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

**Murder Reference No.100 of 2019
(The State versus Asjad Mehmood)**

**Crl. Appeal No.44525-J of 2019
(Asjad Mehmood versus The State)**

JUDGMENT

Date of hearing: 15.03.2023.

Appellants by: M/s. Miss. Rida Noor and Ch. Abdur Rehman Sahi, Advocates for the appellant.

State by: Rana Ahsan Aziz, Additional Prosecutor General with Javed, ASI.

Complainant by: Mr.Qasim Mehmood Baba, Advocate.

AALLA NEELUM, J:- The appellant-Asjad Mehmood, son of Muhammad Khan, Caste Gujjar, resident of Khonan, Tehsil Kharian, District Gujrat, has assailed his conviction and sentence recorded by the learned Addl. Sessions Judge, Kharian vide judgment dated 11.04.2019 in a State case F.I.R No.563/2009, dated 21.12.2009, an offense under Section 302 PPC, registered at the police station, Saddar Kharian, District Gujrat, whereby the learned trial court convicted the appellant-Asjad Mehmood, under Section 302 (b) PPC as Ta'zir and sentenced to death with the direction to pay Rs.3,00,000/- as compensation to the legal heirs of the deceased under Section 544-A of Cr.P.C, which would be recoverable as arrears of land revenue and in case of default in payment thereof, he would further undergo 06-months S.I.

2. Feeling aggrieved by the judgment of the learned trial court, the appellant-Asjad Mehmood, has assailed his conviction and sentence by filing an appeal bearing **Crl. Appeal No.44525-J of 2019**. The learned trial court also referred **M.R. No.100 of 2019 (The State. Vs. Asjad Mehmood)** to confirm the death sentence awarded to the appellant-Asjad Mehmood, as both the matters arising from the same judgment of the learned trial court are being disposed of through this consolidated judgment.

3. Briefly, the prosecution story as alleged in the F.I.R (Ex. PC) lodged on the application (Ex. PA) of Maqsood Bibi (PW-1)-the complainant is that on 20.12.2009, the daughter of the complainant, namely Babra Bibi (since dead) called the complainant telephonically that the accused-Asjad Mehmood was quarreling with her every day after that the complainant reached the house of her daughter along with her "bhanja" namely Atif Annayat to see her daughter. When the complainant reached her daughter's house, the accused started quarreling with Maqsood Bibi (PW-1) and her "bhanja." After that, at about 4/5 a.m., the accused-Asjad Mehmood, called Babra Bibi (since dead), who came out of the room. The complainant and others also went out of the room. The accused-Asjad Mehmood, armed with a rifle, made fire shots, which hit the belly and chest of Babra Bibi (since dead), who succumbed to the injuries on the spot. The alleged occurrence was witnessed by Maqsood Bibi (PW-1)-the complainant, Sohail (PW-2), and Atif Annayat.

4. The motive behind the occurrence was a domestic dispute between the accused-Asjad Mehmood, and his brother Amjad Mehmood (husband of the deceased, Babra Bibi), due to which the alleged occurrence took place.

5. The complainant-Maqsood Bibi (PW-1), reported the incident to local police through Fard Bayan (Ex. PA) after that

formal FIR (Ex. PC) was chalked out by Wasif Hussain, S.I (PW-4). After the registration of the case, firstly, the investigation of this case was entrusted to Muhammad Khan Ranjha, SI (PW-9). After that, the investigation of this case was entrusted to Tanvir Abbas, SI (PW-13), who found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C. while placing the names of the accused in column No.3 of the Challan and sent the same to the court of competent jurisdiction. The learned trial court formally charge-sheeted the appellant on 04.05.2017, to which he pleaded not guilty and claimed trial. In support of his version, the complainant produced as many as thirteen (13) witnesses. The appellant was also examined in terms of Section 342 Cr.P.C., wherein he neither opted to appear as his own witness in terms of Section 340(2) Cr.P.C. nor produced any defence evidence.

6. After recording evidence and evaluating the evidence available on record in light of arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction as well as awarding of sentence to him in the afore-stated terms.

