

Stereo. H C J D A 38.

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

Murder Reference No.185 of 2019
(The State *versus* Muhammad Iqbal)

Crl. Appeal No.48876 of 2019
(Muhammad Iqbal *versus* The State, etc.)

Crl. Appeal No.44259 of 2019
(Muhammad Arshad *versus* Mukhtar Ahmed, etc.)

JUDGMENT

Date of hearing: 10.09.2024.

Appellant by: Ms. Rida Noor, Advocate.

State by: Rai Akhtar Hussain Bhatti, Additional Prosecutor General.

Complainant by: M/s Burhan Moazzam Malik, Mian Tabbasum Ali, Khaqan Moazzam Malik and Ch. Muhammad Nazeer Umar, Advocates.

AALIA NEELUM, C.J:- The appellant-Muhammad Iqbal, son of Fatteh Khan, Caste Gujjar, resident of Uduwal, Tehsil & District Gujrat, along with his co-accused, was involved in the case F.I.R. No.506 of 2014, dated 23.06.2014, registered under Sections 302, 109, 148, 149 P.P.C., at the police station, Civil Line, District Gujrat and was tried by the learned Additional Sessions Judge, District Gujrat. The trial court seized with the matter in terms of the judgment dated 17.06.2019, convicted Muhammad Iqbal (the appellant) **under Section 302(b) PPC read with section 34 PPC** and sentenced to **Death as Ta'zir on two counts** for committing Qatl-e-Amd of Muhammad Shafaat and Muhammad Ijaz (the deceased). The appellant was also held liable to pay compensation under section 544-A of Cr.P.C. amounting to Rs.6,00,000/- and if the same was realized, would be given Rs.3,00,000/- to the legal heirs of Muhammad Shafaat (deceased) and

Rs.3,00,000/- to the legal heirs of Muhammad Ijaz (deceased). In case of default thereof, to further undergo 06-months S.I each.

2. Feeling aggrieved by the trial court's judgment, Muhammad Iqbal, the appellant, has assailed his conviction and sentence by filing the instant appeal bearing Criminal Appeal No.48876-J of 2019. The trial court also sent **M.R. No.185 of 2019 (The State. Vs. Muhammad Iqbal)** to confirm the death sentence awarded to the appellant, Muhammad Iqbal. Whereas the complainant also filed Crl. Appeal No. 44259 of 2019 against the acquittal of respondents Nos.1 to 7, namely Mukhtar Ahmed, Iftikhar Ahmed alias Yar Muhammad, Muhammad Shafi, Altaf Hussain, Ali Raza, Ashiq Ali and Yousaf. All the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex. PD) lodged on the statement (Ex. PA) of Muhammad Arshad (PW-1)-the complainant, is that he (PW-1) alongwith his brother Muhammad Ilyas alias Amjad (PW-2) while boarding on motorcycle Honda 125/CG was going to village Udhawal Khurd to see his brother-in-law (بنوئی), namely Ch. Muhammad Shafaat; when they reached Service Morr, he (PW-1) met with Muhammad Afzal (PW-4), brother of Ch. Shafaat, who told that Ch. Shafaat was sitting at Al-Rehman Builders, Rehman Shaheed Road, Gujrat; after that, they all three went there. In the meanwhile, nephew (بهانجا) of the complainant, namely Ijaz Ahmad while boarding on motorcycle came there for taking his father Muhammad Shafaat; Muhammad Shafaat insisted them to go to his home at village Udhawal; Muhammad Shafaat boarded on the motorcycle of his son Ijaz, whereas, the complainant (PW-1), Muhammad Ilyas alias Amjad (PW-2) and Muhammad Afzal (PW-4) boarded on their motorcycle and proceeded to village Udhawal; Ijaz and Muhammad Shafaat were going ahead on motorcycle and the complainant and others were following them; when they reached Udhawal road near water tank, it was about 07:15 p.m., accused persons Muhammad Iqbal (the appellant), Moazzam (since P.O), Iftikhar alias Yar Muhammad (since acquitted), Rehman Ali alias Mana (since P.O), Muhammad Shafi (since acquitted), Ali (since acquitted), Altaf

Ahmad (since acquitted), Mukhtar Ahmad (since acquitted), Yousaf (since acquitted) and Ashiq (since acquitted) had already waylaid there while armed with deadly weapons; Muhammad Iqbal (the appellant) raised a lalkara that Shafaat and Ijaz might not be let alive that day and made fire with his weapon, which hit Ijaz Ahmad (deceased), Moazzam (since P.O) made a fire with his weapon, which hit Muhammad Shafaat (the deceased); upon receiving injuries, they both fell down from motorcycle; Rehmat Ali (since P.O) made a fire with his weapon, which hit Muhamad Shafaat (the deceased); Iftikhar Ahmad alias Yar Muhammad (since acquitted) also made a fire with his weapon, which hit Ijaz Ahmad (the deceased); Muhammad Shafi, Ali, Altaf Ahmad, Mukhtar Ahmad, Yousaf and Ashiq (all co-accused since acquitted) also made firing with their weapons, which hit Ijaz and Muhammad Shafaat; accused persons also raised lalkaras to get satisfaction about their death; after satisfaction about death of Muhammad Shafaat and Ijaz Ahmad, all the accused persons went away while raising lalkaras and making firing from the spot. Due to fear, the complainant and PWs did not go near; when the accused persons went away, they attended to Muhammad Shafaat and Ijaz Ahmad, who succumbed to the injuries. The accused persons committed the incident on the abetment of Shahbaz and Bhutto (co-accused since P.O), who sent messages of threats on different occasions, and witnesses of the said fact were Basharat Ali and Jawad Ali. The motive behind the occurrence was a dispute over land, due to which hot words were exchanged between Muhammad Iqbal (the appellant) and Muhammad Shafi, etc. with Muhammad Shafaat prior to this occurrence, for which accused persons had extended threats of death to Muhammad Shafaat.

4. After the incident, the complainant reported the matter to the police through his oral complaint (Ex. PA), and after that, formal F.I.R (Ex. PD) was chalked out by Muhammad Asghar S.I (PW-7). After the registration of the case, the investigation of this case was entrusted to Shahid Husnain S.I (PW-15), who found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. On 09.05.2015, the trial court formally charge-

sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as fifteen (15) witnesses.

