

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

**Murder Reference No.399 of 2018
(The State *versus* Irfan Haider)**

**Crl. Appeal No.12708-J of 2019
(Irfan Haider *versus* The State etc.)**

JUDGMENT

Date of hearing: 04.09.2024.

Appellant by: Mian Shah Abbas, Advocate.

State by: Mr. Tariq Siddique, Additional Prosecutor General.

Complainant by: M/s. Muhammad Abid Hussain Saqi, Shahid Mehmood Chaudhary, and Faisal Amin, Advocates.

AALIA NEELUM, C.J: - The appellant-Irfan Haider, son of Tasleem Haider, Caste Syed, resident of Mouza Khaki Lakhi, Tehsil Shorkot, District Jhang, was involved in case F.I.R. No.603 of 2012, dated 17.11.2012, registered under Sections 302, 324, 148, 149 P.P.C., at P.S. Shorkot City, District Jhang and was tried by the learned Additional Sessions Judge, Shorkot. The trial court seized with the matter in terms of the judgment dated 20.12.2018, convicted Irfan Haider (the appellant) under Section 302 (b) PPC, and sentenced to Death as Tazir for committing Qatl-e-Amd of Ghulam Haider (the deceased), with the direction to pay compensation of Rs.2,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further.

2. Feeling aggrieved by the trial court's judgment, Irfan Haider, the appellant, has assailed his conviction and sentence by filing the instant jail appeal bearing Criminal Appeal No.12708-J of 2019. The trial court also referred the M.R. No.399 of 2018 (The State. Vs. Irfan Haider) to confirm

the death sentence awarded to the appellant-Irfan Haider. Both the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex. PA/1) lodged on the written application (Ex. PA) of Zafar Abbas (PW-6)-the complainant, is that on 17.11.2012, at about 02:15 p.m., the complainant (PW-6) along with his brothers namely, Ghulam Haider (since dead) and Muhammad Jabir were busy in making arrangements of majlis at Darbar Syed Ahmad Ali Shah, situated at Mouza Tatthi Ailchi. In the meanwhile, the accused, Irfan Haider along with his co-accused persons, equipped with lethal weapons, while riding on four motorcycles came at the place of occurrence. After that, the accused persons, Dabeer Husain, Israr Hussain, Aftab Hussain, Ahmad Raza, Qaisar Abbas, Irfan Haider, and Tahir Abbas, pointed their respective weapons toward them while the remaining accused persons started to raise the construction of the house and four walls. The complainant and his brothers came there and restrained the accused persons from doing so. At about 03:00 p.m., when they insisted the accused persons to restrain from said work, then the accused persons asked their co-accused to murder the complainant party, whereupon, the accused, Ahmad Raza fired at Ghulam Haider (since dead), which hit him at his left thigh, the accused, Qaisar Abbas made a fire shot which landed on the left side of the abdomen of Ghulam Haider (since dead), and accused, Irfan Haider made a rifle burst, which hit on the chest of Ghulam Haider (since dead), who fell down and succumbed to the injuries. The accused, Tahir Abbas, made a fire shot, which hit Liaqat Ali (uncle of the complainant, injured PW) at the upper side of his left thigh. After the alleged occurrence, the accused persons fled away from the place of occurrence. The motive behind the occurrence was a land dispute where the accused persons started construction on the day of the alleged occurrence. Syed Karam Hussain donated the said land for “Janazgah.”

4. After the incident, the complainant reported the matter to the police through his written application (Ex. PA). After that, formal F.I.R.

(Ex.PA/1) was chalked out by Muhammad Riaz, 745/Head Constable (PW-1). After registering the case, the investigation was entrusted to Muhammad Riaz, Inspector (since dead), who found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. Muhammad Afzal, S.I appeared in the witness box as (PW-9) and identified the handwriting of Muhammad Riaz, Inspector (since dead)-the investigating officer. On 04.08.2017, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as eleven (11) witnesses. Ishtiaq Rasul, the Inspector, appeared in the witness box as CW-1.

