence, the learned trial court examined the appellants namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah and Muhammad Shakir son of Nazar Muhammad under section 342 Cr.P.C. and in answer to the question why this case against you and why the P.W.s have deposed against you, they replied that they had been involved in the case falsely and were innocent. The appellants namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah and Muhammad Shakir son of Nazar Muhammad, opted not to get themselves examined under section 340(2) Cr.P.C. however, the appellant namely Muhammad Shahbaz submitted a certified copy of *Wara Bandi* (Exh.DC) as evidence in his defence.

9. At the conclusion of the trial, the learned Sessions Judge, Lodhran convicted and sentenced the appellants as referred to above.

10. The contention of the learned counsel for the appellants precisely is that the whole case is fabricated and false and the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible, and relevant evidence. Learned counsel for the appellants further contended that the story of the prosecution mentioned in the statements of the witnesses, on the face of it, was highly improbable. Learned counsel for the appellants further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellants also submitted that the recovery of the *pistol* (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the *pistol* (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah were full of procedural defects, of no legal worth and value, and were result of fake proceedings. The learned counsel for the appellants also argued that the appellants had been involved in the occurrence only on suspicion. The learned counsel for the appellants finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

11. On the other hand, the learned Deputy Prosecutor General along with the learned counsel for the complainant, contended that the prosecution has proved its case beyond the shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General along with the learned counsel for the complainant, further argued that the deceased died as a result of injuries suffered at the hands of the appellant namely Muhammad Shahbaz

son of Syed Shabbir Hussain Shah and the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) were also injured at the hands of the appellants. The learned Deputy Prosecutor General along with the learned counsel for the complainant, further contended that the medical evidence also corroborated the statements of the eye witnesses. The learned Deputy Prosecutor General along with the learned counsel for the complainant, further argued that the recovery of the pistol (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the pistol (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah also corroborated the ocular account. The learned Deputy Prosecutor General along with the learned counsel for the complainant, further contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. Lastly, the learned Deputy Prosecutor General along with the learned counsel for the complainant prayed for the rejection of the appeals. The learned counsel for the complainant also argued that the Criminal Appeal No.36 of 2018, assailing the acquittal of Muhammad Shakir son of Nazar Muhammad by the learned trial court from the charge under section 302 P.P.C., also merited acceptance.

12. We have heard the learned counsel for the appellants, the learned counsel for the complainant, the learned Deputy Prosecutor General and perused the record with their able assistance.

13. The ocular account of the case was furnished by Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12). No doubt that the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) were injured during the occurrence however the stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries statedly received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still his evidence is to be scrutinized on the benchmark of principles laid down for the appraisal of evidence. It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not a simple presence of a witness at the crime scene but his credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts which an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not. Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of Nazir Ahmad vs. Muhammad Iqbal and another (2011 SCMR 527) where at page 534 the august Supreme Court of Pakistan was pleased to hold as under:

“It is settled law that injuries of P.W. are only indication of his presence at the spot but are not affirmative proof of his credibility and truth”.

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of Amin Ali and another Vs. The State (2011 SCMR 323) where the august Supreme Court of Pakistan was pleased to hold that presence of injuries does not stamp a witness to be a truthful one and observed as under :-.

"12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of P.Ws. would not stamp them truthful witnesses. It has been held in the case of Said Ahmed supra as under:--

"It is correct that the two eye-witnesses are injured and the injuries on their persons do indicate that they were not self-suffered. But that by itself would not show that they had, in view of the aforementioned circumstances, told the truth in the Court about the occurrence; particularly, also the role of the deceased and the eye-witnesses. It cannot be ignored that these two witnesses are closely related to the deceased, while the two other eye-witnesses mentioned in the F.I.R. namely, Abdur Rashid and Riasat were not examined at the trial. This further shows that the injured eyewitnesses wanted to withhold the material aspects of the case from the Court and the prosecution was apprehensive that if independent witnesses are examined, their depositions might support the plea of the accused."

In the case of Mehmood Hayat supra at page 1417, it has been observed as under:--

"10. There is no cavil with the proposition laid down in the case of Zaab Din and another v. The State (PLD 1986 Peshawar 188) that merely because the P.Ws. had stamp of firearm injuries on their person was not per se tantamount to a stamp of credence on their testimony."

In the case of Mehmood Ahmed supra, this Court at page 7 observed as under:

"For an injured witness whose presence at the occurrence is not disputed it can safely be concluded that he had witnessed the incident. But the facts he narrates are not to be implicitly accepted merely because he is an injured witness. His testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution witness."

13. From the above evidence of the P. Ws., they do not appear to be truthful witnesses; therefore, no implicit reliance can be placed on their evidence."

With this principle of appreciation of evidence in our minds that an injured witness can not be presumed to be also a truthful witness, we have proceeded to examine the statements of the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah

Bachayya (PW-11). We find that the prosecution evidence with regard to the number of injuries suffered by the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) is quite contradictory and the prosecution failed to prove that out of the two prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11), who had suffered what injuries . The prosecution itself got examined Dr. Shahid Riaz (PW-1), who on 25.04.2017 was posted as Senior Registrar, Orthopedic Ward , BV hospital Bahawalpur and on the same day, had medically examined **Muhammad Ramzan son of Allah Bachayya (PW-11)**. According to the statement of Dr. Shahid Riaz (PW-1) , on examining **Muhammad Ramzan son of Allah Bachayya (PW-11)**, he observed the following injuries on the person of **Muhammad Ramzan son of Allah Bachayya (PW-11)**.