5. Ocular account, in this case, has come out from the statements of Muhammad Arshad (PW-1)-the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4)-the eye witness, whereas Dr. Yasir Ali (PW-13), who conducted the postmortem examination of Muhammad Shafaat (the deceased) and Muhammad Ijaz (the deceased) found the following injuries on their person:-

INJURIES OF MUHAMMAD SHAFAAT (THE DECEASED)

1. A lacerated wound of inverted margins blackening absent of 1.5 X 1.5 cm at the right temporal area.
2. A lacerated wound of 1 X 1 cm with inverted margins blackening absent at the right jaw.
3. A lacerated wound of 1.5 X 1.5 with everted margins blackening absent about the right ear.
4. A lacerated wound of 1 X 1 cm with inverted margins blackening absent at the left half of the chest.
5. A lacerated wound of 1 X 1 cm with inverted margins blackening absent just below injury No.4.
6. A lacerated wound of 1.5 X 1.5 cm at the right half chest just below the nipple with everted margins and blackening absent.
7. A lacerated wound of 1.5 X 1.5 cm with everted margins blackening absent just below injury No.6.
8. A lacerated wound of 1 X 1 cm on the left half of the chest with inverted margins blackening absent.
9. A lacerated wound of 1 X 1 cm with inverted margins blackening absent at left shoulder.
10. A lacerated wound of 1 X 1 cm inverted margins blackening is absent. Just below injury No.9.

11. A lacerated wound of 1 X 1 cm inverted margins blackening absent on the right half of the abdomen.
12. A lacerated wound of 1.5 X 1.5 cm everted margins blackening absent at left shoulder.
13. A lacerated wound of 1 X 1 cm at the anterior of the right thigh inverted margins blackening absent.
14. A lacerated wound of 1.5 X 1.5 cm everted margins posterior of the right thigh.
15. A lacerated wound of 1 X 1 cm at the anterior of the right forearm inverted margins blackening absent.
16. A lacerated wound of 1.5 X 1.5 cm everted margins blackening absent lateral to injury No.15.
17. A lacerated wound of 1 X 1 cm inverted margins blackening absent posterior of the left elbow.
18. A lacerated wound of 1.5 X 1.5 cm everted margin blackening absent lateral to injury No.17.
19. A lacerated wound of 1 X 1 cm inverted margins blackening absent at the lower back.
20. A lacerated wound of 1 X 1 cm inverted margins blackening absent lateral to injury No.19.
21. A lacerated wound of 1 X 1 cm inverted margins blackening absent 5 cm below injury No.19.

After conducting the postmortem examination of Muhammad Shafaat (the deceased), the doctor opined that injuries No.1 & 2 damaged the brain and its major blood vessels, and injuries No.4 & 5 damaged the heart, lungs, and major thoracic vessels leading to shock and ultimate death. All other injuries were contributory to the above-mentioned injuries. All the injuries were caused by a firearm. The probable time between injuries and death was almost immediately, whereas between death and postmortem was 08 to 12 hours.

INJURIES OF MUHAMMAD IJAZ (THE DECEASED)

1. A lacerated wound of 1 X 1 cm inverted margins blackening absent at the right side of the scalp.

2. A lacerated wound of 1.5 X 1.5 cm with everted margins blackening absent on the left side of the scalp.
3. A lacerated wound of 1 X 1 with inverted margins blackening absent on the left side of the scalp below injury No.2.
4. A lacerated wound of 1 X 1 cm with inverted margins blackening absent below injury No.3.
5. A lacerated wound of 1.5 X 1.5 cm with everted margins blackening absent on the right side of the scalp.
6. A lacerated wound of 1.5 X 1.5 cm with everted margins and blackening absent below injury No.5.
7. A lacerated wound of 1 X 1 cm with inverted margins blackening absent at the back of the scalp.
8. A lacerated wound of 1 X 1 cm with inverted margins blackening absent on the right side of the abdomen.
9. A lacerated wound of 1 X 1 cm with inverted margins blackening absent below injury No.8.
10. A lacerated wound of 1.5 X 1.5 cm everted margins blackening absent on left half of abdomen.
11. A lacerated wound of 1 X 1 cm on the left arm with inverted margins blackening absent.
12. A lacerated wound of 1 X 1 cm with inverted margins blackening absent at the back of the left shoulder.
13. A lacerated wound of 1 X 1 cm with inverted margins blackening absent below injury No.12.
14. A lacerated wound of 1 X 1 cm with inverted margins blackening absent below injury No.13.
15. A lacerated wound of 1.5 X 1.5 with everted margins blackening absent at the lateral border of the right shoulder.

After conducting the postmortem examination of Muhammad Ijaz (the deceased), the doctor opined that injuries No.1, 3, 4 & 7 damaged the brain and led to death. All the other injuries had a contributory effect.

Firearms caused all the injuries. The probable time between injuries and death was almost immediately, whereas between death and postmortem was 08 to 12 hours.

6. The learned Deputy District Public Prosecutor gave up PWs Muhammad Sikandar, Naeem ud Din 1247/C, Jawad Ali, and Nafees Akhtar 2667/C as unnecessary and PWs Zahoor Ellahi and Muhammad Hanif 1386/C as dead. The prosecution evidence was closed after tendering reports of the Punjab Forensic Science Agency (Ex. PDD and Ex. PEE).

7. 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 opted to produce any evidence in his defence. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

I am innocent. Neither I nor any other co-accused is involved in this alleged occurrence in any manner. None of the eye witness was present at the alleged time and place of occurrence. None of the cited eye witnesses have seen the occurrence and at a much belated stage with much delay they got information regarding death of deceased persons and thereafter they came in the picture. This case was got registered after much delay and after joining hands with the police with concocted, fabricated and false version against the real facts. Deceased Shafaat was ex-police employee and for this reason as well police joined hands with the complainant party for getting this case registered at a belated stage but with ante time proceedings and against the real facts. As actual assailants could not be seen and identified by any person hence, for causing blackmailing and harassment to me and other co-accused, we were roped in this case for fetching my property and remaining co-accused have been falsely roped in this case for their relationship with me and for causing blackmailing to them also. The other co-accused have also been roped in this case for keeping them refrain from making

protest over false registration of case against me and also against them. There was no dispute of any land between me and Shafaat Hussain deceased and no threats have ever been issued by me to deceased Shafaat Husain and fake motive has been introduced by the complainant party. All the PWs are close relatives of complainant, therefore, they have deposed falsely against me and other co-accused persons.”

