

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
(Judicial Department)

Criminal Appeal No.83167 of 2023
(*Muhammad Nawaz vs. The State etc.*)

Criminal Appeal No.2404 of 2024
(*Sharafat Ali vs. Muhammad Talal etc.*)

&
Criminal Revision No.2407 of 2024
(*Sharafat Ali vs. The State etc.*)

J U D G M E N T

Date of hearing: **21-10-2024**

Appellant by: Rai Bashir Ahmad, Advocate.

State by: Mr. Abdul Rauf Watto, Deputy Prosecutor General.

Complainant by: Mr. Sikander Zulqarnain Saleem, Advocate.

MUHAMMAD TARIQ NADEEM, J.:- Through this single judgment, I intend to decide **Criminal Appeal No.83167 of 2023**, filed by Muhammad Nawaz appellant against his conviction and sentence along with **Crl. Revision No.2407 of 2024**, filed by Sharafat Ali complainant for enhancement of sentence of Muhammad Nawaz (appellant) as well as **Crl. Appeal No. 2404 of 2024**, filed by Sharafat Ali complainant against the acquittal of Muhammad Talal co-accused/respondent No.1 being originated from judgment dated 01-12-2023, passed by learned Additional Sessions Judge, Lahore, in private complaint titled "Sharafat Ali vs. Muhammad Nawaz and another" under sections 302, 324, 337-F(iii) and 34 PPC, emanated from case FIR No.2559 of 2021, under sections 302, 324, 337-F(iii) and 34 PPC, registered at Police Station Manawan, Lahore, whereby the trial court while acquitting

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Muhammad Talal co-accused, convicted and sentenced Muhammad Nawaz appellant as under:-

Under Section 302(b) PPC: -

Life Imprisonment for committing murder of Salman Ali with direction to pay compensation under Section 544-A, Cr.P.C. to the tune of Rs.5,00,000/- to the legal heirs of deceased, recoverable as arrears of land revenue, or in default thereof to further undergo simple imprisonment for six months. However, benefit of section 382-B Cr.P.C. was extended in his favour.

2. The prosecution story as given in the judgment of the trial court reads as under:-

“...Facts leading to filing of instant private complaint are that complainant party is having agricultural land at Mouza Lakhaodair. On 21.11.2021, complainant’s brothers Muratab Ali, Salman Ali, and Sakhawat Ali were sowing wheat crop in their fields where they saw that accused Nawaz and Talal opened water in their fields. Complainant’s brothers Salman etc. forbade them due to which accused Muhammad Nawaz became infuriated and went away while extending threats to them. At about 01:30 p.m. complainant’s brother Muratab Ali called the complainant through mobile phone No. 0308-4124726 on his mobile phone No.0300-4046035 and told the entire episode. Complainant asked him not to quarrel with them and that he himself was coming. Thereafter, complainant on his own vehicle ACG-730 reached at the spot and saw that accused Muhammad Nawaz was quarreling with his brothers Salman Ali, Sakhawat Ali and Muratab Ali and in his view accused Muhammad Nawaz made fire shot with his pistol which landed on left arm and armpit of Salman Ali who fell down in injured condition. Complainant stepped ahead to save Salman Ali on which accused Muhammad Talal made fire-shot on Muratab Ali with his pistol which landed on his left thigh and he also fell down in injured condition. The accused persons while making firing fled away from the spot. Complainant made call on mobile police emergency number and while boarding Salman Ali in vehicle was shifting him to Shalimar Hospital who succumbed to the injuries on reaching hospital which was confirmed by doctors. Complainant then went to police station and moved application Ex-PA for registration of case. Muratab Ali

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injured was shifted to Services Hospital by Sakhawat Ali, who remained under treatment there.

Initially FIR No.2559/2021, under sections 302, 34, 324, 337-F(iii) PPC, at police station Manawan, Lahore was registered against the accused persons, but feeling aggrieved with investigation of said case FIR, the complainant filed the instant private complaint Ex-PE.....”

