

Judgment Sheet

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Criminal Appeal No.29270/2019

Abid Ali and another **vs** **The State and another**

Criminal Appeal No.39423/2019

Muhammad Nazir **vs** **The State and others**

Criminal Revision No.39425/2019

Muhammad Nazir **vs** **The State and 2-others**

Murder Reference No.157/2019

The State **vs** **Abid Ali**

J U D G M E N T

Date of hearing:	<u>12.12.2023.</u>
Appellants by:	Rai Bashir Ahmad, Advocate along with Ch. Imtiaz Gujjar, Advocate for the appellants in Crl. Appeal No.29270/2019 and with Muhammad Asif (appellant, present in person after serving his entire sentence).
State by:	Mr. Munir Ahmad Sial, Additional Prosecutor General.
Complainant by:	Mr. Muhammad Farhan Saeed, Advocate for Muhammad Nazir (complainant in Crl. Appeal No.29270/2019, appellant in Crl. Appeal No.39423/2019 and petitioner in Crl. Revision No.39425/2019).

FAROOQ HAIDER, J.:- This single judgment will dispose of **Crl. Appeal No.29270/2019** filed by Abid Ali and Muhammad Asif (appellants) against their “convictions & sentences”, **Crl. Appeal No.39423/2019** filed by Muhammad Nazir (complainant) against order of acquittal of respondents No.2 to 15, **Criminal Revision No.39425/2019** filed by Muhammad Nazir (complainant) for enhancement of sentences of Abid Ali, Muhammad Asif as well as compensation amount and **Murder Reference No.157/2019** sent by trial court, as all the matters have arisen out of one and the same judgment dated: 08.05.2019 passed by learned Addl. Sessions Judge, Mandi Bahauddin/trial court.

2. Abid Ali and Muhammad Asif (appellants) along with their co-accused persons namely Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shamas alias Shamsher, Ansar Iqbal, Tasawar Iqbal, Khizar Hayat, Muhammad Mansha, Muhammad Akram, Amjad Iqbal, Ehtisham ul Haq, Mukhtar Ahmad,

Muhammad Aslam and Muhammad Ashraf were tried in case arising out of F.I.R. No.285/2014 dated: 08.10.2014 registered under Sections: 302, 324, 148, 149 PPC {subsequently offence under Section: 337-F(iii) PPC was also added during investigation of the case) at Police Station: Miana Gondal, District: Mandi Bahauddin and the trial court *vide* impugned judgment dated: 08.05.2019 while acquitting aforementioned co-accused persons namely Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shamas *alias* Shamsher, Ansar Iqbal, Tasawar Iqbal, Khizar Hayat, Muhammad Mansha, Muhammad Akram, Amjad Iqbal, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Aslam and Muhammad Ashraf of all charges, has convicted and sentenced the appellants as under: -

ABID ALI

<u>Conviction</u>	<u>Sentence</u>
<u>Under Section:</u> 302 (b) PPC	<i>“Death”</i> as <i>Taz’ir</i> for committing Qatl-i-Amd of Muhammad Nawaz (deceased) with payment of compensation of Rs.2,00,000/- under Section: 544-A Cr.P.C. to the legal heirs of the deceased and in default of payment of compensation amount to further undergo simple imprisonment for six months.

MUHAMMAD ASIF

	<u>Convictions</u>	<u>Sentences</u>
1	<u>Under Section:</u> 324 PPC	<u>Under Section: 324 PPC</u> to “ Five years’ Rigorous Imprisonment ” along with fine of Rs.25000/- and in default thereof to further undergo Simple Imprisonment for two months.
2	<u>Under Section:</u> 337-F(iii) PPC	<u>Under Section: 337-F(iii) PPC</u> to “ Three years’ Rigorous Imprisonment ” as <i>Taz’ir</i> alongwith payment of Rs.25000/- as <i>Daman</i> payable to Ziafat Usman (injured) and in default thereof to remain in jail. Both the sentences were ordered to run concurrently and benefit of Section: 382-B Cr.P.C. was also extended to him.

