

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

Murder Reference No.159 of 2019
(The State *versus* Arshad Ali.)

Crl. Appeal No.47011-J of 2019
(Arshad Ali. *versus* The State, etc.)

JUDGMENT

Date of hearing: 20.02.2023.

Appellant by: Mr. Muhammad Adeel Gohar, Advocate.

State by: Rana Ahsan Aziz, Addl. Prosecutor General.

Complainant by: M/s Mian Shahid Hameed and Ch. Zahid Javed,
Advocates.

AALIA NEELUM, J:- The appellant-Arshad Ali, son of Ahmad Ali, caste Rajpoot Deendar, resident of village Bukkan Kalaan, police station Vanike Tarar, District Hafizabad, was involved in case F.I.R. No.174 of 2018, dated 24.05.2018, an offence under Section 302 P.P.C., registered at P.S. Vanike Tarar, District Hafizabad and was tried by the learned Addl. Sessions Judge (MCTC), District Hafizabad. The learned trial court seized with the matter in terms of the judgment dated 21.05.2019 and convicted Arshad Ali (the appellant) under Section 302(b) PPC as Tazir and sentenced to Death for committing Qatl-e-Amd of Niaz Ali (deceased), with the direction to pay compensation of Rs.2,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to further undergo 06-months S.I.

2. Feeling aggrieved by the judgment of the learned trial court, Arshad Ali, the appellant, has assailed his conviction by filing instant jail appeal bearing Criminal Appeal No.47011-J of 2019. The learned trial court

also referred **M.R. No.159 of 2019 (The State. Vs. Arshad Ali)** for confirmation of the death sentence awarded to the appellant-Arshad Ali. The matters arising from the same judgment of the learned trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex. PA/1) lodged on the application (Ex. PA) of Akhtar Ali (PW-10)-the complainant, is that four months prior, the complainant's nephew Safdar Ali married with Mst. Hameeda Ahmad, daughter of Ahmad Ali, who, due to a quarrel, came to the house of her parents at Bukan Kalan on 09.05.2018. On 23.05.2018, the complainant, along with his brothers, Niaz Ali (the deceased) and Zafar Ali (PW-11), came to the parents' house of Mst. Hameeda Bibi and demanded from Arshad Ali (the appellant), the real brother of Mst. Hameeda Bibi to send their daughter-in-law with them; after that, Arshad Ali (the appellant) became furious and refused to send his sister. They beseeched Arshad Ali (the appellant) to reconcile the matter and to send Mst. Hameeda Ahmad with them, but he was not ready to do so. They all slept in the courtyard where the energy saver bulb was lightening. Suddenly, at about 02:30 a.m., Arshad Ali (the appellant) came out of his residential room while raising Lalkaras to teach a lesson about quarreling with his sister; on hearing the voice, the complainant (PW-10) and his brother Zafar Ali (PW-11) woke up and saw Arshad Ali (the appellant) armed with pistol 30 bore while making straight firing at Niaz Ali (the deceased), who was sleeping there on a cot nearby. Two fire shots hit the left side of the neck and two on the right shoulder of Niaz Ali (the deceased). The complainant (PW-10) and Zafar Ali (PW-11) wanted to step forward to rescue their brother; after that, Arshad Ali made a straight fire upon them, but they saved them by moving them right and left. Arshad Ali (the appellant) accused, fled away from the spot by waiving his pistol and extending murderous threats. Niaz Ali (the deceased) succumbed to the injuries at the spot.

4. The motive behind the occurrence was that Arshad Ali accused, had been suspected of quarrels and cruelty with his sister Mst. Hameeda Bibi

on the part of Niaz Ali and others, due to which he committed the occurrence.

5. After the incident, the complainant reported the matter to the police through the written application (Ex. PA); after that, formal F.I.R (Ex.PA/1) was chalked out by Gulzar Hussain S.I (PW-2). After registration of the case, the investigation was entrusted to Azhar Hussain, S.I. (PW-8)-the investigating officer, who, having 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 13.08.2018, the learned trial court formally charged the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as eleven (11) witnesses.