“ DESCRIPTION OF WOUNDS

1. Wound of about 5X5cm on medial aspect of right mid thigh
2. Wound of about 0.5X0.5 cm present on the right anterior superior iliac spine
3. Wound of about 0.5X0.5 cm over the right heel
4. Wound of about 2X2 cm on the medial aspect of left mid thigh
5. Wound of about 0.5x0.5 cm in the left forearm about 5cm below the elbow.
6. Wound of about 1X1 cm on the medial aspect on left thigh near the inguinal area.”

Contrary to the statement of Dr. Shahid Riaz (PW-1) that on examining **Muhammad Ramzan son of Allah Bachayya (PW-11)**, he had observed as many as **six injuries** on the person of **Muhammad Ramzan son of Allah Bachayya (PW-11)**, Dr. Muhammad Imran Hashmi (PW-7), who also medically examined **Muhammad Ramzan son of Allah Bachayya (PW-11)** on 25.04.2017 observed only **two injuries** present on the person of Muhammad Ramzan son of Allah Bachayya (PW-11) and described the said injuries as under:-

“Injury No.1

Wound of fire arm. Wound of entry lower side forearm located below axial and wound of exit lateral anterior side of fire arm. Referred to BVH, Bahawalpur.

INJURY NO.2.

Wound of entrance just below hip margin inverted and sound of exit present medial side of thigh. Injury KUO, referred to BVH, Bahawalpur.
After surgical notes no bone fractures of femur.”

In this manner, there are two versions of the prosecution evidence itself with regard to the number of injuries suffered by the prosecution witness namely **Muhammad Ramzan son of Allah Bachayya (PW-11)**. According to Dr. Shahid Riaz (PW-1), on examining **Muhammad Ramzan son of Allah Bachayya (PW-11)**, he had observed as many as **six injuries** on the person of **Muhammad Ramzan son of Allah Bachayya (PW-11)**, whereas according to Dr. Muhammad Imran Hashmi (PW-7), who also medically examined **Muhammad Ramzan son of Allah Bachayya (PW-11)** on

25.04.2017, he had observed only **two injuries** present on the person of Muhammad Ramzan son of Allah Bachayya (PW-11). In this manner, it cannot be determined by us that the prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11) had suffered from **two injuries** or **six injuries**. As a corollary to the above contradictory statements of the two Medical Officers who had examined the prosecution witness namely **Muhammad Ramzan son of Allah Bachayya (PW-11)** on 25.04.2017, now a deep fissure has developed in the prosecution case with regard to the very identity of the person who was examined by Dr. Shahid Riaz (PW-1) and Dr. Muhammad Imran Hashmi (PW-7) on 25.04.2017 . Furthermore , if the said Medical Officers had indeed examined the prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11) is an assertion left not proved.

14. There also exists similar kind of muddle in the prosecution case with regard to the injuries observed on the person of the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9). The prosecution itself got examined **Dr. Noman Ashraf (PW-6)** , who on 25.04.2017 was posted as Medical Officer , Surgical Ward No.2, BV hospital Bahawalpur and on the same day, had medically examined **Muhammad Ramzan son of Allah Wasayya (PW-9)** . According to the statement of Dr. Noman Ashraf (PW-6), on examining **Muhammad Ramzan son of Allah Wasayya (PW-9)** , he had observed the following injuries on the person of prosecution witness namely **Muhammad Ramzan son of Allah Wasayya (PW-9) :-**

“ I. On the right thigh 1 one wound on lateral side.

II. Two lacerated wounds 2 one wound on the medial side.

On the left arm lacerated wound on the medial and lateral side.”

Contrary to the statement of Dr. Noman Ashraf (PW-6) that on examining **Muhammad Ramzan son of Allah Wasayya (PW-9)**, he had observed only **two injuries** on the person of **Muhammad Ramzan son of Allah Wasayya (PW-9)**, Dr. Muhammad Imran Hashmi (PW-7), who also medically examined **Muhammad Ramzan son of Allah Wasayya (PW-9)** on 25.04.2017, observed as many as **seven injuries** present on the person of **Muhammad Ramzan son of Allah Wasayya (PW-9)** and described the said injuries as under:-

“INJURY NO.1. KUO

Wound of about 5 cm X 5 cm present on medial aspect of right mid thigh. Bone exposed and injury is of fire arm.

INJURY NO.2. KUO

Wound of about 0.5 cm X 0.5 cm present on the right anterior superior iliac supine.

INJURY NO.3.

Wound of about 0.5 cm X 0.5 cm present over right heel (sic) .

INJURY NO.4.

Wound of about 2 cm X 2 cm in medial aspect of hip.

INJURY NO.5.

Wound of about 0.5 cm X 0.5 cm left forearm below elbow join.

INJURY NO.6.

Wound of about 1 cm X 1 cm on medial aspect of left thigh.

INJURY NO.7.

Left shaft of humerus fracture. .”