7. We have heard the arguments advanced by the learned counsel for the parties and have minutely perused the record on the file.

8. The incident took place on 21.12.2009 at 04:00/05:00 a.m. in the house of Asjad Mehmood, situated in the area of village Khunan, within the area of Police Station, Sadar Kharian, District, Gujrat, which is at a distance of seven (7) Miles from the place of occurrence. Mst. Maqsood Bibi (PW-1)-the complainant reported the incident through her Fard Bayyan (Exh. PA) to Muhammad Khan Ranjha, S.I. (PW-9) at 06:00 a.m., who reached the place of occurrence on receiving information and referred the Fard Bayyan

(Exh.PA) through Muhammad Hanif 3432/C (not cited as PW) to the police station, based on which, formal F.I.R. (Exh.PC) was chalked out on the same day at 6:30 a.m. by Wasif Hussain SI/DO (PW-4). Mst. Maqsood Bibi, the complainant (PW-1), deposed during cross-examination that: -

“---Atif Pw informed police about the occurrence telephonically at once. Atif Pw is serving in any department in Kharian that's why he has telephone number of Police Station---”

It is notable that immediately after the incident of the murder of Babra, it was reported to the police. It is noticed that the occurrence took place at 04:00/05:00 a.m. (night), and the distance between the police station and the place of occurrence was seven (7) Miles, whereas Mst. Maqsood Bibi, the complainant (PW-1), deposed during cross-examination that: -

“I got recorded my statement to police at about 5.30 am.”

Whereas, the police proceedings (Exh. PA/1) written below at the Fard Bayyan (Exh. PA) reveal that the same was written at 06:00 a.m. Sohail Amjad (PW-2), son of the deceased, deposed during cross-examination that: -

“---Atif Pw informed the police about the occurrence. Police reached at place of occurrence at 6.00 a.m---”

Thus, it was established from the evidence of Mst. Maqsood Bibi (PW-1) and Sohail Amjad (PW-2) that Atif Annayat (PW) informed the police about the incident and said witness was given up being un-necessary, therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984 that had the witness Atif Annayat, been appeared in witness box, then his testimony would have been un-favourable to the prosecution.

Mst. Maqsood Bibi, the complainant (PW-1), deposed during cross-examination that: -

“---I can not tell inter se distance of village Khunan and Police Station Saddar Kharian---I can not tell the numbers of police officials/officers who reached at the place of occurrence. I got recorded my statement to Moulvi Shareef, police officer--- It is correct that Moulvi Shareef questioned me about the occurrence and I made answers to him and same were reduced to writing by him---”

Mst. Maqsood Bibi, the complainant (PW-1), reaffirms that their statements were recorded by “Moulvi Shareef.” But as per record, name of the police officer to whom Mst. Maqsood Bibi, the complainant (PW-1) got, recorded her statement (Exh.PA/1) regarding occurrence, is Muhammad Khan, S.I and not Moulvi Shareef. Mst. Maqsood Bibi, the complainant (PW-1), deposed during cross-examination that: -

“---When my statement was being recorded by Moulvi Shareef, I, Atif and Sohail were present---”

Contrary to the deposition of Mst. Maqsood Bibi, the complainant (PW-1), Muhammad Khan Ranjha, S.I. (PW-9), deposed during examination-in-chief that: -

“---Stated that on 21.12.2009 I was posted as ASI/IO in Police Station Kharian Sadar. On the same day, on receiving the information of occurrence, I along with other police officials reached place of occurrence in village Khunan where complainant Magsood Bibi appeared before me and got recorded his statement about the occurrence which I reduced into writing which was read over to her and she admitting it correct thumb marked the same as a token of correctness---”

It creates doubt, that who prepared the Fard Bayyan (Exh. PA). Mst. Maqsood Bibi, the complainant (PW-1), stated during cross-examination that when police reached the place of occurrence, they at once recorded her statement and then made an investigation/inquiry. Mst. Maqsood Bibi, the complainant (PW-1), deposed during cross-examination that: -

“---Police reached the place of occurrence recorded statements and conducted other proceedings and after 5/10 minutes they took the dead body of Babra with them on a white colour vehicle Dala. I do not know who went with dead body of Babra---”