6. Ocular account, in this case, has come out from the statements of Akhtar Ali (PW-10)-the complainant, and Zafar Ali (PW-11)-the eye witness, whereas Dr. Usama Bin Yousaf, Medical Officer, DHQ Hospital, Hafizabad (PW-1), who conducted the postmortem examination of Niaz Ali (the deceased) found the following injuries on his person: -

INJURIES

- 1) Firearm entry wound 1 cm x 0.5 cm on left side of neck, 1.5 cm away from left ear lobe. Inverted edges with blackening,
- 2) Firearm wound of entry 1.5 cm x 0.8 cm on left side of neck 3.5 cm away from left ear lobe. Inverted edges with blackening,
- 3) Firearm wound of exit 1 cm x 0.5 cm on right side of neck near clavicle 5 cm away from right ear lobe. Edges were everted,
- 4) Firearm wound exit 1 cm x 0.5 cm on right side of neck, near clavicle, 6.10 cm away from right ear lobe. Edges are everted.
- 5) Firearm wound of entry 1 cm x 0.5 cm on right shoulder, edges were inverted with blackening,

- 6) Firearm wound of exit 1.5 cm x 1 cm on right posterior axillary line, 9.5 cm away from right nipple. Edges were everted,
- 7) Firearm wound of entry 3 cm x 1 cm on right arm, 5.5 cm away from right shoulder joint. Edges were inverted with blackening,
- 8) Firearm wound of entry 1 cm x 0.5 cm on right back side of head, 1 cm away from right ear lobe. Edges were inverted with blackening,
- 9) Firearm wound of exit.

After conducting the postmortem examination, the doctor opined that cause of death was due to the excessive hemorrhage and irreversible neurogenic shock due to injuries No.1 2, which were sufficient to cause death in the ordinary course of nature. All the injuries were ante-mortem. The probable time between injury and death was within five minutes, and between death and postmortem was 16 hours.

The statements of the remaining prosecution witnesses are formal in nature.

7. The learned Deputy District Public Prosecutor gave up PWs, Sajjad Haider 201/C, Mukhtar Ahmad 744/C, and Muhammad Ramzan as being unnecessary and closed the prosecution evidence after tendering the reports of Forensic D.N.A and Serology Analysis report (Ex.PS) and Firearms and tool mark examination report (Ex. PT).

8. The appellant was also examined under Section 342 Cr.P.C., wherein he neither opted to appear as his own witness under section 340(2) Cr.P.C nor opted to produce any evidence in defence. In response to a particular question that why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“I had no motive to kill Niaz Ali deceased. I was not present at the time of occurrence at the place of occurrence, as during the days of occurrence, I used to sleep in my tailoring shop at Vanike Tarar. Some unknown persons committed the occurrence. I have

been falsely involved in the case, by the I.O. in connivance with the complainant and eye witnesses, after calling them from their village, to get rid of the untraceable accused. I am infirm being chronic patient of Tuberculosis. I filed application before this Court, regarding my illness and requested to constitute medical board, upon which the jail Doctor submitted report, copy of which is Ex.DA, to the Court that medication had been started. I have been under treatment at Services Hospital, Lahore, and other various hospitals from where I was issued prescriptions, time to time, photocopies of which are produced as Mark-DA/1-21 regarding my disease. I being patient of many diseases including paralysis was unable to easily walk and even move at the time of occurrence, what to say about killing a person and fleeing away from the scene, in alleged presence of PWs who are healthy and well built. It was an unseen occurrence, the PWs being closely related to the deceased have falsely deposed against me.”

9. After evaluating the evidence available on record in light of arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the aforesated terms.

10. We have given our anxious and most thoughtful consideration to both sides' rival submissions. We have minutely gone through the evidence on record.

11. The occurrence occurred at 2:30 a.m. (night) on 24.05.2018 in the area of village Bukkan Kalaan situated within the jurisdiction of Police Station Vanike Tarar, District Hafizabad, which is at a distance of one kilometer only from the place of occurrence and is connected by mettled road. The two eye-witnesses, namely, Akhtar Ali (PW-10)-the complainant, and Zafar Ali (PW-11), had allegedly seen the occurrence. After the commission of the crime, they had also seen the accused running away from the spot. Akhtar Ali (PW-10)-the complainant informed the police about the occurrence through the written application (Exh. PA), and formal F.I.R. (Exh.PA/1) was chalked out at 05:00 a.m. on 24.05.2018 by Gulzar Hussain