5. The ocular account, in this case, has come out from the statements of Zafar Abbas (PW-6)-the complainant, Liaqat, injured PW (PW-7), and Muhammad Jabir (PW-8)-the eyewitness, whereas Dr. Muhammad Naeem (PW-2), who conducted the postmortem examination of Ghulam Haider (the deceased) found the following injuries on his person:

INJURIES

1. Six firearm entrance wounds, each measuring 0.8 cm x 0.8 cm x DNP, on the front of the chest and upper abdomen.
- 2-A. A firearm entrance wound 0.8 cm x 0.8 cm through & through on the right front side of the abdomen and 10 cm away from the umbilicus.
- 2-B. A firearm exit wound 1.2 cm x 1 cm on the right flank, 2 cm above the right iliac crest.
- 3-A. A firearm entrance 0.8 cm x 0.8 cm x through & through on the front of the left thigh at its middle.
- 3-B. A firearm exit wound 1.2 cm x 1 cm on the back of the left thigh, 9 cm from the left knee joint.

After conducting the postmortem examination, the doctor opined that death was caused by shock

hemorrhage and injuries to vital organs (heart, lung, liver), which were sufficient to cause death in the ordinary course of nature (Injury No.1). Firearms caused all the injuries and were ante-mortem. The probable time between injuries and death was within minutes, whereas between death and postmortem, it was within 15 hours.

Dr. Safdar Abbas appeared in the witness box as PW-4 and stated that he was familiar with the handwriting and signatures of Dr. Qaisar Abbas (since dead), who medically examined Liaqat Ali, injured PW. He also stated that a Medicolegal Certificate was issued by Dr. Qaisar Abbas (since dead) dated 17.11.2012.

6. The learned Deputy District Public Prosecutor gave up PWs Rustam, Ishtiaq Rasul, Hamid Hussain, and Ahmad Sher, S.I being unnecessary, Lal Khan & Zawar Hussain 482/C being dead, and closed the prosecution evidence after tendering reports of Punjab Forensic Science Agency (Ex. PMM and Ex. PLL). Learned counsel for the complainant also tendered certified copies of private complaint (Ex. PFF), statements of Ahmad Sher, S.I, Hamid Hussain, DSP, Ishtiaq Rasul, Inspector, and Gulfam Hussain (Ex. PGG, Ex. PHH, Ex. PJJ and Ex. PKK).

7. The appellant was also examined in terms of Section 342 Cr.P.C., wherein he refused to appear as his own witness in terms of Section 340(2) Cr.P.C.; however, he opted to produce evidence in his defence. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

"I have close relations with Dabeer Hussain Shah (nephew) who has ex-enmity with complainant party due to this reason complainant got registered this case against me. Complainant and PWs falsely involved me in this case."

In documentary evidence, the accused tendered certain documents, i.e., Ex. DA to Exh. DO.

8. After evaluating the evidence available on record and considering arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction and sentence in the above terms.

9. We have carefully considered both sides' rival submissions and minutely reviewed the evidence on record.

10. In the instant case, the occurrence took place on 17.11.2012 at 03:00 p.m. Zafar Abbas (PW-6)-the complainant and brother of Ghulam Haider (the deceased), informed the police about the occurrence at 04:15 p.m. through written application (Ex. PA) at Lakhi Pull Tehsil Shorkot District Jhang to Muhammad Riaz Inspector (since dead), who sent the written complaint (Ex. PA) through Muhammad Akram 772/C (not cited as PW) for lodging of criminal case. Based on the written complaint (Ex. PA), Muhammad Riaz 745/H.C (PW-1) chalked out FIR (Ex.PA/1) at 04:45 p.m. The distance between the place of occurrence and the police station is 16 kilometers. Zafar Abbas (PW-6)-the complainant deposed during examination-in-chief that:-

"Through mobile phone, I informed the occurrence to the police. After that, I proceeded to Shorkot for filing application to the police for registration of case. At Lakhi Pul, I met Mehr Riaz Inspector to whom I submitted the application Exh.PA, on the basis of which the FIR was registered. After it, the police reached the place occurrence, seized the dead body and also took into possession the blood stained earth."