In this manner, there are also two versions of the prosecution evidence itself with regard to the number of injuries suffered by the prosecution witness namely **Muhammad Ramzan son of Allah Wasayya (PW-9)**. According to Dr. Noman Ashraf (PW-6) , on examining **Muhammad Ramzan son of Allah Wasayya (PW-9)**, he had observed only **two injuries** on the person of **Muhammad Ramzan son of Allah Wasayya (PW-9)**, whereas according to Dr. Muhammad Imran Hashmi (PW-7), who also medically examined **Muhammad Ramzan son of Allah Wasayya (PW-9)** on 25.04.2017, he had observed as many as **seven injuries** present on the person of Muhammad Ramzan son of Allah Wasayya (PW-9). In this manner, it cannot be determined by us that whether the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9) had suffered from **two injuries** or **seven injuries**. As a result of the above contradictory statements of the two Medical Officers who had examined the prosecution witness namely **Muhammad Ramzan son of Allah Wasayya (PW-9)** on 25.04.2017, now a deep fracture has developed in the prosecution case with regard to the very identity of the person who had been examined by Dr. Noman Ashraf (PW-6) and Dr. Muhammad Imran Hashmi (PW-7) on **25.04.2017** . Whether the said Medical Officers had indeed examined the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9) was never proved. The learned counsel for the complainant as well as the learned Deputy Prosecutor

General, despite our repeated enquiries, have shown their inability to explain this inherent and fatal flaw in the prosecution case with regard to the very identity of the persons who were examined by the Medical Officers on 25.04.2017. This fact alone is in itself sufficient to discard the whole prosecution case as the evidence in the case has been collected in an abject lax manner, working more to create further confusion regarding the facts in issue rather than proving the said facts.

15. Another fatal flaw which has been discovered by us in the statements made by the prosecution witnesses namely Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12) are the contradictory statements made by the said witnesses with regard to the injuries suffered by the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11). According to the statement of the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9), the prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11) suffered an injury on his **left thigh** and the accused had also make several fires, **hitting on the legs of the prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11)**, whereas according to the statement of the prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11), he suffered an injury on **his left arm**, and did not state that he was hit by various bullets fired by the accused on his legs. Muhammad Ramzan son of Allah Wasayya (PW-9) in his statement before the learned trial court, stated as under:-

“Whereas, three unknown accused persons who were familiar to us by faces and later on their names were known to us. Among them one unknown person made a straight **fire shot the same landed on the left thigh of Ramzan s/o Allah Wasayya.** Second unknown accused made a fire shot which hit me on my right leg's thigh. Third fire shot was made by third unknown accused and the same hit on the left leg of Ramzan s/o Allah Bachayya. And thereafter, **they kept making firing which hit on different portion of legs of Muhammad Ramzan s/o Allah Bachayya.**” (emphasis supplied)

Contrary to the above, Muhammad Ramzan son of Allah Bachayya (PW-11) in his statement before the learned trial court, stated as under:-

“Among them one unknown person made a straight fire shot the same landed **on my left upper arm.** Second unknown accused made a fire shot which hit on right leg's thigh of Ramzan s/o Allah Wasayya. Third fire shot was made by third unknown and the same hit me on the left leg. The occurrence has been witnesses by me, complainant and eye witnesses.”

16. We have also noted that the prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12) did not explain the presence of independent injuries present on the bodies of the injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11). As mentioned above, the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9) did state that the prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11) had suffered several injuries after being hit with bullets on his legs, however, the

prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11) himself did not make any such statement. Moreover, as discussed above, the prosecution got recorded contradictory statements with regard to the number and the locale of the injuries suffered by the injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11). In view of the statements of the Medical Officers who had examined the injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11), it cannot be explained as to which of the two injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) had suffered which injuries. Moreover, the presence of extra injuries on the persons of the injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) was never explained. Then the apertures of the injuries observed on the bodies of the injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) do not commensurate with the aperture of the bullets allegedly used by the appellants to cause the said injuries. The contradictions in the ocular account of the occurrence, as narrated by the prosecution witnesses namely Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12) and the medical evidence as furnished by Dr. Shahid Riaz (PW-1) , Dr. Noman Ashraf (PW-6) and Dr. Muhammad Imran Hashmi (PW-7) , sound the death knell for the

prosecution case against the appellants namely Muhammad Shahbaz and Muhammad Shakir and prove to be the cause of its sad demise. The prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12) were proven not to have deposed truthfully with regard to the appellants namely Muhammad Shahbaz and Muhammad Shakir . Reliance is placed on the case of “Muhammad Ashraf Vs. The State” (**2012 S C M R 419**) where the august Supreme Court of Pakistan was pleased to hold as under

“Both the eye-witnesses are not natural witnesses and they claimed that they had seen the incidence but had failed to explain two injuries caused with blunt weapon on the forehead and below the left eye of the deceased and had only attributed one injury to the appellant at the back of his ear.”

Reliance is also placed on the case of USMAN alias KALOO Vs. The State (**2017 S C M R 622**) where the august Supreme Court of Pakistan was pleased to hold as under:-

“Some of the above mentioned eye-witnesses had maintained that the deceased had received only one injury at the hands of the appellant but the Post-mortem Examination Report shows that the deceased had received as many as 8 injuries on different parts of his body.”

Reliance is also placed on the case of Muhammad Hussain Vs. The State (**2008 S C M R 345**) where the august Supreme Court of Pakistan was pleased to hold as under:-

“Only one fire-arm injury was attributed to Muhammad Hussain petitioner but according to the post-mortem report there was another injury on the person of deceased caused with blunt weapon.”