S.I. (PW-2). The delay of 2 1/2 hours in filing an FIR in the instant case, irrespective of the fact that the Police Station is situated only at a distance of one kilometer from the spot of the incident, creates sufficient doubt about the genuineness of the FIR. The matter can also be examined from another angle; in the inquest report (Exh. PJ) in column No.3, related to the time of information received about the occurrence, it was mentioned that FIR was registered at 05:00 a.m. on 24.05.2018. The contents of column No.3 are reproduced hereunder,

”اندراج مقدمہ مورخہ 24-05-2018 بجے 5“

It is mentioned in column No.1 of the inquest report (Exh. PL) that the dead body was recovered from the area of Bukkan Kalan. It is not mentioned therein that the dead body was found lying in the accused's house. We further noticed that Doctor Usama Bin Yousaf (PW-1), who conducted the post-mortem-examination upon the dead body of Niaz Ali deceased, had noted the rigor mortis present on the dead body of the deceased. The mouth and eyes were semi-open. We noticed that death had not taken place at the time given by the prosecution witnesses, nor witnesses were present at the spot, which also got support from the inquest report (Exh. PJ) wherein the names of Akhtar Ali (PW-10)-the complainant and Zafar Ali (PW-11) were not mentioned. It indicated that the incident did not occur as stated by the prosecution. All these factual circumstances lead to the conclusion that relying upon the FIR in the instant case is unsafe. Other essential facts on this case are that the Inquest Report (Exh. PJ) was prepared on 24.05.2018, but the preparation time was not mentioned therein. Azhar Hussain S.I. (PW-8)-the investigating officer deposed during cross-examination that,

“We reached the spot at about 6:30 a.m.”

If Azhar Hussain S.I. (PW-8)-the investigating officer, had reached the place of occurrence at 06:30 a.m. and prepared an inquest report (Exh. PJ), there is no reason that why the post mortem of the dead body of

Niaz Ali-the deceased was conducted on 24.05.2018 at 06:30 p.m. with the delay of approximately twelve hours. More significantly, the inquest Report (Exh. PJ) does not bear any signatures of the witnesses. Also, at the bottom, on the last page, the names of the prosecution witnesses were not mentioned. In column No.4 names of Safdar Ali (PW-9) and Muhammad Ramzan (given up PW) were mentioned. Safdar Ali (PW-9), son of the deceased Niaz Ali, deposed during cross-examination that he reached Bukkan Kalan at about 06:00 a.m. Safdar Ali (PW-9) deposed during cross-examination that: -

"I reached Bukan Kalan at about 6:00 a.m., after the occurrence.-----I came to know about the occurrence at about 2:45 a.m. Police reached the place of occurrence at about 6:00 a.m.-----Dead body was shifted from the spot at about 12:00/12:30 noon. I left the place of occurrence at about 12:00/12:30 noon."

Bashir Ahmed 391/C (PW-5) escorted the dead body of Niaz Ali to DHQ Hospital Hafizabad. Bashir Ahmed 391/C (PW-5) deposed during cross-examination: -

"I reached at DHQ, Hospital at 05:00 pm. I shifted the dead body on private vehicle.-----IO handed over the police papers to doctor at 05:30/06:00 pm."

From the deposition of Akhtar Ali (PW-10)-the complainant, Zafar Ali (PW-11), and Safdar Ali (PW-9), it is established that the FIR had been registered after due consultation and deliberation by the complainant (PW-10). No explanation is coming forward as to why the complainant (PW-10) had not informed the police about the incident soon after the incident. The inordinate delay of about two hours and thirty minutes from the time of the commission of the offence remained unexplained and rendered the whole of the prosecution version doubtful. The Hon'ble Supreme Court of Pakistan held in the case of **Iftikhar Hussain and another v. The State (2004 SCMR 1185)** that: -

"As far as F.I.R. under section 154, Cr.P.C. itself is concerned, it is always treated to be a cornerstone of the prosecution case to establish guilt against culprits involved in the crime. Thus it has got a very significant role to play. If there is any doubt in lodging of F.I.R. and commencement of investigation, it gives rise to a doubt in benefit of which, of course, cannot be extended to anyone else except to the accused. However, an F.I.R. under section 154, Cr.P.C. which has been lodged after conducting an inquiry loses its evidentiary value-----."