3. After recording cursory statements of complainant and PWs, the accused were summoned to face trial. The trial court, after observing all the pre-trial codal formalities, framed charge against the appellant and his acquitted co-accused under sections 302, 34, 324 and 337-F(iii) PPC, to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced as many as 02 PWs and 10 CWS. The ocular account of the incident in issue had been furnished by Sharafat Ali complainant (PW.1) and Muratab Ali injured (PW.2). Syed Muhammad Younus Bukhari, Draftsman appeared as CW.1, who prepared scaled site plan of the place of occurrence. Ulfat Hayat, Inspector (CW.10) was the investigating officer of the case, who stated about various steps taken by him during the course of investigation. Medical evidence was furnished by Doctor Waqas Ahmad (CW.4) and Doctor Mohsin Munawar (CW.9).

The remaining evidence produced by the prosecution was formal in nature. The prosecution gave up Irfan Ali 5368/C, Ghulam Sabir 17396/C and Adil Saeed 5393/C PWs being unnecessary and while tendering in evidence reports of the Punjab Forensic Science Agency, Lahore (Exh.PG and Exh.PH) closed its evidence.

4. Thereafter, statements under section 342 Cr.P.C. of the appellant and his acquitted co-accused were recorded in which they denied the allegations leveled against them and professed their innocence. While answering to a question, “*why this case is against you and why PWs deposed against you?*” Muhammad Nawaz appellant stated as under:-

“The real facts have been suppressed by complainant. In fact, at about 12:00/01:00 noon time, deceased and Muratab Ali came to our Dera alongwith brothers and they made indiscriminate firing upon me. His brothers were armed with 'kulhari'. The deceased and Sakhawat Ali gave

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'kulhari' blows on my father's head and other parts of body. Resultantly, he was injured, whereas, the deceased made indiscriminate firing upon him. Our vehicles were also parked at our Dera. Fires made by complainant party hit to the vehicles and the bullets reflected from vehicles and one of the bullet hit to Salman Ali at his left armpit while other one bullet hit to Muratab Ali on his left thigh. As I was seriously injured by them, Muratab Ali alongwith deceased decamped. Muratab Ali was shifted to Services Hospital, Lahore where he was admitted at 01:15 p.m, on 21.11.2022, whereas, deceased was shifted to his house, who ultimately succumbed to the injuries. The complainant was not present there and later on after 3/4 hours of death of deceased, the deceased was shifted to hospital. When complainant who was on duty in traffic police at Lahore City reached in the hospital and came to know this fact that Salman Ali had expired and Muratab Ali was injured, then he cooked up a false and fabricated story of occurrence at 02:00 p.m on 21.11.2021. He lodged FIR with due deliberation and consultation after about 4/5 hours. It is also pertinent to mention here that the complainant has not mentioned that he was wearing his uniform and his shirt became blood stained due to lifting of his brother, neither in FIR nor in inquest report and even in his evidence before the Court. The complainant party after legal advice thought that presence of complainant be established in any manner, because he was on his duty as traffic constable at Lahore City, then he cooked up a false and incorrect story of blood stained uniform/shirt just to prove his presence at the scene of occurrence. This story is also false from the fact that if the blood stained shirt of complainant was available at the time of lifting dead body of the deceased, the name plate of the complainant must have been on the shirt, which was later on taken into possession but same is not available on the said shirt. The availability of shirt and taking the same into possession on very first day is also not proved. If the shirt had been taken into possession on very first day of registration of FIR, then same must had been sent to Punjab Forensic Science Agency when empties and blood stained earth were sent to Punjab Forensic Science Agency. Non-sending of shirt with the blood stained earth and empties also proves that it was not in possession of police. Furthermore, till 28.12.2021 this shirt was not sent to Punjab Forensic Science Agency, when allegedly recovered pistol was sent to Punjab Forensic Science Agency on 29.12.2021 with delay of about one month and eight days after alleged occurrence and this delay shows the false managing of shirt of the complainant. It is also important to mention here that the place of occurrence has been changed because it is admitted by the prosecution