8. After evaluating the evidence available on record in light of arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction and sentence in the above terms.
9. We have given our anxious and most thoughtful consideration to both sides' rival submissions. We have minutely gone through the evidence on record.
10. In the instant case, the incident occurred at 07:15 p.m. on 23.06.2014 at Udhawal road near "water Tainki" situated within the jurisdiction of Police Station, Civil Line, District Gujrat, which is at a distance of 1½-kilometers from the place of occurrence. Muhammad Arshad (PW-1)-the complainant, brother-in-law and maternal cousin (Mamu Zaad) of Shafaat (the deceased) and maternal uncle of Ijaz (the deceased) reported the incident through oral complaint (Ex. PA) to Shahid Husnain, S.I. (PW-15) at 08:00 p.m. at the place of occurrence, i.e. Uddowal Khurd, who reached the place of occurrence upon receiving information of the incident and he (PW-15) incorporated police proceedings (Ex.PA/2) and referred the same through Naeem-ud-Din 1239/C (given up PW) to the police station, based on which, formal F.I.R. (Exh. PD) was chalked out on the same day at 08:20 p.m. by Muhammad Asghar S.I (PW-7). Admittedly, both the deceased are father and son. Muhammad Arshad (PW-1), the complainant, took forty-five minutes to report the incident to the police. During the examination-in-chief, Muhammad Arshad (PW-1), the complainant deposed that:-

"At the spot on the same day, I made statement to Thanidar and I signed the same in English which is Ex. PA.

Similar statements were made by Muhammad Ilyas (PW-2) and Muhammad Afzal (PW-4). The prosecution story is silent about why Muhammad Arshad (PW-1), the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4) had not reported the incident to the police and what they were doing on the spot for 45 minutes, whereas the prosecution's case is that both Shafaat (the deceased) and Ijaz (the deceased) sustained injuries and scummed on the spot immediately. It indicates that they were not present at the spot. The complainant lodged the first information report 45 minutes after the alleged incident, whereas the police station was 1-1/2 kilometers from the place of occurrence. Time and again, the object and importance of prompt lodging of the first information report have been highlighted. Delays in lodging the First Information report often result in embellishment and exaggeration, a creature of an afterthought. A delayed report not only gets bereft of the advantage of spontaneity, the danger of introducing a colored version of the incident, or a concocted story as a result of deliberations and consultations, but also creeps in, casting serious doubt on its veracity. Therefore, the delay in lodging the report must be satisfactorily explained. As per the prosecution case, the incident took place at 07:15 p.m., and the matter was reported to police at 08:00 p.m. at the place of occurrence. Whereas, in the inquest report of Muhammad Shafaat-the deceased (Ex.PS/A), in column No.3 regarding receiving information of death and time, only the date, i.e., 23.06.2014, has been mentioned, and time has not been given. Shahid Husnain S.I (PW-15)-the investigating officer admitted during cross-examination that Fard Biyan (Ex. PA) does not bear the signatures of a medical officer. Even on the last page of inquest reports (Ex.PS/A & Ex.PS/B), the columns of signatures and names of respectable persons in the vicinity are not mentioned. Shahid Husnain S.I. (PW-15)-the investigating officer admitted during cross-examination that he had not mentioned the names and respectable of the vicinity, nor has he mentioned the same on the last pages of inquest reports. The delay in conducting the

postmortem examination from the time of the commission of the offence renders the whole of the prosecution story doubtful. Shahid Husnain S.I. (PW-15)-the investigating officer admitted during cross-examination that: -

"It is correct that I have not shown the time in column No. 3 of inquest report Ex.P-S/B.-----
It is correct that I had not obtained the signatures of respectables of the area at the bottom of inquest reports of Muhammad Shafaat Ex.P-S/A and Muhammad Ijaz Ex.P-S/B."

Shahid Husnain (PW-15)-the investigating officer deposed that after recording the oral statement of Muhammad Arshad (PW-1)-the complainant, he transmitted the same to the police station for registration of formal FIR through Naeem Ud Din 1239/C (given up PW). After that, he (PW-15) inspected the dead bodies and drafted inquest reports (Ex.PS/A and Ex.PS/B) of Muhammad Shafaat and Muhammad Ijaz, respectively, applications for postmortem examination (Ex. PT and Ex. PU) of Muhammad Shafaat (deceased) and Muhammad Ijaz (Ex. PU); he also drafted injury statement (Ex. PV and Ex. PX) of Muhammad Shafaat and Muhammad Ijaz respectively and handed over the dead body of Muhammad Shafaat to Ashiq Ali 3629/C (PW-8) and dead body of Muhammad Ijaz to Mudassar Iqbal 147/C (PW-10) for postmortem examination. Ashiq Ali 3629/C (PW-8) deposed in his examination-in-chief that on 23.06.2014, the dead body of Shafaat Hussain, along with police papers, was entrusted to him for the postmortem examination, and he escorted the dead body to ABS Hospital, Gujrat for postmortem examination. He (PW-8) admitted during cross-examination that I.O. had not recorded his statement about the entrustment of a dead body to him for the postmortem examination of deceased Shafaat Hussain on 23.06.2014. In similar words, Mudassar Iqbal 1473/C (PW-10) deposed. Mudassar Iqbal 1473/C (PW-10) also admitted during cross-examination that I.O had not recorded his statement about the entrustment of the dead body to him for the postmortem examination of deceased Ijaz Ahmad on 23.06.2014. Dr. Yasir Ali (PW-13) deposed in his examination in chief that: -

“According to police paper the death occurred at 7:15 pm, on 23.06.2014. Dead body was received in dead house at 10:00 pm, on 23.06.2014. I received complete documents from police at 3:30 am, on 24.06.2014. I conducted autopsy at 4:00 am, on 24.06.2014.”

In similar lines, Dr. Yasir Ali (PW-13) deposed about the receiving of the dead body of Muhammad Ijaz (the deceased) on 23.06.2014 during examination-in-chief. Dr. Yasir Ali (PW-13) further deposed during examination-in-chief that: -

“Carbon copy of post mortem report is Ex.P-Q and its diagrams are Ex.P-Q/1 and Ex.P-Q/2 which are in my hand and signed by me.” He (PW-10) also deposed during examination-in-chief that, “Carbon copy of post mortem report is Ex.P-R and its diagrams are Ex.P-R/1 and Ex.P-R/2 which are in my hand and signed by me.”