Sohail Amjad (PW-2), son of the deceased, deposed during cross-examination that: -

“---Police left the place of occurrence after 90/120 minutes---”

The dead body of Barbra deceased was escorted to the THQ, Kharian, for autopsy by Yasir Iqbal 2331-C (PW-5) on 21.12.2009. Yasir Iqbal 2331-C (PW-5) deposed during cross-examination that:-

“---I escorted the dead body of Babra deceased from her village Khunan. I reached there at 6.00 AM. I remained there at place of occurrence about 30 minutes. We came to Tehsil Headquarter Hospital, Kharian on vehicle/Dala-Shahzore. I escorted the dead body along with 3/4 female whose name are not known to me. We reached at Tehsil Headquarter Hospital, Kharian at 7.00/7.30 AM. I remained in Tehsil Headquarter Hospital, Kharian till 2.30 PM---Dead body was sent to dead house at 7.30 AM---It is correct that four females who escorted the dead body were neither examined by the IO nor their statements were recorded under Section 161 Cr.P.C.”

Muhammad Khan Ranjha, S.I. (PW-9)-investigating officer, deposed during examination-in-chief that: -

“---I send the dead body for postmortem examination along with police papers to Tehsil Headquarter Hospital, Kharian under the escort of Yasir Iqbal 2331-C---”

Muhammad Khan Ranjha, S.I. (PW-9)-investigating officer had not stated the names of family members who went with the dead body of Babra Bibi-the deceased to identify her dead body. In the column of the brief history of inquest report (Exh. PF), the names of witnesses accompanying the dead body to identify the dead body were also not given. Zafer Iqbal (PW-3) deposed that he and Iftikhar Hussain (given up PW) identified the dead body of Babra Bibi-the deceased before and after the postmortem examination. Zafer Iqbal (PW-3) deposed during examination-in-chief that: -

“---We reached at Tehsil Headquarter Hospital, Kharian for postmortem at about 10.00 AM. We remained in Tehsil Headquarter Hospital, Kharian till 2.00/2.30 PM. Dr. started postmortem examination at about 2.00/2.30 PM---We left our village Chailanwala at about 8.30 AM boarding on public vehicle/Bus. I do not remember how long it take to reach Tehsil Headquarter Hospital, Kharian---I and Babra Bibi deceased belong to same village. We both belong to Gujjar caste.”

9. It is strange that at the time and place of occurrence, the nephew of Mst. Maqsood Bibi, the complainant (PW-1), namely Atif Inayat (given up PW), was present, but he has not accompanied the dead body of Babra Bibi-the deceased. In our social setup, persons with no blood relation cannot see females after death. In the presence of family member Atif Inayat (given up PW), Zafer Iqbal (PW-3) was called from Chailanwala, and he boarded public transport at about 08:30 a.m and went to Tehsil Headquarter Hospital, Kharian at about 10: a.m. The deposition of Zafer Iqbal (PW-3) reveals that he (PW-3) belongs to the same

village and caste to which Babra Bibi belonged. He (PW-3) has not stated his relationship with Babra Bibi. The unexplained discrepancy in the timings recorded in the inquest report (Exh. PF) must be considered. It is the prosecution's version that the death information was received at 06:00 a.m., but column No. 3 of the inquest report revealed that the date and time of receiving information of death were 21.12.2009 at 04:00/05:00 a.m. As per the prosecution case, fard Bayyan (Exh. PA) was written at 06:00 a.m., and in column No.4 of the inquest report, names of the persons who identified the dead body at the time of the inquest mentioned Zafer Iqbal (PW-3) and Iftikhar Hussain (given up PW). If it was so, it was required to be explained by Muhammad Khan Ranjha, S.I. (PW-9)-investigating officer, by plausible evidence on the record as to how the inquest was undertaken at 04:00/05:00 a.m. in the presence of Zafer Iqbal (PW-3), who was called from Chailanwala and proceeded at about 08:30 a.m. and directly went to THQ Hospital. Muhammad Khan Ranjha, S.I. (PW-9)-investigating officer deposed that on 21.12.2009 received the information of occurrence in village Khunan. After that, he (PW-9), along with other police officials, proceeded to the place of occurrence. After that, he (PW-9) recorded Fard Bayyan (Exh. PA) and after that, prepared an inquest report (Ex. PF) and an injury statement (Ex. PG) and entrusted the dead body of Babra Bibi-the deceased, to Yasir Iqbal 2331-C (PW-5) for taking to the mortuary for postmortem examination. If Muhammad Khan S.I. (PW-9)-investigating officer, reached the place of occurrence upon receiving information, then the complainant had met with her and recorded Fard Bayyan (Exh. PA) and he prepared an injury statement (Ex. PG). On perusal of the injury statement (Exh. PG), it reveals that space was left blank after mentioning "بنام" and it reveals that till preparation of the injury statement (Ex. PG), Fard Bayyan (Exh. PA) was not prepared. We have also perused the

