

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

Murder Reference No.129 of 2019
(The State *versus* Manzoor Ahmad)

Crl. Appeal No.44496-J of 2019
(Manzoor Ahmad *versus* The State.)

Crl. Appeal No.37914 of 2019
(Sultan Ahmad *versus* The State, etc.)

JUDGMENT

Date of hearing: 13.03.2023.

Appellant by: Ms. Saika Javed, Advocate.

State by: Rana Ahsan Aziz, Additional Prosecutor General.

Complainant by: Mr. Tallat Mahmood Tarhana, Advocate.

AALIA NEELUM, J:- The appellant-Manzoor Ahmad, son of Chanan Khan, caste Korra, resident of Village Korra, Tehsil & District Khushab, was involved in case F.I.R. No.396 of 2017, dated 19.11.2017, registered under Sections 302, 34 P.P.C., at P.S. Khushab, District Khushab and was tried by the learned Additional Sessions Judge, District Khushab. The trial court seized with the matter in terms of the judgment dated 02.05.2019, convicted Manzoor Ahmad (the appellant) under Section 302(b) PPC as Tazir and sentenced to Death for committing Qatl-e-Amd of Muhammad Jabbar (the deceased), with the direction to pay compensation of Rs.15,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further.

2. Feeling aggrieved by the judgment of the trial court, Manzoor Ahmad, the appellant, has assailed his conviction and sentence by filing the

instant jail appeal bearing Criminal Appeal No.44496-J of 2019. The trial court also referred **M.R. No.129 of 2019 (The State. Vs. Manzoor Ahmad)** to confirm the death sentence awarded to the appellant-Manzoor Ahmad. Whereas, the complainant also filed Crl. Appeal No.37914 of 2019 against the acquittal of respondent No.2, namely Khan Muhammad. 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.PA) lodged on the statement (Ex.PF) of Sultan Ahmad (PW-7)-the complainant, is that on 18.11.2017, at about 10:40 p.m., the complainant (PW-7) along with Muhammad Khan (PW-8) and Muhammad Younas (given up PW) was present at his dera to look after his ailing buffalo, whereas his son Muhammad Jabbar (the deceased) was present in front of a room of cattle shed. Meanwhile, Manzoor Ahmad (the appellant), armed with a gun 12-bore repeater and Khan Muhammad (co-accused since acquitted) came empty-handed. Khan Muhammad (co-accused since acquitted) raised lalkara that they had come to take revenge for their insult; after that, Manzoor Ahmad (the appellant) made straight fire with his gun 12-bore repeater, which hit Muhammad Jabbar on the right side of his chest; Manzoor Ahmad (the appellant) made second fire towards the complainant's side; Manzoor Ahmad (the appellant) while coming forward, again made a straight fire, which hit on the right side of the face of Muhammad Jabbar (the deceased). Meanwhile, Khan Muhammad (co-accused since acquitted) kept raising lalkaras that if anyone came near, he would be done to death; due to fear, they could not interfere. After that, Manzoor Ahmad (the appellant) and Khan Muhammad (co-accused since acquitted) fled away towards their dera while making fires and raising lalkaras. The complainant (PW-7) and PWs attended Muhammad Jabbar, who succumbed to the injuries. The motive behind the occurrence was that about 1½ years before the occurrence, the daughter of Manzoor Ahmad (the appellant), namely Aneetan Manzoor eloped with one Muhammad Imran and the accused had a suspicion that the complainant party had facilitated and helped the elopement of said Aneetan

Manzoor with Muhammad Imran; due to that grudge, the accused had murdered Muhammad Jabbar (the deceased).

4. After the incident, the complainant reported the matter to the police through his statement (Ex. PF), and after that, formal F.I.R (Ex. PA) was chalked out by Muhammad Zaman S.I (PW-1). After the registration of the case, the investigation of this case was entrusted to Zafar Iqbal S.I. (PW-9) and subsequently investigation was conducted by Muhammad Fayyaz-S.I (PW-11), 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 10.03.2018, 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 twelve (12) witnesses.