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of “Amin Ali and another Vs. The State” (2011 SCMR 323) where the august Supreme Court of Pakistan was pleased to reject the evidence of injured witnesses and held as under:-

*“11. All the three witnesses deposed that the deceased had received three injuries, but the Medical Officer found six injuries on the person of the deceased. One of them had blackening. None of the witnesses deposed that any of the appellants had caused the injuries from a close range but on the contrary in the site plan the place of firing has been shown 8 feet away from the deceased. Thus from such a distance injury with blackening cannot be caused as it can be caused from a distance of less than 3 feet as per Modi's Medical Jurisprudence. The Medical Officer did not show as to which of the injury was entry or exit wound on the person of the deceased. The medical officer stated that metallic projectile was recovered from wound No.1/B which was an exit wound. If it was an exit wound then the metallic projectile would have been out of the body. The presence of metallic projectile in the body clearly establishes the fact that it is not an exit wound but an entry wound. The medical officer has not shown that any of the injuries had inverted or averted margins so as to ascertain as to which of the injuries is entry or exit wound. Thus on this count there is a conflict between the medical and oral evidence. **Furthermore, according to Medical Officer, the P.W.15 had four injuries out of them two were entry and two were exit wounds but the P.Ws. 13 and 14 deposed that the injured had received three injuries. Thus the P.Ws. have shown one exit wound as entry wound.** With regard to the injured Tanveer Hussain, the Medical Officer showed two injuries one entry wound on the chest and one exit wound on the back but all the three eye-witnesses deposed that P.W.14 had received two injuries on his chest. As regards injuries on the person of Mst. Maqbool Bibi. The Medical Officer found one entry wound on her back with blackening, whereas P.Ws. 13, 14 and 15 deposed that the fire shot was fired from the roof of the shop. Entry wound with blackening marks cannot be caused from such a long distance. From the above position it is manifest that the ocular testimony is in conflict with the medical evidence. Thus, the deceased and injured did not receive the injuries in the manner, as alleged by the*

prosecution.

.....

13. From the above evidence of the P. Ws., they do not appear to be truthful witnesses; therefore, no implicit reliance can be placed on their evidence.”

Reliance is also placed on the case of Irfan Ali Vs. The State (2015 S C M R 840) where the august Supreme Court of Pakistan was pleased to hold as under:-

11. The most striking feature of the case is that in the F.I.R. complete photographic narration of the entire tragedy has been given so much so, Muhammad Khan acquitted accused and the appellant were attributed causing specific injuries with the fire shots of 30-bore pistols at the deceased. With such degree of accuracy each and every detail of the incident was given however, it was not due to mental disorientation that the dagger blows inflicted on the deceased found during the autopsy on the dead body, could not be noticed by the complainant. This doubt of reasonable nature and substance would strongly suggest that the complainant and the other eye-witnesses were not present at the spot, otherwise, lodging the report after more than 3 hours and spending 1-1/2 hour at the spot with the dead body, no room was left for this glaring omission. This omission is very fatal to the prosecution case and it is established that crime was an unwitnessed one”.

17. We have also noted that the prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12) admitted candidly that both the allegedly injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and

Muhammad Ramzan son of Allah Bachayya (PW-11) were never taken to any hospital for treatment before the arrival of the police at the place of occurrence and both the allegedly injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) kept laying at the same place where they had suffered from the injuries, in the same injured condition , bleeding from their wounds. The prosecution witness namely Muhammad Rafique (PW-8), stated during cross-examination ,as under:-

“Police arrived at the spot at 11:45 AM. We did not try to shift injured PWS and deceased to any hospital prior to the arrival of police. I did not call the ambulance of rescue 1122 for shifting the injured PWS and deceased to hospital. We did not wrap any piece of cloth on the injuries c. both injured PWs in order to stop the flow of blood. Qasim deceased and both injured PWs remained lying at the same place where they sustained injuries.” (emphasis supplied)

Similarly, the prosecution witness namely Muhammad Shafi (PW-12), stated during cross-examination, as under:-

“I did not call for any ambulance at the spot to shift the injured I even did not arrange any vehicle for this purpose. I did not wrap any piece of cloth over the wounds. We even did not shift the injured witnesses to any clean place. Police reached after 75 minutes after the occurrence. Sohaib Qaiser I.O also reached at the spot. When Sohaib Qaiser arrived injured PWs were present there.”

Muhammad Ramzan son of Allah Wasayya (PW-9), during cross-examination, stated as under:-

“We were shifted to RHC 53/M at 01:00 PM. We were shifted through an ambulance of rescue emergency 1122. 10/15 minutes **after the arrival of police**, said ambulance reached the spot **Till the arrival of ambulance, I remained present at the same place where I sustained injuries.**”
(emphasis supplied)

This conduct of the prosecution witnesses namely Muhammad Rafique (PW-8), and Muhammad Shafi (PW-12) of not taking of the allegedly injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) to any hospital for treatment and of Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) of not going to any hospital for treatment is much revealing of the doubtful circumstances existent in the prosecution case.