Inquest Report (Exh.PF). Under Column No. 24 of the Inquest Report (Exh. PF), a sketch plan of where the dead body is found is not given. The investigating officer had not prepared a drawing of where the dead body was lying and its condition but left it blank. The conduct of the I.O. and his investigation of the case is also not above board. The First Information Report was recorded at 06:30 a.m. vide F.I.R. (Exh. PC). Strangely enough, Muhammad Hanif 3432/Constable, who delivered the carbon copy of FIR (Exh. PC) and original complaint (Exh. PA) to Muhammad Khan Ranjha, S.I. (PW-9)-investigating officer at village Noonanwali, was not cited as the prosecution witness. Muhammad Khan Ranjha, S.I. (PW-9)-investigating officer deposed during examination-in-chief that: -

“---Muhammad Hanif 3432-C met me at village Noonanwali and he handed over to me the carbon copy of FIR and original complaint. I attached the said documents with the police file. After the postmortem examination Yasir Iqbal 2331-C, Zafar Iqbal, and Iftikhar Hussain met me in the Police Station Kharian Sadar---”

It means the prosecution took all this time for due deliberations and consultations to find convenient eyewitnesses of the occurrence. It has also been noted that the two eye-witnesses are near relatives of the deceased, as has been admitted by the prosecution witnesses themselves. Mst. Maqsood Bibi, the complainant (PW-1), is the mother of the deceased, and Sohail Amjad (PW-2) is the son of the deceased. Further, Mst. Maqsood Bibi, the complainant (PW-1), belongs to the village of Chailianwala. At the same time, Sohail Amjad (PW-2) and Babra Bibi (deceased) belong to the village Khunan. Mst. Maqsood Bibi (PW-1)-the complainant deposed during cross-examination that: -

“---I left village Chailianwala before Maghrab prayer for village Khunan. I reached village Khunan by motorcycle. Darkness had been prevailed when I reached village Khanan but I can not tell

the exact time. When we reached Babra was busy in cooking---

During cross-examination, Sohail Amjad (PW-2) deposed that her maternal grandmother and Atif PW reached their house after the evening on the bike. At the time of the murder of his mother, his age was 9/10 years. Maqsood Bibi (PW-1)-the complainant deposed during cross-examination that: -

“---Accused Asjid called Babra deceased by knocking of door at about 4/5.00 am. It is correct that knocking of door is not mentioned in my statement Ex.PA. I awaked up by knocking of door., I have stated the above mentioned fact in Ex.PA. Confronted with Ex.PA where it is mentioned that Babra deceased went outside and we awaked up---it is correct that it is not mentioned in Ex.PA that accused Asjid called Babra loudly---

Contrary to Maqsood Bibi (PW-1)-the complainant, Sohail Amjad (PW-2), son of the deceased, deposed during cross-examination that: -

“---Month of December is usually cold and foggy. It was about 4/5.00 am when Asjad accused called my mother outside the room and I heard the voice of calling. I woke up due to voice of Asjad accused. I tis correct that I have not stated in my statement under Section 161 Cr.P.C that I awoke up by the voice of Asjad accused rather it is mentioned in same that I awoke up when my mother went out from room---

