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Judgment Sheet

IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN.

JUDICIAL DEPARTMENT

Murder Reference No.135 of 2019
(The State Vs. Muhammad Arif)

Criminal Appeal No. 1150-J of 2019
(Muhammad Arif Vs. The State.)

Petition for Special Leave to Appeal No.130 of 2019.

(Ghulam Yaseen Vs. The State and two others.)

Date of hearing:	11.10.2023.
Appellant by:	Mr. Muhammad Asghar Hayat Haraj, Advocate.
State by:	Malik Riaz Ahmad Saghla, Additional Prosecutor General.
Complainant by:	Mr. Muhammad Nawaz Khan Sadozai, Advocate.

J U D G M E N T

SADIQ MAHMUD KHURRAM, J.– Muhammad Arif son of Ghulam Haider (convict) was tried alongwith Ismail son of Ghulam Haider and Muhammad Jalil son of Ghulam Haider (since acquitted), the co-accused of the convict by the learned Sessions Judge , Rajanpur in the case instituted upon the private complaint titled *"Ghulam Yaseen Vs. Muhammad Arif and three others"* (relating to F.I.R. No. 220 of 2016 dated 15.07.2016 registered at Police Station Saddar Rajanpur, District Rajanpur) in respect of offences under sections 302 and 34 P.P.C. for committing the *Qatl-i-Amd* of Talib Hussain son of Allah Yar

(deceased). The learned trial court vide judgment dated 30.10.2019 convicted Muhammad Arif son of Ghulam Haider (convict) and sentenced him as infra:

Muhammad Arif son of Ghulam Haider:-

Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Talib Hussain son of Allah Yar (deceased) and directed to pay Rs.4,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.

The convict was ordered to be hanged by his neck till dead.

Ismail son of Ghulam Haider and Muhammad Jalil son of Ghulam Haider, the co-accused of the convict, were however acquitted by the learned trial court. Ghulam Haider, another co-accused of the convict, died during the trial and to his extent the proceedings were abated.

2. Feeling aggrieved, Muhammad Arif son of Ghulam Haider (convict) lodged the Criminal appeal No.1150-J of 2019 through Jail, assailing his conviction and sentence. The learned trial court submitted Murder Reference No.135 of 2019 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Muhammad Arif son of Ghulam Haider (convict). The complainant of the case namely Ghulam Yaseen filed Petition for Special Leave to Appeal No.130 of 2019 seeking permission to file an appeal against the acquittal of Ismail son of Ghulam Haider and Muhammad Jalil son of Ghulam Haider, the co-accused of the convict, both since acquitted. We intend to dispose of the Criminal Appeal No.1150-J of 2019, the Petition for Special Leave to Appeal No.130 of 2019 and the Murder Reference No.135 of 2019 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as stated by Ghulam Yaseen (PW-5), the complainant of the case, are as under:-

> " Talib Hussain deceased was my elder brother. On 15.07.2016, I alongwith Talib Hussain and Khalil Ahmad were grazing our sheep and goats near Canal known as Fazil Waha. While one Allah Ditta son of Mallik Hammad was working is nearby cotton field. Then we were taking rest and having gossips alongwith our cattle under a sheesham tree. At 12:30 p.m. accused persons all of sudden accused persons namely Arif armed with pistol 30-bore, Jalil armed with pistol 30-bore, Ismail armed Sota and Ghulam Haider armed with Sota all present in court in their own motorcycle. Ghulam Haidar and Jalil accused present in court raised Lalkara with the words "be ready and you would not be spared today". Then Jalil accused made a fire at Khalil but luckily Khalil was saved. Then Ghluam Haider and Ismail accused started giving us fits blows while holding us due to fear Talib Hussain ran towards Kachha path, where Ghulam Haidar accused caught hold him and asked Muhammad Arif accused to fire at Talib Hussain after aiming at him. Then Talib Hussain fell down again said. Then Arif accused fired at Talib Hussain which hit him on right side of his mouth and exit through head. Then Talib Hussain fell down and tried to apprehend the accused persons on which all the accused persons threatened us that we will face the same consequences if came closer and due to fear we did not come close to them. We were empty handed. I left Allah Ditta and Khalil PWS with the deadbody and went to inform police about the occurrence. When police met me at Aqilpur where I got recorded my statement. Police also got affixed my thumb impressions on said statement. Police did not read over the statement thing. Then police declared accused Ismail innocent. Thanedar also recorded my statement against the facts as he wrongly mentioned the seat of injury in the statement recorded by him. I kept on moving applications on different forum but nobody attended me. Then I filed instant private complaint which is Ex.P.D. I also affixed my thumb impression on complaint witness is Ex.P.D/1. Motive behind the occurrence was the dispute on digging water course between Talib Hussain deceased and Ghulam Hussain accused one day prior to occurrence. All the accused persons in pursuance of common intention of all committed the instant occurrence."

4. The accused were summoned to face trial in the case instituted upon the private complaint titled *"Ghulam Yaseen Vs. Muhammad Arif and three others"* (relating to F.I.R. No. 220 of 2016 dated 15.07.2016 registered at Police Station Saddar Rajanpur, District Rajanpur) in respect of offences under sections 302 and

34 P.P.C. for committing the *Qatl-i-Amd* of Talib Hussain son of Allah Yar (deceased). The learned trial court framed the charge against the accused on 13.05.2017, to which the accused pleaded not guilty and claimed trial.