18. We have also noted with grave concern that the prosecution did not prove the place of occurrence with any exactitude as neither the blood stained earth from the place where the deceased had fallen was collected nor any blood stained earth was collected from the places where the allegedly injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) had fallen and remained present ,after suffering from the injuries. Initially, Talib Hussain 57/HC (PW-3) arrived at the place of occurrence, however, he did not collect any blood stained earth and subsequently Shoaib Qaisar, SI (PW-10) also visited the place of occurrence, however, he did too did not collect any blood stained earth either from where the deceased had fallen or from the places where the allegedly injured prosecution witnesses namely Muhammad

Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) had remained present, bleeding. There is no explanation as to why the Investigating Officers of the case did not collect any blood-stained earth. The failure of the Investigating Officers of the case to collect the blood stained earth either from the palce where the deceased had fallen or from the places where the allegedly injured prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) had remained present has consequences, entailing that the very place of occurrence was never proved as a fact by the prosecution and we cannot, on our own, without any evidence, presume that the occurrence had taken place where it was stated by the prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12).

19. We have also noted that both the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) admitted that their statements were recorded with delay by the Investigating Officer of the case during the investigation of the case. Both the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11), admittedly did not provide any reason for not getting their statements recorded with promptitude and why the matter was delayed by them. The prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9) admitted that though he had met with Shoaib Qaisar, SI (PW-10), the Investigating Officer of the case, on the very day of occurrence

at the place of occurrence , however, at that time he did not get his statement recorded. Muhammad Ramzan son of Allah Wasayya (PW-9), admitted during cross-examination , as under:-

“I got recorded my statement to the I.O after ten days of the occurrence.

Firstly, Sohaib Qaiser I.O met me at the place of occurrence. At that time

I did not make any statement before him. ” (emphasis supplied)

It has not been explained that when Muhammad Ramzan son of Allah Wasayya (PW-9) had met with Shoaib Qaisar, SI (PW-10), the Investigating Officer of the case , on the very day of occurrence at the place of occurrence then while he did not narrate the details of the occurrence to the Investigating Officer of the case and why he only got his statement recorded after much delay. We have also noticed that the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9), wrongly stated that he got his statement recorded under section 161 of the Code of Criminal Procedure, 1898 after **ten days of the occurrence** as according to Shoaib Qaisar, SI (PW-10) , the Investigating Officer of the case , the statements of the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) were recorded on **30.05.2017**, i.e after as many as **thirty six days** after the occurrence. The prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11) admitted during cross-examination as under:-

“I firstly appeared before the I.O 45/60 days after the occurrence.”(emphasis supplied)

Shoaib Qaisar, SI (PW-10) , the Investigating Officer of the case, in his statement before the police also stated as under:-

“ On 30.05.2017, I recorded the statements of injured witnesses of this case.”

It is trite that the delayed recording of the statement of a prosecution witness under section 161 of the Code of Criminal Procedure, 1898 reduces its value to nothing unless there is plausible explanation for such delay. No explanation, much less plausible, has been given by both the prosecution witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11), for them not getting their statements under section 161 of the Code of Criminal Procedure, 1898 recorded immediately and therefore no value can be attached to their statements. The august Supreme Court of Pakistan in the case of “Abdul Khaliq Vs. The State” (1996 SCMR 1553) has held as under:

“It is a settled position of law that late recording of 161, Cr.P.C. statement of a prosecution witness reduces its value to nill unless there is plausible explanation for such delay”.

The august Supreme Court of Pakistan in the case of “Muhammad Khan Vs. Maula Bakhsh” (1998 SCMR 570) has held as under:

“It is a settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation”.

The august Supreme Court of Pakistan in the case of “Syed Saeed Muhammad Shah and another Vs. The State” (1993 SCMR 550) at page 571 has held as under:

“In the absence of satisfactory nature of explanation normally rule is that statements recorded by police after delay and without explanation are to be

ruled out of consideration. In this case unsatisfactory explanation which is not substantiated can be equated with no explanation”.

20. With regard to the presence of the prosecution witness namely Muhammad Rafique (PW-8) we have noticed that his presence at the place of occurrence could not be proved. We have noted that according to the prosecution witnesses namely Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12), the motive of the occurrence was that the prosecution witness namely Muhammad Rafique (PW-8) had a dispute with the appellants over the turn of water. Moreover, according to the prosecution witnesses namely Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12), neither the deceased namely Muhammad Qasim nor the injured witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) had any dispute with the appellants which could have motivated them to commit *Qatl-i-Amd* of Muhammad Qasim (deceased) or attempt to commit their *Qatl-i-Amd*. The prosecution witness namely Muhammad Rafique (PW-8), in his statement before the learned trial court stated as under:-

“It is correct that Qasim deceased did not own any land in Mouza Bohar Boghay Shah. Ramzan s/o Allah Bachayya and Ramzan s/o Allah Wasayya own land in Mouza Bohar Boghay Shah. Qasim deceased had no civil or criminal litigation with Shahbaz accused. **It is correct that there was no litigation between Shahbaz and Ramzan s/o Allah Wasayya prior to the occurrence.** It is correct that there was no litigation between

Shahbaz and Ramzan s/o Allah Bachayya prior to the occurrence. Qasim deceased was not witness against Shahbaz accused in any case. There happened no quarrel or altercation between Shahbaz accused and Qasim deceased prior to the occurrence. **I did not receive any injury during this occurrence** It is correct that I filed a suit in civil court Lodhran on 30.12.2014. declaratory in Volunteered, same is subjudice. It is correct that injunctive order was passed on 24.05.2017. It is correct that Qasim deceased and both Ramzan injured witnesses are not the parties of said suit. It is correct that applications moved by me before the revenue authorities against Shahbaz accused were also remained subjudice. It is correct that a case FIR No.142/16 dated 26.06.2016 offence u/s 447 PPC was got registered by me against Shahbaz accused and Shakir accused at police station Gaily Wall.