Maqsood Bibi (PW-1)-the complainant deposed during cross-examination that: -

“---One electric bulb was lightening in verandah where accused Asjad and Babra deceased were standing while another bulb was lightening where we Pws were standing. I have mentioned in my statement Ex.PA that electric light was lightening at relevant time---

Contrary to Maqsood Bibi (PW-1)-the complainant, Sohail Amjad (PW-2), son of the deceased, deposed during cross-examination that: -

“---It is correct that lightening of electric Bulbs at relevant time is not mentioned in my statement u/s 161 Cr.P.C---”

Looking at these facts, we are of the opinion that the prosecution has withheld the true genesis of the occurrence. On perusal of the postmortem examination report (Exh. PM) of Babra Bibi-the deceased. In column No.4, under the heading 'Abdomen,' Stomach and its contents-semi-digested food. Semi-digested food was found, meaning thereby that the deceased had taken a meal 2 or 3 hours before being murdered. Sohail Amjad (PW-2), son of the deceased, deposed during cross-examination that: -

“---We have dinner at about 8/9.00 pm-”

Maqsood Bibi (PW-1)-the complainant, Sohail Amjad (PW-2), son of the deceased, deposed during cross-examination that: -

“---On that day we had eaten potato and beans in dinner---”

As per Sohail Amjad (PW-2), they took a meal at 8/9 p.m. According to the post-mortem report, semi-digested food was found; thus, the time of occurrence becomes doubtful. A perusal of F.I.R. (Ex. PC) reveals that the same was lodged at 6:30 a.m. on 21.12.2009, and Dr. Adeeba conducted postmortem examination at 02:20 p.m. on the same day; she did not appear as a witness being abroad. The postmortem examination report (Exh. PM) was proved by Dr. Amjad, who appeared as a secondary witness. The contents of the postmortem examination report (Exh. PM) reveal that the dead body was received in the dead house on 21.12.2009 at 2:00 p.m., and complete documents from police were received at 2:20 p.m. The autopsy was conducted at 2:20 p.m. Autopsy was conducted after about seven hours and fifty minutes from the time of registration of FIR. The prosecution did not explain the delay in

conducting the postmortem examination. The fact, however, remains that the post-mortem examination was delayed for seven hours and fifty minutes. Considering all these facts, this court has no hesitation in concluding that the prosecution has not been able to prove on record that the FIR was recorded at the claimed time. The Hon'ble Supreme Court of Pakistan, in the case of **"Irshad Ahmed v. The State"** (2011 SCMR 1193), held that: -

"We have further observed that the post-mortem examination of the dead body of Shehzad Ahmed deceased had been conducted with a noticeable delay and such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses and in cooking up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the dead body conducted."

Delay in lodging the first information report often results in consultation and deliberation, which is a creature of an afterthought. The prosecution failed to explain the delay in reporting the incident and the delay in conducting a post-mortem examination of the dead body of Babra Bibi-the deceased. Hence these circumstances raise considerable doubt regarding the veracity of the case and suggests delay in reporting the incident in lodging the first information report which is fatal to the prosecution's case.

10. Another aspect of the case is a conflict between the ocular and medical evidence. Maqsood Bibi (PW-1)-the complainant deposed during examination-in-chief that: -

"---Meanwhile Asjad Mehmood accused present in the court made 3 fire shots with his rifle which landed on the belly and one fire hit on her chest. All fires went through and through---"

Contrary to the above, Maqsood Bibi (PW-1)-the complainant, deposed during cross-examination that: -

“---We were standing near Babra at relevant time that's we witnessed that fire shots were through and through---”

Sohail Amjad (PW-2) deposed during cross-examination that: -

“---Three fire shots were made by the accused. It is correct that I have not mentioned in my statement u/s 161 Cr.P.C that three fire shots were made by Asjad accused. Two fire shots were landed on belly and one fire shot was landed on the chest of my mother. It is correct that I have not mentioned in my statement u/s 161 Cr.P.C that how many fire shots were landed on belly and how many on the chest. My mother fell on ground by back after receiving fire shots”