5. Ocular account, in this case, has come out from the statements of Sultan Ahmad (PW-7)-the complainant, and Muhammad Khan (PW-8)-the eye witness, whereas Dr. Faisal Ramzan (PW-5), who conducted the postmortem examination of Muhammad Jabbar (the deceased) found the following injuries on his person:

INJURIES

- 1) A lacerated penetrating wound of 5 x 4 cm, 2 cm below right eye on right cheek. Margins of the wound were irregular and inverted with blackening present around the margins, underlying maxilla bone was visibly fractured and shattered. This was wound of entry of firearm.
- 2) A lacerated penetrating wound of 1.5 x 1 cm on left cheek, 3 cm anterior to left pinna. On probing, it was proved to be exit wound of injury No.1. Margins were everted.
- 3) A lacerated wound of 1 x 0.5 cm on middle lower chin, 4 cm below lower lip. Margins were inverted with collar of abrasion present. This wound of entry of firearm. Mandible was fractured.

- 4) A lacerated penetrating wound of 1 x 0.5 cm on inferior aspect of lower chin, 2 cm below to injury No.3. Margins were inverted with collar of abrasion present. This was found of entry of firearm.
- 5) A grazed firearm injury lacerated wound of 2 x 1 cm on right cheek, 4 cm lateral to injury No.1, 3 cm below right eye, underlying maxilla bone was exposed and broken.
- 6) A lacerated penetrating wound of 1 cm x 0.5 cm on upper anterior fold of right axilla, 6 cm below lateral end of right clavicle, 9 cm superolateral to right nipple. Margins of the wound were inverted with collar of abrasion present. This was wound of entry of firearm, corresponding hole present on clothes.
- 7) A lacerated penetrating wound of 1 x 0.5 cm on anteromedial aspect of right arm, 10 cm above elbow joint. Margins of the wound were inverted with collar of abrasion. This was wound of entry of firearm. Corresponding hole was present on clothes.
- 8) A lacerated penetrating wound of 1 x 0.5 cm on posterior aspect of right arm, 10 cm above elbow joint. Margins of the wound were everted. On probing, it was proved to be the exit wound of injury No.7. Corresponding hole present on clothes.

After conducting the postmortem examination, the doctor opined that the cause of death was due to injuries 1 and 2, which were sufficient to cause death in the ordinary course of nature, as they injured skull bone and brain, causing intracranial hemorrhage, shock, and death. All the injuries were ante-mortual and were caused by a firearm. The probable time between injuries and death was immediate, whereas between death and postmortem was about 04 to 05 hours.

6. The learned Deputy District Public Prosecutor gave up PWs- Abdul Ghaffar and Muhammad Younis as being unnecessary and Fayyaz Ullah 552/HC being dead and after tendering reports of Punjab Forensic

Science Agency (Ex. PQ, Ex. PR) and school leaving certificate of Muhammad Jabbar (the deceased) as Ex.PS, character certificate as Ex.PT and Registration certificate (Form-B) of NADRA department as Ex.PU closed the prosecution evidence.

7. The appellant was also examined in terms of Section 342 Cr.P.C., wherein he did not opt to appear as his own witness in terms of section 340(2) Cr.P.C.; however, produced Altaf Hussain 2729/H.C. in his defence as DW-1. 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: -

“The PWs are members of one family. They deposed falsely. In fact, in the night of occurrence, the son of Muhammad Mukhtar (PW-6), namely Ghaffar, saw Muhammad Jabbar (deceased) in compromising position with her sister, Saniya Mukhtar. He murdered him but to save the skin of Ghaffar and for the sake of family honour, as well as due to local friction and grudge, I have been falsely involved in this case.”

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. The occurrence took place on 18.11.2017 at 10.40 p.m. in the Dera/Cattle Shed of Sultan Ahmad, Korra, District Khushab, situated within the jurisdiction of Police Station Khushab, District Khushab, which is at a distance of 10 Kilometers only from the place of occurrence. Whereas F.I.R. (Exh. PA) was got registered on the oral statement (Exh. PF) of Sultan Ahmad (PW-7)-the complainant, on 19.11.2017 at 12.50 a.m. It is clear from the Fard Bayan (Exh. PF) that the statement of Sultan Ahmad (PW-7)-the