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witnesses that there was no place in the land of the accused party, where any source of watering of agricultural field of complainant was available at the alleged place of occurrence. The said land belongs to three other persons who are neither witnesses nor having any concern with the complainant party. The place where alleged occurrence has been shown by the complainant party is on the lower pedestal than the land of complainant party and there is a "Banna" (heap) of four feet height from alleged place of occurrence and land of complainant and no water can flow from place of occurrence to the land of complainant party. Hence, whole story of occurrence narrated by complainant party in FIR as well as in complaint is false, fabricated, concocted having no legs to stand upon. As, we have separated our land from the complainant party and we were in possession of Dera, complainant party wants to usurp our land and Dera that is why deceased etc. attacked upon our Dera and injured me as well as my father Nawaz and by suppressing all these injuries on our persons, they have concocted up a false and fabricated story of occurrence, which has been proved as false during the trial.

The appellant and his acquitted co-accused did not opt to appear as their own witnesses on oath as provided under Section 340(2) of the Code of Criminal Procedure, 1898, in disproof of the allegations leveled against them, however, appellant produced Doctor Shah Rukh (CW.11) in his defence evidence.

5. The trial court *vide* judgment dated 01-12-2023 found the appellant guilty, convicted and sentenced him as mentioned above, *however*, acquitted his co-accused namely Muhammad Talal of the charges through the same judgment by giving him the benefit of doubt, hence, these appeals and criminal revision before this Court.

6. It is contended by learned counsel for the appellant that although FIR is shown to have been promptly lodged within a period of just 45 minutes after the occurrence but being dissatisfied from the police investigation, Sharafat Ali complainant (PW.1) filed private complaint (Exh.PE) with a delay of five months and six days just to fill up the lacunas left in FIR, similarly post mortem examination on the dead body of Salman Ali (deceased) was conducted with a considerable delay of nine hours which reflects that prosecution witnesses were not present at the

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time and place of occurrence and police remained busy in procuring and planting fake eyewitnesses and cooking up a false story for the prosecution before preparing police papers necessary for getting a favourable postmortem examination report; that although Muratab Ali (PW.2) has been shown as injured PW but it is not necessary that whatever he has stated is a gospel truth and his statement is to be seen in the light of parameters and guidelines settled by the superior Courts of the country; that the prosecution has badly failed to prove the mode and manner of occurrence described in the crime report; that presence of Muratab Ali injured (PW.2) at the time and place of occurrence, i.e. 02.00 p.m. on 21.11.2021 is negated from Rapat No.11 dated 21.11.2021 (Exh.DE), according to which, on the same day at 01.15 p.m. he was admitted in Services Hospital, Lahore; that the alleged eyewitnesses have made dishonest improvements to their previous statements, for the reason, their evidence is not reliable; that with regard to the recovery of pistol from the possession of Muhammad Nawaz appellant and positive report of PFSA, learned counsel for the appellant stated that the same are inconsequential for the prosecution case because empties were sent to the office of PFSA on 06.12.2021, i.e. after 15 days of the occurrence which shows that empties were secured subsequently and not during spot inspection after the occurrence; that motive has already been disbelieved by the trial court through cogent and convincing reasons; lastly submitted that the appeal filed by Muhammad Nawaz appellant be allowed and he be acquitted of the charge.