The postmortem examination report (Exh. PM) reveals that the deceased received three firearm injuries. Injury No, 1-a went through and through, whereas injuries 2-a and 3-a were from downward to upward. In the prosecution's case, the accused shot a burst, and all fire shots landed on the deceased's body; after that, Babra Bibi fell. Under the head external examination sub-head examination of clothes, the postmortem report (Exh. PM) reveals that the deceased's shirt was torn. The prosecution's evidence is silent on how the deceased's shirt was torn and who did so. Even the lady doctor has not observed corresponding holes on the shirt. The distance from which the accused fired upon the deceased becomes irrelevant because the investigating officer had not mentioned the distance between points A, B, and C in the unscaled site plan (Exh. PI). The scaled site plan (Exh. PJ) was prepared on 25.12.2009, wherein the distance between different points was given. Muhammad Khan Ranjha S.I. (PW-9)-investigating officer deposed during examination-in-chief that: -

“---it is correct that in the un-scaled site plan of the place of occurrence Ex.PJ, I have not given any note that this map was prepared on the pointation of complainant and Pws. I have not

mentioned the inter-se distance among the points "A" "B" "C". I have not mentioned in the map regarding the installation of any Bulb at the place of occurrence. I have not taken into possession any such Bulb from the place of occurrence---

The conflict between medical evidence and ocular testimony was so severe that it traveled to the roots of the matter and knocked the bottom of the prosecution's case against the accused. There was an apparent conflict between the medical evidence and ocular testimony of chance, and an interested witness incapable of being believed.

11. The motive set up by the prosecution in the Fard Bayyan (Exh.PA) and F.I.R. (Exh.PC) is that Babra Bibi-the deceased made the call to Mst. Maqsood Bibi (PW-1)-the complainant on 20.12.2009 and informed her that there were usually domestic quarrels between the deceased and the accused; coming to know of the occurrence, she and her bhanja Atif Anayat went to the house of Babra Bibi-the deceased situated at Khonan. After that, Mst. Maqsood Bibi (PW-1)-the complainant, and Sohail Amjad (PW-2), eyewitnesses, have improved their statements before the police. The defence has brought on record the contradictions in the evidence of Mst. Maqsood Bibi (PW-1)-the complainant, and Sohail Amjad (PW-2), eyewitnesses. Mst. Maqsood Bibi (PW-1)-the complainant deposed during cross-examination that: -

“---Motive behind the occurrence was that Amjad was sending money to Asjad accused, but after his marriage he used to live separately with his wife and used to send money to Mst. Babra that's why a quarrel existed between Babra, Amjad and Asjad accused. It is correct that I have not mentioned the sending of money to accused Adjad and afterward to Babra deceased in my statement Ex.PA. I

always remained acquainted with quarrel of Amjad, Babra and Asjad accused through Amjad or Babra deceased, Babra deceased made a telephonic call to me on 20.12.2009 at about evening time and we remained talking for about 5/10 minutes. I can not tell the cell number from which I received telephonic call of Babra deceased even I can not tell my own number. Babra informed me that we have a quarrel; with Asjad accused and you people should come to settle the dispute. It is correct that I have not stated in Ex.PA that you people should come to settle the dispute. When I was talking to Babra on 20.12.2009 on a telephonic call, PW-Atif was present there and same fact is not mentioned in Ex.PA---I have not got recorded in Ex.PA the time when Babra made a telephonic call to me---"

Sohail Amjad (PW-2) deposed during cross-examination that: -

"---Quarrel took place between my mother and Asjad accused regarding money in my presence. On the day of occurrence I got recorded my statement u/s 161 Cr.P.C before police. I do not remember whether I got recorded in my statement u/s 161 Cr.P.C that a quarrel took place between my father and Asjad accused. I do not remember when my father went back to France prior to this occurrence. I got recorded in my statement u/s 161 Cr.P.C that my mother made a telephonic call to my maternal grandmother regarding the quarrel between her and Asjad accused. Said telephonically call was made in my presence before Asar prayer (before Degar-Waila) and I have not stated this fact in my statement u/s 161 Cr.P.C. The telephonic call between my mother and maternal grandmother lasted for 10/15 minutes. My mother asked my maternal grandmother that Asjad accused is quarreling with us and you people should come to settle the dispute and same fact is not mentioned in my statement u/s 161