complainant, was recorded by Zafar Iqbal, S.I. (PW-9) at Sandal Adda at 12:30 a.m. Sultan Ahmad (PW-7)-the complainant took one hour and fifty minutes to report the incident to the police, for which no plausible explanation was rendered. However, the inquest report (Exh.PE) reveals that the time of receiving information regarding the death was 10:40 p.m. on 18.11.2017 by Zafar Iqbal, S.I. (PW-9). Whereas Zafar Iqbal, S.I. (PW-9) deposed during his examination-in-chief that upon receiving information of the occurrence, he (PW-9), along with Jaleel-ur-Rehman 238-C (PW-10), Saif Ullah 125/C, and Mukhtar Hussain 62/C were going towards the place of occurrence, when he met with Sultan Ahmad (PW-7)-the complainant at Sandal Adda at 12:30 a.m. After that, he (PW-9) proceeded to the place of occurrence along with the complainant (PW-7) and prepared a rough site plan of the place of occurrence, application for post-mortem, and inquest report (Exh.PE). It has been noticed that in the inquest report (Exh.PE), the names of Sultan Ahmad (PW-7)-the complainant, Muhammad Khan (PW-8), and Muhammad Younas (given up PW) have not been mentioned. Any eyewitnesses or the complainant does not sign the inquest report (Exh.PE). However, the investigating officer-Zafar Iqbal, S.I. (PW-9), has categorically asserted that he recorded statements of witnesses under section 161 of Cr.P.C at the spot, which shows that witnesses were present at the place of occurrence. If he (PW-9) visited and prepared the inquest report (Exh. PE) and had met with Sultan Ahmad (PW-7)-the complainant, Muhammad Khan (PW-8), and Muhammad Younas (given up PW). In that case, there is no reason why the details we found missing from the inquest report (Exh.PE) should not have been there. The absence of those details indicates that the prosecution story was still in the embryo and had not been given any shape. The FIR was recorded after due deliberations and consultations, and FIR was then ante-timed. The second external check that is equally important is sending a copy of the FIR along with the dead body for post-mortem examination and its reference in the inquest report (Exh. PE). In the column of the brief history of the inquest report (Exh. PE), the investigating officer-Zafar Iqbal, S.I. (PW-9), specifically mentioned that he got registered an FIR, and its particulars were mentioned. Even then, it was

not mentioned that FIR was also sent along with other documents with the dead body for post-mortem examination. The absence of these details in the inquest report may indicate that the FIR was not registered and the FIR was recorded after due deliberations and consultation. In the inquest report (Exh. PE), it was mentioned as follows:-

302/34 جم 19/11/2017 مورخ 396 نمبر مقدمہ پر بیان کے سلطان احمد کے متعلق
تپ تھانہ خوشاب بذریعہ استغاثہ درج کروایا گیا ہے میں معہ رہائیں جائے وقوع قتل ڈیرہ
مال مویشی سلطان احمد بحد رقبہ کوڑا پہنچا ہوں۔ نقش محمد جبار کو ٹھہارال مویشی کے سامنے زمین
پر پڑی ہے۔ نقش محمد جبار بعد تیاری نقشہ ممزوبی و نقشہ صور تھال برائے پوسٹ مارٹم زیر
حفاظت کنسٹیل جلیل الرحمن 238 THQ ہسپتال خوشاب پنجوائی جاری ہے بعد
پوسٹ مارٹم وجہ موت سے آگاہ کیا جائے۔"

Dr. Faisal Ramzan (PW-5), who conducted autopsy at 3:15 a.m. on 19.11.2017, deposed during his examination-in-chief that:-

"Ex.PC is the correct carbon copy of postmortem report, Ex.PC/1 and Ex.PC/2 are pictorial diagrams of injuries, prepared, signed and stamped by me. I also endorsed the injury statement Ex.PD and inquest report Ex.PE."

The FIR has lost its value and authenticity because of the above-said infirmities. It appears that the same has been ante-timed and had not been recorded till the inquest proceedings were over at the place of occurrence by the investigating officer-Zafar Iqbal, S.I. (PW-9). Jaleel-ur-Rehman 238-C (PW-10) deposed during cross-examination that:-

"On receiving the information about the occurrence, I alongwith Zafar Iqbal SI and other police officials directly went at the place of occurrence. We did not stay in the way. When we reached at place of occurrence, SHO PS Khushab, DSP Saddar Circle Khushab and Members of Forensic Team were already at the place of occurrence.-----IO handed over the dead body to me at 2:30 a.m. I reached at 3:00 a.m. at hospital alongwith dead body."

Zafar Iqbal, S.I. (PW-9)-the investigating officer deposed during cross-examination that:-

"I received information of this occurrence near about 10:30 p.m on the fateful night. It is not in my knowledge as to whether the son of the complainant namely Ansar made a telephonically call at Rescue 15 at about 10:45 p.m. or not. I reached at the place of occurrence at 12:45 a.m (night). I handed over the dead body of deceased to Jaleel ur Rehman 238/C for postmortem examination at about 2.00 a.m."