12. In the instant case, as stated above, the occurrence occurred at 2:30 a.m. (night) on 24.05.2018; the inter-se distance between the place of occurrence and the police station is one kilometer. At the same time, F.I.R. (Exh.PA/1) was got registered on the written complaint (Exh. PA) of Akhtar Ali (PW-10)-the complainant, at 05:00 a.m. on 24.05.2018. It is notable that Akhtar Ali (PW-10)-the complainant deposed during examination-in-chief as under:-

"I moved an application for registration of case Ex.PA which bears my signature."

From the evidence of Akhtar Ali (PW-10)-the complainant) it reveals that after the incident, the complainant (PW-10) straightaway went to the police station to report the incident to the police, whereas during cross-examination, Akhtar Ali (PW-10)-the complainant, deposed that:-

"After the occurrence, firstly I attended the deceased, then I go scribed the complaint Ex.PA and went to P.S I got scribed the complaint from a villager at the spot, about one or two hours after the occurrence. I am matriculate. I cannot remember the name of the person who scribed the complaint Ex.PA. Place of occurrence is at a distance of one kilometer from P.S Vanike Tarar. I went to P.S on a motorcycle. Two other persons were with me when I went to P.S. We were on two motorcycles. We stayed at P.S for about half an hour. I do not know the names of both the persons who went with me to P.S. "

Zafar Ali (PW-11)-eye witness deposed during cross-examination as under: -

"Akhtar complainant got scribed the complaint Ex.PA at about 5:00 a.m.....Akhtar complainant left the spot to inform the police at about 5:00/5:30 a.m."

As per the prosecution, the complainant (PW-10) went to the police station to report the incident, but before visiting the police station, the complainant got prepared an application for registration of a criminal case from "someone" whose name was not known to him. Non-mentioning this fact in the application/complaint (Ex. PA) indicates that the complainant (PW-10) had not stated the complete truth and that the F.I.R. came into existence after due deliberations and consultations. When and where the complaint (Ex. PA) was prepared, and the author of the complaint should have to state that he prepared the complaint under the instructions of the complainant. It is also not a case of the prosecution that the complainant (PW-10) asked "someone" (unknown) to prepare a complaint. Accordingly, the complaint was prepared by "someone" (unknown), which was shown to the complainant, read over to him, which the complainant signed and thumb marked. Even the complainant had not given any explanation regarding the preparation of the complaint in the complaint and his statement before the learned trial court; therefore, in these circumstances, the chance of consultations and deliberations on the part of the complainant cannot be ruled out. It creates a dent in the prosecution case.

13. We have noted a conflict between the statements of material witnesses regarding the length of time of stay of the investigating officer at the spot and the recording of statements of witnesses. Safdar Ali (PW-9) deposed that: -

"Police stayed at the spot till 11:00/12:00 noon."

Whereas, Akhtar Ali (PW-10)-the complainant deposed during examination-in-chief that: -

“The I.O along with 3 /4 other policemen, came to the place of occurrence and stayed there till 1:00/2:00 p.m.”

It also comes in the evidence of Azhar Hussain S.I. (PW-8)-investigating officer, that he prepared an un-scaled site plan of the place of occurrence, Ex. PR. The un-scaled site plan reveals that the accused fired at the deceased by standing at point “B,” and crime empties were secured from the same point. In the un-scaled site plan, Ex.PR presence of witnesses was shown, but the cots of the prosecution witnesses were not revealed. Azhar Hussain S.I. (PW-8)-investigating officer admitted during cross-examination that: -

“I have not drawn the sketches of cots of PWs at the place of occurrence in my site plan Ex.PR. I have not mentioned any point in the site plan Ex.PR where the PWs had slept on the night of occurrence. There was no cot lying near or adjacent to the cot of the deceased when I reached there. Volunteered, cots were lying here and there in the courtyard.....I have shown only one standing point of accused at the time of occurrence in the site plan Ex.PR. None of the PWs showed me different standing point of the accused while firing.”

Bilal Ahmad Bhatti Draftsman (PW-4) inspected the place of occurrence on 26.05.2018 and took rough notes on the pointing of the complainant and PWs. He (PW-4) deposed during cross-examination that: -

“I have not shown the sleeping position of the PWs as well as the position of the accused in scaled site plan Exh.PB and Exh.PB/1.”