I also forbid the accused persons from breaking the water on the day of occurrence. **I was standing at a distance of 15/16 feet from the accused persons at that time.**

.....

Deceased Qasim did not grapple with accused persons rather he verbally restrained the accused persons from breaking the water. Neither Shahbaz accused nor deceased Qasim abused each other. Ramzan s/o Allah Wasayya and Ramzan s/o Allah Bachayya did not came forward to restrain the accused persons. Deceased Qasim was standing at a distance of 10 feet from accused Shahbaz when sustained fire shot

.....

I did not escape from the spot at the time of occurrence rather remained standing there till the departure of accused persons.”(emphasis supplied)

Similarly, the prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9) , during cross-examination, stated as under:-

“ There was no civil or criminal litigation between deceased Qasim and accused Shahbaz. There happened no quarrel or altercation between Shahbaz accused and deceased Qasim. There was civil and criminal litigation pending between Rafique complainant and Shahbaz accused prior to the occurrence. Rafique complainant remained present at the spot at the time when accused arrived and made firing and did not escape. Rafique complainant did not sustain any injury by the hands of accused persons.

5/10 minutes after the arrival of accused persons occurrence of firing took place. Raffique complainant restrained the accused persons from breaking the water. None of us snatched "Kassi" from the accused persons. We did not inquire from the accused the reason for breaking the water. Qasim deceased also did not try to snatch "Kassi" or stopped any person. Accused did not abuse us. Prior to this occurrence, accused persons present in the court did not attack or injured us. **I as well as Ramzan s/o Allah Bachayya are not the complainant/plaintiff of any case against accused Shahbaz. Likewise, Shahbaz accused is also not complainant/plaintiff in any case against us.”** (emphasis supplied)

The prosecution witness namely Muhammad Ramzan son of Allah Bachayya (PW-11), during cross-examination stated as under:-

“ There was no litigation or enmity between me and Shahbaz accused. All litigations between Rafique complainant and Shahbaz accused. **Rafique**

complainant did not sustain any injury during this occurrence. Even there was no quarrel or litigation between Qasim deceased and Shahbaz accused.” (emphasis supplied)

Muhammad Shafi (PW-12), during cross-examination , stated as under:-

“There is old standing litigation between Rafique complainant and Shahbaz accused prior to the occurrence. **There was no dispute regarding water between us and accused Shahbaz prior to the occurrence.** Shahbaz accused never attacked upon me or other witnesses prior to the occurrence. **Rafique complainant did not sustain even a scratch during this occurrence.** ” (emphasis supplied)

In these circumstances, the prosecution witness namely Muhammad Rafique (PW-8) should have been the prime target of the assailants. Furthermore, according to the prosecution witnesses namely Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12), the prosecution witness namely Muhammad Rafique (PW-8) was in clear view, at a meagre distance, from the assailants and unarmed whereas the accused were allegedly armed with various firearm weapons. Neither there was any dearth of ammunition nor that of intent and opportunity on part of the appellants or their co-accused for not doing away with the prosecution witness namely Muhammad Rafique (PW-8), their main adversary, who, at the time of occurrence, was present at the place of occurrence and there did not exist any obstacle in the line of the sight of the accused and the place where the prosecution witness namely Muhammad Rafique (PW-8) was present . In this scenario, it is hard to believe that the prosecution witness namely Muhammad Rafique (PW-8) would have been shown the courtesy of being not fired at

all, when Muhammad Rafique (PW-8) should have been the prime target of the assailants . In the midst of firing by so many accused persons, the prosecution witness namely Muhammad Rafique (PW-8) did not receive even a single scratch on his body during the whole occurrence. If the prosecution witness namely Muhammad Rafique (PW-8) had been present in the view of the assailants, then he would not have been spared. Blessing the prosecution witness namely Muhammad Rafique (PW-8) with such an incredible consideration and showing him such favour, the person with whom the assailants had a direct dispute with, is implausible and opposed to the natural behaviour of any accused. Such behaviour, on part of the accused as deposed by the prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12) runs counter to natural human conduct and behaviour. Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the assailants, as deposed to by the prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12), was opposed to the common course of natural events and human conduct. Hence, we are holding that the prosecution witness namely Muhammad Rafique (PW-8) did not witness the occurrence. The august Supreme Court of Pakistan in its

binding judgments has repeatedly held that in a scenario where the motivation was against the complainant or the witnesses but the accused did not cause any harm to them, notwithstanding being within the range of their firing, would reveal that the said witnesses had not witnessed the occurrence. The august Supreme Court of Pakistan in case Tariq Mehmood v. The State and others (2019 SCMR 1170) has observed as under:

“First sight cannot escape preponderance of evidence, however on a closer view, emerges a picture incompatible with the events, narrated in the crime report. The accused mounted assault, as per prosecution's own case to settle score with Muhammad Usman, PW for his alleged affair with the lady related to the appellant; it is disgrace that brought the assailants, face to face, with Muhammad Usman, PW, well within their view and reach it is astonishing that while being merciless without restraint upon others they spared prime target of assault. There can be no other inference that either Muhammad Usman was not present at the scene or the occurrence took place in a backdrop other than asserted in the crime report.”