Zafar Iqbal, S.I. (PW-9)-the investigating officer to conceal a material fact from the Court, stated that it was not in his knowledge that the son of the complainant Ansar informed the police about the occurrence at Rescue 15 at 10:45 p.m. In column No. 3 of the inquest report (Exh. PE), Zafar Iqbal, S.I. (PW-9)-the investigating officer mentioned the time of receiving information regarding the death at 10:40 p.m. on 18.11.2017. Muhammad Khan (PW-8) admitted that Ansar, the son of the complainant, reached the place of occurrence, and no other son came to the place of occurrence. Muhammad Khan (PW-8), in this regard, deposed during cross-examination that: -

"Ansar son of complainant reached at the place of occurrence after the occurrence but I do not remember the exact time of his arrival. Except Ansar no other son of the complainant came at the place of occurrence. Sultan Ahmad complainant is my brother in law (Behnoee)."

Contrary to the deposition of Muhammad Khan (PW-8), Sultan Ahmad (PW-7)-the complainant deposed during a court statement that his son Muhammad Shahbaz was in front of the room of cattle shed. Sultan Ahmad (PW-7)-the complainant admitted during cross-examination that:-

"My son Ansar knew about the occurrence soon after the occurrence as he was present at the home which is at a distance of about half kilometer away from my dera. The police was informed about the occurrence at Rescue 15 but I do not know who made such call to the police. I do not know as to whether Ansar made call at Rescue 15 at 10.45 p.m or not. I also do not know as to whether Ansar made such call at Rescue 15 that some persons illegally occupied his land and also made firing at the dera."

Volunteers soon after the occurrence, I went to the police to furnish the information about the occurrence. On the way, police met me at Bus stand Sandral and police informed me that police received call at Rescue 15 about the occurrence. I was on the way at that time, therefore, I do not know who made the call to the police at Rescue 15.”

The defence produced defence-witness Altaf Hussain 2729/HC (DW-1). Altaf Hussain 2729/HC (DW-1) deposed during his examination-in-chief that: -

“Under the order of the Court I have brought today the relevant record of rescue 15 dated 18.11.2017 regarding the call of Ansar s/o Sultan Ahmad r/o Korra Tehsil & District Khushab. I have also brought record of call made from cell No.0302-6544945 which is Ex.DD/1-2 duly attested by concerned authority.”

A witness summoned by the trial court to produce a document shall bring it to the Court if it is in his possession or power. Altaf Hussain 2729/HC (DW-1) is in charge of rescue 15, who produced records of daily dairy (roznamcha) of the call made on 15 (Ex.DD/1-2) revealing that caller Ansar made the call on 15 at 10:45 p.m. and informed that their opponents were making firing at their Dera and they occupied their Dera and asked for police help. At 12:55 a.m. (night), on return, Muhammad Arshad S.I. of police station Khushab reported that the accused persons killed Jabbar, son of Sultan Ahmad, and fled away after that. The deposition of Jalil-ur-Rehman 238/C (PW-10) revealed that when they reached the place of occurrence, police officers of police station Khushab were present. The learned counsel for the complainant also admitted that Ansar, the complainant's son, made the call on the 15. However, the complainant was not aware of it. There were so many omissions and contradictions in the evidence of prosecution witnesses affecting the entire fabric of the prosecution case.

11. In the instant appeal, in the scaled site plans (Exh. PB and Exh. PB/1) place of firing was shown at points "2 and 3," and the deceased, i.e.,

Muhammad Jabbar, was shown at point "1". The distance between Point "1" and Points "2 and 3" was 12 and 6 feet, respectively; from such a distance, blackening is impossible. Whereas, in the unscaled site plan (Exh. PI), the distance between Point "1" and Point "3" was not mentioned. The investigating officer-Zafar Iqbal, S.I. (PW-9), prepared an unscaled site plan (Exh. PI) and left blank space after writing as under:-

"جو مقام نمبر 1 سے فاصلہ فٹ جانب پر"

Whereas, Dr. Faisal Ramzan (PW-5), who conducted autopsy on the dead body of Muhammad Jabbar, observed blackening on injury No.1. Dr. Faisal Ramzan (PW-5) deposed during cross-examination that: -

"I extracted four pellets and one wad from the track/rout of injury No.1 and two pellets from the floor of mouth coming from injuries No.3 & 4, whereas the seventh pellet was extracted from injury No.6. Injury No.6 is an independent injury.-----I extracted single pellet from injury No.3, single pellet from injury No.4 and single pellet from injury No.6.-----Injury No.1 is on cheek, whereas injuries No.3 & 4 are on chin."