5. The complainant of the case in order to prove its case got recorded statements of as many as **eight** witnesses. The ocular account of the case was furnished by Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) . Shah Daad Khan Patwari (PW-1) prepared the scaled site plan of the place of occurrence (Exh.PA). Shahid Hussain, T/ASI (PW-2) stated that on 15.07.2016 he recorded the formal F.I.R (Exh. PB/1). Abdul Rashid 6/C (PW-3) stated that on 15.07.2016 he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Abdul Karim (PW-4) stated that on 15.07.2016 he identified the dead body of the deceased at the time of post mortem examination and the Medical Officer handed over the last worn clothes of the deceased to the police official after post mortem examination. Allah Bakhsh Asim, ASI (PW-8) stated that on 15.07.2016, the Investigating Officer of the case handed over to him one sealed parcel said to contain blood stained earth and one sealed parcel said to contain empty shells of the bullets collected from the place of occurrence and on 25.08.2016, he handed over the said sealed parcels said to contain blood stained earth and empty shells of the bullets collected from the place of occurrence to Abid Aziz, ASI (CW-1) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. and on 22.08.2016, Abid Aziz, ASI (CW-1) handed over to him one sealed parcel said to contain a pistol and on 09.10.2016, he handed over the said sealed parcel said to contain a pistol to

Abid Aziz, ASI (CW-1) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore.

6. The complainant also got Dr. Muhammad Adeel Khalid (PW-7) examined, who on 15.07.2016 was posted as Medical Officer at R.H.C. Makhdoom Rasheed and on the same day conducted the post-mortem examination of the dead body of the deceased, namely Talib Hussain son of Allah Yar. Dr. Muhammad Adeel Khalid (PW-7) on examining the dead body of the deceased namely Talib Hussain son of Allah Yar, observed as under:-

> " There was fire arm entry wound 1.5 x 1 c.m, margins were burnt and inverted, situated on below right angle of mouth with exit wound of 2 x 2 c.m, margins were everted situated on left side of parital bone of skull
>
> ……..
>
> After thorough examination, in my opinion, injury No.1 was ante mortem and caused by fire arm weapon. The injury No.1 was sufficient to cause death due to brain haemorrhage and shock. The probable duration between injury and death was immediate and between death and postmortem it was 5-6 hours probably."

7. The learned trial court examined Abid Aziz, ASI (CW-1), the Investigating Officer of the case, as a Court witness who investigated the case from 15.07.2016 till 11.10.2016, arrested the appellant namely Muhammad Arif son of Ghulam Haider on 14.08.2016 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

8. On 18.10.2019, the learned counsel for the complainant gave up the witnesses namely Allah Ditta and Ahmad Yar as being unnecessary. On 25.10.2019 , the complainant of the case tendered in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PN and Exh. PO) and closed the prosecution evidence.

9. After the closure of prosecution evidence, the learned trial court examined the appellant namely Muhammad Arif son of Ghulam Haider (convict) and 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*, he replied that he was innocent and had been falsely involved in the case. Muhammad Arif son of Ghulam Haider (convict) further stated that he had not committed any offence and had been made a scapegoat in the case in order to show efficiency by the police. The appellant namely Muhammad Arif son of Ghulam Haider opted not to get himself examined under section 340(2) Cr.P.C and did not adduce any evidence in his defence.

10. At the conclusion of the trial, the learned Sessions Judge, Rajanpur convicted and sentenced the appellant as referred to above.

11. The contention of the learned counsel for the appellant namely Muhammad Arif son of Ghulam 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 appellant 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 appellant further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant also submitted that the recovery of the pistol (P-6) from the appellant namely Muhammad Arif son of Ghulam Haider was full of procedural defects, of no legal worth and value, and were result of fake proceedings. The learned counsel for the appellant also argued that the appellant had been involved in the occurrence only on suspicion. The learned counsel for the appellant 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 Additional Prosecutor General along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond the shadow of doubt by producing independent witnesses. The learned Additional 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. The learned Additional 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 Additional Prosecutor General along with the learned counsel for the complainant, further contended that the recovery of the pistol (P-6) from the appellant namely Muhammad Arif son of Ghulam Haider also corroborated the ocular account. The learned Additional Prosecutor General along with the learned counsel for the complainant, further stated that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offender with the innocent in this case. Lastly, the learned Additional Prosecutor General along with

the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellant namely Muhammad Arif son of Ghulam Haider. The learned counsel for the complainant also argued that the Petition for Special Leave to Appeal No.130 of 2019, assailing the acquittal of Ismail son of Ghulam Haider and Muhammad Jalil son of Ghulam Haider by the learned trial court from the charges also merited acceptance.

12. We have heard the learned counsel for the appellant, the learned counsel for the complainant, the learned Additional Prosecutor General and with their assistance carefully perused the record and evidence recorded during the trial.

13. A perusal of the prosecution evidence reveals that the whole prosecution case as against the appellant namely Muhammad Arif son of Ghulam Haider is based on the statements of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6). The relationship of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) with the deceased is on record. Talib Hussain (deceased) was the brother of the prosecution witness namely Ghulam Yaseen (PW-5) and the prosecution witness namely Khalil Ahmad (PW-6). The prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were also admittedly not the residents of the place of occurrence. According to the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) both of them had their residence at a distance of about *as much as 3-4 squares* from the place of occurrence. The prosecution witness namely Ghulam Yaseen (PW-5) , during cross-examination stated as under:-

> “ Talib Hussain deceased was my real brother. PW Khalil is my real brother.
>
> …….