It is an admitted fact that Dr. Yasir Ali (PW-13), who conducted postmortem reports on the dead bodies of Muhammad Shafaat and Muhammad Ijaz (the deceased), has not signed any document except postmortem reports (Ex. PQ and Ex. PR). Although it is the prosecution case that the incident took place at 07:15 p.m. on 23.06.2014, the matter was reported to the police at the spot at 08:00 p.m. on 23.06.2014. However, during cross-examination, Dr. Yasir Ali (PW-13) admitted that he only signed postmortem reports (Ex. PQ and Ex. PR). If police documents, i.e., Fard Biyan (Ex. PA), FIR (Ex. PD), injury statements, inquest reports, and applications for conducting postmortem reports were handed over to the doctor before the postmortem of the dead bodies, the same should have been signed by the medical officer. Even Dr. Yasir Ali (PW-13) was also unable to mention in the postmortem reports (Ex. PQ and Ex. PR) that injuries were ante mortem in nature; during cross-examination, he admitted that he had not mentioned in the postmortem reports that injuries were ante-mortem or post-mortem. He (PW-13) also admitted during the cross-examination that: -

“It is correct that in the post mortem report of deceased Shafaat Hussain Ex.P-Q, the column

as to age of deceased is blank.-----It is correct that the column as to CNIC and relationship with deceased is also blank.-----It is correct that I have not specified under the description of injuries that the same were fire arm injuries. Volunteer states that I have specified under my opinion that the nature of injuries was fire arm injuries.-----It is correct that under the opinion given in the post mortem report the nature of injuries was not shown as fire arm injuries. It is correct that I have not specified the words "exit and entry wounds" under the description of injuries. Volunteer states that I have used the word inverted and everted margins.-----It is incorrect to suggest that the reason for non-mentioning of nature of injuries as to exit or entry wound is that I was not sure that the injuries were either caused by fire arm or not. It is correct that every injury of every nature has margins of different nature. It is correct that I have not specified the number on injuries in pictorial diagrams. It is correct that I have not specified in my opinion that the injuries were ante mortem or post mortem. It is correct that I had seen the dead body in mortuary for the first time at the time of conducting post mortem examination. It is correct that I had mentioned the time of receipt of dead body in the post mortem report as 10:00 pm when police told me at the time of post mortem examination.-----It is correct that in the post mortem report of deceased Ijaz Ex.P-R, the column as to CNIC and relationship with deceased is blank.-----It is correct that I have not specified under the description of injuries that the same were firearm injuries. Volunteer states that I have specified under my opinion that the nature of injuries was fire arm injuries.-----It is correct that under the opinion given in the post mortem report the nature of injuries was not shown as fire arm injuries. It is correct that I have not specified the words "Exit and entry wounds" under the description of injuries. Volunteer states that I have used the word inverted and everted margins.----- It is correct that I have not specified the number on injuries in pictorial diagrams. It is correct that I have not specified

in my opinion that the injuries were ante mortem or post mortem. It is correct that I had seen the dead body in mortuary for the first time at the time of conducting post mortem examination. It is correct that I had mentioned the time of receipt of dead body in the post mortem report as 10:00 pm when police told me at the time of post mortem examination.”

Muhammad Ilyas (PW-2) deposed during cross-examination that: -

“I don’t know when postmortem examination over dead bodies of the deceased of this case was performed.”

Muhammad Arif (PW-12), the identifier of the dead bodies, deposed during cross-examination that: -

“It is correct that my statement u/s 161 of Cr.P.C. as to the identification of the dead body was not recorded by the I.O.”

Shahid Husnain S.I. (PW-15)-the investigating officer admitted during cross-examination that: -

“It is correct that carbon copy of fard biyan available on the police file does not bear the proceedings of duty officer. It is correct that fard biyan Ex.P-A does not bear the signatures of Medical Officer.-----It is correct that I have not specified the registration number and model of motorcycle in the use of eye witnesses in the whole record. I do not remember whether I had dispatched the copy of FIR to the Medical Officer at the time of post mortem or not. It is correct that in the case diaries of record of this case I have not mentioned that the eye witnesses were present at the place of occurrence when I got visited draftsman to the place of occurrence. Volunteers states that it is specified in the record that complainant was present.”

Dr. Yasir Ali (PW-13) deposed that the duration between injuries and death of both the deceased, i.e., Muhammad Shafaat and Muhammad Ijaz, was immediate, while the probable time between death and postmortem was 08 to 12 hours. Admittedly, an autopsy on the dead body of

Muhammad Shafaat, the deceased, was conducted at 04:00 a.m. on 24.06.2014, and the autopsy on the dead body of Muhammad Ijaz, the deceased, was conducted at 04:30 a.m. on 24.06.2014. There is a delay in conducting a postmortem examination on the bodies of the deceased from the time when the incident was reported to the police. There is no plausible explanation as to why the postmortem of the dead bodies was delayed for eight hours and forty-five minutes from the time of reporting the occurrence. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story, including the complainant's presence at the scene of the occurrence. Delays in lodging the FIR often result in embellishment, a creature of an afterthought.

11. It is the prosecution case that on 23.06.2014, Muhammad Arshad (PW-1)-the complainant, alongwith his brother Muhammad Ilyas (PW-2), while boarding on motorcycle 125 Honda were proceeding to Uddowal Khurd to see Muhammad Shafaat, the deceased; when they reached Service Mor Gujrat, Muhammad Afzal (PW-4), brother of Muhammad Shafaat met them and he informed them that Shafaat was residing at Show Room situated at Rehman Builder, Rehman Shaheed Road, on which Muhammad Arshad (PW-1)-the complainant, Muhammad Ilyas (PW-2)-the eye witness and Muhammad Afzal (PW-4) while boarding on the same motorcycle proceeded and reached Show Room situated at Rehman Builder, Rehman Shaheed Road for meeting with Shafaat. Muhammad Shafaat asked Muhammad Arshad (PW-1), the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4), the eyewitnesses, to come with him to his house. The complainant and the witnesses boarded on a motorcycle and left with him for his house. Shafaat (the deceased) boarded the motorcycle with his son Ijaz (the deceased). Shafaat and Ijaz were ahead of Muhammad Arshad (PW-1)-the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4) when they reached the Water tank near Uddowal at about 7:00/7:15 p.m, the incident took place. Admittedly, all the witnesses are chance witnesses.

Even Muhammad Arshad (PW-1), the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4), the eyewitnesses, had made dishonest improvements in his examination-in-chief. The defence has confronted the court statements of these witnesses with their earlier statements made before the investigating officer. Muhammad Arshad (PW-1)-the complainant deposed during cross-examination that:-

"I got recorded in my statement Ex.DA to police that we inquired him (Afzal) about presence of Shafat at home. (Confronted with Ex.DA where it is not so mentioned). I got recorded in my statement Ex.DA that Shafat was "at show room situated at Rehman Builders". (confronted with Ex.DA where show room is not so mentioned). I got recorded in my statement Ex.DA to police that we including Afzal aforementioned "while boarding on same motorcycle proceeded and reached at the above said showroom" (confronted with Ex.DA where while boarding on the same motorcycle and above said show room is not mentioned, however it is recorded in Ex.DA that we said 03 persons went there. I did not mention in my statement Ex.DA about the time as 07:00 PM. I got mentioned in my statement Ex.DA to police that fires made by Shafi, Ali Raza, Altaf, Mukhtar, Yousaf and Ashiq hit at different parts of the bodies of both Shafat and Ejaz above mentioned. Confronted with Ex.DA where hitting of said fires at different parts of body of both Shafat and Ejaz not mentioned. I got mentioned in Ex.DA that this occurrence was witnessed by me, Ilyas and Muhammad Afzal PWs. Confronted with Ex.DA where it is not so mentioned."