The blackening and recovery of pellets from the wound and the seat of injuries show that Muhammad Jabbar sustained the fire shot injuries on the vital part of his body from a close range. There is an apparent conflict between the medical evidence and with ocular testimony delivered by the eyewitness. The fact, however, is that the deceased, i.e., Muhammad Jabbar received firearm injuries from close range, and who was responsible for the said wounds was not known; however, the appellant was not responsible for said wounds. Although the site plan is not a substantive piece of evidence in terms of Article 22 of the Qanun-e-Shahadat Order, 1984, as held in the case of "**Mst. Shamim Akhtar v. Fiaz Akhtar and two others**" (PLD 1992 SC 211) but it reflects the view of the crime scene. The same can be used to contradict or disbelieve eyewitnesses. Thus, there was an apparent conflict between the medical evidence and ocular testimony incapable of being reconciled by any amount of argument and persuasion. In these

circumstances, the presence of eyewitnesses at the place of occurrence has become highly doubtful.

12. Another aspect of the case is that the occurrence occurred in the Dera/Cattle shed of Sultan Ahmad (PW-7)-the complainant. The presence of the witnesses, i.e., Sultan Ahmad (PW-7)-complainant, and Muhammad Khan (PW-8), was by chance. Sultan Ahmad (PW-7)-complainant stated the reason for his presence at his Dera was due to an ailment of buffalo, he was present at his Dera. Sultan Ahmad (PW-7)-complainant has specifically deposed in his court statement that:

"On 18.11.2017 at about 10:40 p.m, I alongwith Muhammad Khan and Muhammad Younis were present at my dera to look after my ailing buffalo whereas my son Muhammad Shehbaz was present in front of room of cattle shed."

Whereas, during cross-examination, he (PW-7) deposed that: -

"At the time of occurrence I was present in garage (chappar). The said garage (chappar) was open from three sides. Although ailing buffalo had to save from cold weather, however, the said buffalo due to ailment, sit in the said garage/chapper at Asar time and then remained unable to stand on legs. Due to this reason, we were present in the said garage/chapper at the time of occurrence. We used the said garage/chapper for multiple purposes i.e. to park the tractor, tethered the animals and also for sitting purposes."

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

"My residence is not at the dera of complainant i.e place of occurrence. I am not veterinary doctor."

Zafer Iqbal S.I. (PW-9)-investigating officer deposed during cross-examination that: -

"I did not mention in my spot inspection note about the presence of sick buffalo in the garage."

I drafted the unscaled plan on the pointation of the witnesses. I also did not mention the presence of sick buffalo in the garage in my unscale site plan Ex.PI.”

Muhammad Zahoor, Patwari (PW-3) deposed during cross-examination that:-

“I did not point out the presence of any sick buffalo in the garage where PWs were present. It is correct that I did not point out the presence of any cattle in two cattle shed at the place of occurrence. When I visited venue of crime, the garage was vacant.”

When for the presence, if witnesses took the specific plea, there must be an explanation for their presence there. The deposition of a chance witness whose presence at the place of the incident remains doubtful should be discarded. Conduct of the chance witness after the incident may also be considered, particularly the condition of the dead body of the deceased. Dr. Faisal Ramzan (PW-5) deposed during examination-in-chief that: -

“-----mouth and eye were opened---”

The same is reflected in column No. 8 of the inquest report (Exh. PE).

