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Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE

(JUDICIAL DEPARTMENT)

Criminal Appeal No.78896/2019

M. Ihsan @ Malkoo etc. versus The State etc.

Murder Reference No.361/2019

The State versus Ihsan @ Malkoo

Criminal Revision No.2212/2020

Hasnat Ahmad versus The State etc.

Date of hearing	**08.04.2024**
The Appellants by	Syed Ali Muhammad Zahid Bukhari, Advocate
The Complainant by	M/s Rai Bashir Ahmad and Nazir Umar, Advocates
The State by	Mr. Waqar Abid Bhatti, Deputy Prosecutor General

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Asjad Javaid Ghural, J. Through the afore-titled criminal appeal under Section 410 Cr.P.C., appellants Muhammad Ihsan @ Malkoo and Masood Ahmad @ Bilal have challenged the vires of judgment dated 18.11.2019 passed by the learned Addl. Sessions Judge, Sargodha in case FIR No.86/2018, dated 14.02.2018, in respect of offence under Sections 302, 324, 337-F(i) & 34 PPC registered at Police Station, Jhal Chakkian, District Sargodha, whereby they were convicted and sentenced as under:-

i) *Appellant Muhammad Ihsan @ Malkoo;*

Under Section 302 PPC

Death alongwith compensation of Rs.4,00,000/- to be paid to the legal heirs of deceased Zafar Iqbal and in default thereof to further undergo simple imprisonment for six months.

Under Section 337-F(i) PPC

Daman amount of Rs.50,000/- to be paid to the injured Muhammad Khan.

ii) *Appellant Masood Ahmad @ Bilal*;

Under Section 302/34 PPC

Imprisonment for life and to pay compensation of Rs.200,000/- to the legal heirs of deceased Zafar Iqbal as required u/s 544-A Cr.P.C. and in default thereof to further undergo simple imprisonment for six months.

Benefit of Section 382-B Cr.P.C. was extended to the convict Masood Ahmad @ Bilal.

2. Murder Reference No.361 of 2019 sent up by the trial Court for confirmation or otherwise of death sentence of appellant Muhammad Ihsan @ Malkoo and Criminal Revision No.2212/2020 preferred by complainant Hasnat Ahmad seeking enhancement of sentence of respondent No.2 namely Masood Ahmad @ Bilal will also be decided through this common judgment.

3. The prosecution story unfolded in the crime report (Ex.PF/1) registered on the statement (Ex.PF) of complainant Hasnat Ahmad (PW-8) was that on 14.02.2018, he alongwith his brothers Zafar Iqbal (deceased), Muhammad Khan, (PW-9) and one Azhar Hayat (given up PW) were coming back to their homes after attending court proceedings in District Courts, Sargodha. At about 11.45 a.m. when they reached at Scacor Road near Chak No.60/East Daira Jora, appellants armed with 12-bores came in front of them. Appellant Ihsan raised *Lalkara* that they had come to take the revenge and opened a fire shot which hit at the right knee of Zafar Iqbal. He repeated the fire which landed at the right thigh of said Zafar Iqbal. His third fire was hit at the fuel tank of motor-cycle while the forth one was landed at the right shin of injured Muhammad Khan, who fell down from the motor-cycle. Accused persons left the place on motor-cycle 125 without number while brandishing their guns. They attended the injured persons and took them to the Civil Hospital, Sargodha. Injured Zafar Iqbal succumbed to the injuries on the way to the hospital.

Motive behind the occurrence was that appellant Ihsan @ Malkoo sustained injuries in an occurrence and the FIR in this regard was registered against the complainant and his deceased brother Zafar Iqbal alongwith one Mazhar Hayat, brother in law of deceased.

4. Khalid Hayat, SI (PW-12) prepared injury statement as well as inquest report of deceased Zafar Iqbal and escorted his dead body to the mortuary. He visited the place of occurrence on the same day, took all necessary steps

of initial investigation and also recorded the statements of the witnesses under Section 161 Cr.P.C.

Muhammad Yar, SI (PW-11), produced the appellants before the Area Magistrate and obtained their physical remand. During investigation, appellant Ihsan @ Malkoo led to the recovery of motor-cycle No.SGL-1426 Yamah 100 CC (P-1) and 12-bore repeater (P-2), which were taken into possession through recovery memos (Ex.PG & Ex.PH), respectively. Appellant Masood Ahmad, led to the recovery of 12-bore single barrel (P-3), which was taken into possession through recovery memo (Ex.PJ).