7. Contrarily, learned counsel for the complainant argued that it was a daylight occurrence, the appellant and the accused party being *inter se* close relatives and residents of the same vicinity were known to each other, for the reason, there was no chance of misidentification of the accused; that the FIR had also been promptly lodged, leaving no room for the accused to claim that the matter was reported to the police with due deliberation and consultation; that so far as the delay in post mortem examination on the dead body of Salman Ali (deceased) is concerned, one person Muratab Ali (PW.2) was in injured condition whereas Salman Ali

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had already lost his life, therefore, it was prime consideration of the complainant party to save the life of Muratab Ali injured (PW.2), in this way, delay in post mortem examination is not helpful to the defence; that the presence of Sharafat Ali, complainant (PW.1) and Muratab Ali injured (PW.2) is fully proved and despite lengthy cross-examination upon the above mentioned PWs, nothing favourable to the defence could be brought from their mouths; even otherwise, Muratab Ali (PW.2) is also injured witness which further established his presence at the time and place of occurrence; that mere this fact that both the PWs are real brothers of Salman Ali (deceased) is not a justifiable ground to disbelieve their evidence, because, they admittedly had no previous animosity to falsely entangle the accused persons in this case, similarly, this fact does not appeal to a prudent mind that due to their kinship with the deceased, they would spare the real perpetrator and entangle the accused falsely; that Rapat No.11 dated 21.11.2021 (Exh.DE) is a photocopy and has illegally been exhibited by the trial court despite objection of complainant's counsel and the same can be brushed aside by this Court. To substantiate this contention, learned counsel for the complainant has placed reliance upon case-law titled as "*Sana Ulah vs. The State*" (**1990 P.Cr.L.J. 466**). He further maintained that the prosecution witnesses were not cross-examined on material points and it is settled proposition of law that if a portion of examination-in-chief is not cross-examined then the same will be deemed to have been admitted. Reference was made to the case-laws titled as "*Dr. Javed Akhtar vs. The State*" (**PLD 2007 SC 249**), "*Ghulam Qadir Patani vs. The State*" (**2007 P.Cr.L.J. 1435**) and "*Arbab Tasleem vs. The State*" (**PLD 2010 SC 642**); that defence has taken a specific plea during cross-examination upon the PWs that complainant party of FIR case assaulted upon the accused party on 21.11.2021 at 01.30 p.m. but failed to prove the same, in this way, occurrence is admitted by the defence, although with a slightly different mode and manner. Further argued that if a party takes a specific plea then the burden of proof shifts upon him. Reliance was placed upon the case-laws titled as "*Ashiq Hussain alias Muhammad Ashraf vs. The State*" (**PLD 1994 SC 879**),

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“*Mst. Mumtaz Begum vs. Ghulam Farid and another*” (**2003 SCMR 647**) and “*Muhammad Javed vs. The State*” (**2015 SCMR 864**); that site plan is not substantive piece of evidence as observed in the case-law reported as “*Elahi Bakhsh vs. Rab Nawaz and another*” (**2002 SCMR 1842**); that the trial court has acquitted Muhammad Talal accused merely on the basis of *ipse dixit* of police which is not binding upon the court. Learned counsel for the complainant has placed reliance upon the case-law titled as “*Anwar Shamim and another vs. The State*” (**2010 SCMR 1791**). Lastly submitted that the prosecution has proved its case up to the hilt through trustworthy and confidence inspiring ocular account, which is duly supported by medical evidence and corroborated by recovery of weapon of offence, for the reason, the appeal filed by Muhammad Nawaz (appellant) be dismissed; criminal revision filed by the petitioner (complainant) be accepted and normal penalty of death be awarded to Muhammad Nawaz appellant/respondent and impugned judgment of acquittal of Muhammad Talal co-accused/ respondent be set aside and he be also punished in accordance with law.

The learned Deputy Prosecutor General while adopting the arguments of learned counsel for the complainant supplicated for the dismissal of appeal against conviction filed by Muhammad Nawaz appellant.

8. I have heard the arguments of learned counsel for the appellant as well as learned counsel for the complainant and learned Deputy Prosecutor General assiduously and also scanned the record minutely with their able assistance.