"منہ اور آنکھیں قدرے کھلی ہوئیں"

Both these witnesses deposed in their court statements that they attended Muhammad Jabbar, who succumbed to the injuries on the spot. If they attended to the deceased soon after the occurrence, there was no reason for the mouth and eyes to be open. Although Muhammad Khan (PW-8), the eye witness, deposed during cross-examination, he tried to close the eyes and mouth of the deceased but could not succeed. At this juncture, it is relevant to mention the chemical changes that would occur when the dead body of a human being is exposed to different environmental situations. Autolysis (self-destruction) is an intrinsic activity brought about by the breakdown of cells and tissues of the human body because of the constituents of the said cells. The cell membranes break down after death and release enzymes that start self-digestion. The first external sign of autolysis is the whitish

appearance of the cornea. One of the first visible signs of death is when the eyes cloud over, a result of fluids and oxygen no longer flowing to the corneas. That can begin within 10 minutes of death. If the deceased person's eyes remain open at the time of death, any relative or person nearby can close the eyes soon after, as after 10 minutes, the decomposition process begins. It is relevant to mention here that Zafar Iqbal S.I. (PW-9)-investigating officer, after reaching the place of occurrence, inspected the dead body, prepared an injury statement (Ex. PD), inquest report (Ex. PE) and photographs of the dead body of the deceased were also taken, and photo-card (P-7) containing four pictures of deceased were secured and genuineness of which is not denied by prosecution or complainant. The deceased was in the knee-chest position, the body was lying on his side, and the torso was lying diagonally. This also suggested that Sultan Ahmad (PW-7)-the complainant, and Muhammad Khan (PW-8) were not present at the time of occurrence. It suggests that if Sultan Ahmad (PW-7)-the complainant, and Muhammad Khan (PW-8), an eye witness, were present at the place of occurrence and tried to close the eyes and mouth of the deceased and also straighten the dead body of the deceased, then there was no reason the same should be closed and a dead body lying in the straight position. Thus, Sultan Ahmad (PW-7)-the complainant, and Muhammad Khan (PW-8) failed to prove their presence on the spot. Such evidence can be created at any moment. With this background, the presence of the alleged eyewitnesses in the place seems to be doubtful.

13. According to Sultan Ahmad (PW-7)-the complainant, and Muhammad Khan (PW-8), two charging lights were lit at the time of occurrence. In the cross-examination, the defence has brought omissions, contradictions, and improvements in the evidence of this witness. Sultan Ahmad (PW-7)-the complainant deposed during cross-examination that:-

"I also stated before the police officer about charging lights in my statement but I do not know as to whether the police recorded the same or not. Confronted with Ex.PF, wherein it is also not so recorded."

Zafar Iqbal S.I. (PW-9)-investigating officer deposed during cross-examination that: -

“It is correct that in the statement of the complainant Ex.PF, the factum of lightening of charging lights at the time of occurrence is not mentioned.”

Whereas, Muhammad Zahoor, Patwari (PW-3) deposed during cross-examination that:-

“It is correct that I did not show the source of light, bulb in the garage, however, a charging light was hanging at the front guarder of garage in the middle.”

The charging lights are not a source of light recorded in the FIR (Ex. PA). The charging lights (P-1 and P-2) produced in the court were new. Muhammad Khan (PW-8) deposed during cross-examination that: -

“The charging lights P-1 & P-2 are seem to be new. Volunteers the same were taken into possession in my presence.”

Zafar Iqbal S.I. (PW-9)-investigating officer deposed during cross-examination that: -

“I am serving in police department for the last 32 years. I cannot tell as to whether the electric bulbs become hot after remained lightening for some time. I do not remember as to whether the recovered charging lights, P-1 & P-2, were wrapped in plastic cover or not. At this stage, charging lights P-1 & P-2 are shown to the witness and he admitted it correct that the same are covered with plastic paper on front side.”

Jaleel-ur-Rehman 238/C (PW-10) deposed during cross-examination that:-

“I did not see any charging lights hanging with the walls of room and garage, however, the charging lights were holding in hands by the people present at the spot.”

The statements about the source of light are not consistent. The statements of the prosecution witnesses do not support the FIR about the source of light. They are contradictory. In view of the preceding discussion, we think that the evidence adduced by the prosecution does not establish that there was any source of light when the incident allegedly took place.

14. The motive set up by the prosecution in the Fard Beyan (Exh. PF) and F.I.R. (Exh. PA), brought on the record through the deposition of Mukhtar Ahmad (PW-6), Sultan Ahmad (PW-7)-complainant and Muhammad Khan (PW-8) is that about 1½ years before the occurrence, the daughter of Manzoor Ahmad (the appellant), namely Aneeta Manzoor eloped with one Muhammad Imran, and the accused had a suspicion that the complainant party had facilitated and helped the elopement of said Aneeta Manzoor with Muhammad Imran; due to that grudge, the accused had murdered Muhammad Jabbar (the deceased). To substantiate the motive part of the case, the prosecution produced Mukhtar Ahmad (PW-6). In the cross-examination of Mukhtar Ahmad (PW-6), some omissions, contradictions, and improvements have been brought on record by the defence, which is as under: -

"I got recorded in my police statement that Jabbar used to visit the house of accused Manzoor but I do not know as to whether IO recorded it or not. Confronted with Ex.DA, where it is not so recorded. I also got recorded in my police statement that accused persons had suspicion that Jabbar was also involved in the matter of abduction of Aneeta Manzoor with Imran. Confronted with Ex.DA, where it is not so recorded."