> The distance between place of occurrence is about **3 square of land from my house** " (emphasis supplied)

Similarly, the prosecution witness namely Khalil Ahmed (PW-6) during cross-examination, stated as under:-

> " Talib Hussain deceased was my real brother. PW Ghulam Yasin is my real brother.
>
> ……
>
> The distance between place of occurrence is about 3 square of land from my house."

In this manner, the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) can be validly termed as "*chance witnesses*" and therefore were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. We have noted with grave concern that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place. The prosecution witness namely Ghulam Yaseen (PW-5) had claimed that they were present at the place of occurrence, prior to the arrival of the accused at the said place as they were engaged in grazing their *sheep and goats*, near *Fazil Wah* Canal, whereas the prosecution witness namely Khalil Ahmed (PW-6) stated that they were present at the place of occurrence, prior to the arrival of the accused at the said place as they were engaged in grazing their *cattle*. The prosecution witness namely Ghulam Yaseen (PW-5), in his statement before the learned trial court got recorded as under:-

> " Talib Hussain deceased was my elder brother. On 15.07.2016, I alongwith Talib Hussain and Khalil Ahmad were **grazing our sheep and goats** near Canal known as Fazil Waha" (emphasis supplied)

Contradicting the prosecution witness namely Ghulam Yaseen (PW-5) regarding the purpose of their presence at the place of occurrence, prior to the occurrence, the prosecution witness namely Khalil Ahmad (PW-6), in his statement before the learned trial court got recorded as under:-

> "On 15.07.2016 we were grazing **our cattle** near the canal under the sheesham tree when accused persons namely Muhammad Arif, Muhammad Jalil, Ismail and Ghulam Haider suddenly came there " (emphasis supplied)

Obviously, there is a huge difference between *cattle*, *sheep* and *goats*. The prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) could not even make a consistent statement as to the reason for their presence at the place of occurrence, denuding the fact that both of them were not present at the place of occurrence and therefore such a huge contradiction cropped up in their statements regarding their reason for the presence at the place of the occurrence. Moreover, Abid Aziz ASI (CW-1), the Investigating Officer of the case , at the time of his visit to the place of occurrence, did not take into possession any physical proof of the claim of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) that they were present at the place of occurrence grazing sheep, cattle or goats. Abid Aziz ASI (CW-1), the Investigating Officer of the case during cross-examination admitted that at the time of his visit to the place of occurrence neither he saw any sheep nor goats nor any cattle present there and furthermore he did not even observe the presence of any hoof marks of such animals present at or around the place of occurrence. Abid Aziz ASI (CW-1),

the Investigating Officer of the case further admitted during cross-examination that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) also did not point out the presence of such cattle, sheep or goats to him at the time of his visit to the place of occurrence. Abid Aziz ASI (CW-1), the Investigating Officer of the case during cross-examination, admitted as under:-

> " I reached at the place of occurrence after about half an hour of the recording of statement of complainant Ex.P-B. **When I reached at the place of occurrence there were no goats or sheep. Complainant or PWs did not point out me about the presence of herd of goats or sheep.** It was Kacha place at the place of occurrence**. I have not mentioned the signs of scuffling or foot prints of the herd because the same were not available**"(emphasis supplied)

Abid Aziz, ASI (CW-1), the Investigating Officer of the case, admitted during cross-examination that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) never produced before him the animals for the care of which prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were available at the place of occurrence. The non-production and the non-availability of the animals for the care of which the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) had arrived at the place of occurrence and the failure of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) to produce the same before the Investigating Officer of the case, leads to only one conclusion and that being that no such animals were being taken care of by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) while they grazed. Had such animals been present at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of Abid Aziz ASI (CW-1), the

Investigating Officer of the case and the same would necessarily have been taken into possession by Abid Aziz ASI (CW-1), the Investigating Officer of the case or at least their presence marked in the inspection note as well as in the rough site plan of the place of occurrence (Exh. PM) but they were not . Furthermore , Abid Aziz ASI (CW-1), the Investigating Officer of the case would have prepared a memo marking the presence of such animals at the place of occurrence had they being there but he did not and it proves that a false claim was made by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were present at the place of occurrence while taking care of animals owned by them. In this manner, the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) failed miserably to prove that they had indeed arrived at the place of occurrence, before the occurrence. Reliance in this regard is placed on the case of *"Muhammad Ali Vs. The State"* **(2015 SCMR 137)**. The proven failure of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) to provide a reason for their presence at the place of occurrence, on the day of the incident, has repercussions, proving that there was no reason actually for the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) to be visiting the place of occurrence. The very inception of the prosecution case is thus put in doubt due to the said abject failure of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6). The failure of the prosecution to prove their claims regarding the reason for their presence at the place of occurrence has vitiated our trust in Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) as being truthful witnesses. In this respect, reliance is placed on the case of "*Muhammad Rafiq v. State"* **(2014 SCMR 1698)** wherein the august

Supreme Court of Pakistan rejected the claim of witnesses who lived one kilometre away from the place of occurrence, but on the day of occurrence stated to be present near the spot as they were working as labourers, inasmuch as they failed to give any detail of the projects they were working on. Reliance is also placed on the case of "*Usman alias Kaloo v. State*" **(2017 SCMR 622)** wherein the august Supreme Court of Pakistan held that the ocular account of the incident had been furnished by Zahoor Ahmad, Ghulam Farid and Manzoor Ahmed in the said case who were all residents of some other houses and they were not the inmates of the house wherein the occurrence had taken place and therefore the said eye-witnesses were, thus, declared chance witnesses and not worthy of reliance. Reliance is also placed on the case of "*Nasrullah alias Nasro v. The State"* **(2017 SCMR 724)**.