Liaqat (PW-7)-injured PW and paternal uncle of the complainant, deposed during examination-in-chief that:-

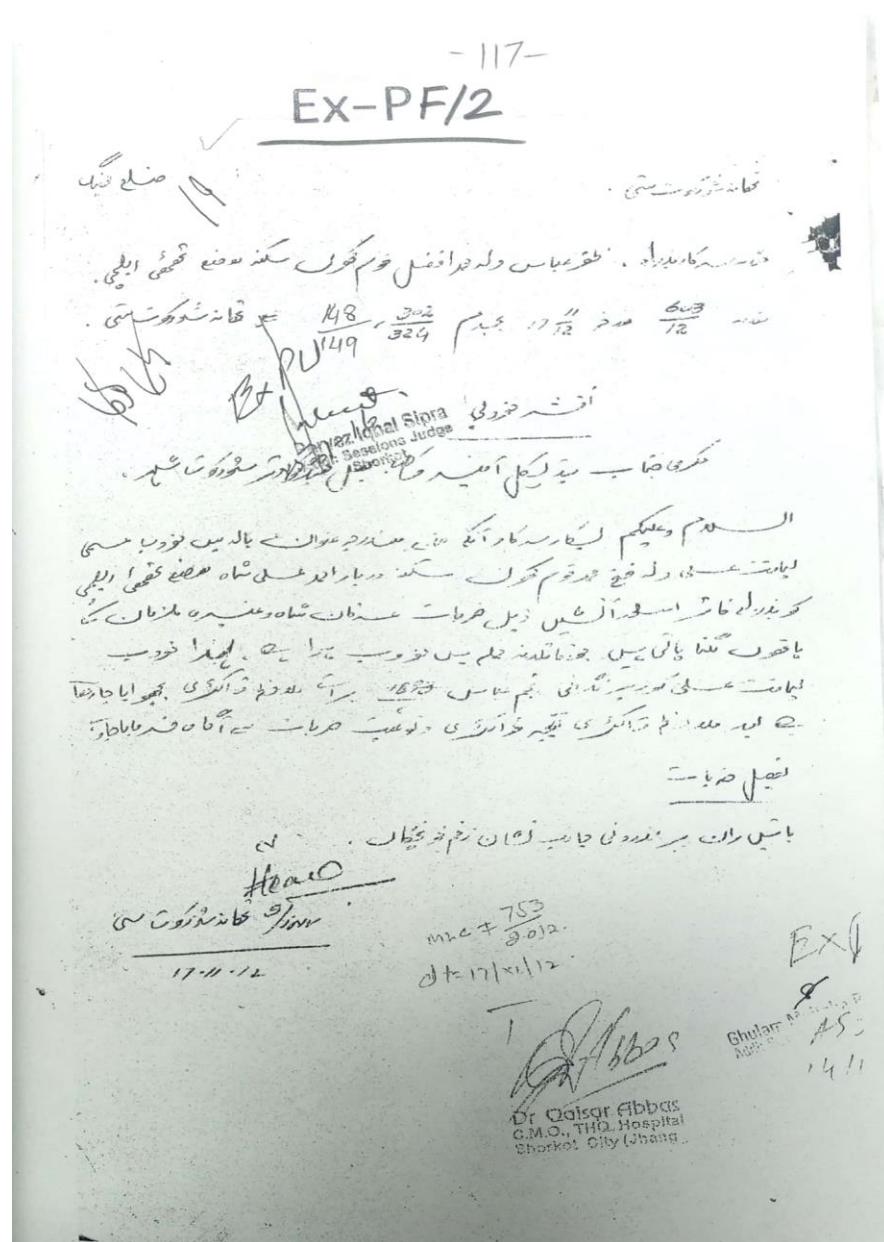
"I fell down and became unconscious. After that, the police reached the place of occurrence and I was taken to the THQ Hospital, Shorkot

where the doctor examined me and issued medical certificate.

Muhammad Jabir (PW-8)-eye witness and brother of the complainant, deposed during examination-in-chief that: -

"My brother Zafar Abbas went to Shorkot City for reporting the occurrence to the police. The police reached the place of occurrence, examined the dead body and shifted the dead body and injured person to the THQ Hospital, Shorkot.