9. The occurrence in this case allegedly took place on 21.11.2021 at 02.00 p.m. and the matter was reported to the police on the same day at 02.45 p.m., i.e. within a period of 45 minutes but post mortem examination on the dead body of Salman Ali (deceased) was conducted on 21.11.2021 at 11.00 p.m., i.e. with the delay of nine hours. It has been clearly mentioned in crime report (Exh.CW6/A) and private complaint (Exh.PE) that after the occurrence, Sharafat Ali complainant (PW.1) made

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a call to police emergency number and escorted Salman Ali, in injured condition, to Shalamar Hospital who succumbed to the injuries while reaching hospital, whereas, other injured namely Muratab Ali was shifted by his brother Sakhawat Ali to Services Hospital for the purpose of treatment. In this way, both the injured were shifted to hospitals immediately. According to the statement of Dr. Mohsin Munawar (CW.9), time that elapsed between injury and death of Salman Ali was within few minutes, while between death and post mortem examination was 9 to 15 hours. His (CW.9) statement further reflects that the dead body of Salman Ali (deceased) was received in the department on 21.11.2021 at 04:00 p.m. He (CW.9) further stated in his cross-examination that documents were received at 10:15 p.m. on 21.11.2021 and post mortem examination was conducted by Dr. Zain Asif at 11:00 p.m. Besides, Ulfat Hayat, Inspector/I.O. (CW.10) has admitted in his cross-examination that the police documents were provided to the doctor at 10:45 p.m. i.e. eight hours and forty minutes after the occurrence, thus, the delay in conducting post mortem examination cannot be attributed to the doctor. Keeping in view the above mentioned gross delay in the post mortem examination, an adverse inference can be drawn that the prosecution witnesses were not present at the time and place of occurrence and the intervening period had been consumed in fabricating a false story after preliminary investigation, otherwise there was no justification of such delay for conducting post mortem examination on the dead body of the deceased. Wisdom is derived from the case-laws tilted as “*Muhammad Ilyas vs. Muhammad Abid alias Billa and others*” (**2017 SCMR 54**), “*Muhammad Adnan and another vs. The State and others*” (**2021 SCMR 16**) and “*Iftikhar Hussain alias Kharoo vs. The State*” (**2024 SCMR 1449**).

10. Furthermore, Sharafat Ali complainant (PW.1), while changing the prosecution version as reproduced supra, filed private complaint (Exh.PE) with the delay of five months and six days that too without giving any plausible reasoning qua such delay, meaning thereby, the private complaint was filed after due deliberation and consultation just to fill up

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the lacunas left in the FIR. I fortify my view from the dictum laid down in case-law titled as “*Muhammad Azad vs. Ahmad Ali and 2 other*” (**PLD 2003 Supreme Court 14**) wherein it was held as under:-

“Admittedly the private complaint on the basis which the cognizance was taken by the trial Court and the entire evidence was adduced against the respondent Ahmad Ali was filed belatedly i.e. after about three months and four days, for which no explanation of any sort was furnished either at the trial or thereafter”.

11. Coming to the ocular account, I have observed that both the eyewitnesses, i.e. Sharafat Ali complainant (PW.1) and Muratab Ali injured (PW.2) were the real brothers of Salman Ali (deceased). Record reflects that on the day of occurrence, Sharafat Ali complainant (PW.1) and Muratab Ali (PW.2) were serving in police department. I have noted that Sharafat Ali complainant (PW.1) has failed to justify his presence at the time and place of occurrence because he could not establish through any solid evidence that he was on leave at the date and time of occurrence. Relevant portion of his cross-examination is mentioned below:-