Zafar Iqbal S.I. (PW-9)-investigating officer deposed during cross-examination about the motive part of the occurrence as under: -

"It is correct that under the motive part of complaint Ex.PF, the name of Muhammad Jabbar deceased is not specifically mentioned. Volunteers that it is mentioned in the motive part that the accused party had suspicion upon

us. I correctly recorded the statements of Muhammad Khan and Muhammad Younis PWs. It is correct that according to the statements of Muhammad Khan and Muhammad Younis PWs recorded by me, u/s 161 Cr.P.C, the motive is ascribed to Muhammad Mukhtar only. Volunteers that Muhammad Mukhtar is the real uncle of Muhammad Jabbar deceased.”

To whom the motive was attributed has not stated that he (PW-6) received threats from the appellant. The testimony of Mukhtar Ahmad (PW-6) revealed that Aneetan, the daughter of Manzoor Ahmad, went to the house of Muhammad Imran on 18.11.2015. During cross-examination, Mukhtar Ahmad (PW-6) admitted that Manzoor Ahmad had not caused murderous assault or damage to his family members, although they were residing in the village. Mukhtar Ahmad (PW-6) deposed during cross-examination that: -

“During inventing period from 18.11.2015 till the date of occurrence of this case i.e. 19.11.2017, I visited my village many times but I used to visit my village secretly due to fear of Manzoor Ahmad because he used to threatened me. I did not got register any FIR against Manzoor Ahmad regarding above said threat. My family members are residing at village. None had killed my son. No murderous assault was committed upon my any family member. I do not offer the funeral prayer of Jabbar deceased, because I was in Karachi on that day and came to my village on the next day of death of Jabbar.”

Contrary to the deposition of Mukhtar Ahmad (PW-6), Sultan Ahmad (PW-7)-the complainant deposed during cross-examination that: -

“Prior to this occurrence, neither Mukhtar Ahmad nor any his other family members was murdered by the accused. Volunteered the accused made three murderous assaults upon Mukhtar Ahmad but he remained save due to his luck. Due to fear of his death, later on he went to Karachi. We did not lodge any FIR regarding the murderous assaults upon Mukhtar Ahmad. The accused did not murder

the sons of Mukhtar Ahmad. Volunteer one of his son is minor and we did care his other sons.”

Muhammad Khan (PW-8) deposed during cross-examination that: -

“I stated before the IO that Muhammad Jabbar and Mukhtar Ahmad facilitated Imran in elopement of Mst. Aneetan Manzoor with him. Confronted with Ex.DC, wherein only the name of Mukhtar is mentioned.”

There are contradictions between the statements of Mukhtar Ahmad (PW-6) and Sultan Ahmad (PW-7)-the complainant. The inconsistencies above in the statements are material and raise doubt or suspicion in the prosecution case about the motive for committing the occurrence. We believe the prosecution has been unable to establish a motive in the instant case.

15. So far as recovery of the weapon of offence, i.e., gun 12-bore repeater (P-8), one bandolier (P-9), four live cartridges (P-10/1-4), and one magazine (P-11/1-2) from the possession of the accused/appellant and positive report of Punjab Forensic Science Agency (Ex. PQ), are concerned, as per the prosecution case, on 21.12.2017, the accused was arrested from village Kora Pattan. On 02.01.2018, upon his disclosure, a gun 12-bore repeater (P-8), one bandolier (P-9), four live cartridges (P-10/1-4), and one magazine (P-11/1-2) were recovered from his residence. Muhammad Fayyaz S.I. (PW-11)-the investigating officer secured the same through a recovery memo (Ex.PL). Muhammad Fayyaz S.I. (PW-11)-the investigating officer deposed during cross-examination that: -

“As per record the gun was recovered from the accused at about 12.00 p.m. (noon) on 02.1.2018.”