As per the prosecution case, the incident took place at 03:00 p.m., and soon after the incident, Zafar Abbas (PW-6)-the complainant, proceeded to the police station to report the incident to police and Zafar Abbas (PW-6)-the complainant met with Muhammad Riaz Inspector (since dead) at Lakhi Pull. Zafar Abbas (PW-6)-the complainant handed over a written complaint (Ex. PA) at 04:15 p.m. to Muhammad Riaz, Inspector (since dead). The inordinate delay of one hour and 15 minutes in reporting the incident has not been explained by the prosecution, even though the matter was not reported to police in the police station, and the same was reported at Lakhi Pull. Delay in lodging the FIR often results in embellishment, a creature of an afterthought. This view is further strengthened by the testimony of Liaqat (PW-7)-the injured witness, paternal uncle of the complainant, and deceased. He (PW-7) deposed that after the incident, police reached the place of occurrence. It means that till the arrival of police Liaqat (PW-7)-the injured witness was not shifted to the hospital for medical treatment, although he received firearm injuries; this means that the injured remained lying injured at the place of occurrence for one hour and 15 minutes, and no one bothered to shift the injured to the hospital for medical treatment, which proves that the witnesses were not present at the spot. The content of the injury statement (Ex. PF/2) reveals that after registration of FIR (Ex. PA/1), Liaqat (PW-7)-the injured PW, was taken to the THQ hospital, Shorkot, through Najam Abbas 1893/C (not cited as PW) for medical treatment. The scanned copy of the injury statement (Ex. PF/2) is reproduced hereinunder: -



Dr. Safdar Abbas (PW-4) appeared and tendered secondary evidence as Dr. Qaisar Abbas, who medically examined Liaqat Ali (PW-7), had died. Dr. Safdar Abbas (PW-4) deposed that on 17.11.2012, the injured PW was brought by Najam Abbas 1893/C (not cited as PW). From the MLC (Ex. PF) of Liaqat Ali (PW-7)-the injured witness also, it is evident that in the column of the name of relative and friend, the name of relative(s) is not mentioned, but the name of Najam Abbas 1893/C (not cited as PW) is mentioned. In the said MLC (Ex. PF), the timing of arrival and examination has also not been mentioned. In the column of No. and date of police docket/court order FIR No.603 of 2012 was mentioned, which means till the registration of FIR (Ex. PA/1) Liaqat (PW-7)-the injured witness was not shifted to the hospital for medical treatment while from the contents of the FIR (Ex. PA/1), it also reveals that injured was not shifted to the hospital before registration of the

FIR (Ex. PA/1). In the FIR (Ex. PA/1), the complainant mentioned that the injured was in the struggle for life and death. Dr. Safdar Abbas (PW-4) admitted during the cross-examination that: -

“It is correct that Exh.PG/1 is attested carbon copy of original copy. ----- It is correct that original copy of final report is not available on the record. -----I have not mentioned in my report Exh.PG/1 that there was no possibility of fabrication. Confronted with the earlier statement recorded on 16.11.2016 in the court of Judge Ghulam Mujtaba Baloch, ASJ Shorkot where the possibility of fabrication is mentioned.”

The conduct of the prosecution witnesses cannot be said to be natural. Even the evidence of the eyewitnesses must stand the test of probability. If their conduct is unnatural, doubt is created about the prosecution case, and their oral evidence is not believable. Muhammad Imran (PW-11), who identified the dead body of the deceased, deposed during cross-examination that: -

“My house is situated at a distance of four squares from the place of occurrence. I came to know about the occurrence at 03:00 pm on hearing firing. At about 04:00 pm, the dead body of Ghulam Haider was shifted to the THQ Hospital, Shorkot. ----- The Investigating Officer was also present there. The complainant Zafar Abbas was also there. At the time of reaching the dead body of Ghulam Haider (deceased) the doctor was already present there. The police recorded my statement under Section 161 Cr.P.C at the police station on the next morning.”

In column No.3 of the inquest report (Ex. PD), the investigating officer mentioned the date and time of receiving information of the death as “17.11.2012 at about 03:00 p.m.”. In column No.4, the names of witnesses who identified the dead body are written as “Laal Khan and Muhammad Imran.” Whereas, on the last page of the inquest report (Ex. PD), the place and time where the inquest report (Ex. PD) was prepared has been left blank. The names of the witnesses were mentioned as Nazim Hussain and

Makhdoom Ali Shah. Zafar Abbas (PW-6)-the complainant deposed during examination-in-chief that: -

“On 16.11.2012 I got recorded my statement before the court of Rana Abdul Ghaffar, learned Judicial Magistrate, Shorkot. I do not remember whether Makhdum Ali was also got recorded his statement before the said Magistrate. I do not remember that Makhdum Ali Shah was co-accused in that case and also got recorded his statement. I do not remember whether I got recorded that I have no concern with the land situated in square No. 15, killa No. 14/2 consisting of one Kanal in Thatti Ailchi Tehsil Shorkot, District Jhang. I do not remember whether I requested apology from Dabeer Shah. I do not remember whether I got recorded that we shall not tease Dabeer Shah in future. Makhdum Ali Shah was not present at the time of occurrence at the place of occurrence. I do not remember where Makhdum Ali Shah was present at that time. I do not remember that I connected him through telephone at that time to inform him that accused persons occupied his land.”