Akhtar Ali (PW-10)-the complainant deposed during cross-examination that: -

“My cot was about 1 ½ to 2 meters from the cot of Niaz deceased, then was of mine and then the cot of Zafar PW. At the time of occurrence Arshad accused was at a distance of 10/12 feet from me. Distance between the deceased and

accused at the time of occurrence was about 3 feet.”

Zafar Ali (PW-11) deposed during cross-examination that: -

“The accused was at a distance of 15/20 feet from us when he made fire. We were on left side of the deceased near our cots when the deceased was hit. The accused made firing at the deceased while touching the barrel at mosquito net. The accused remained at the place of occurrence for about one or one and half minute. The accused changed his positions during the occurrence. We told the I.O that the accused made fires in walking position during the occurrence.”

Besides, Azhar Hussain S.I. (PW-8)-investigating officer, had shown the direction of the foot side of the cot in different directions. Azhar Hussain S.I. (PW-8)-investigating officer admitted during cross-examination that: -

“The foot side of the cot of deceased has been shown towards east in the site plan Ex.PR. whereas in the inquest report Ex.PJ, I mentioned the foot side of the cot of the deceased on west side.”

Even the distance between the accused and the deceased at the time of the firing was not mentioned in the un-scaled site plan (Ex. PR). Bilal Ahmad Bhatti Draftsman (PW-4) has left space blank in the scaled site plan (Exh. PB and Exh.PB/1). The scaled site plan (Exh. PB and Exh. PB/1) consists of six points, i.e., from point “A” to point “F.” Distance between the other points was mentioned except for the distance between point A to B. Point “B” reads as under:

”وہ مقام ہے جہاں پر ملزم ارشد علی نے کھڑے ہو کر چارپائی پر سوئے ہوئے مقتول نیاز علی پر دستی پسل 30 بور سے فائزگ کرنا بیان ہوا اور ملزم ارشد علی کامدی اختز علی، گواہ ظفر علی پر بھی فائزگ رکنیاں کو فائزگ لگانا بیان ہوا اور اسی مقام کے قریب پڑے بکھرے خول 5 ضرب پسل 30 بور کو PFSA ٹیم نے اٹھا کر پار سل تیار کیے جو قبضہ پولیس میں لیے گئے بیان ہوا۔ فاصلہ A تا B نٹ“

Moreover, looking at the material contradictions and omissions, we are of the opinion that the prosecution has withheld the true genesis of the occurrence. In our opinion, the prosecution has failed to bring home the charges framed against the appellant. We find it unsafe to rely upon such witnesses' evidence to base the accused's conviction.

14. Admittedly, Akhtar Ali (PW-10)-the complainant, and Zafar Ali (PW-11) are chance witnesses. The prosecution witnesses are not only related inter-se and also with the deceased. Akhtar Ali (PW-10)-the complainant alleged that the motive behind the occurrence was that Niaz Ali, deceased, used to quarrel with Hameeda Bibi, sister of the accused, and due to said grudge, the accused committed the murder. Akhtar Ali (PW-10)-the complainant deposed during examination-in-chief that: -

“4 months prior to the occurrence marriage of my nephew Safdar Ali was solemnized with Hameeda Bibi sister of accused Arshad at village Bukkan Kalan Hafizabad. On 09.05.2018 Hameeda Bibi after quarrel came at village Bukan Kalan. On 23.05.2018 I along with, my brother Niaz Ali and Zafar Ali came at Bukkan Kalan for reconciliation with Hameeda Bibi and talk to his brother Arshad Ali in this regard who refused to do so.....Motive behind the occurrence was that Niaz Ali deceased used to quarrel with Hameeda Bibi sister of accused and due to this grudge accused Arshad Ali committed this occurrence.”

Zafar Ali (PW-11) also deposed in the same lines. As per prosecution witnesses Akhtar Ali (PW-10)-the complainant, Zafar Ali (PW-11), on the refusal by Arshad Ali, the brother of Hameeda Bibi, to have a reconciliation, they stayed at the house of the accused. Zafar Ali (PW-11) deposed during cross-examination that: -

“We talked till evening then we slept. The deceased used a new bedding with mosquito net on the night of occurrence.”