3. Brief facts, as per statement (فرد بیان/Ex.PU) got recorded by Muhammad Nazir (complainant/PW-16) before Azhar Iqbal S.I. (PW-20) on 08.10.2014 at 02:00 p.m., are that his residential *Dera* is situated at a distance of 3-kilometer towards south side from village *Miana Gondal* whereas his agricultural lands are towards south-west side at a distance of 2-kilometer from residential *Dera*; on 08.10.2014 at about 12:00 (noon), complainant along with Muhammad Nawaz (his brother), Ziafat Usman (his

son), Ghulam Hussain and Muhammad Yaar were coming back after looking their lands and when reached near canal outlet (*Mohga Nehri Nala*) a bit ahead from *Chah Gulab* (چھا گلاب سے ٹھوڑا آگے نہ موجہ نہری نالہ پنجھ) (اپنی اپنی زمین کی دلچسپی کے بعد واپس آ رہے تھے کہ جب چاہ گلاب سے ٹھوڑا آگے نہ موجہ نہری نالہ پنجھ)، accused persons namely Abid armed with kalashnikov, Sajid armed with .303 bore, Muhammad Asif armed with .44 bore, Amjad, Ehtisham, Umair, Muhammad Ashraf, Khizar Hayat, Shamshair, Azhar, Mukhtar, Muhammad Aslam, Muhammad Akram, Ameer armed with firearms along with four unknown armed with firearms, who were already ambushed on both sides of canal outlet, after seeing them and while raising lalkara started straight firing in order to commit their murder; Abid fired shot from kalashnikov which hit Muhammad Nawaz (brother of complainant) at back side of right buttock in result whereof, he fell down after becoming injured; they also lay down on the ground; in the meantime, Muhammad Asif fired shot with rifle .44 bore which hit at Ziafat Usman (son of the complainant) at his right foot; all accused persons also made firing with their respective weapons; since they were laying on the ground therefore, luckily they remained safe; after hearing report of firing, people from nearby *Dera* made aerial firing; accused persons after leaving them fled away from the spot; occurrence was witnessed by the complainant and his companions.

Motive behind the occurrence as per aforementioned statement (فرد بیان/Ex.PU) was enmity regarding previous murder and litigation between complainant and Abid Hussain, etc.; accused party had been putting pressure for compromise and on refusal, accused persons after consultation with each other and with the intention to kill, made straight firing and caused injuries to Muhammad Nawaz (brother of complainant) and Ziafat Usman (son of the complainant), who were taken to R.H.C. Miana Gondal, where Muhammad Nawaz succumbed to the injuries.

In the light of aforementioned statement (فرد بیان/Ex.PU), F.I.R. (Ex.PL) was chalked out by Muhammad Inayat ASI/DO (PW-8). However, complainant/PW-16 subsequently got recorded supplementary statement for nominating Tasawar Iqbal, Ansar Iqbal and Muhammad Mansha in the case.

During investigation, accused persons namely Muhammad Aslam, Muhammad Ashraf, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Akram and Amjad Iqbal were found not involved in the occurrence, however, after completion of investigation, challan report under Section: 173 Cr.P.C. was submitted in the Court by placing names of aforementioned accused persons in

Column No.2 whereas names of other accused persons including present appellants in Column No.3 of the same; they all were summoned and formally charge sheeted but they pleaded not guilty and claimed trial, whereas Ameer s/o Ghulam Hussain (one of the accused nominated in aforementioned F.I.R./Ex.PL) was declared as “proclaimed offender” as he was not traceable; thereafter, prosecution evidence was summoned; after recording of prosecution evidence, accused persons were examined under Section: 342 Cr.P.C. but they refuted the allegations levelled against them; they neither opted to appear as their own witnesses under Section: 340(2) Cr.P.C. nor produced any evidence in their defence.

Trial Court after conclusion of trial while acquitting co-accused persons namely Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shamas *alias* Shamsher, Ansar Iqbal, Tasawar Iqbal, Khizar Hayat, Muhammad Mansha, Muhammad Akram, Amjad Iqbal, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Aslam and Muhammad Ashraf, has convicted and sentenced the appellants as mentioned above through the impugned judgment dated: 08.05.2019.

4. Learned counsel for the appellants has submitted that eyewitnesses are chance witnesses, recovery of the weapons is inconsequential, ocular account is not truthful and even not corroborated by any independent evidence; convictions recorded and sentences awarded to the appellants through impugned judgment are against the ‘law and facts’ of the case. Learned counsel for the appellants finally prayed for acquittal of the appellants.