It does not appeal to reason that a person who deposed that his memory is not weak would not remember such apparent details relating to the presence of Makhdum Ali Shah at the place and time of occurrence, who was his co-accused in the case registered against them. The name of Makhdoom Ali Shah is mentioned on the last page of the inquest report (Ex. PD), which suggests that Makhdum Ali Shah was present at the place of the occurrence when the inquest report was prepared. The inquest report (Ex. PD) is not signed by Zafar Abbas (PW-6), the complainant, and Muhammad Jabir (PW-8), the eyewitness, although they stated that they reached the place of occurrence in their presence. If investigating officer Muhammad Riaz Inspector (since dead) visited and prepared the inquest report (Ex. PD) and had met with Zafar Abbas (PW-6), the complainant, and Muhammad Jabir (PW-8), the eyewitness, there is no reason why the details that I have found missing from the inquest report (Ex. PD) should not have been there. The absence of those details indicates that the prosecution story was still in

the embryo and had not been given any shape and that the FIR was recorded later after due deliberations and consultations. The second external check, equally important, is the sending of a copy of the FIR along with the dead body for postmortem examination and its reference in the inquest report (Ex. PD). The absence of these details in the inquest reports may indicate that the FIR was not registered and was recorded later after due deliberations and consultation. The relevant portion of the inquest report (Ex. PD) is reproduced hereinunder: -

”جپر بذریعہ استغاثہ مقدمہ عنوان بالا درج رجسٹر کرایا بر سیدگی موقع لفظ غلام حیدر
عرف کالا کا نقشہ مضمونی اور نقشہ صور تھال مرتب کیا گیا لہذا لفظ بحفاظت زوار حسین
C/528 برائے پو شمار ٹم سول ہبھتال شور کوت پنجوالی جاری ہے گواہان شاخت لفظ اور
کاغذات متعلقہ ہمراہ دیئے گئے ہیں۔“

Dr. Muhammad Naeem (PW-2) deposed during examination-in-chief that: -

**“I also prepared the sketches of injuries which
are Ex.P.B/1 & Ex.P.B/2. I put my signature on
injury statement EXP-C. I also put my
signature on the inquest report EXP-D.”**

I have to scrutinize whether there has been a real delay in lodging the FIR or whether that creates a dent in the prosecution version. The complaint and FIR have been exhibited as Ex.PA and Ex.PA/1. It reveals that the prosecution witnesses, Zafar Abbas (PW-6), the complainant, and Muhammad Jabir (PW-8), were not present at the time when the inquest on the dead body was prepared. It also gets support from the fact that Zafar Abbas (PW-6)-the complainant deposed during examination-in-chief that: -

**“On 17.11.2012, at about 02:15 pm, I alongwith
my brothers Ghulam Haider, Muhammad Jabir
and my uncle Liaqat were busy in arranging
“Majlis” at Darbar Baba Syed Ahmad Ali
Shah.”**

Zafar Abbas (PW-6)-the complainant has made dishonest improvements in his statement before the court, and the defense confronted the statement made by the complainant (PW-6). Zafar Abbas (PW-6)-the complainant deposed during cross-examination as under: -

"I got recorded in FIR that I along-with Ghulam Haider, Muhammad Jabir and Liaqat were busy arranging Majlis at Darbar Ahmad Ali Shah. Confronted with FIR (Exh.P.A/1) wherein it is so recorded. I do not remember whether I got mentioned in the FIR that my uncle Liaqat was present at a distance of 1½ from the place of occurrence. -----I had got recorded my cursory statement in private complaint on 21.12.2013. I do not remember whether I got recorded in that statement that my uncle Liaqat was at a distance of 1 ½ acre when the occurrence took place."