14. We have also noted another flaw in the statements of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) which proves that no reliance can be placed upon their statements. Both the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) claimed that during the occurrence they were beaten by the accused, as many as four in total, however, also admitted that neither they were examined by any Medical Officer nor any Medico Legal Examination Certificate existed with regard to them nor Abid Aziz ASI (CW-1), the Investigating Officer of the case even prepared any injury statement mentioning the presence of injuries on the bodies of prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) as allegedly inflicted upon them by the accused. The prosecution witness namely Ghulam Yaseen (PW-5) in his statement recorded by the learned trial, court stated as under:-

> " Then Ghluam Haider and Ismail accused started giving us fits (sic) blows while holding us
>
> ……
>
> The accused were having Sotas in their hand when they were causing fist blows to us. Again said, at the time when they gave fist blows to us, the Sotas had fallen on the ground."

The prosecution witness namely Khalil Ahmad (PW-6) in his statement recorded by the learned trial court , stated as under:-

> " Ghulam Haider and Ismail accused kept on giving us fits blows
>
> ……..
>
> I had recorded before the 1.0. that Ghulam Haider and Ismail accused persons gave us fist blows. (Confronted with Ex.D.A. wherein it is not so recorded)."

We have also noted that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) also failed to explain the presence of the motorcycle (P-7), which was found present at the place of occurrence by Abid Aziz ASI (CW-1), the Investigating Officer of the case and was also taken into possession by him. The prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) in their statements did not even state that the accused had arrived on the motorcycle (P-7) at the place of occurrence or that they had fled away from the place of occurrence leaving behind the said motorcycle. Even Abid Aziz ASI (CW-1), the Investigating Officer of the case admitted during cross-examination that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) could not explain the presence of the motorcycle (P-7) at the place of occurrence

and the damaged condition of the said motorcycle (P-7). Abid Aziz ASI (CW-1), the Investigating Officer of the case, during cross-examination, admitted as under:-

> " I took into, possession the motorcycle P7 from the place of occurrence, said to be belonging to accused persons. I did not inquire from the complainant and PWs about the damage condition of motorcycle (P-7). PWs also did not tell me about the said condition of the motorcycle, I have not written the reasons of damage condition of motorcycle P7 in my whole investigation, because I do not find any evidence in this regard"

We have also noted that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) also failed to explain to the Investigating Officer of the case regarding the presence of the dead body of the deceased on a cot at the place of occurrence, whereas the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) had claimed that the deceased had fallen on the ground and his body not shifted from that place. The prosecution witness namely Ghulam Yaseen (PW-5) during cross-examination, admitted as under:-

> "At the time when the IO. visited the place of occurrence for the first time, the deadbody was lying on the ground. "

The prosecution witness namely Khalil Ahmad (PW-6) during cross-examination, admitted as under:-

> " The 10. had captured photos of the deadbody when it was lying on cot. The 1.0. secured the bloodstained at the place where Talib Hussain deceased received injuries and died. The cot was at that place of occurrence. **The cot was lying on different place from the place where the deceased received injuries.**
>
> ……

> The 1.O. had taken possession of that bloodstained soil where Talib Hussain was murdered and he had not taken bloodstained soil underneath the cot whereupon the deadbody was lying" (emphasis supplied)

Abid Aziz ASI (CW-1), the Investigating Officer of the case , during cross-examination, explained as under:-

> " When I reached at the place of occurrence the deadbody was lying on a cot at another place and not on the point No.1 of unscaled site plan Ex.P-M. The deadbody was lying. on a cot at a distance of about 20 Krams from the point No.1. The blood was present under the cot upon which the deadbody was lying
>
> ……..
>
> The snaps of the deadbody which I prepared on my first visit of the place of occurrence are of the deadbody while lying on the cot at the place where the cot was lying.
>
> ……
>
> **I inquired from the complainant and PWs that why they have and who shifted the deadbody from the place of occurrence but nobody replied to me** and I warned them that they should have not shift the deadbody. I have not mentioned any tree near the point No.1 of unsealed site plan Ex.P-M because it was not present near the point No.1" (emphasis supplied)

The above referred portions of the statements of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) and Abid Aziz ASI (CW-1), the Investigating Officer of the case bring out the contrast and contradictions in their statements and prove that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were not present at the place of occurrence and

therefore made the errors which they did and also could not explain many aspects related to the details of the occurrence and the crime scene.

15. Another aspect drawing our grave concern is the fact that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) made blatant improvements to their previous statements in order to bring the ocular account as narrated by them, in line with the opinion and observations of Dr. Muhammad Adeel Khalid (PW-7), who had conducted the post mortem examination of the dead body and went on to claim that the injury mentioned by them as the entry wound in their previous statements was actually the *exit wound* and mentioned the seat of the entry wound on the dead body of the deceased in their statements recorded by the learned trial court , which wound they had not earlier mentioned in their statements. The prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) made a deliberate and dishonest departure from their earlier narrations of the occurrence while deposing before the learned trial court. The prosecution witness namely Ghulam Yaseen (PW-5) was cross-examined in this regard and the learned trial court observed as under:-

> "I had made statement before the 1.0. that then Arif accused fired at Talib Hussain, which hit him on right side of his mouth and exit through head (**Confronted with Ex.P.B. wherein it is not so recorded**)." (emphasis supplied)

The prosecution witness namely Khalil Ahmad (PW-6) was also cross-examined in this regard and the learned trial court observed as under:-

> "I got recorded before the I.O. that the fire shot hit Talib Hussain deceased at his mouth and exit from head. (Confronted with Ex.D.A. wherein it is not so recorded)."