5. Learned Additional Prosecutor General has supported the impugned judgment to the extent of convictions recorded and sentences awarded to Abid Ali and Muhammad Asif (appellants). Learned counsel for the complainant has supported impugned judgment to the extent of convictions recorded against aforementioned appellants however has prayed for enhancement of their sentences as well as compensation while supporting aforementioned Criminal Revision No.39425/2019 and also prayed for dismissal of the appeal filed by the convicts. Learned counsel for the complainant in support of Crl. Appeal No.39423/2019 against order of acquittal of Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shamas *alias* Shamsher, Ansar Iqbal, Tasawar Iqbal, Khizar Hayat, Muhammad Mansha, Muhammad Akram, Amjad Iqbal, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Aslam and Muhammad Ashraf, has submitted that said order of acquittal is against the law and facts; result of

misreading and non-reading of evidence; prosecution has proved its case against them too, up to hilt and they may also be convicted and sentenced.

6. Arguments heard. Record perused.

7. It has been noticed that as per case of prosecution, occurrence took place on 08.10.2014 at 12:00 p.m. (noon) within the area of Union Council: Miana Gondal; after receipt of firearm injuries by Muhammad Nawaz (brother of complainant) and Ziafat Usman (son of complainant/PW-17), they were shifted to R.H.C. Miana Gondal, however, Muhammad Nawaz succumbed to the injuries there whereas Ziafat Usman (injured/PW-17) was medically examined by Dr. Muhammad Ilyas, SMO (PW-4); Muhammad Nazir (complainant/PW-16) got recorded his statement (فرد بیان/Ex.PU) for registration of case to Azhar Iqbal S.I./Investigating Officer (PW-20) in R.H.C. Miana Gondal on 08.10.2014 at 02:00 p.m., which was sent to police station and in the light of the same, First Information Report (F.I.R./Ex.PL) was recorded on 08.10.2014 at 02:20 p.m. by Muhammad Inayat A.S.I./D.O. (PW-8) whereas autopsy over dead body of Muhammad Nawaz (deceased) was conducted at 11:00 p.m. on 08.10.2014 by Dr. Saqib Ali (PW-13). It is natural phenomenon that generally efforts are made on priority basis for firstly shifting the injured persons to the hospital in order to save their lives and then to report the matter to the police; hence, in the peculiar facts and circumstances mentioned above, attempt of the complainant to firstly save the lives of his brother and son while taking them to R.H.C. Miana Gondal, is quite understandable and not contrary to the natural behavior. So, case has been got registered without unnecessary/unexplained delay and in the peculiar facts and circumstances mentioned above, postmortem examination also cannot be termed as conducted with unexplained delay; in this regard, guidance has been sought from the case of "**MASKEEN ULLAH and another versus The STATE and another**" (2023 S C M R 1568).

Ocular account produced by prosecution comprises of statements of Muhammad Nazir (complainant/PW-16), Ziafat Usman (injured/PW-17) and Muhammad Yar (PW-18). Though said witnesses were not residents of the place of occurrence yet it has been mentioned in statement (فرد بیان/Ex.PU) as well as in the F.I.R. (Ex.PL) that residential Dera of the complainant/PW-16 is situated at a distance of about 3-kilometers towards south from village Miana Gondal whereas his agricultural land is towards south-west at a distance of about 2-kilometers from residential Dera; on 08.10.2014 at about 12:00 p.m. (noon), complainant (PW-16) along with Muhammad Nawaz (brother of complainant/

now deceased of the case), Ziafat Usman (son of the complainant/injured in the occurrence/PW-17), Ghulam Hussain (given-up PW) and Muhammad Yar (PW-18) were coming back after looking their lands and when reached near canal outlet (*Mohga Nehri Nala*) a bit ahead from *Chah Gulab* (اپنی اپنی زمین کی دیکھ بھال کے بعد واپس آ رہے تھے کے جب چاہ گلاب سے ٹھوڑا آگے نزد مورگ نہری نالہ پہنچا), this occurrence took place. It goes without saying that it is routine of villagers that they usually go to their lands for looking after their crops etc. in the morning time and come back at about noon time; so, complainant and cited eyewitnesses have explained acceptable and valid reason regarding their presence at the relevant “time and place” of occurrence, which was quite natural and appeals to common prudent man; furthermore, Ziafat Usman (PW-17) is the eyewitness who received firearm injury on his body during the occurrence and being injured witness his presence at the “time & place of occurrence” cannot be doubted/questioned. In view of above, though they were chance witnesses yet their testimony cannot be doubted/thrown away merely for the reason that they were having no residence over there at the place of occurrence rather same can be safely relied; in this regard, guidance has been sought from the cases of “**ZAHID IQBAL versus The STATE**” (2017 SCMR 1543), “**AHSAN SHAHZAD and another versus The STATE and others**” (2019 SCMR 1165) and “**AMANULLAH versus The STATE and another**” (2023 SCMR 527).