5. Dr. Muhammad Sohail (PW-7) held autopsy on the dead body of deceased Zafar Iqbal Ditta on 14.02.2018 and observed three injuries on lower part of right thigh, front right knee joint with inverted margins and multiple firearm wound of exit, seven in number on inner side of right knee joint, lower part of right thigh, upper part of right left, underlying bone was fractured with averted margins. According to his opinion injury No.1 & 2 damaged major blood vessels leading of hemorrhagic shock, cardiopulmonary arrest and death. Probable duration between injuries and death was 25-30 minutes, whereas between death and post mortem examination, it was about four hours.

On the same day, he also examined injured Muhammad Khan and observed one fire arm grazed wound 2.5 x 1 cm on inner, upper part of right leg skin deep. Injury was declared as *Jurh Damiyah* with no possibility of fabrication.

7. At the commencement of trial, the trial Court framed a charge against the appellants to which they pleaded not guilty and claimed to be tried.

8. The prosecution examined 13-witnesses besides the reports of Punjab Forensic Science Agency Ex.PZ and Ex.PAA. The appellants, in their statements recorded under Section 342 Cr.P.C., had denied and controverted all the allegations of facts leveled against them. They neither opted to make statements under Section 340(2) Cr.P.C. nor produced any evidence in their defence.

9. Learned trial Court, upon conclusion of the trial, convicted and sentenced the appellants, as stated above, vide impugned judgment dated

18.11.2019. Hence, this criminal appeal, connected Murder Reference and as well as criminal revision.

10. We have heard learned counsel for the appellants, learned Deputy Prosecutor General appearing for the State assisted by learned counsels for the complainant and perused the record with their able assistance.

11. First of all, we would like to take up the case of appellant Masood Ahmad @ Bilal to whom admittedly neither any overt act nor any fire arm injury either to the deceased or injured was attributed and he was convicted and sentenced by the Trial Court for sharing 'common intention' with the principal accused. Ordinarily, every accused is individually responsible for a criminal act done by him. No one can be held responsible for an independent act or wrong committed by another. However, Section 34 PPC makes an exception to this principle, which for ease and ready reference is reproduced as under:-

> "**34. Acts done by several persons in furtherance of common intention.**—When a criminal act is done by several persons, in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone."

The main object for enactment of the aforesaid provision is to meet a case in which it is difficult to distinguish between act of each individual being members of a party who act in furtherance of common intention of all or to prove exactly what part was played by each of them. If A,B and C make a plan to kill D and in the execution of the crime, A buys a poison, B mixes it in food and C gives it to D, as a result of which D dies, it would be unjust to hold only C liable for murder. To deal with such cases, the above provision of vicarious liability was introduced. In case reported as "*SHOUKAT ALI Versus THE STATE*" **(PLD 2007 Supreme Court 93),** the Apex Court has observed that:-

> "Common intention' within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. It is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most case it has to be inferred from his act or conduct or other relevant circumstances of the case. Same or similar intention must not. be confused with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if over looked, will result in miscarriage of justice. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. Common intention does not mean similar intention of several persons. To constitute common intention, it is necessary that the intention of each one of them be known to the rest of them and shared by them. The common intention ought to be determined from such known facts and circumstances which existed before the commencement of the criminal act as the criminal act itself is committed in furtherance of that common intention.

It was further laid down in the said judgment that;