It reveals that providing new bedding to the deceased is impossible if the reconciliation proceedings fail. Zafar Ali (PW-11) admitted

that no grappling occurred between them and the accused on the night of the occurrence. Safdar Ali (PW-9), the husband of Hameeda Bibi, had not come forward and stated about his and Hameeda Bibi's relationship. During cross-examination, Safdar Ali (PW-9) deposed that: -

"I married Mst. Hameeda Bibi sister of Arshad accused. My wife Mst. Hameeda Bibi is not restituting with me now-a-days. It is not in my knowledge where she is residing now."

Nothing on record shows what prevented him (PW-9) from disclosing the motive part of the incident, which is directly linked to him. Therefore, we are inclined to believe that the prosecution failed to prove the motive part of the occurrence, which is shrouded in mystery.

15. So far as recovery of the weapon of offence, i.e., pistol 30-bore, from the possession of the accused/appellant and positive report of Punjab Forensic Science Agency (Firearms and took marks Examination report) (Ex. PT), are concerned, as per the prosecution case, five crime empties were collected from the place of occurrence by Azhar Hussain S.I (PW-8)-the investigating officer were matched with the weapon recovered on the pointing of Arshad Ali (the appellant), resulting into a positive report of Punjab Forensic Science Agency (Ex. PT). On perusal of the record, it reveals that Azhar Hussain S.I. (PW-8)-the investigating officer deposed during examination-in-chief: -

"PFSA team inspected the place of occurrence, collected five crime empties, made the same into parcels separately and handed over to me. I took the same into possession through recovery memo Ex.PK which was attested by the PWs."

Contrary to the deposition of Azhar Hussain S.I. (PW-8)-the investigating officer, Akhtar Ali (PW-10)-the complainant deposed during examination-in-chief that:-

"I.O. collected five crime empties from the place of occurrence, prepared the parcel of crime empties and took the same into possession through recovery

memo Ex.PK which was attested by me and Zafar Ali PW.”

In similar lines, Zafar Ali (PW-11)-the eye witness deposed. Admittedly, the investigating officer did not collect crime empties; the PFSA team secured the same. After collecting the same, they prepared separate parcels and handed them to the investigating officer (PW-8), who secured them through a recovery memo (Ex. PK). Azhar Hussain S.I. (PW-8)-the investigating officer deposed during the examination-in-chief that he conducted proceedings at the place of occurrence. After that, he searched for the accused and reached DHQ Hospital Hafizabad. After the postmortem examination, Bashir Ahmad 391/C (PW-5) handed over to him the postmortem report, police papers, parcels prepared by the doctor, and the last worn clothes of the deceased. After that, he reached police station Vanike Tarar and handed over the case property to Moharrar. Admittedly, Azhar Hussain S.I. (PW-8)-the investigating officer, returned to the police station after conducting proceedings at the place of occurrence, a search of the accused, and visiting the hospital. The prosecution evidence remained silent that five parcels of crime empties remained during the said period in whose custody. The prosecution failed to establish by cogent evidence that the alleged parcels of crime empties seized from the place of occurrence were kept in safe custody. As per the prosecution case, Arshad Ali (the appellant) was arrested on 28.05.2018, and the weapon, i.e., pistol (P-5), was recovered on 30.05.2018 on his disclosure from his house. Per the prosecution case, the accused fled away from the place of occurrence after the occurrence. It was not the prosecution’s case that he went inside the house, kept the pistol, and fled away. Azhar Hussain S.I. (PW-8)-the investigating officer deposed during the examination in chief that after inspecting the place of occurrence, he searched for the accused. During cross-examination, he (PW-8)-the investigating officer, deposed that: -

“I have mentioned no place in my proceedings, where I searched for the accused.----- I have not shown arrest of Arshad accused from his house on 28.05.2018. Volunteered, he was arrested from his

house. I did not recover anything from the house of the accused on 28.05.2018.”

As per the admission of Azhar Hussain, S.I. (PW-8)-the investigating officer, at the time of the arrest of the accused from his house on 28.05.2018, he did not recover anything. Strangely, the weapon, which could not be retrieved on 28.05.2018, was recovered on 30.05.2018 after 02-days of his arrest from the accused’s house, although the accused had ample opportunity to destroy the weapon from 24.05.2018 to 28.05.2018. It does not appeal to the prudent mind that to facilitate the investigating agency, the accused will bring back the weapon, and he will conceal the same in his house, which the investigating officer could not recover at the time of his arrest. But later on, the same will be recovered on his pointing.