“I have been serving in Police Department since 26.07.1997. On 21.11.2021, I was closed to line. Generally police officials enter their arrival and departure in Roznamcha. I used to enter my departure and arrival in Roznamcha of Mobeen Shaheed, Manawan Police Lines. On 20.11.2021, I received message on my phone when I was at my home that I had to proceed to Mall-II for duty at 03.00 p.m. Said message was transmitted by duty officer lines. I do not remember his name. On 20.11.2021 I was posted at Shadman traffic sector and I departed from there to my home. I was closed to line from said Shadman traffic sector. Rapat regarding my said departure was incorporated in Roznamcha of Shadman traffic sector. Again said departure Rapat is not incorporated in the Roznamcha. I do not remember that on 20.11.2021 who was Muharrer of the said traffic sector. On 21.11.2021 my arrival was not incorporated in Roznamcha but I was told that my duty was at Mall Road. On 21.11.2021, I had not yet joined my duty. I do not remember whether I had produced the said text message before the investigating officer sent to me by the duty officer lines. It is incorrect to suggest that I have deliberately suppressed this fact. It is incorrect to suggest that I am intentionally concealing and suppressing the name of Muharrer. It is incorrect to suggest that I am also suppressing this fact that on

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21.11.2021, I was on my duty and my duty was assigned by Muharrer through Rapat Roznamcha.”

So far as the duty hours of Muratab Ali injured (PW.2) are concerned, he has stated in his cross-examination as under:-

“I am serving in Police Department. During the days of occurrence I was performing duty at office of CCPD, Lahore. My place of duty is at a distance of ten kilometers from my residence. It is incorrect to suggest that I am deposing falsely in this regard. My duty starts at about 09.00 a.m. and ends at about 05.00 p.m. or 10.00 p.m.

Being driver my departure and arrival is not to be incorporated in Roznamcha. It is correct that when departure of police officer is incorporated in Roznamcha then name of accompanying driver is also mentioned therein. On 21.11.2021, I was posted as driver with Syed Mubashar Hussain Shah, PR-II to CCPD, Lahore. I was on leave on 21.11.2021. I had not produced any written proof before the I.O. during investigation that I was on leave on 21.11.2021.”

In the light of above-mentioned portion of cross-examination upon Muratab Ali injured (PW.2), it is abundantly clear that he also remained unable to prove that he was on leave on the date and time of occurrence.

To establish his presence at the spot, Sharafat Ali complainant (PW.1) produced his blood-stained shirt before Ulfat Hayat, Inspector/I.O. (CW.10) on 21.11.2021, which was allegedly taken into possession *vide* memo (Exh.CW3/C), but contrary to the above stance of the complainant, Ulfat Hayat, Inspector/I.O. (CW.10) has stated in his cross-examination that the complainant had also not mentioned that he produced his blood stained shirt to the police at the time of recording of FIR. He (CW.10) further stated that he had not described in the site plan that the complainant showed him any blood-stained shirt. He (CW.10) has also not mentioned this fact in the police proceedings or in the inquest report. Ulfat Hayat, Inspector/I.O (CW10) has stated in his cross-examination as infra:-

“It is correct that no name plate of name of complainant Sharafat Ali was on the shirt P-9. It is also correct that in the recovery memo Ex.PC it is not mentioned that the shirt

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of complainant which is shirt of uniform of city traffic police contains the name plate of Sharafat Ali.”

Similarly, Faqeer Hussain 12655/C (CW.3) who is a witness of recovery of Shirt (P-9) has narrated in his cross-examination as infra:-

“I had mentioned in my statement u/s 161 of Cr.P.C. that I and Amjad Ali/C alongwith Ulfat Hayat/ Inspector reached the place of occurrence. Confronted with Exh. DC wherein not so recorded. I had not mentioned in my statement u/s 161 of Cr.P.C. the date and time of our reaching the place of occurrence.

It is correct that on recovery memo Ex. CW.3/C regarding taking into possession shirt (P-9) of complainant Sharafat his signatures are not available. It is correct that name of Sharafat is also not mentioned on the uniform as per recovery memo. It is correct that in my presence statement of Sharafat complainant was also not recorded in this regard by the investigating officer. It is correct that seal of Ulfat Hayat is made out as UH but he did not affix the said seal rather with MS.”