> Mahmood, J., in Dharma Rai's case said "this section was the subject of consideration impliedly in the case of Queen v. Gorachand Gopee. At p.456, Sir Barnes Peacock clearly laid down the rule of law that mere presence of persons at the scene of an offence is not, ipso facto, sufficient to render them liable to any rule such as S.34 enunciates, and that `the furtherance of common design' was an essential condition before such a rule applied to the case of an individual person. It was probably in consequence of this expression of view from such a high authority that the Legislature by S.1 of Act XXVII of 1870, repealed the original S.34; and in substituting another section therefore, inserted the important word is 'in furtherance of the common intention of all,' as representing the condition precedent to each of such persons being held liable for the crime in the same manner as if it were committed by him alone. This change in the law is very significant, and it indicates to my mind that the original section having been found to be somewhat imperfectly worded, these additional words were introduced to draw a clear distinction that unpremeditated acts done by a particular individual, and which go beyond the object and intention of the original offence, should not implicate persons who take no part in that particular act. We have the opinion of an American jurist on the point, whom Mr. Mayne, in his Commentary on the Penal Code, quotes (Biship, S.439) where that learned author, lying down the rule, goes on to say:-- `But if the wrong done was a fresh and independent wrong, springing wholly from the mind of the doer, the other is not criminal therein, merely because when it was done he was intending to be a partaker with the doer in a different wrong.' This seems to me to be the right interpretation of the words `in furtherance of the common intention of all, as they occur in S.34 of the Penal Code" (in re Thipperudrappa (Vol. 55 1954 Cr.LJ 481). "The Supreme Court has held that it is well-established that a common intention pre-supposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. All that is necessary is either' to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference or. the circumstances of the case. All that is necessary is either to have direct proof of prior concert, or proof of circumstances which necessarily lead to that inference or the incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypotheses." (Poandurang v. State of Hyderabad (1955 Cr.LJ 572)".

After survey of almost entire law qua the enactment of provisions of Section 34 PPC, the Apex Court lastly laid down following pre-requisites for attracting the provisions of aforesaid Section:-

> "(a) It must be proved that criminal act was done by various persons
>
> (b) The completion of criminal act must be in furtherance of common intention as they all intended to do so.
>
> (c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof.
>
> (d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.
>
> (e) The real and substantial distinction in between `common intention' and `similar intention' be kept in view."

12. On the touchstone of above, guiding principles, now we have to see whether the case of the appellant falls within the ambit of vicarious liability or not. In the crime report, (Ex.PF) the complainant did not utter even a

single word qua prior concert or pre-arranged plan to kill the deceased between the appellants. Even both the acclaimed eye-witnesses while appearing in the dock in the court room did not make even a slight indication that there was a plan or meeting of mind of both the appellants to commit the murder of deceased which was *sina qua non* for attracting the provisions of Section 34 PPC. Both the witnesses simply stated that at the time of crime, appellant while armed with fire arm was accompanying the principle accused. Mere presence of the appellant with the principal accused in the absence of any pre-arranged plan between them is not sufficient to hold him guilty of vicarious liability. In case **Mahbub Shah .V. Emperor (A.I.R. (32) 1945 Privy Council 118)**, Allah Dad and few others were trying to collect reeds from the bank of the Indus River. They were warned by Mahboob Shah against collecting reed from land belonging to him. Ignoring the warning the deceased collected reeds but was stopped by Qasim Shah, nephew of Mahboob Shah while he was placing them on the boat. Qasim Shah was hit by the victim by a bamboo pole. On hearing Qasim Shah's cries for help, Mahboob Shah and his son Wali Shah came while armed with their guns. Wali Shah fired at the victim who died instantly and Mahboob Shah fired another person causing him some injuries. This Court (Lahore High Court) sentenced Mahboob Shah with the murder of the victim under Section 302 Penal Code read with Section 34 but on appeal Privy Council set-aside the conviction of Mahboob Shah while observing that common intention required pre-arranged plan and it has to be proved that the criminal act was done in concert pursuant to the pre-arranged plan. Here the two accused might be having the same or similar intention but not the common intention and since the firing of Mahboob Shah did not kill anyone, he was not held liable for murder by application of Section 34. Here in the instant case, entire prosecution evidence is silent qua the relationship of the appellant with the principal accused. Neither the motive part of occurrence has any relevance with the appellant nor there is any iota of material from which it could be inferred that the appellant has any animosity with the complainant party. Learned Trial Court while holding the appellant guilty of vicarious liability has observed that "*Admittedly, Ihsan alias Malku accused was amputated with his one leg much before the instant occurrence. He was*