16. Besides, a bare reading of Section 510 Cr.P.C., a report of an expert is per se admissible without examination of the expert. It would be appropriate to quote Section 510 of the Criminal Procedure Code, which reads as under: -

“510. Report of Chemical Examiner, Serologist, etc.

Any document purporting to be a report, under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, finger print expert or fire-arm expert or the Chemist or the Pharmacist or the Forensic Scientist or Hand-writing expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code: Provided that the Court may [if it considers necessary in the interest of justice] summon and examine the person by whom such report has been made.].”

A bare reading of this Section makes it abundantly clear that the reports of the Chemical Examiner or Assistant Chemical Examiner to the Government [or of the Chief Chemist of Pakistan Security Printing Corporation, Limited] or any Serologist, fingerprint expert, or fire-arm expert or the Chemist or the Pharmacist or the Forensic Scientist or Hand-

writing expert are admissible per se without they being formally proved by the person who has made the same. It is in prosecution evidence that a team consisting of the members of the Punjab Forensic Science Agency inspected the place of occurrence, collected five crime empties, made the same into parcels separately, and handed them over to Azhar Hussain, S.I. (PW-8)-the investigating officer. The members of the PFSA team are not officers covered by Section 510 of the Code of Criminal Procedure, and thus, the positive report of Punjab Forensic Science Agency (Ex. PT) is not conclusive and reliable in the absence of the officers above being examined in Court, who collected crime empties from the spot and prepared separate parcels to prove the fact that they collected crime empties from the place of occurrence and after that, they prepared parcels which were handed over to Azhar Hussain, S.I. (PW-8)-the investigating officer. The report in question is of no help to the prosecution as there is nothing on record to prove that the recovery of five crime empties alleged to have been made by the members of the PFSA team, were the same which were recovered from the place of occurrence. Azhar Hussain, S.I. (PW-8)-the investigating officer, admitted that he had not mentioned the name of any Forensic Team member nor obtained his signature on the recovery memo Ex.PK relating to empties. Azhar Hussain (PW-8)-the investigating officer admitted during cross-examination that: -

I have not mentioned the name of any Forensic Team member nor obtained his signature on the recovery memo Ex.PK relating to empties.”

There can, thus be no dispute that it was incumbent upon the prosecution to produce members of the PFSA team who have collected the crime empties and prepared separate parcels in order to prove the chain of safe custody. Without such proof, report of PFSA cannot corroborate the case of prosecution.

17. From the above-detailed discussion, we are convinced that the prosecution has failed to establish its case. The truth was seen buried under the debris, and a different story was structured perhaps to lug the appellant

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

“The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favor 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.”

The golden principle of law is that the Court should let off a hundred guilty but not convict one innocent person. In the case of **“Ayub Masih v. The State”** (PLD 2002 SC 1048), it has been held by the Hon’ble Supreme Court of Pakistan that:-

“----It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which can not be ignored while dispensing justice in accordance with law. It is based on the maxim, “it is better that ten

guilty persons be acquitted rather than one innocent person be convicted”.

*In simple words it means that utmost care should be taken by the Court in convicting an accused. It has further been held in “The State v. Mushtaq Ahmed” (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic law and is enforced rigorously in view of the saying of the **Holy Prophet (P.B.U.H)** that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent”.*

18. The upshot of the above discussion is that the prosecution had severely failed to bring home charge against the appellant beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Criminal Appeal No.47011 of 2019 is accepted. The sentence awarded by the learned Additional Sessions Judge (MCTC), Hafizabad, vide judgment dated 21.05.2019, is set aside, and the appellant is acquitted of the charge in case F.I.R. No.174 of 2018, dated 24.05.2018, an offence under section 302 P.P.C. registered at Police Station Vanike Tarar, District Hafizabad. The appellant-Arshad Ali son of Ahmad Ali is ordered to be released forthwith, if not required in any other case. Murder Reference No.159 of 2019 is answered in the negative, and the death sentence awarded to Arshad Ali, son of Ahmad Ali (convict), is Not Confirmed.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for Reporting

Judge

Judge

This judgment has been dictated, pronounced, prepared, and signed on 20.02.2023.

*Ikram**