Abid Aziz ASI (CW-1), the Investigating Officer of the case admitted during cross-examination the blatant and dishonest improvement made by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) in their previous statements so as to bring them in conformity with the evidence and observations of Dr. Muhammad Adeel Khalid (PW-7) and stated as under:-

> "I have mentioned one injury through and through on the head of deadbody of Talib Hussain deceased on the injury statement Ex.PL/1 and inquest report Ex P-L. The complainant got recorded in his statement Ex.P-B about one injury on the head of deceased. The complainant got recorded about the through and through injury but not specify the location about exit. The eye witnesses also had not disclosed in their statements u/s 161 Cr.P.C about the location of exit injury. **They got recorded the injury on head as entry wound** " (emphasis supplied)

By improving their previous statements , the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) impeached their own credit. Article 151 of the Qanun-e-Shahadat Order 1984 provides as under: -

> "151. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:
>
> (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be un worthy of credit;
>
> (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
>
> **(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;"**

As the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) introduced dishonest, blatant and substantial improvements to their

previous statements and were duly confronted with their former statements, hence their credit stands impeached and the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) cannot be relied upon on, being proved to have deposed with a slight, intended to mislead the court. The august Supreme Court of Pakistan in the case of "*Muhammad Ashraf Vs. State"* (**2012 SCMR 419**) took serious notice of the improvements introduced by witnesses and rejected their evidence. We, thus, are satisfied that the evidence of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) has no intrinsic worth and is to be rejected outrightly. The august Supreme Court of Pakistan in a recent case reported as "*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

> *"Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence".*

The august Supreme Court of Pakistan in the case reported as *Muhammad Arif Vs. The State* (**2019 SCMR 631**) has enunciated the following principle:

> *"It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge."*

Guidance is 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 metalic projectile was recovered from wound No.1/B which was an exit wound. If it was an exit wound then the metalic projectile would have been out of the body. The presence of metalic 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."*

16. We have also noted that the stance set up by the prosecution in the present case was that the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were present at the time of the death of the deceased and had remained with the dead body however in the inquest report (Exh.PL), in column No.8 it had been noted that both the *mouth and the eyes* of the deceased were open at the time of preparation of the same, which clearly shows that the dead body was not attended to by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6), as claimed. The mouth and eyes of the

deceased were found open at the time of preparation of the inquest report (Exh.PL), thus, if the witnesses were present then, at least after the death, as is a consistent practice of such close relatives, they would have closed the eyes and mouth of the deceased on his expiry, however, they did not. Thus, the open eyes and mouth of the deceased force a hostile interpretation against the prosecution's version regarding the presence of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) at the place of occurrence, at the time of occurrence. This fact by itself indicates that none was present with the deceased till his death. The august Supreme Court of Pakistan in the case of "*MUHAMMAD RAFIQUE alias FEEQA vs. The State"***(2019 SCMR 1068)** has held as under:

> *"What has further irked this Court is that in column No. 9 of the Marg Report (Ex.PW9/1), and even in the Post Mortem Report (Ex.PW-10/A), the mouth of the deceased has been stated to be open, which clearly indicates that the dead body was not attended to by his close relatives after being pronounced dead. However, the stance set up by the prosecution in the present case is that Arshad Ali - the brother, and Nazir Ahmad - the uncle of the deceased Muhammad Azam were present at the time of his death, and remained with him, even thereafter. Thus, the said posture of the deceased raises an adverse inference against the prosecution's version regarding the presence of the said persons at the place and time of occurrence."*

We have also noted that both the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were not mentioned either in column No.4 of the inquest report (Exh.PL) as being the witnesses who had identified the dead body of the deceased at the time of preparation of the inquest report (Exh.PL) nor were mentioned at page 4 of the inquest report (Exh.PL) as witnesses who were present at the place of occurrence at the time of preparation of the inquest report (Exh.PL). This fact also points towards the absence of the prosecution witnesses

namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) at the place of occurrence, at the time of preparation of the inquest report (Exh.PL) by Abid Aziz ASI (CW-1), the Investigating Officer of the case.

17. We have also observed that Dr. Muhammad Adeel Khalid (PW-7) opined that at the time of the postmortem examination of the dead body of the deceased, *rigor mortis* was developed. Before proceeding any further, it would be advantageous to mention here that *rigor mortis* is a term which stands for the stiffness of voluntary and involuntary muscles in human body after death. It starts within 2 to 4 hours of death and *fully develops in about 12-hours* in temperate climate. Similarly, the reverse process with which *rigor mortis* disappears is called *algor mortis*. In support of duration required to develop *rigor mortis*, an extract from "*The Principles And Practice Of Medical Jurisprudence" by Alfred Swaine Taylor,MD* , is being referred hereunder:-

> *"In sudden natural deaths occurring in a temperate climate during average seasonal conditions rigor mortis usually commences within 2 to 4 hours of death. It reaches a peak in about 12 hours and starts to disappear after another 12 hours. The cadaver becoming limp some 36 hours after death."*