Contrary to the deposition of Muhammad Fayyaz S.I. (PW-11)-the investigating officer, Jaleel-ur-Rehman 238/C HIC (PW-10)-recovery witness, deposed during cross-examination that:

“It is correct that on 02.1.2018, at about 7.00 a.m., I left the police station PS Sadar Jauharabad with Rana Asif SHO for PS Katha

Saghral and I returned back alongwith him at evening time.”

The deposition of Jaleel-ur-Rehman 238/C HIC (PW-10)-recovery witness creates doubts about the recovery of the weapon of offence, i.e., gun 12-bore repeater (P-8), one bandolier (P-9), four live cartridges (P-10/1-4), and one magazine (P-11/1-2). Besides, after completing the proceedings at the spot, Zafar Iqbal S.I. (PW-9)-investigating officer- searched for the accused. Zafar Iqbal S.I. (PW-9)-investigating officer deposed during examination-in-chief as under: -

“I also joined into investigation the other persons available at the spot. Thereafter, I went in search of the accused persons, which could not be arrested.”

It does not appeal to the prudent mind that the accused would conceal the gun 12-bore repeater (P-8), one bandolier (P-9), four live cartridges (P-10/1-4), and one magazine (P-11/1-2) in his residential Dera to hand it over to the police on his arrest. It creates doubt about the recovery of the gun 12-bore repeater (P-8), one bandolier (P-9), four live cartridges (P-10/1-4), and one magazine (P-11/1-2). Whereas it is the defence version that the police officers serving in the police department at the DPO office, Khushab, on the next day of the occurrence, took into possession a shotgun along with the license of co-accused Khan Muhammad (since acquitted). Then the same was planted against them. In the presence of the statement of Jaleel-ur-Rehman 238/C HIC (PW-10)-the recovery witness throws clouds on the recovery of the testimony of gun 12-bore repeater (P-8), one bandolier (P-9), four live cartridges (P-10/1-4), and one magazine (P-11/1-2). In these circumstances, the recovery of the weapon of offence and a positive report are not of any consequence.

16. As it is difficult to rely upon the testimonies of PWs 6, 7, and 8 and for other reasons enumerated hereinbefore, we are persuaded to hold that the prosecution had not been able to prove its case against the appellant beyond any shadow of a doubt as there were many dents in the prosecution

story. The conviction and sentence learned trial court recorded could not be sustained. It is held in the case of “**Muhammad Akram v. The State**” (2009 SCMR 230) that:-

“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.”

17. In light of the above discussion, we affirm that the prosecution has failed to prove its case against the appellant beyond any shadow of a doubt. Therefore, we accept the instant **Criminal Appeal No.44496 of 2019** filed by Manzoor Ahmad, appellant, set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Khushab, vide judgment dated 02.05.2019 and acquit him of the charge in the case F.I.R. No.396 of 2017 dated 19.11.2017 under Sections 302/34 PPC, at Police Station Khushab and he is directed to be released forthwith if not required in any other case. **Murder Reference No.129 of 2019** is answered in the **negative**, and the sentence of death awarded to Manzoor Ahmad, son of Chanan Khan, Caste Korra, resident of village Korra, Tehsil and District Khushab, is **not confirmed**.

18. So far as **CRIMINAL APPEAL No.37914 of 2019** seeking a conviction under section 302 (b) P.P.C. of respondent No.2-Khan Muhammad is concerned, we have noted that the respondent No.2-Khan Muhammad was attributed the role of lalkara, and no injury was attributed to him towards the deceased or prosecution witnesses. For what has been discussed above in the light of prosecution, medical, and documentary evidence, the acquittal of respondent No.2-Khan Muhammad does not suffer from any illegality to call for our interference with the impugned judgment

to the extent of respondent No.2. We have also taken note of the settled principle of criminal jurisprudence that unless it can be shown that the lower court's judgment is perverse or that it is completely illegal. No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting into a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to his case. The acquittal order cannot be interfered with, whereby an accused 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 respondent No.2, which connects him with the alleged crime. The learned trial Judge has advanced valid and plausible reasons for recording acquittal in favor of respondent No.2. The judgment of acquittal does not call for any interference. Consequently, we find no merit in this **Criminal Appeal bearing No.37914 of 2019**, which is, as a result of this, **dismissed** as being without merits.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for reporting

Judge

Judge

This judgment has been dictated, pronounced on 13.03.2023 and signed after its completion on 29.03.2023.

*Ikram**