It goes without saying that in this case, occurrence took place on 08.10.2014 and statements of witnesses of ocular account i.e. Muhammad Nazir (complainant/PW-16), Ziafat Usman (injured witness/PW-17) and Muhammad Yar (PW-18) were recorded in the year 2019. Minor inconsistencies and discrepancies do appear in the statements of witnesses with the passage of time; however, such inconsistencies/discrepancies cannot dislodge the case of prosecution; in this regard, cases of “**SAJID MEHMOOD versus The STATE**” (2022 S C M R 1882) and “**MUHAMMAD BASHIR and another versus The STATE and others**” (2023 S C M R 190) can be safely referred. It is relevant to mention here that Muhammad Nazir (complainant/PW-16) is brother of Muhammad Nawaz (deceased) and father of Ziafat Usman (injured) whereas said Ziafat Usman (PW-17) was himself injured of the case and Muhammad Yar (PW-18) was nephew of the complainant; as per case of the prosecution, role of causing **fatal firearm injury** to Muhammad Nawaz (deceased) has been ascribed to Abid Ali (appellant) whereas role of causing firearm injury at right foot of Ziafat Usman (injured witness) has been attributed to Muhammad Asif (appellant) and any valid/plausible reason to

make false deposition by the complainant/PW-16 and aforementioned eyewitness against both the appellants could not be brought/established on the record; furthermore, this is broad daylight occurrence, admittedly, previous criminal litigation existed between the parties, both the appellants were already known to the complainant and eyewitnesses including injured PW, hence, there was no question of misidentification of the accused persons/appellants; even there is no reason that why Muhammad Nazir (complainant/PW-16), Ziafat Usman (injured/PW-17) and Muhammad Yar (PW-18) will make substitution of the accused persons, who have committed murder of their close relative i.e. Muhammad Nawaz and caused firearm injury to Ziafat Usman; in such circumstances, substitution of the real culprits is rare phenomenon; in this regard, case of "**IRSHAD AHMAD and others versus THE STATE and others**" (**PLD 1996 Supreme Court 138**) can be advantageously referred, relevant portion from page No.143 of the same is as under:-

"Undoubtedly, the substitution is a phenomenon of rare occurrence, because even the interested witnesses would not normally allow the real murderers of their relation to escape by involving innocent persons."

Guidance on the subject has also been sought from the cases of "**MUHAMMAD AKHTAR versus THE STATE**" (**2007 SCMR 876**), "**SHERAZ KHAN versus THE STAE**" (**2010 SCMR 1772**) and "**NASIR AHMED versus The STATE**" (**2023 S C M R 478**).

After going through the statements of complainant (PW-16), Ziafat Usman (injured/PW-17) and Muhammad Yar (PW-18), it has been observed by us that they deposed required detail of occurrence in straightforward, clear, unambiguous and unequivocal manner; they were subjected to searching cross-examination but neither anything favourable to present appellants nor adverse to the prosecution could come on the record; furthermore credibility of their testimony could not be minimized/impeached; even otherwise, presence of Ziafat Usman (injured witness/PW-17) who was having stamp of receiving firearm injury on his body at the "time and place" of occurrence, is beyond doubt and his testimony carries more evidentiary value; in this regard, guidance has been sought from cases of "**ALLAH DAD and others versus MUHAMMAD NAWAZ and others**" (**2001 SCMR 1111**), "**MUHAMMAD SADIQ versus THE STATE**" (**2003 SCMR 736**) and "**AQIL versus The STATE**" (**2023 SCMR 831**). Therefore, ocular account produced by the prosecution is confidence inspiring, truthful and reliable.