Likewise, Dr. S. Siddiq Husain in Chapter-V of his book "*Forensic Medicine and Toxicology"*, observed that in temperate climate the *rigor mortis* completes in 8 to 12 hours. Similarly, William Carroll in his research article titled as "*An Examination of Muscle Function"*, has declared a similar duration for *rigor mortis* to develop. In Chapter 15 'POST-MORTEM CHANGES AND TIME SINCE DEATH", from page 351 to page 352 of Rai Bahadur Jaising P. Modi's *A Textbook*

of Medical Jurisprudence and Toxicology (26th Edition 2018) ,it has been discoursed as under:-:

> "Rigor mortis generally occurs, while the body is cooling. It is in no way connected with the nervous system, and it develops even in paralyzed limbs, provided the paralyzed muscle tissues have not suffered much in nutrition. It is retarded by perfusion with normal saline.
>
> Owing to the setting in of rigor mortis all the muscles of the body become stiff, hard, opaque and contracted, but they do not alter the position of body or limb. A joint rendered stiff and rigid after death, if flexed forcibly by mechanical violence, will remain supple and flaccid, but will not return to its original position after the force is withdrawn; whereas a joint contracted during life in cases of hysteria or catalepsy will return to the same condition after the force is taken away.
>
> Rigor mortis first appears in the involuntary muscles, and then in the voluntary. In the heart it appears, as a rule, within an hour after death, and may be mistaken for hypertrophy, and its relaxation or dilatation, atrophy or degeneration. The left chambers are affected more than the right. Post-mortem delivery may occur owing to contraction of the uterine muscular fibres.
>
> In the voluntary muscles rigor mortis follows a definite course. It first occurs in the muscles of the eyelids, next in the muscles of the back of the neck and lower jaw, then in those of the front of the neck, face, chest and upper extremities, and lastly extends downwards to the muscles of the abdomen and lower extremities. Last to be affected are the small muscles of the fingers and toes. It passes off in the same sequence. However, according to H.A. Shapiro this progress of rigor mortis from proximal to distal areas is apparent only, it actually starts in all muscles simultaneously but one can distinguish the early developing and fully established stage, which gives an indication of the time factor.
>
> Time of Onset.- This varies greatly in different cases, but the average period of its onset may be regarded as three to six hours after death in temperate climates, and it may take two to three hours to develop.
>
> Duration-In temperate regions, rigor mortis usually lasts for two to three days. In northern India, the usual duration of rigor morts is 24 10 48 hours in winter and 18 to 36 hours in summer. According to the investigations of Mackenzie, in Calcutta, the average duration is nineteen hours and twelve minutes, the shortest period being three hours, and the the longest forty hours." In Colombo, the average duration is 12 to 18 hours. When rigor mortis sets in early, it passes

> off quickly and vice versa. In general, rigor mortis sets in one to two hours after death, is well developed from head to foot in about twelve hours. Whether rigor is in the developing phase, established phase, or maintained phase is decided by associated findings like marbling, right lower abdominal discolouration, tense or taut state of the abdomen, disappearance of rigor on face and eye muscles. If on examination, the body is stiff, the head cannot be fixed towards the chest, then in all probability, the death might have occurred six to twelve hours or so more before the time of examination."

The occurrence statedly took place at about **12.30 p.m. on 15.07.2016** whereas Dr. Muhammad Adeel Khalid (PW-7) conducted the post mortem examination of the dead body of the deceased on **15.07.2016 at 5:30 p.m** . Dr. Muhammad Adeel Khalid (PW-7), in his statement before the learned trial court , stated as under:-

> "A deadbody of about 49 years old man lying on autopsy table wearing Qameez of light sky blue and Dhoti. **Rigor mortis developed while postmortem staining fully developed"** (emphasis supplied)

The development of *rigor mortis* and the post-mortem staining on the dead body fully developed in the month of July, at the time of post mortem examination of dead body, contradicts the time of occurrence deposed by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) .In the month of July, development of *rigor mortis* and the presence of post mortem staining completed on the dead body within such a short span of time as suggested by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) was implausible and the occurrence does not appear to have taken place at the point of time mentioned by the witnesses. The August Supreme Court of Pakistan in the case of "*Noor Ahmad vs. The State and others "***(2019 SCMR 1327)** has held as under:

> *"Occurrence statedly took place at 10.00 a.m. whereas the autopsy was conducted at 5.00 p.m. development of complete rigor mortis on the body of a young lady in hot weather, belies point of time of assault given in the crime report".*

The August Supreme Court of Pakistan in the case of *Asad Rehmat vs. The State and others "***(2019 SCMR 1156)** has held as under:

> *"Occurrence, statedly, took place at 2.00 p.m., autopsies started 4.30 p.m., concluded at 9.00 p.m. Muhammad Hayat was examined first; the medical officer noted rigor mortis. Same is the case with other corpses. In the month of* ***March****, development of rigor mortis within such short span of time is mind boggling; occurrence does not appear to have taken place at the point of time mentioned in the crime report."*

For the abovementioned observations of Dr. Muhammad Adeel Khalid (PW-7), we are swayed to hold that time of occurrence as deposed by the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) is not free from uncertainty, proving their absence.