Liaqat (PW-7)-the injured PW deposed during cross-examination that: -

"At the time of first fire, I was present at the place of occurrence. Confronted with Exh: D.A wherein it is mentioned that I was present at a distance of 1 ½ acre from the place of occurrence."

Muhammad Jabir (PW-8)-the eye witness deposed during cross-examination that: -

"I do not remember whether in my previous cursory statement recorded in private complaint that my uncle Liaqat was present at distance of 1 ½ acre from the place of occurrence at the time of occurrence. The police recorded my statement. I do not remember whether I got recorded in my statement u/s 161 Cr.P.C. Liaqat PW was present at distance of 1 ½ acre from the place of occurrence."

Contrary to the above, Zafar Abbas (PW-6)-the complainant deposed during cross-examination that: -

"My uncle Liaqat came at the spot at 10:00 am. PW volunteers he came there before. The witness Jabir was already was present at the place of occurrence when I reached there."

Liaqat (PW-7)-injured PW deposed during cross-examination that: -

"I reached the Darbar at 08:00/09:00 am and others also reached at the same time."

Muhammad Jabir (PW-8)-the eyewitness deposed during cross-examination that: -

"I along-with Liaqat, Zafar Abbas and Ghulam Haider reached at the spot on the same time. I do not remember at what time I reached the place of occurrence. I do not remember in my earlier statement that I reached the place of occurrence at about 02:15 pm."

The above depositions of the prosecution witnesses reveal that they are not stating the complete truth, and there is a conflict between the statements of the prosecution witnesses. However, Zafar Abbas (PW-6)-the complainant, and Muhammad Jabir (PW-8)-the eyewitness in their statements, could not answer most of the questions, and these witnesses answered the questions by saying, "I do not remember."

This creates doubt about the presence of Zafar Abbas (PW-6)-the complainant; Liaqat (PW-7)-the injured PW; and Muhammad Jabir (PW-8)-the eye witness at the place of occurrence where Ghulam Haider deceased was done to death, as it was the prosecution case that Liaqat (PW-7) was present at a distance of 1½ acre from the place of occurrence at the time of occurrence.

11. On the complaint (Ex. PA), FIR (Ex.PA/1) was chalked out by Muhammad Riaz 745/H.C. at 04:45 p.m. The written complaint (Ex. PA) reveals that the same was submitted by Zafar Abbas (PW-6)-the complainant. During cross-examination, he (PW-6) deposed that: -

"I do not remember the name of scribe of FIR. I do not remember whether I got recorded in my previous cross-examination I got drafted application for registration policemen outside the police station."

Zafar Abbas (PW-6)-the complainant deliberately concealed the fact from the court while replying to the question he does not remember. However, he (PW-6) deposed during cross-examination, saying, "My memory is not weak." If his memory is not weak, he should answer each question. The delay in lodging the report, where the incident was reported, and whether the complainant drafted the complaint or someone else raises considerable doubt regarding the veracity of the evidence of the prosecution

witnesses and points toward the infirmity of evidence. It renders it unsafe to base convictions on it.

12. It has been further noticed that Dr. Muhammad Naeem (PW-2) conducted a postmortem examination on the dead body of the deceased on 18.11.2012. However, Dr. Muhammad Naeem (PW-2) has not deposed the time when he conducted the postmortem examination on the dead body of Ghulam Haider (the deceased). On perusal of the postmortem report (Ex. PB), it reveals that the dead body was received in the dead house on 18.11.2012 at 02:00 a.m., complete documents and police papers were received at 02:00 a.m., and an autopsy was conducted at 02:15 a.m. on 18.11.2012. It reveals that the postmortem was conducted with a delay of ten hours from the time of reporting the incident to the police. Muhammad Imran (PW-11), who identified the dead body of the deceased, deposed during cross-examination that, at about 04:00 p.m., the dead body of Ghulam Haider was shifted to the THQ Hospital, Shorkot. If the dead body was moved to the hospital for postmortem examination at 04:00 p.m., then there is a delay of 10 hours and 15 minutes in conducting postmortem examination. However, Mehar Riaz, Inspector (since dead), received the written complaint (Ex. PA) at 04:15 p.m. on 17.11.2012. The prosecution witnesses did not explain the delay in conducting the postmortem examination. The fact, however, remains that the postmortem was delayed for ten hours and 15 minutes from the time of reporting the incident. If we took time, as Dr. Muhammad Naeem (PW-2) deposed, that the time elapsed between death and postmortem was 15 hours, then the time becomes between 11:15 a.m. on 17.11.2012 and 02:15 a.m. on 18.11.2012. Thus, this proves that the death occurred sometime after 11:15 a.m. on 17.11.2012 onward. These circumstances, to our mind, suggest that the FIR was antedated. Dr. Muhammad Naeem (PW-2) deposed during cross-examination that: -