in absolute need of a companion to accompany him to court and back depart to his village. Allegedly the accused was taken by Masood accused on a motorcycle while approaching to crime venue. The alleged role played for Masood accused was found essential and contributory in execution of design of occurrence and the circumstances of his presence alongwith principle offender admittedly amputated with one leg itself establish the fact of his provided assistance and sharing of common intention. It is concluded that the accused was not merely present at crime scene on relevant time but he played pivotal role in instant occurrence." The above observations of the learned Trial Court are entirely based on surmises and conjectures. The prosecution has not placed on record any material from which it could be inferred that the principal accused without the help of someone else was unable to ride the motor-cycle. No doubt the leg of the principal accused was amputated but the complainant (PW-8) during cross-examination denied the suggestion that due to amputation of leg principal accused was unable to walk and work rather voluntarily stated that the principal accused get an artificial leg and was capable to deal in routine work. Moreso, in the crime report, it was the case of the prosecution that the accused persons came on the crime scene at Honda 125 without number but the motor-cycle which was shown to be recovered at the instance of the principal accused bears registration No.SGL-1426 Yamah 100 CC, as such assumption of the Trial Court that the appellant brought the principal accused on the crime scene at motor-cycle is not made out from the record. Even otherwise, if for the sake of arguments it is assumed that the principal accused was unable to do any routine work due to amputation of his leg and the appellant bring him back from the Court, even then in the absence of any evidence that intention of principal accused to kill the deceased was in the knowledge of the appellant, he cannot be held guilty of vicarious liability. In view of what has been discussed above, we are of the considered view that the prosecution has miserably failed to prove the charge against the appellant for sharing common intention with the principal accused, as such his conviction and sentence on that basis cannot be allowed to hold the field.

13. Now coming to the case of principal accused/appellant Ihsan @ Malkoo. Hasnat Ahmad, (PW-8)/complainant and Muhammad Khan, (PW-

9) /injured while appearing in the dock in the court room unanimously raised accusing fingers towards him for causing two fire shots at the right thigh and right knee joint of deceased Zafar Iqbal and one at the upper part of right leg of injured (PW-9), while they were on their way to home after attending court proceedings. In the course of cross-examination, both the witnesses of ocular account remained firm and consistent on all material aspects of the incident qua the date, time, place, mode and manner of the occurrence, name of the appellant, weapon of offence, role played by him for committing murder of the deceased and causing injuries to the injured witness and the defence could not extract any favourable material from their mouths.

Learned defence counsel laid much emphasis that the complainant was neither witness in the criminal case, which was fixed on the fateful day nor he sustained even a scratch on his body and as such his presence at the venue of occurrence was highly doubtful. We are not in agreement with the submission of learned defence counsel. During evidence, it came on surface that the complainant was also accused in a motive case of occurrence. No doubt the case, which was fixed on the fateful day was not the motive case but another case got lodged by the deceased against the appellant, however, keeping in view the previous criminal litigation, it is not unusual in our society for a person to accompany his brother in the court proceedings as a matter of pre-caution. Even otherwise, on this point the defence has questioned the complainant at a considerable length but he remained firm and consistent and even gave minute details of the incident in a quite natural manner, which established his presence at the venue of occurrence at the relevant time without any doubt.

14. Muhammad Khan (PW-9), sustained injuries during the occurrence, as such his presence at the venue of occurrence at the relevant time cannot be questioned, however, learned defence counsel raised the objection that the statement of said witness U/S 161 Cr.P.C. was not recorded, therefore, his testimony before the Court cannot be made basis to sustain conviction and sentence of the appellant. We are unable to agree with the submission of the learned counsel as a proper procedure for recording of prosecution evidence, after framing of charge has been laid down in Section 265-F of Cr.P.C. Nowhere in the said section a prohibition has been contained that the Court

is bound only to record the testimony of a person, whose statement U/S 161 Cr.P.C. was recorded by the police. Sub-Section (2) of said section reads as under:-

> "(2) The Court shall ascertain from the public prosecutor or, as the case may be, from the complainant, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon such persons to give evidence before it."

Here in the instant case, said witness sustained injury during the occurrence and even his name was reflecting in the calendar of witnesses. The Medical Officer (PW-3), who conducted his medico legal examination ruled out any possibility of fabrication qua the injury sustained by him, therefore, none else is more aware of the facts than the said witness and his testimony cannot be excluded merely for the reasons that the Investigating Officer due to negligence or with malafide intention did not record his statement U/S 161 Cr.P.C. Reliance is places on case reported as "*Sajid Mehmood ..Vs.. The State" (2022 SCMR 1882)*, wherein it has been laid down as under:-