Cr.P.C. I do not remember the mobile numbers of my mother and my maternal grandmother. My maternal grandmother and Atif Pw reached our houses after evening on bike. During the days of occurrence I was student of 4th class but I do not remember the name of my school. It is correct that I have not mentioned in my statement u/s 161 Cr.P./C that my mother made a telephonic call to my grandmother in my presence---

Thus, the defence has brought the material contradiction in the evidence of Mst. Maqsood Bibi (PW-1)-the complainant, and Sohail Amjad (PW-2), eyewitnesses, on record. In the circumstances, we cannot avoid the conclusion that the motive, as alleged, was an afterthought and does not inspire confidence, and therefore the same deserves to be discarded.

12. The recovery of the rifle (P-5) allegedly affected by the appellant on 24-03-2017 is of no consequence to the prosecution case when medical evidence is at variance with the ocular account. The report of Forensic Science Laboratory, Punjab, Lahore (Exh. PQ) is only to the effect that the weapon allegedly recovered from the accused/appellant was in mechanical operating condition. So, the recovery of the weapon from the accused is of no consequence.

13. The murder was committed in the appellant's house, and the appellant was not there after the occurrence. As far as the absconding of the appellant is concerned, the evidence taken against the appellant is that he had absconded after the incident. Muhammad Khan Ranjha S.I. (PW-9)-investigating officer deposed during examination-in-chief that: -

“---I searched accused present in the court for many times but in vain. On 07.01.2010 I made the application Ex.PK for non-bailable warrants of arrest of accused Asjad and non-bailable warrants of arrest was handed over to Muhammad

Arshad 343-C for execution. Non-bailable warrants of arrest of accused could not be executed. After recording the statement of Muhammad Arshad 343-C before learned Area Magistrate I made the application Ex.PL for proclamation of the accused. Proclamation was handed over to Muhammad Arshad 343-C for execution. On 27.01.2010 I recorded the statement of Muhammad Arshad 343-C for execution regarding the execution of non-bailable warrants of arrest and proclamation of accused present in the court. On 29.01.2010 I got prepared the incomplete report u/s 173/512 Cr.P.C through SHO and declared the accused present in the court as P.O---

Given the deposition of Muhammad Khan Ranjha S.I. (PW-9)-investigating officer, it reveals nothing to show that the proceedings under Sections 87 and 88 of Cr.P.C took place against the appellant as prescribed in the law. The appellant was indeed absconding, but in the present case, the substantive piece of evidence in the shape of an ocular account has been disbelieved; therefore, no conviction can be based on absconsion alone. Reliance is placed on the case reported as “**Rohtas Khan v. The State**” (2010 SCMR 566). We believe the case against the appellant has not been made out. The appeal of the appellant must, therefore, be allowed.

14. From the above-detailed discussion, we are convinced that the prosecution has failed to establish its case. The truth was seen buried under the debris, and a different story was structured perhaps to lug the appellant into trial under the severe offense. It is often said “**that Foulter the crime higher the degree of proof**” we have gone through the process of keen examination of the entire material and found compelling reasons, as stated above, to disagree with the conclusion reached/recorded by the learned Additional Sessions Judge and also found that the prosecution has

miserably failed to prove the guilt of the accused-appellant beyond a reasonable doubt. As per the dictates of law benefit of every doubt is to be extended in favour of the accused.

15. We, therefore, **accept in toto Criminal Appeal No. 44525-J of 2019** filed by Asjad Mehmood, son of Muhammad Khan, as a result of which conviction and sentence recorded by the learned trial Court vide judgment dated 11.04.2019 is **set-aside**. The appellant is **acquitted** of the charge in the case of F.I.R. No.563 of 2009, dated 21.12.2009, an offence under Section 302 PPC, registered at Police Station Saddar Kharian, District Gujrat, and he (Asjad Mehmood, son of Muhammad Khan) be released forthwith, if not required in any other case.

16. **Murder Reference No.100 of 2019** forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in **Negative**.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for reporting

Judge

Judge