Ulfat Hayat, Inspector/I.O. (CW10) has also admitted in his cross-examination as under:-

“It is correct that since the Zimni No. 1 to Zimni No. 5 dated 21.11.2021 to 03.12.2021 I have not specifically mentioned that the shirt of complainant was handed over to Muhamarrer”

Insofar as the evidence of Muratab Ali injured (PW.2) is concerned, although he is alleged to have a stamp of injury on his body but it is not necessary that whatever he has stated is a gospel truth. I have to take his evidence in the light of settled rule of prudence. As per prosecution story, he (PW.2) sustained firearm injury at the time and place of occurrence but he was medically examined on 4th day of the occurrence, i.e. 25.11.2021. While appearing in the witness box during his cross-examination, he stated that he was medically examined on 21.11.2021 and denied this fact that he was medically examined on 25.11.2021. Relevant lines of his cross-examination are mentioned below:-

“On 21.11.2021, I was medically examined. It is incorrect to suggest that I am deposing falsely in this regard as I was medically examined on 25.11.2021. It is incorrect to suggest that on 25.11.2021 at 07.20 p.m. Irfan Ali/C took

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me for medical examination. It is not confirmed in my mind that I was medically examined at 07.20 p.m. on 25.11.2021. It is not in my knowledge that on 25.11.2021 my medico legal examination was conducted by the doctor by the order of the learned Magistrate”

Contrary to the above, Dr. Waqas Ahmad (CW.4) has categorically stated that he had medically examined Muratab Ali injured (PW.2) on 25.11.2021 at 07.30 p.m. Moreover, he has disclosed in his examination-in-chief that surgical notes from Services Hospital, Lahore under diary No. 44476 dated 26.11.2021 were received where date of admission of Muratab Ali injured was mentioned as 21.11.2021 and he was also discharged on 21.11.2021 as he was vitally stable. According to the statement of Ulfat Hayat, Inspector/I.O. (CW.10) on 22.11.2021 he was present at *Lakhodair* where Muratab Ali injured (PW.2) joined the investigation with him and he recorded his statement under section 161, Cr.P.C. There is no exegesis of one day’s delay in recording his statement under section 161, Cr.P.C. which diminishes his credibility as observed by the Supreme Court of Pakistan in the case-law reported as “*Khial Muhammad vs. The State*” (2024 SCMR 1490).

Similarly, it is mentioned in FIR (Exh.CW6/A) that Muratab Ali injured (PW.2) was shifted to Services Hospital, Lahore, but the prosecution has no satisfactory explanation that why he was not got medically examined by the concerned doctor at Services Hospital, Lahore, and why his Medico-legal Certificate was not obtained on the same day. Moreover, on the following day i.e. 22.11.2021, he (PW.2) joined the investigation and got recorded his statement under section 161, Cr.P.C. but even on this day, he was not sent by the Investigating Officer (CW.10) for his medical examination and issuance of Medico-legal Certificate.

Another crippling feature of this case is that at the time of joining police investigation on 22.11.2021, Muratab Ali injured (PW.2) did not produce his blood stained clothes and subsequently on 27.11.2021, he produced the same but on that day, he (PW.2) had not produced his Medico-legal Certificate which was produced by Irfan Ali constable before the investigating officer on 03.12.2021. I have noted that there is

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no evidence that who had directed Irfan Ali constable to get Muratab Ali injured (PW.2) medically examined from Rural Health Centre (RHC), Awan Dhai Wala, Lahore. Moreover, Irfan Ali constable has not been produced in the evidence. I have also observed that no plausible explanation has been given by the prosecution qua delayed medical examination of Muratab Ali injured (PW.2) especially when the matter was allegedly reported promptly to the police and it has been specifically mentioned in crime report (Exh.CW6/A) that Sakhawat Ali (jettisoned PW) escorted Muratab Ali, in injured condition, to Services Hospital, Lahore, for the purpose of treatment.