> " The very purpose of Section 265-F is to ensure the concept of a fair trial and to achieve this purpose equal opportunity has been given to both the accused and the prosecution for summoning the evidence. There is nowhere mentioned in this Section that only those witnesses could be examined whose statements under section 161, Cr.P.C. have been recorded. Under this provision of law i.e. section 265-F the Trial Court is not bound to record the statements of only those witnesses who have been listed in the calendar of witnesses. On the other hand, section 540, Cr.P.C. empowers the Trial Court to summon a material witness even if his name did not appear in the column of witnesses provided his evidence is deemed essential for the just and proper decision of the case. In the present case, although the statement of Zameer Hussain (PW-11) under section 161, Cr.P.C. could not be recorded by the Police yet the fact remains that he was named as an eye-witness in the very FIR and was fully acquainted with the facts and the circumstances of the case."

15. Though both the witnesses of ocular account were closely related to the deceased inasmuch as the real brothers of deceased yet their testimony cannot be discarded merely on this score by treating them interested witnesses. One of the witnesses sustained injury during the occurrence and as has been discussed supra the complainant has also established that he was accompanying the deceased at the relevant time, as such they were quite natural witnesses, who can conveniently describe the incident in the manner as it happened as compared to any other independent witness. There was no earthly reason for the eye witnesses to falsely implicate the appellant in substitution of the real culprit. Even otherwise, substitution of the real

culprit with an innocent one, in particular, where the eye-witnesses have lost their close kith and kin, is a rare phenomenon. It is well established principle in criminal administration of justice that mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence, if the same was otherwise found confidence inspiring and trustworthy. Reliance is placed on case reported as "*Ghulam Murtaza Versus. The State*" **(2021 SCMR 149).**

16. Next objection of the defence was that one of the witnesses namely Azhar Hayat mentioned in the crime report was given up by the prosecution, so the inference could be drawn that he was not ready to support the prosecution version. This submission is repelled. It is well settled by now that the prosecution is not bound to produce all the witnesses. If the appellant was sure that this witness was not ready to support the prosecution witnesses, he had ample opportunity rather at liberty to examine him in his defence or even submit application before the trial Court to summon him as Court Witness but merely on that basis other overwhelming and confidence inspiring prosecution evidence cannot be discarded. Reliance is placed on case reported as "*Saeed Akhtar and others ..Vs.. The State*" **(2000 SCMR 383)**.

17. Dr. Muhammad Sohail (PW-7) held autopsy on the dead body of deceased Zafar Iqbal on 14.02.2018 and observed three injuries on lower part of right thigh, front right knee joint with inverted margins and multiple firearm wound of exit, seven in number on inner side of right knee joint, lower part of right thigh, upper part of right left, underlying bone was fractured with averted margins. According to his opinion injury No.1 & 2 damaged major blood vessels leading of hemorrhagic shock, cardiopulmonary arrest and death. Probable duration between injuries and death was 25-30 minutes, whereas between death and post mortem examination, it was about four hours.

The locale, number and nature of injuries, kind of weapon used for causing these injuries and the duration between injuries and death as well as death and post mortem examination, was exactly in consonance with the ocular account and as such, the medical evidence lends full support to the ocular version furnished by the prosecution.

The above said Medical Officer also examined injured Muhammad Khan and observed one fire arm grazed wound 2.5 x 1 cm on inner, upper part of right leg skin deep, which was also in consonance with the ocular account of the injured. The Medical Officer has ruled out the possibility of fabrication of said injury and the defence also did not make any effort to get constitute a District Standing Medical Board for re-examination of the injured, in the absence whereof, we are unanimous in holding that the medical evidence finds full support for the prosecution story.

18. Motive as set-out by the prosecution was that earlier the appellant sustained fire arm injury due to which his leg was amputated and the FIR of the said incident was lodged against the complainant, deceased Zafar Iqbal and his brother in law namely Mazhar Hayat. Amputation of the leg of the appellant at the hands of the complainant party was not denied rather admitted by the appellant. During evidence, it came on surface that the deceased and the complainant have been acquitted in the said case, which added fuel to the fire. Moreso, the deceased also got lodged an FIR No.139/14 dated 15.04.2024, in respect of offence U/S 382 & 435 PPC, P.S. Jhal Chakian, District Sargodha against the appellant and injured Muhammad Khan (PW-9) was the eye-witness of the said occurrence, which was fixed on the fateful day, therefore, there can be no other reason for the appellant to take the life of deceased. No doubt previous enmity, being motive, is always considered as a double edged weapon but from the evidence available on record it has been established that it was the sole reason of this unfortunate incident. With this backdrop, we are persuaded to hold that the prosecution has successfully proved motive part of the occurrence.