18. The learned Additional Prosecutor General and the learned counsel for the complainant placed much emphasis on the promptitude with which the oral statement (Exh. PB) of Ghulam Yaseen (PW-5) was recorded by Abid Aziz ASI (CW-1), the Investigating Officer of the case and stated that this excluded the possibility of any pre-concert prior to the recording of the oral statement (Exh. PB). The prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) themselves admitted that the oral statement (Exh.PB) was wrongly recorded and themselves abandoned the said oral statement (Exh.PB). The prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) during cross-examination repeatedly stated that the oral statement (Exh.PB) was not recorded correctly and the details of the occurrence as mentioned in the said

oral statement (Exh.PB) were not correct. The prosecution witness namely Ghulam Yaseen (PW-5) , admitted during cross-examination, as under:-

> " **The I.O. recorded my first statement u/s 154 Cr.P.C. wrongly**
>
> ……
>
> At the time of bail petitions, I and my counsel did not take any stance that the police did not record my statement correctly. Volunteer that on the receipt of copy of postmortem report, I came to know that my statement was incorrectly recorded After showing postmortem report to my counsel, I came to know that my statement was incorrectly recorded by the police. When I produced copy of my postmortem report to my counsel, then I came to know that the seat of injury was not according to seat of injury mentioned in the FIR. After knowing about this fact, I moved applications for change of investigation 1 ½ months thereafter. I filed the instant private complaint 1 ½ years after my moving those applications" (emphasis supplied)

The prosecution witness namely Khalil Ahmad (PW-6), admitted during cross-examination , as under:-

> "**During investigation our case could not be proved**, therefore, we have filed the private complaint regarding the occurrence. 1 ½ months after the occurrence, when we showed postmortem report to our counsel, we came to know that the police did not lodge FIR correctly " (emphasis supplied)

Moreover, we have noted that despite the disapproval of the August Supreme Court of Pakistan, the same method was adopted in this case; that the recording of the oral statement (Exh. PB) was shown when the complainant namely Ghulam Yaseen (PW-5) was allegedly on his way to the Police Station to report the matter, however, suddenly came across Abid Aziz ASI (CW-1), the Investigating Officer of

the case. The August Supreme Court of Pakistan has termed this practice as misleading and deceptive. The August Supreme Court of Pakistan in the case of *Mst. Rukhsana Begum & others v. Sajjad & others* **(2017 SCMR 596)** observed at page 601 as under:

> *"In the ridder to the FIR, the Investigating Officer has mentioned that the complainant Muhammad Faazal met him somewhere in the way while proceeding to the police station. In past, it had become routine practice of the police that indeed in such like crimes, the FIR/written complaints were being taken on the crime spot after preliminary investigation, however, after this court had disapproved this practice, they have invented a new way of misleading the court of law because invariably in every second or third case, same and similar practice is adopted."*

Reliance is also placed on the case of *Abdul Jabbar alias Jabbari v. The State* **(2017 SCMR 1155)** wherein the august Supreme Court of Pakistan observed as under:

> *"An FIR in respect of the incident in issue had not been lodged at the local Police Station giving rise to an inference that the FIR had been chalked out after deliberations and preliminary investigation at the spot."*

The scrutiny of the statements of the prosecution witnesses reveals that the oral statement (Exh.P.B) of Ghulam Yaseen (PW-5) was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. No corroboration of the prosecution evidence can be had from the said oral statement (Exh. PA) of Ghulam Yaseen (PW-5) Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard.

19. The learned Additional Prosecutor General and the learned counsels for the complainant, have submitted that the recovery of the pistol (P-6) from the appellant namely Muhammad Arif son of Ghulam Haider offered sufficient corroboration of the statements of the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6). Regarding the recovery of the pistol (P-6) from the

appellant namely Muhammad Arif son of Ghulam Haider, the same 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-6) from the appellant namely Muhammad Arif son of Ghulam Haider which was in clear violation of section 103 Code of Criminal Procedure, 1898. 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**."

Therefore, the evidence of the recovery of the pistol (P-6) from the appellant namely Muhammad Arif son of Ghulam Haider cannot be used as incriminating evidence against the appellant, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence 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."*

We have also noted that the appellant namely Muhammad Arif son of Ghulam Haider was arrested on **14.08.2016**, the pistol (P-6) was recovered from the appellant namely Muhammad Arif son of Ghulam Haider on **22.08.2016,** however the empty shells of the bullets taken into possession from the place of occurrence on **15.07.2016** were sent to Punjab Forensic Science Agency, Lahore on **26.08.2016** though there was no reason for keeping the shells of the bullets, which

were taken into possession of on the day of occurrence**,** at the Police Station and not sending them to the office of Punjab Forensic Science Agency, Lahore till **26.08.2016** i.e. after the appellant had been arrested on **14.08.2016**. In this manner the report of Punjab Forensic Science Agency, Lahore. (Exh. PN) regarding the comparison of the shells of the bullets taken from the place of occurrence with the *pistol (P-6)* recovered from the appellant, has no evidentiary value as the possibility of fabrication is apparent. Reliance is placed on the case of Muhammad *Amin Vs. The State and another* (**2019 S C M R 2057**) wherein the august Supreme Court of Pakistan has held as under:-

> *"Interestingly, two empty cartridges (P-4/1-2) were secured from the place of occurrence by the investigating officer Akhtar Ali, SI (PW12) on the night of 11.10.2012, but the same were sent to the office of Punjab Forensic Science Agency on 23.01.2013 i.e. after arrest of the appellant in this case. In these circumstances, the positive report of FSL is of no avail to the prosecution and is inconsequential."*