Muhammad Ilyas (PW-2)-the eye witness deposed during cross-examination that: -

"I got mentioned in my statement Ex.DB before police that Afzal also boarded with us on our motorcycle. Confronted with Ex.DB where it is not mentioned. I got mentioned in my statement Ex.DB before police that Shafat suggested for making further conversation there at home. Confronted with Ex.DB where it is not

mentioned. I got recorded in my statement Ex.DB that whereas we three boarded on our motorcycle. Confronted with Ex.DB where it is not so mentioned. I did not mentioned in my statement before police that we reached at “Uddowal”. Volunteers that I mentioned “near water tank, Uddowal road”. Confronted with Ex.DB where Uddowal road is not mentioned.---

-----I mentioned time of occurrence at about 07/07:15 PM in my statement before police in this case. Confronted with Ex.DB where 07:00 PM as time not mentioned. I got mentioned in my statement Ex.DB before police that this occurrence was witnessed by me, Muhammad Afzal and Muhammad Arshad PW. Confronted with Ex.DB where it is not so recorded.”

Muhammad Afzal (PW-4)-the eyewitness deposed during cross-examination that: -

“I do not remember whether I stated before police in my statement that “I also boarded on their motorcycle”. Confronted with Ex.DE where it is not recorded. I got recorded in my statement before police that I alongwith Muhammad Arshad and Ilyas PWs witnessed the occurrence. Confronted with Ex.DE where it is not so recorded.”

In the instant case, the prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4), are not only related inter se but also to the deceased. Even their presence at the spot is not established. The prosecution has no sufficient proof that the FIR (Ex. PD) was recorded at the given time after the occurrence, as discussed above. The delay in conducting the postmortem also revealed that the FIR was not registered at the given time. The conclusion arrives that there is no credible evidence to establish that the PWs were present at the place of occurrence. We scanned the prosecution evidence and found that Muhammad Arshad (PW-1)-the complainant admitted during cross-examination that: -

“Jawar crop was at its full height during the days of occurrence. Height of “Jawar” and “Milt” crops usually rises up to 6/7 feet.”

Asif Akhter Naqash draftsman (PW-6) admitted during cross-examination that: -

“It is correct that the point No.9 shown in the scaled site plan Ex.P-D is in front of all the accused persons. It is correct that the point No.9 is not on the back or sides of the accused persons shown in the site plan Ex.P-D. It is correct that I have not specified the distance of point No.9 from remaining points shown in the site plan Ex.P-D.”

On perusal of the site plan (Ex. PY), it reveals that between the deceased and accused persons, there was a “Jawar” crop, and the appellant was shown at point No.3, while the deceased was at points No.1 & 2. The distance between points Nos.1, 2 & 3 was 10 feet, whereas between points No.1,2 & 8 was 40 feet. As per the site plan, the witnesses witnessed the incident from point “8”, which was 40 feet away from points No.1 & 2. The presence of the appellant-Muhammad Iqbal, was shown at point No.3, which was 10 feet ahead of point No.1. It is not possible that the witnesses witnessed the incident from 40/50 feet when there was “Jawar” crop standing between the assailants and the deceased. This all throws a cloud of doubt into the deposition of witnesses. Even during cross-examination, the prosecution witnesses deliberately concealed the facts confronted by the defence. Muhammad Arshad (PW-1)-the complainant deposed during cross-examination that: -

“Shafat one of the deceased was Ex-police employee. Volunteered that he served in police department for about 10 years. Shahjahan is son of Shafat deceased of the case. ----- It is not in my knowledge that a sodomy case was registered against Shahjahan and Kashi aforementioned. The FIR about dispute of money of Trawler was registered against me and not against Shafat deceased of this case. ---- It is not in my knowledge that Shafat deceased was doing business of giving money to the

people and then to receive money as profit on the same and so many disputes arose due to said business. ----- I also joined investigation alongwith cited eye witnesses of this case on 27.09.2014. I have not made statement during investigation on 27.09.2014 before I.O to the effect that Altaf, Ali Raza, Yousaf and Ashiq accused persons have no role in the occurrence and Shafi also did not take part in the occurrence. ----- Confronted with Ex.DA where it is so mentioned.”

Muhammad Ilyas (PW-2)-the eyewitness deposed during cross-examination that: -

“It is incorrect to suggest that on 27.09.2014, I made statement to I.O of this case that Altaf, Ali Raza, Yousaf, Ashiq accused persons have no role in the occurrence and Shafi accused had also not taken part in the occurrence. ----- on direction of the court learned DDPP provided copy to learned defence counsel of purported “Daryaft” of said PW Muhammad Ilyas stately got recorded on 27.09.2014. Confronted with Ex. DC purported Daryaft dated 27.09.2014, where it is so recorded.”

Muhammad Afzal (PW-4)-the eyewitness deposed during cross-examination that: -

“It is not in my knowledge that Ejaz deceased was beaten thrice due to his nefarious activities, by the villagers. It is not in my knowledge that Shafat was used to give money to the persons and then get profit on the same on monthly basis. It is also not in my knowledge that due to said reason he had earned scattered enmity in and around the vicinity with lots of persons over said interest/profit and money.-----It is not in my knowledge that Shafat deceased was used to come to police station and getting moved applications from different persons against other persons by using his former police employment and due to said reason he was used to blackmail and harass the different persons and extract money. It is also not in my knowledge that due to said reason he had developed lot of annoyance and enmity in and

around the vicinity and he was even himself used to make such frivolous applications against different persons. ----- I did not joined investigation on 27.09.2014. it is incorrect to suggest that I joined investigation on 27.09.2014 and also made statement to the police/IO on that day. ----- Confronted with Ex.DD/purported statement/daryaft where it is so recorded. I got recorded in my statement before police that Muhammad Ilyas and Muhammad Arshad told me “that they are going Uddowal”. Confronted with Ex.DE where it is not recorded.”

These witnesses improved their version about the acquitted accused. It reveals that the prosecution witnesses deliberately concealed the facts.