As per ocular version, Abid Ali (appellant) caused firearm injury at backside of right buttock of Muhammad Nawaz (deceased of the case); Dr. Saqib Ali (PW-13) conducted postmortem examination over dead body of the deceased of the case and relevant portion of his statement before the Court is reproduced as under: -

Description of Injuries.

1. A fire-arm lacerated wound of size 01 x 01cm with inverted margins going deep on right buttock.
 2. Contused selling[sic] of size 04 x 04cm at just below the umbilicus.
- Injuries No.1 & 2 are communicating to each other.

Dissection of injuries No.1 & 2.

Cause damage to bladder, small intestines (jejunum), which caused massive inside bleedings.”

So, the firearm injuries caused by Abid Ali (appellant) damaged the bladder and small intestines (jejunum), which caused massive inside bleedings; therefore, said ocular version has been confirmed by medical evidence.

Furthermore, as per case of prosecution, Muhammad Asif (appellant) caused firearm injury at right foot of Ziafat Usman (injured/PW-17); Dr. Muhammad Ilyas (PW-4) conducted medical examination of said injured on 08.10.2014 at 02:00 p.m. and found firearm injury on the body of said injured and declared the same as “*Jurrah Ghayr Jaifah Mutlahimah*” attracting offence under Section: 337-F(iii) PPC; in this regard, relevant portion of his statement is mentioned below: -

Injuries.

1 x 1 cm entry and exit wound lacerated in nature. No blackening and burning was seeing around, fresh little more clotted blood around. Located below right lateral malleolus, X-Ray was advised and injury was kept under observation. No other injury seen/stated on any part of the body.

Nature of injuries.

Injury No.1 was kept under observation.

Probable duration of injury was within five hours.

There was no possibility of fabrication in this injured. Kind of weapon was fire arm.

On 22-10-2014, I.O of the instant case submitted application before me for declaration of injury No.1. Vide X-Ray No.13 dated 16.10.2014, no bony injury was seen. No foreign body was seen. However, injury No.1 was declared as “*Jurrah Ghayr Jaifah Mutlamiah*”.

(emphasis added)

so, medical evidence comprising of Medicolegal Examination Certificate (Ex.PC) of Ziafat Usman (injured/PW-17) and statement of Dr. Muhammad Ilyas (PW-4), has also supported afore-mentioned ocular version.

Now coming to the motive of the occurrence, prosecution produced copy of First Information Report as Ex.PAT (copy whereof is available at Page

No.396 of the paper book) and perusal of the same reveals that Muhammad Nawaz (now deceased of the case) was first informant/complainant in the same, it was recorded on 30.12.2011 under Sections: 324, 148, etc. PPC at Police Station: Miana Gondal, District: Mandi Bahauddin against Abid Ali (now one of the appellants) and others; furthermore, motive has even not been denied rather admitted by the defence; in this regard, relevant portion of statement of Muhammad Yar (PW-18) is hereby reproduced: -

“It is correct that both parties are worst enemy of each other”.

Therefore, case of the prosecution against both these appellants is also corroborated by the motive.

It is further noteworthy that Abid Ali (appellant) became fugitive from law after the occurrence, his non-bailable warrants of arrest (Ex.PF) and proclamation (Ex.PH) were also issued; he was declared as “proclaimed offender” and after remaining absconder for a considerable period of more than two years and seven months, he was ultimately arrested in this case on 27.05.2017 but could not offer any valid/acceptable reason to explain the same; so, his unexplained and considerable abscondance also provides corroboration to the ocular account against him; in this regard, case of “**NASIR AHMED versus The STATE**” (2023 SCMR 478) can be safely referred: relevant portion of the same is reproduced below: -

“Admittedly, the petitioner remained absconder for a period of about six months and the same is also a corroboratory piece of evidence against him.”

In this regard, case of “**MASKEEN ULLAH and another versus The STATE and another**” (*mentioned supra*) can also be advantageously referred and relevant portion of the same is mentioned as under: -

“This willful and unexplained abscondence fully corroborates the ocular account as he did not give any plausible explanation of such long abscondence.”