19. During investigation, appellant led the police party to the recovery of 12-bore repeater (P-2), which was sent to the office of Punjab Forensic Agency, Lahore for comparison with the crime empties secured from the spot and the report of said office (Ex.PAA) has been received with negative result rendering the recovery of weapon of offence from the appellant inconsequential.

20. From this discussion, we have entertained no manner of doubt in our mind that the prosecution has been able to prove the charge of homicidal

death of the deceased at the hands of the appellant Muhammad Ihsan @ Malkoo through cogent, reliable and confidence inspiring evidence. The appellant was named in the crime report with the specific role of causing two successive fire arm injuries to the deceased resulting into his death. Both the witnesses of ocular account furnished plausible explanation of their presence at the place of occurrence at the relevant time. The ocular account is firm and consistent inter-se supported with the medical evidence. This overwhelming evidence constrained us to concur with the conclusion arrived at by the trial Court qua the conviction of the appellant under Section 302(b) PPC.

21. Now coming to the quantum of sentence. It is well settled by now that question of quantum of sentence, requires utmost caution and thoughtfulness on the part of the Court. In this regard, reliance is placed on case reported as **Mir Muhammad alias Miro ..Vs.. The State (2009 SCMR 1188)** wherein it has been laid as under:-

> "It will not be out of place to emphasize that in criminal cases, the question of quantum of sentence requires utmost care and caution on the part of the Courts, as such decisions restrict the life and liberties of the people. Indeed the accused persons are also entitled to extenuating benefit of doubt to the extent of quantum of sentence."

Here in the instant case, we have taken note of some mitigating factors. *Firstly*, recovery of weapon of offence from the appellant remained inconsequential. *Secondly*, co-accused Masood Ahmad @ Bilal has been acquitted of the charge. It is well settled that no special circumstance is required to consider mitigation for converting the sentence of death into imprisonment for life rather an iota of single instance is sufficient to justify lesser sentence. Reliance is placed on case reported as "**Dilawar Hussain ..Vs.. The State (2013 SCMR 1582)**" wherein it has been laid down as under:-

> "It has neither been mandate of law nor the dictates of this Court as to what quantum of mitigation is required for awarding imprisonment for life rather even an iota towards the mitigation is sufficient to justify the lesser sentence."

It is also settled principle of law that when a case qualifies the awarding of both sentences of imprisonment for life and that of the death, the proper course for the Courts, as a matter of caution, is to give preference to the lesser sentence. Reference may be made to case titled "GHULAM MOHY-

UD-DIN alias HAJI BABU and others versus The STATE" **(2014 SCMR 1034)** wherein it has been observed at page 1044 as:-

> "In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life imprisonment instead of death sentence."

22. In view of what has been discussed above, the appeal in hand is **partially allowed**, the conviction and sentence of appellant Masood Ahmad @ Bilal are hereby set-aside and he is acquitted of the charge by extending him the benefit of doubt. He is on bail, his bail bonds as well as surety stands discharged from the liability. However, appeal to the extent of appellant Muhammad Ihsan @ Malkoo stands ***dismissed*** by maintaining his conviction in offence under Section 302(b) PPC, however his sentence of capital punishment is converted into one of *imprisonment for life.* The amount of compensation and sentence in lieu thereof and his conviction U/S 337-F(i) PPC shall remain intact. The appellant is given benefit of Section 382-B Cr.P.C.

23. **Murder Reference No.361 of 2019** is answered in the **NEGATIVE** and the Death Sentence awarded to appellant Muhammad Ihsan @ Malkoo is **not confirmed**.

Crl.Revision No.2212-20

24. For the reasons enumerated above, since respondent No.2 has been acquitted of the charge, therefore, instant petition seeking enhancement of his sentence has lost its relevance and stands **dismissed** accordingly.

(Tariq Saleem Sheikh)
Judge

(Asjad Javaid Ghural)
Judge

Approved for Reporting

JUDGE **JUDGE**

*Azam**