12. It is admitted that the prosecution witnesses are interested and inimical towards the appellant. About the relationship between Muhammad Arshad (PW-1)-the complainant; Muhammad Ilyas (PW-2) eyewitness; Muhammad Afzal (PW-4)-eyewitness, Shafaat deceased and Ijaz deceased is concerned; Muhammad Arshad (PW-1)-the complainant admitted during cross-examination that: -

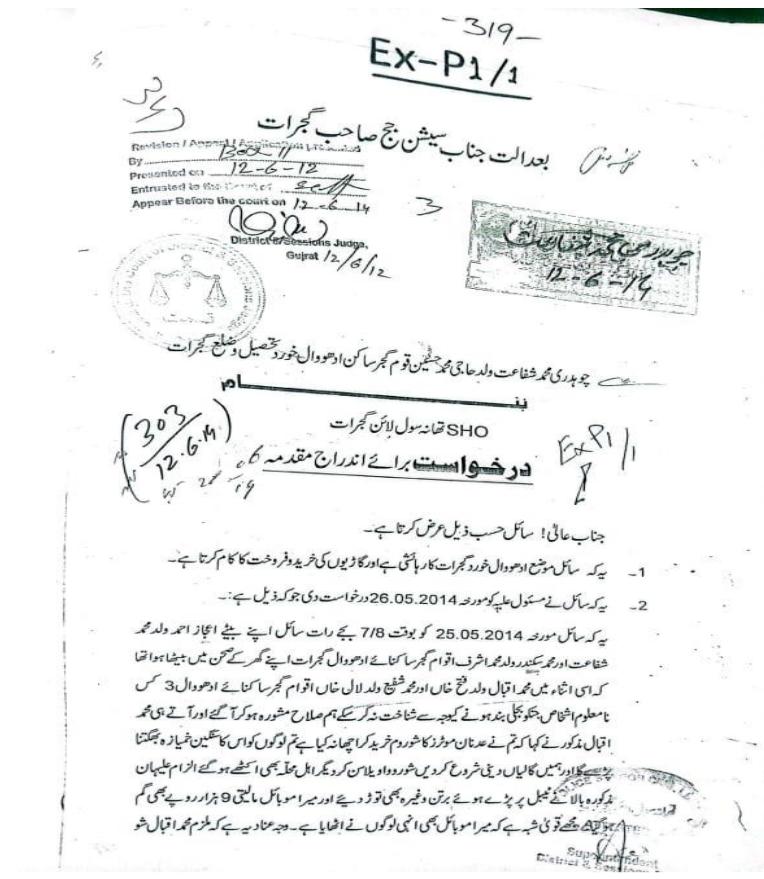
“Shafaat deceased was my “Behnoi” and the same is the position of Ishrat PW, I and Shafaat deceased were also inter-se cousins being “Mamu Zad” and “Phuphi Zad” respectively, same is position of Ishrat PW, Sikandar PW is Chacha Zad” of Shafaat deceased, Ilyas PW is my real brother and he is also having same relation with Shafaat deceased as of mine. Afzal/PW is real brother of Shafaat deceased. Jawad/PW is son of Shafaat deceased. Bharat/PW is “Bhanja” of Shafaat deceased and resident of village “Karnana”. Arif/PW is “Phuphi Zad” of Shafaat deceased. Zahoor Elahi/PW was “Hum Zulf” of Shafaat deceased of the case.”

The prosecution witnesses were not only inimical towards the accused but were also closely related to the deceased, and they had reasons to implicate the accused falsely. There is no independent evidence to

corroborate the evidence of the witnesses interested in this case. In this background, as far as motive is concerned, it is a double-edged sword that cuts both sides/ways. Muhammad Arshad (PW-1)-the complainant deposed about the motive behind the occurrence during examination-in-chief that: -

"Motive behind the occurrence was dispute about land, due to which Iqbal etc had even earlier issued threats to Shafaat at home.-----
On 11.07.2014 I alongwith Ishrat and Sikandar appeared before Thanidar and produced a Court order to Thanidar which was comprising upon four pages, which was taken into possession by him vide recovery memo Ex.PB attested by us, said order PB/1-4."

The scanned copy of the application for registration of the case (Ex. P1/1) is as follows: -



The stamp imposed on the face of the application for registration of the case (Ex. P1/1) reveals that the application was presented on 12.06.2012, and the date under the signature of the District and Sessions Judge Gujarat was also mentioned 12.06.2012. Contrary to the contents of the

application for registration of the case (Ex. P1/1), Basharat Ali (PW-14) deposed during examination-in-chief that: -

“Stated that on 25.05.2014, accused Muhammad Iqbal and I alongwith Jawad PW were present at the dera of Ch. Shafaat Hussain as there was a dispute of property between Ch. Shafaat Hussain deceased and accused Muhammad Iqbal present before the court. We had gathered there to settle the dispute of property. In the meantime, accused Iqbal present before the Court received a telephone call from accused persons Bhutto and Shahzad (since P.Os) that accused Iqbal opened the speaker and I heard the conversation between them. Accused Shahbaz and Bhutto (both since P.Os) were instigating accused Iqbal to murder Ijaz and Shafaat. I made my statement before the I.O in this regard.”

Muhammad Ishrat (PW-5) also admitted during cross-examination that: -

“I joined investigation of this case. I have not made any statement to the police in this case.”

The contents of the application for registration of the case (Ex. P1/1) reveal that Muhammad Ishrat (PW-5) was not present with Shafaat (deceased) and Ijaz (deceased) on 25.05.2014. Instead, Muhammad Sikandar (given up being unnecessary) allegedly witnessed the alleged occurrence on 25.05.2014. Therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of *Qanun-e-Shahadat*, 1984, that had Muhammad Sikandar (given up being unnecessary) been produced as a witness. His testimony would have been unfavorable to the prosecution. Reliance is placed on the case reported as “The State and others v. Abdul Khaliq and others” (PLD 2011 SC 554). As per the prosecution version put forth in the crime report by the complainant, Muhammad Iqbal, the appellant issued threats to Shafaat, deceased, over a land dispute. Muhammad Ilyas (PW-2) deposed during cross-examination that: -

“I did not get mentioned in my statement Ex.DB the words “due to this motive even earlier” hot words exchanged.”

Muhammad Afzal (PW-4) deposed during cross-examination that: -

"I don't remember that I mentioned to police in my statement that words "on which earlier" were recorded by me or not. Confronted with Ex.DE where these words are not mentioned."