As far as acquittal of co-accused persons namely Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shamas *alias* Shamsher, Ansar Iqbal, Tasawar Iqbal, Khizar Hayat, Muhammad Mansha, Muhammad Akram, Amjad Iqbal, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Aslam and Muhammad Ashraf is concerned, suffice it to say that as per own case of the prosecution, only generalized role of ineffective firing was alleged against all of them and any overt act was not attributed to them and more so, during investigation of the case, out of aforementioned accused persons, Muhammad Aslam, Muhammad Ashraf, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Akram and Amjad Iqbal were found not involved in the occurrence and even no weapon was

recovered from them; in this regard, case of “**SAFDAR MEHMOOD and others versus TANVIR HUSSAIN and others**” (2019 SCMR 1978) can be safely referred and relevant portion from the same is reproduced: -

“For whatever its evidentiary value, the investigating agency had declared the appellant innocent.”

Furthermore, Tasawar Iqbal, Ansar Iqbal and Muhammad Mansha were not nominated in the First Information Report (F.I.R./Ex.PL) rather they were subsequently introduced in the case through supplementary statement of the complainant/PW-16. Though firearm weapons were recovered from Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shams *alias* Shamsher, Khizar Hayat, Tasawar Iqbal, Ansar Iqbal and Muhammad Mansha yet empties/cartridge cases secured from the place of occurrence were found as not having been fired from the weapons statedly recovered from them as per report of Punjab Forensic Science Agency, Lahore (available at Page No.134-136 of the paper book), so said recovery was inconsequential. While taking into consideration aforementioned reasons in totality, they have been acquitted for safe administrative of justice by the trial court, however, said acquittal cannot have any adverse effect on the case of prosecution against present appellants; in this regard, case of “**SHAHEEN IJAZ alias BABU versus The STATE**” (2021 SCMR 500) can be advantageously referred and relevant portion of the same is hereby reproduced below: -

“nomination of co-accused with inconsequential roles notwithstanding, their presence at the scene followed by acquittal, seemingly out of abundant caution, does not tremor prosecution’s mainstay qua the role assigned to the petitioner.”

A rifle .44 bore was recovered from Muhammad Asif (appellant) but as pre report of Punjab Forensic Science Agency, Lahore dated: 10.06.2016 (copy whereof is available at Page No.134-136 of the paper book), empties secured from the place of occurrence have not been found as having been fired from said weapon; therefore, said recovery is of no avail however it cannot have any adverse effect on the case of prosecution.

Now coming to the defence version. Abid Ali and Muhammad Asif (appellants) during recording of their statements under Section: 342 Cr.P.C. in reply to Question No.9 “*Why this case has been made against you and why the witnesses of the prosecution have deposed against you?*”, stated as under: -

“The story of prosecution is false, fabricated one. I have been falsely implicated in false story and complainant party tried their best to throw a wider net to falsely implicate my whole family. No independent person

supported the prosecution version, so much so independent person negated the prosecution version. In fact the deceased has lost his life in an unseen occurrence at some unknown place when he was all alone. The injury on the person of Ziafat is concocted, self suffered and the result of connivance with doctor. Furthermore, FIR was registered with pre-meditation pre- consultation after an unexplained delay. Post mortem was also conducted after delay. I am innocent.”

Said version of the appellants is a bald assertion as they neither themselves appeared under Section: 340 (2) Cr.P.C. in support of their aforementioned version as well as to disprove the allegation levelled against them nor produced any other witness including any other resident of the vicinity in this regard. Even otherwise, there version could not find favour from the available record. Therefore, aforementioned version has neither been proved nor caused any dent in the case of prosecution and same is even otherwise of no avail to the defence.

When Court has kept prosecution version in juxtaposition with defence version, then it has been observed by us that defence version stands nowhere, however, version of prosecution has been found as straightforward, truthful and reliable.

In view of what has been discussed above, prosecution has proved its case against Abid Ali and Muhammad Asif (appellants) upto hilt, beyond any shadow of doubt; therefore, they have been rightly convicted as mentioned above; resultantly, aforementioned convictions recorded against both aforementioned appellants are upheld and maintained.