In view of the above-mentioned facts, the alleged recovery of the pistol (P-6) from the appellant namely Muhammad Arif son of Ghulam Haider is not proved and the same cannot be used as a circumstance against the appellant. Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of the recovery of the pistol (P-6) from the appellant namely Muhammad Arif son of Ghulam Haider would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

20. The Learned Additional 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 of the occurrence as stated by the

prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) in their statements recorded by the learned trial court was that the deceased had an altercation with the accused Ghulam Haider (since dead) over the digging of a watercourse. We have scrutinized the statements of the prosecution witnesses and find that the motive as alleged could not be proved. During the course of cross-examination both the prosecution witnesses namely Ghulam Yaseen (PW-5) and Khalil Ahmed (PW-6) were exposed to having made dishonest improvements in their previous statements regarding the motive of the occurrence as narrated by them before the learned trial court. The prosecution witness namely Khalil Ahmad (PW-6) was cross-examined in this regard and the learned trial court observed as under:-

> "I got recorded before the IO. that motive behind the occurrence was dispute on digging watercourse between us and Ghulam Haider. (Confronted with Ex.D.A. wherein it is not so recorded). "

Moreover, admittedly there was no dispute between the appellant namely Muhammad Arif and the deceased namely Talib Hussain. Furthermore, during the course of the investigation, the Investigating Officer of the case did not collect any evidence so as to establish that there was any grievance developing in the heart of the appellant as against the deceased which motivated him to act in the manner in which he did. Abid Aziz ASI (CW-1), the Investigating Officer of the case during cross-examination admitted as under:-

> "The complainant did not show me the water course upon which the dispute between the parties was occurred prior to this occurrence. I asked the complainant to show the said water course which is mentioned in the motive part of complaint, **but the complainant did not get inspected me the same.** " (emphasis supplied)

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 appellant namely Muhammad Arif to have committed the *Qatl-i-Amd* of the deceased namely Talib Hussain. There is a haunting silence with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* (**2016 SCMR 2021**) as under:

> *"The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case."*

Moreover, it is an admitted rule of appreciation of evidence that motive is only a supporting piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made the basis of conviction.

21. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellant namely Muhammad Arif son of Ghulam Haider in the present case. It is a settled principle of law that for giving 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 the 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 Akramv.The State (2009 SCMR 230) and Muhammad Zamanv.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 held as:-

> *"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 got 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 this Court has 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."*

22. For what has been discussed above the Criminal Appeal No.1150-J of 2019 lodged by the appellant namely Muhammad Arif son of Ghulam Haider is allowed and the conviction and sentence of the appellant namely Muhammad Arif son of Ghulam Haider (convict) awarded by the learned trial court through the impugned judgment dated 30.10.2019 are hereby **set-aside**. The appellant namely Muhammad Arif son of Ghulam Haider is ordered to be acquitted by extending him the benefit of doubt. Muhammad Arif son of Ghulam Haider is in custody and he is directed to be released forthwith if not required in any other case.

23. The complainant of the case filed Petition for Special Leave to Appeal No.130 of 2019 seeking permission to file an appeal against the acquittal of Ismail son of Ghulam Haider and Muhammad Jalil son of Ghulam Haider (both since acquitted). This Court has observed that the learned trial court has rightly acquitted the said accused. This Court has scrutinized the statements of the prosecution witnesses and has come to the conclusion that the prosecution witnesses could not prove the facts in issue. It is important to note that according to the established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse. The said principle has been enunciated by the august Supreme Court of Pakistan in the judgment reported as "*Ghulam Sikandar and another Versus Mamaraz Khan and Others"* (**P L D 1985 Supreme Court 11**) wherein it has been held as under:

> *"The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however. the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."*

Reliance is also placed on the judgment reported as *Muhammad Inayat Versus The State* (**1998 SCMR 1854**) wherein it has been held as under:

> *"The judgment of acquittal qua Muhammad Yousaf, Muhammad Sated and Muhammad Nawaz cannot, in the given situation, be termed as perverse or foolish inasmuch as the view having been taken by the High Court can possibly be taken for acquitting them in the peculiar facts and circumstances of this case. It cannot be said that the impugned judgment of the High Court acquitting Muhammad Yousaf and two others is fanciful, artificial, shocking or ridiculous. 1t is based on convincing reasons"*."

The august Supreme Court of Pakistan in the case of "*Mst. Sughran Begum and another Vs. Qaiser Pervaiz and others"* (**2015 SCMR 1142**) has held as under:

> "*On acquittal, an accused person earns twofold innocence particularly, in the case when there are concurrent findings to that effect by the trial Court and the Court of First Appeal (High Court), is the bedrock principle of justice. In a case of acquittal, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. Unless the concurrent findings of the two Courts below are found perverse, fanciful, arbitrary and are based on misreading and non-reading of material evidence causing miscarriage of justice, the Supreme Court would not lightly disturb the same because on reappraisal, another view might be possible therefore, sanctity is attached under the law to such concurrent findings in ordinary course."*

Pursuant to the discussion made and conclusions arrived at above, the Petition for Special Leave to Appeal No.130 of 2019 as filed by the complainant, seeking permission to file an appeal against the acquittal of Ismail son of Ghulam Haider and Muhammad Jalil son of Ghulam Haider (both since acquitted), is hereby **dismissed**.

24. **Murder Reference No.135 of 2019** is answered in **Negative** and the sentence of death awarded to Muhammad Arif son of Ghulam Haider is **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

Approved for Reporting

Judge