A concocted story about the motive appears to have been cooked up, and it cannot be believed only based on the complainant and prosecution witnesses' oral statements. As is evident from the above deposition, the prosecution has failed to prove the motive part of the occurrence, which is shrouded in mystery. Thus, the prosecution has failed to provide evidence of a clear motive. Motive is a doubt-edge weapon for the occurrence and false implication. There are always different motives operating in a person's mind when making accusations. On the other hand, Muhammad Arshad (PW-1), the complainant, shows his lack of knowledge about Shafaat deceased and Ijaz deceased character and their daily affairs; he (PW-1) deposed during cross-examination that: -

"Shafat one of the deceased was Ex-police employee. Volunteered that he served in police department for about 10 years. Shahjahan is son of Shafat deceased of the case-----It is not in my knowledge that a sodomy case was registered against Shahjahan and Kashi aforementioned. The FIR about dispute of money of Trawler was registered against me and not against Shafat deceased of this case. -----It is not in my knowledge that Shafat deceased was doing business of giving money to the people and then to receive money as profit on the same and so many disputes arose due to said business."

Muhammad Ilyas (PW-2) deposed during cross-examination that: -

"I am brother of Muhammad Arshad complainant of this case. I am related to Shafat deceased of this case, he was my cousin being "Mamuzad". My sister is widow of Shafat deceased as she was married with him. I know Shahjahan s/o Shafat deceased and Kashif alias Kashi s/o Akhtar. It is not in my knowledge that a case regarding sodomy was registered against them.-----It is not in my knowledge that case regarding dispute of money of Trawler was registered against Shafat deceased. It is even

not in my knowledge that any such case was registered against any person. ----- It is not in my knowledge that Ejaz deceased was giving beating by the people due to his nefarious activities and he was ill reputed person. I don't remember that Shafat deceased was used to give money to the person and then fetch profit on the same on monthly basis. ----- Shafat deceased might had been companying persons and moving their applications to police stations and then taking part in proceedings of the same.”

Muhammad Afzal (PW-4) deposed during cross-examination that: -

“It is not in my knowledge that Ejaz deceased was beaten thrice due to his nefarious activities, by the villagers. It is not in my knowledge that Shafat was used to give money to the persons and then get profit on the same on monthly basis. It is also not in my knowledge that due to said reason he had earned scattered enmity in and around the vicinity with lots of persons over said interest/profit and money. ----- It is not in my knowledge that Shafat deceased was used to come to police station and getting moved applications from different persons against other persons by using his former police employment and due to said reason he was used to blackmail and harass the different persons and extract money. It is also not in my knowledge that due to said reason he had developed lot of annoyance and enmity in and around the vicinity and he was even himself used to make such frivolous applications against different persons.”

The above depositions of the prosecution witnesses reveal that the witnesses were asked questions about the character of Shafaat and Ijaz, deceased. It was safe for them to deny the allegations, but they deliberately denied it for want of knowledge. Otherwise, the prosecution witnesses have not come with clean hands and bonafide intentions but have made willful and malafide concealment of facts as discussed above. Muhammad Arshad (PW-1), the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4) concealed the facts and very cleverly made vague answers to the allegations. Even there is conflict between the statements of the prosecution

witnesses, i.e., Muhammad Arshad (PW-1), the complainant, Muhammad Ilyas (PW-2), and Muhammad Afzal (PW-4). The above information reveals that the deceased were men of questionable character. Therefore, the evidence led by the prosecution in connection with the motive is insufficient for relying on the testimonies of the witnesses. The evidence on the motive part and suggestions put by the defense regarding the questionable character of Shafaat and Ijaz, the deceased, suggested that the above-mentioned prosecution witnesses had deliberately concealed the facts. This, again, adversely affects the credibility of the prosecution version.

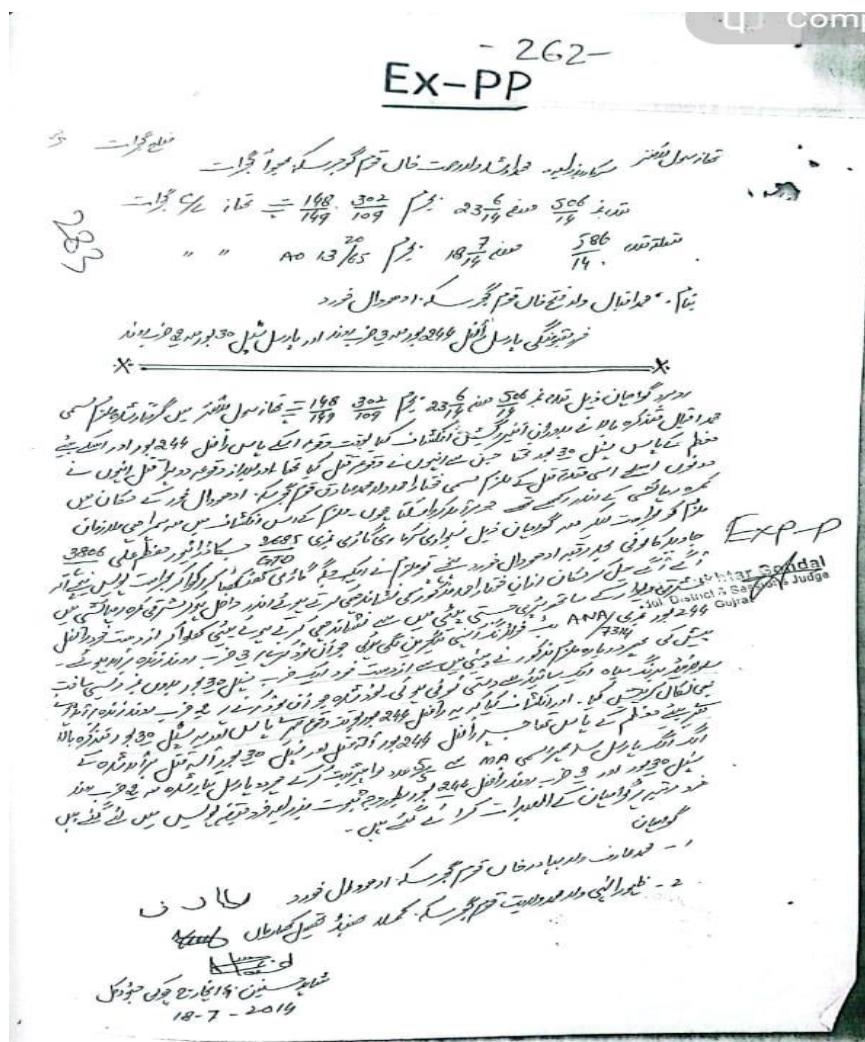
13. Moreover, it is noticed that Shahid Husnain S.I. (PW-15)-Investigating Officer deposed during examination-in-chief that he collected seven crime empties of rifle 244 bore and seven crime empties of pistol 30 bore from the place of occurrence when he inspected the place of occurrence. He (PW-15) secured crime empties of rifle 244 bore and pistol 30 bore vide recovery memo (Ex-PC). The empties recovered from the spot were sent to Forensic Science Laboratory Punjab, Lahore, on 04-07-2014 through Muhammad Hanif 1386/C (since dead). Shahid Husnain S.I. (PW-15)-Investigating Officer deposed during examination-in-chief that:

“On 18.07.2014, accused Muhammad Iqbal during the course of investigation in presence of Muhammad Arif and Zahoor Ellahi made disclosure that he can lead to recovery of rifle.244 bore and pistol.30 bore from the residential house of Mukhtar Ahmad son of Muhammad Sadiq, caste Gujjar, R/O Udhawal Khurd. Upon this disclosure, accused Muhammad Iqbal was lead to the house of Mukhtar Ahmad in presence of witnesses from where he produced rifle.244 bore P-9 that was un-loaded and three alive rounds P-10/1-3 were recovered. Accused Muhammad Iqbal also got recovered pistol.30 bore P-11 that was un-loaded and two alive bullets P-12/1-2 were recovered from the same. I made into sealed parcels the rifle.244 bore rifle P-9, three alive rounds, three alive rounds P-10/1-3, pistol 30.bore P-11 alongwith two alive bullets P-12/1-2 and took into possession vide recovery memo Ex.P-P attested by Muhammad Arif and Zahoor Ellahi witnesses.”

Muhammad Arif (PW-12), the recovery witness, deposed during the examination-in-chief that:

"On 18.07.2014, I alongwith PW Zahoor Ellahi went to police station where Iqbal accused present before the Court made a disclosure that he can lead to the recovery of his rifle.44 bore and pistol.30 bore of Moazzam from the house of accused Mukhtar.-----Then accused Muhammad Iqbal produced pistol.30 bore P-11 from the same iron box that was un-loaded and 02 alive bullets P-12/1-2 were recovered from the same. Both the rifle.44 bore and pistol 30.bore alongwith alive rounds and bullets were made into two separate sealed parcels and took the same into possession vide recovery memo Ex.P-P."

Shahid Husnain S.I. (PW-15)-the investigating Officer secured rifle 244 bore along with three (3) live bullets and pistol 30 bore alongwith two live bullets on 18.07.2014 into possession through recovery memo (Ex. PP). The scanned copy of the recovery memo (Ex. PP) is as follows: -



On perusal of the recovery memo (Ex. PP), it is found that appellant Muhammad Iqbal got recovered the 30-bore pistol and submitted that at the time of the incident, said 30-bore pistol was used by his son Moazzam (since P.O.). Shahid Husnain S.I. (PW-15), the Investigating Officer, deposed that he recovered the rifle 244 caliber from Muhammad Iqbal appellant. Shahid Husnain S.I. (PW-15)-the investigating Officer prepared the parcel on the spot and seized it through the recovery memo (Ex. PP). According to the prosecution version, rifle 244 caliber was got recovered by Muhammad Iqbal-appellant, and the same was secured in a sealed parcel at the spot by Shahid Husnain S.I. (PW-15)-investigating Officer. Afterward, Shahid Husnain S.I. (PW-15)-Investigating Officer, handed over the parcels to Maqsood Ahmad ASI (PW-3)-the moharrar, on 18.07.2014. Maqsood Ahmad ASI (PW-3)-the moharrar handed over parcels to Ashiq Ali 3629/C (PW-8) for onward transmission to the Punjab Forensic Science Agency, Lahore. The firearms and tool marks examination report (Ex. PEE) reveals that 44 caliber rifle was submitted on 25.08.2014 by Ashiq Ali 3629/C (PW-8), which matched with seven crime empties recovered from the spot. Thus, the positive report of the Firearms and Tool Marks Examination Report (Ex. PEE) becomes inconsequential.

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 serious offense. It is often said “that Fouler the crime higher the decree of proof.” We have gone through the process of keen examination of the entire material and found compelling reasons, as stated above, to disgrace with the conclusion reached recorded by the learned Additional Sessions Judge also found that the prosecution had miserably failed to prove the guilt of the accused applicant beyond reasonable doubt. Per the dictates of the law, the benefit of every doubt is to be extended in favour of the accused. In the case of **“Muhammad Akram v. The State”** (2009 SCMR 230), it is held as under: -

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

15. We, therefore, accept in toto Criminal Appeal No.48876 of 2019 filed by Muhammad Iqbal, son of Fatteh Khan, Caste Gujjar, resident of Uduwal, Tehsil & District Gujrat; as a result, whereof conviction and sentence recorded by the learned trial court vide judgment dated 17.06.2019 is set aside and the appellant, namely, Muhammad Iqbal is ordered to be acquitted of the charge in case F.I.R. No.506/2014 dated 23.06.2014, under Sections 302, 109, 148, 149 P.P.C., at Police Station, Civil Line, District, Gujrat and he (the appellant) is directed to be released forthwith if not required in any other case.

16. Murder Reference No. 185 of 2019, forwarded by the learned trial court for confirmation of the death sentence inflicted upon the convict, fails, which is answered in NEGATIVE.

17. So far as CRIMINAL APPEAL No.44259 of 2019 seeking the conviction of respondents Nos.1 to 7, namely Mukhtar Ahmed, Iftikhar Ahmed alias Yar Muhammad, Muhammad Shafi, Altaf Hussain, Ali Raza, Ashiq Ali and Yousaf is concerned, for what has been discussed above in the light of prosecution, medical, and documentary evidence, the acquittal of respondents Nos.1 to 7 do not suffer from any illegality to call for our interference with the impugned judgment to their extent. We have also taken note of the settled principle of criminal jurisprudence, which states that unless it can be shown that the lower court's judgment is perverse or that it

is entirely illegal, No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting in a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to their case. The acquittal order cannot be interfered with, whereby a charge earns double presumption of innocence as held in ***Muhammad Mansha Kausar v. Muhammad Ashgar and others*** (2003 SCMR 477). In this case, the prosecution has not been able to bring on record adequate incriminating evidence against respondents Nos.1 to 7, which connects them with the alleged crime. The learned trial Judge has advanced valid and plausible reasons for recording acquittal in favor of respondents Nos.1 to 7. The judgment of acquittal does not call for any interference. Consequently, we find no merit in this **Criminal Appeal bearing No.44259 of 2019**, which is, as a result of this, **dismissed** as being without prices.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Chief Justice

Approved for reporting

Judge

Chief Justice

*This judgment has been
dictated, pronounced on
10.09.2024, and signed
after its completion on
08.10.2023.*

*Ikram**