“As soon as the dead body was received by me I proceeded with the autopsy without any loss of time on my part after reading the police papers.-----As soon as dead body was handed over to me for post mortem examination after

completion of record I conducted post mortem examination.”

The delay in conducting the postmortem examination also leads to the conclusion that the FIR was recorded with the delay, and the FIR was not recorded when claimed to have been recorded. Considering all these facts, we have no hesitation in concluding that the prosecution has not been able to prove on the record that the incident was reported when it was claimed to have been recorded. The conclusion is inescapable: The prosecution has been unable to establish the case against the appellant beyond reasonable doubt, and no circumstances connect him with the alleged crime.

13. As per the ocular account, Ghulam Haider (the deceased) died on 17.11.2012 at 03:00 p.m. whereas, as per the postmortem report (Ex. PB), the deceased died within 15 hours from the time of postmortem examination. Therefore, there is an apparent conflict between ocular account and medical evidence in such a situation. It also suggests that the occurrence did not take place as stated by the prosecution witnesses. The doctor also observed that rigor mortis was present on the dead body of Ghulam Haider. As per the prosecution case, the appellant was armed with 44 bore rifle at the time of occurrence, four metallic foreign bodies were removed from dead body during autopsy, same were handed over by doctor to police but not got compared from rifle statedly recovered from the appellant to confirm the nature of firearm weapon used for causing injuries and said omission goes against the prosecution under article 129(g) of the Qanun-e-Shahadat Order, 1984. In the inquest report (Ex.PD), in column No.12, the investigating officer (since dead) mentioned that the cause of injuries was the result of torture as well as a firearm; similarly, four incisions each measuring 2.5 x 1 cm on the body of deceased were noted by doctor in the postmortem examination report (Ex.PB), which have not been explained in ocular account by the prosecution. This also negates the presence of the prosecution witnesses at the place of occurrence at the time of occurrence.

14. The report of Forensic Science Laboratory, Punjab, Lahore (Ex. PLL) is only to the effect that the weapon allegedly recovered from the accused/appellant-Irfan Haider, was in mechanical operating condition. So, the recovery of the weapon from the accused, Irfan Haider, is of no consequence. Accordingly, the appellant deserves to be given the benefit of the doubt, and findings in this regard are to be set aside, and the same are set aside.

15. As it is difficult to rely upon the testimonies of Zafar Abbas (PW-6)-the complainant, Liaqat (PW-7)-injured PW and Muhammad Jabir (PW-8), the eyewitness, and for other reasons enumerated hereinbefore, we are persuaded to hold that the prosecution had not been able to prove its case against the appellant beyond any shadow of doubt as there were many dents in the prosecution story. The conviction and sentence the learned trial court recorded cannot be sustained. It is held in the case of "**Muhammad Akram v. The State**" (2009 SCMR 230) that: -

"The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right."

16. Considering the above discussion, we affirm that the prosecution has failed to prove its case against the appellant beyond any shadow of a doubt. Therefore, I accept the instant Criminal Appeal No.12708-J of 2019 filed by Irfan Haider-appellant, set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Shorkot vide judgment dated 20.12.2018 and acquit him of the charge in case of

F.I.R. No. 603 of 2012, dated 17.11.2012, registered under Sections 302, 324, 148, 149 P.P.C., at P.S. Shorkot City, District Jhang The appellant is directed to be released forthwith if not required in any criminal case.

17. **Murder Reference No.399 of 2018**, forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in Negative and death sentence is not confirmed.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Chief Justice

Approved for reporting

Judge

Chief Justice

*This judgment was dictated,
pronounced on 04.09.2024,
and signed after completion
on 30.09.2024.*

*Ikram**