The august Supreme Court of Pakistan in case Rohtas Khan v. The State (2010 SCMR 566) at page 571 observed as under:

“The alleged motive was against the complainant, but it is noted that the appellant did not cause any injury to the complainant, though he was present within the range of firing, thus it supports the contention of the learned counsel of appellant that P.Ws. were not present at the place of occurrence.”

The august Supreme Court of Pakistan in the case of Muhammad Farooq & another v. The State (2006 SCMR 1707) at page 1712 held as under:-

“Had P.W.9 been present on the spot, he was not likely to be spared because the number of injuries on the person of deceased show that at least eighteen rounds were fired. It only shows the degree of venom the killer had for the deceased.”

We are also guided by the binding judgment of the august Supreme Court of Pakistan passed in the case of Mst. Rukhsana Begum & others v. Sajjad & others (2017 SCMR 596) where at page 601 it was observed as under:-

“Another intriguing aspect of the matter is that, according to the F.I.R., all the accused encircled the complainant, the PWs and the two deceased thus, the apparent object was that none could escape alive. The complainant being father of the two deceased and the head of the family was supposed to be the prime target. In fact he has vigorously pursued the case against the accused and also deposed against them as an eye witness. The site plan positions would show that, he and the other P.W.s were at the mercy of the assailants but being the prime target even no threat was extended to him. Blessing him with unbelievable courtesy and mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unhurt, is absolutely unbelievable story. Such behavior, on the part of the accused runs counter to natural human conduct and behavior explained in the provision of Article 129 of the Qanun-e-Shahadat, Order 1984, therefore, the court is unable to accept such unbelievable proposition.”

21. With regard to the value of the statement of the prosecution witness namely Muhammad Shafi (PW-12), suffice it to observe that according to the statements of the witnesses themselves, Muhammad Shafi (PW-12) had arrived at the place of occurrence after the occurrence had been completed. The prosecution witness namely Muhammad Shafi (PW-12), though attempted to claim that he had arrived at the place of occurrence prior to the occurrence, however, was duly confronted with his previous statement and was exposed to having made blatant and dishonest improvements in this regard. During the course of cross-examination of Muhammad Shafi (PW-12), the learned trial court observed as under:-

“ I did not state before the 1.0 in my statement that I along with Azam PW reached the spot on hearing the noise of firing. **Confronted with Ex.D-A where it is so recorded.**”(emphasis supplied)

Even Shoaib Qaisar, SI (PW-10) , the Investigating Officer of the case , made a statement before the learned trial court that Muhammad Shafi (PW-12) had arrived at the place of occurrence after the occurrence had been completed and stated as under:-

“It is correct that Pws Azam and Shafi stated in their statements that they attracted at the place of occurrence, after hearing the fire shots. ”

22. The learned Deputy Prosecutor General along with the learned counsel for the complainant, have relied upon the recovery of the pistol (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the pistol (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah and the reports of the Punjab Forensic Science Agency, Lahore (Exh. P.Z. and Exh.PZ/1) and have submitted that they offered sufficient corroboration of the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Rafique (PW-8), Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12). The recovery of the pistol (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the pistol (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality

during the recovery of the pistol (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the pistol (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery of the pistol (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the pistol (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah cannot be used as incriminating evidence against the appellants, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The prosecution witness namely Muhammad Ramzan son of Allah Wasayya (PW-9) admitted during cross-examination as under:-

“ No Lumberdar or councilor etc was called by the I.O. We reached at the place of recovery at 03:30 PM. Place of recovery is deserted place. **Place of recovery is an open place.**” (emphasis supplied)

The prosecution witness namely Muhammad Shafi (PW-12), during cross-examination admitted as under:-

“ Before recovery of pistol from the accused Shakir I did not see him to conceal it at the place of recovery. The recovery place is situated at No.18/MPR. **No person of locality from the place of recovery cited as a witness.**” (emphasis supplied)

Shoaib Qaisar, SI (PW-10), the Investigating Officer of the case, during cross-examination admitted as under:-

“The place of recovery related to accused Shehbaz is at a distance of 3/4 acre from the place of occurrence. **No person of vicinity was joined in the recovery proceedings.** Volunteered no one was willing to join the same. I have not given anything in my case file regarding said denial. **Place of recovery was an open place i.e bargad tree which was easily accessible** but the same was less visited place.

.....

The place of recovery related to accused Shakir is at a distance of 800 to 1000 meters from the place of occurrence. The place of recovery is state land. I had not taken into possession any motorcycle on which the accused persons fled away after the occurrence. **No person of vicinity i.e chairman, lumberdar etc was joined in the recovery proceedings.** ” (emphasis supplied)

The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

"103.--(1) Before making a search. under this chapter, the officer or other person about to make it **shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.**

The august Supreme Court of Pakistan in the case of “Muhammad Ismail and others Vs. The State” (2017 SCMR 898) at page 901 has held as under:-

“For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard.”

In this manner, the recovery of the pistol (P-16) and two live bullets (P-17 and P-18) from the appellant namely Muhammad Shakir son of Nazar Muhammad and the recovery of the pistol (P-19) and two live bullets (P-20 and P-21) from the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah could not be proved and cannot be considered as a relevant fact for proving any fact in issue.