8. As far as question regarding quantum of sentence awarded to Abid Ali (appellant) is concerned, it has been noticed that though kalashnikov (P-16) along with five cartridges (P-17/1-5) was recovered on the pointing out of the appellant, same was received in Punjab Forensic Science Agency, Lahore on 08.06.2017 yet any report regarding comparison of the same with the empties/cartridge cases secured from the place of occurrence has not been produced by the prosecution rather as per report of Punjab Forensic Science Agency, Lahore dated: 06.07.2017 (copy whereof is available at Page No.132 of the paper book), said kalashnikov was found to be in mechanical operating condition with safety features functioning properly; in this regard, relevant portion of said report is hereby scanned below: -

Description of Evidence Submitted

Parcel-12 was submitted by Akhtar Hussain (SI) along with the request of DPO Mandi Bahauddin for Functionality Testing.

Parcel # Description

Parcel-12	<u>Received in PFSA 2017-69849-FTM 11990 on 08.06.2017</u> One sealed cloth bag containing one 7.62x39mm rifle (Item R3, said to be K.Kove) with magazine, having number RK 1133, marked as 69849-11990/17 along with its item number, duly signed. And five 7.62x39mm live rounds. (said to be recovered from accused Abid Ali s/o M. Akram)
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Conclusion:

- The item R3 rifle was examined and found to be in mechanical operating condition with safety features functioning properly.

Examination Method: Physical Examination & Test Firing

Disposition of Evidence:

The case property/ evidence may be received by the responsible official of your office on submitting authorization letter/docket within 15 days after the receipt of this report. Ammunition components should be maintained for possible future examinations.

Note: The results in this report relate only to the item(s) tested.

This report is to be read with the previously issued report related to this case having serial numbers 0000228343, 0000228344 & 0000228345 dated 10.06.2016. The cartridge cases of the case have already been collected by Shoakat Ali (T/ASI) on 06.10.2016 from Punjab Forensic Science Agency. Please resubmit cartridge cases if the comparison report is required.

Perusal of aforementioned report reveals that cartridge cases of the case had already been collected by Shoukat Ali T/ASI on 06.10.2016 from Punjab Forensic Science Agency, Lahore and it was asked by said agency for re-submission of said cartridge cases if comparison report is required with the rifle recovered from Abid Ali (appellant) but nothing is available on the record to show that investigating agency again submitted said empties/cartridge cases for comparison with said rifle; therefore, when there was nothing brought on the record to show that empties secured from the place of occurrence were found as having been fired with kalashnikov rifle recovered from the present appellant, then said recovery is inconsequential and of no help to the case of prosecution; in this regard, guidance has been sought from the case of "**IMTIAZ alias TAJI and another versus The STATE and others**" (**2020 SCMR 287**); relevant portions of said case law are reproduced below: -

“Moreover, the report of FSL qua .44 bore rifle recovered from the appellant is only to the effect that said weapon is in working condition. As such, the same cannot be of much help for the prosecution.”

“All these circumstances justify reduction in the quantum of sentence of the appellant from death to imprisonment for life.”

In this regard, case of "**AMANULLAH versus The STATE and another**" (**mentioned supra**) can also be advantageously referred and relevant portion of the same is mentioned as under: -

“So far as the quantum of punishment is concerned, keeping in view the fact that recovery was disbelieved, the learned High Court has already taken a lenient view and converted the sentence of death into imprisonment for life to meet the ends of justice, hence, it leaves no room for us for further deliberation on this score.”

Furthermore, Abid Ali (appellant) made single firearm shot at Muhammad Nawaz (deceased of the case). These both factors i.e. inconsequential recovery of weapon and single shot constitute mitigating circumstance for reduction of sentence of Abid Ali (appellant) from death to imprisonment of life; in this regard, case of "**SAJID MEHMOOD versus The STATE**" (2022 SCMR 1882) can also be safely referred; relevant portion from the same is reproduced as below:-

“So far as the question of punishment is concerned, the learned High Court while taking into consideration-----; appellant only fired single shot and co-accused of the appellant have been acquitted by the learned Trial Court, has rightly taken a lenient view and converted the sentence of death into imprisonment for life.”

So, we convert sentence of “**death**” awarded to Abid Ali (appellant) by the trial court to “**Imprisonment for Life**” under Section 302(b) PPC; however, order passed by the trial court regarding payment of compensation by Abid Ali (appellant) to the heirs of the deceased and in respect of imprisonment in default thereof, are maintained. All the sentences of Muhammad Asif (appellant) are also maintained in toto. Benefit under Section: 382-B Cr.P.C. will be given to both the appellants and all the sentences awarded to them shall run concurrently. Therefore, Criminal Appeal No.29270/2019 is dismissed with partial modification/reduction in sentence of Abid Ali (appellant) as mentioned above whereas to the extent of Muhammad Asif (appellant), same is dismissed in toto.

9. **Murder Reference No.157/2019** is answered in **negative** and death sentence awarded to Abid Ali is not confirmed.

10. So far as order of acquittal of Sajid Iqbal, Muhammad Umair, Azhar Iqbal, Shamas *alias* Shamsher, Ansar Iqbal, Tasawar Iqbal, Khizar Hayat, Muhammad Mansha, Muhammad Akram, Amjad Iqbal, Ehtisham ul Haq, Mukhtar Ahmad, Muhammad Aslam and Muhammad Ashraf passed by trial court through impugned judgment dated: 08.05.2019, is concerned, we have noticed that for the reasons mentioned in paragraph No.7 of this judgment, the same is neither perverse, nor capricious nor arbitrary rather has been passed perfectly in accordance with law, facts and record of the case. After acquittal, accused persons have attained double presumption of innocence and courts are always slow to disturb the same and in this regard, reliance can be placed upon the case of "**HAJI PAIO KHAN versus SHER BIAZ and others**" (2009 SCMR 803) and "**MUHAMMAD SHAFI alias KHDDOO versus The State and others**" (2019 SCMR 1045); from, latter case law, relevant portion is reproduced:-

“It is by now well settled that acquittal carries with it double presumption of innocence; it is reversed only when found blatantly perverse, resting upon fringes of impossibility and resulting into miscarriage of justice. It cannot be set aside merely on the possibility of a contra view.”

Thus, **Crl. Appeal No.39423/2019** is dismissed.

11. So far as Criminal Revision No.39425/2019 filed by Muhammad Nazir (complainant) for enhancement of sentences of Abid Ali and Muhammad Asif and compensation amount is concerned, suffice it to say that neither any plausible reason for enhancement of the same could be referred at bar nor we found any such reason in the case; therefore, **Criminal Revision No.39425/2019** also stands **dismissed**.

12. Before parting with this judgment, we deem it essential to point out that in this case, cartridge cases were submitted in Punjab Forensic Science Agency, Lahore on 13.10.2014, same were collected by Shokat Ali T/ASI on 06.10.2016 from there, however, when after arrest of Abid Ali (one of the appellants, who remained fugitive from law), a kalashnikov rifle was recovered from him and same was deposited in the office of Punjab Forensic Science Agency, Lahore on 08.06.2017, report was generated by said agency regarding mechanical operating condition of said rifle and it was further mentioned in said report that empty cartridge cases in the case have already been collected by Shokat Ali T/ASI on 06.10.2016 and re-submission of said cartridge cases was asked by said agency if the comparison report was required but astonishingly said cartridge cases were not again submitted in said agency so comparison report regarding matching of said empty cartridge cases with the kalashnikov rifle recovered from Abid Ali (appellant), could not be generated; hence, important piece of evidence was not brought on the record by the investigating agency, which is not appreciable at all rather amounts to destroying important piece of evidence in the case. Therefore, Registrar of this Court will send a copy of this judgment to Inspector General of Police, Punjab, Prosecutor General, Punjab and Director General of Punjab Forensic Science Agency, Punjab, Lahore, who will ensure that if in a case, one or more accused are absconders, then after submission of cartridge case (s) in the Punjab Forensic Science Agency, Lahore and even after its (their) comparison with any submitted weapon (s), same will kept in said agency, only brought from there for production in the court during trial and after recording of evidence regarding the same as well as their exhibition/production, same will be again obtained with the written permission of court

and re-submitted/deposited in said agency till arrest of absconding accused and comparison of the same with weapon (s) recovered from said absconder (s) accused. Prosecutor General, Punjab will forward copy of this judgment and issue necessary instructions in this regard to District Public Prosecutors of all districts in the Punjab whereas Inspector General of Police, Punjab will send copy of this judgment and also issue necessary instructions to all the heads of police force in each district as well as Incharge of investigation wings in all districts in this regard.

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

This judgment has been dictated
and pronounced on 12.12.2023
whereas after preparation/
completion, signed on 18.12.2023.

Kashif