23. The learned Deputy Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive behind the occurrence of this case, as stated by the prosecution witness namely Muhammad Rafique (PW-8) , in his written application (Exh. P.B) was that there was dispute between the prosecution witness namely Muhammad Rafique (PW-8) and the appellants over the watering of the lands. A perusal of the prosecution evidence reveals that Muhammad Rafique (PW-8) miserably failed to lead any evidence in order to prove the motive due to which the occurrence took place. Muhammad Rafique (PW-8) , admitted during cross-examination that he did not produce any documentary evidence to prove that it was his turn to water the land when the occurrence took place and admitted during cross-examination as under:-

“I do not know about existence of any matter concerning dispute of water pending before irrigation authority. I did not get register any FIR or complaint against accused Shahbaz about theft of water prior to the occurrence. **It is correct that I did not produce any proof of turn of water allegedly belonging to the investigating officer** ” (emphasis supplied)

Shoaib Qaisar, SI (PW-10), the Investigating Officer of the case, also admitted during cross-examination that the motive of the occurrence could not be proved and no evidence was produced before him or collected by him in proof of the motive. Shoaib Qaisar, SI (PW-10), the Investigating Officer of the case, stated during cross-examination as under:-

“The motive behind the occurrence was stated by the complainant in the FIR was dispute over irrigation. **No such material was provided by the complainant to me which could have suggested the existence of such dispute. They had not produced any document regard Warabandi regarding irrigation.** I had not collected any evidence whether on the day of occurrence, the complainant had his turn of water. The stipulated time regarding dispute was not mentioned by the witnesses, however, they stated that a dispute was between them. I had also not collected any document from concern irrigation authority about warabandi of said place. I had not collected any document regarding the ownership of land where the occurrence took place. Apart from complainant and Pws, I had not recorded statement of any person of vicinity regarding the dispute between the parties. I had neither drawn any inference regarding the motive of the occurrence nor collected any evidence in this regard.”(emphasis supplied)

As mentioned above, according to the prosecution witnesses namely Muhammad Rafique (PW-8) , Muhammad Ramzan son of Allah Wasayya (PW-9), Muhammad Ramzan son of Allah Bachayya (PW-11) and Muhammad Shafi (PW-12), neither the deceased namely Muhammad Qasim nor the injured witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11) had any dispute with the appellants which could have motivated them to commit the

Qatl-i-Amd of Muhammad Qasim (deceased) or attempt to commit *Qatl-i-Amd* of Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11). The above referred portions of the statements of the prosecution witnesses clearly prove that the prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged, and the fact that the said motive was so compelling that it could have led the appellants, namely Muhammad Shakir son of Nazar Muhammad and Muhammad Shahbaz son of Syed Shabbir Hussain Shah to have committed the *Qatl-i-Amd* of the deceased or attempted to have committed the *Qatl-i-Amd* of the injured witnesses namely Muhammad Ramzan son of Allah Wasayya (PW-9) and Muhammad Ramzan son of Allah Bachayya (PW-11). There are haunting contradictions with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence. Reliance in this regard is placed on the case of Muhammad Javed v. The State (2016 SCMR 2021) .

24. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellants namely Muhammad Shakir son of Nazar Muhammad and Muhammad Shahbaz son of Syed Shabbir Hussain Shah in the present case. It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so

many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right. The august Supreme Court of Pakistan in the case of “Muhammad Mansha Vs. The State” (2018 SCMR 772) has enunciated the following principle:

“Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”

Reliance is also placed on the judgment of the august Supreme Court of Pakistan Najaf Ali Shah Vs. the State (2021 S C M R 736) in which it has been observed as infra:

“9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of We have categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated

in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."

25. For what has been discussed above, the Criminal Appeal No.254 of 2021 lodged by the appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah is **allowed**. The Criminal Appeal No. 729-J of 2017 lodged by the appellant namely Muhammad Shakir son of Nazar Muhammad is **also allowed**. The convictions and sentences of the appellants namely Muhammad Shakir son of Nazar Muhammad and Muhammad Shahbaz son of Syed Shabbir Hussain Shah awarded by the learned trial court through the impugned judgment dated 19.12.2017 are hereby set-aside. The appellants namely Muhammad Shakir son of Nazar Muhammad and Muhammad Shahbaz son of Syed Shabbir Hussain Shah are ordered to be acquitted by extending them the benefit of the doubt. The appellant namely Muhammad Shahbaz son of Syed Shabbir Hussain Shah is in custody and is directed to be released forthwith if not required in any other case. The sentence of the appellant namely Muhammad Shakir son of Nazar Muhammad was suspended by this Court vide order dated 25.01.2022 and the appellant namely Muhammad Shakir son of Nazar Muhammad is present before the Court on bail. The sureties of the appellant shall stand discharged from their liability and the bail bonds submitted by the appellant namely Muhammad Shakir son of Nazar Muhammad are hereby cancelled.

26. Pursuant to the discussion made and conclusions arrived at above, the Criminal Appeal No.36 of 2018, lodged by the complainant of the case namely Muhammad Rafique (PW-8), assailing the acquittal of Muhammad Shakir son

of Nazar Muhammad by the learned trial court from the charge under section 302 P.P.C., is hereby **dismissed** and the notice issued to Muhammad Shakir son of Nazar Muhammad by this Court is withdrawn.

27. **Murder Reference No.09 of 2021** is answered in **Negative** and the sentence of death awarded to Muhammad Shahbaz son of Syed Shabbir Hussain Shah is **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

APPROVED FOR REPORTING

JUDGE

JUDGE