In the light of above circumstances, I am of the view that if the above-mentioned PW had sustained the injury at the hands of Muhammad Talal co-accused (since acquitted) at the time and place of occurrence then he should have been immediately examined by the concerned medical officer and issued his Medico-legal Certificate. Furthermore, it has also come on the surface of record that Dr. Waqas Ahmad (CW.4), who medically examined Muratab Ali injured (PW.2) on 25.11.2021 at 07.30 p.m. and issued his Medico-legal Certificate (Exh.CW4/A), stated in his cross-examination that he had not mentioned the injury No.1-A as entry or inverted wound in MLC. He had also not mentioned injury No.1-B as exit or everted wound in MLC, however, he had mentioned therein whatever was told to him by the injured. He further admitted in his cross-examination as infra:-

No record of Services Hospital, Lahore was produced before me by the injured that is why I have not recorded the same in my report. I have mentioned in my report the words "that wound was surgically debrided having rough margins from Services Hospital, Lahore" because it was told to me by the injured. The duration of four days was also told to me by the injured. This medico legal was conducted by me through Court orders. It is correct that I have not mentioned in MLC Ex-CW.4/A that MLC was conducted as per Court order. I annexed the said Court order with the MLC. (At this stage, the file was examined but no such Court order is available on file on the basis of which MLC was conducted by the doctor). 26684-85 mentioned on document is not the diary number of our Rural Health Center, Lahore. Awan Dhayewala. Diary number mentioned on our Rural Health

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Center, Awan Dhayewala, Lahore is 44474, dated 26.11.2021/1 referred the injured for x-ray of left thigh and consultant radiologist opinion regarding injuries No.1-A.1-8 plus presence of metallic dust and 1.5 x 1 cm wound over lateral aspect of left thigh and 2 x 1.5 cm wound on posterior aspect but these x-rays were not produced before me. No fracture was seen in the x-ray of left thigh and no metallic dust was also seen. The opinion mentioned overleaf MLC as EMR-84422934, dated 21.11.2021 was not authored by me. No document concerning to the same of Services Hospital, Lahore was produced before me. The date is mentioned as 01.12.2021 on the document.

He also admitted that Rural Health Centre (RHC) Awan Dhai Wala, Lahore, is closer to village *Lakhodair* than Services Hospital, Lahore. He also conceded that from 21.11.2021 to 24.11.2021, the injured never appeared in Rural Health Centre (RHC) Awan Dhai Wala, Lahore.

In the light of above-mentioned facts, possibility cannot be ruled out that Medico-legal Certificate of Muratab Ali injured (PW.2) was subsequently maneuvered by the prosecution as both the eyewitnesses, i.e. PW.1 and PW2 were police officials. If PW.2 was injured in the same occurrence, he should have been examined on the day of occurrence. This fact raises a question about the genuineness of his injury. I have observed that according to prosecution story, after the occurrence Salman Ali (since deceased) was escorted to Shalamar Hospital in injured condition by Sharafat Ali complainant (PW.1) whereas Muratab Ali injured (PW.2) was shifted to Services Hospital, Lahore by his other brother Sakhawat Ali (jettisoned PW). It does not appeal to a prudent mind that why both injured were taken to different hospitals, because, if they had sustained injuries at the same time then they should have been taken by their real brothers to one and the same hospital. This fact is sufficient to hold that Salman Ali (since deceased) and Muratab Ali (PW.2) had not sustained injuries at the same time and place. It is obvious that the occurrence had not taken place as per mode and manner described by the prosecution. I have noted that due to the peculiar facts and circumstances of this case, the trial court has rightly held in paragraph No. 17 of the impugned judgment that:-

“It stands established that both the parties have suppressed true and actual facts from the Court and they have not

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spoken the whole truth. The alleged occurrence had not taken place in the mode and manner as claimed by both the parties.”

12. Another important aspect of this case is that occurrence allegedly took place upon forbidding the accused party from diverting canal water in the land of complainant party as the wheat crop could not be sowed by them. According to the site plan (Exh.CW10/E) occurrence took place in *Khasra* No.4622, which was owned by Ameen and Idrees and was being cultivated by Shafique, etc. but not by the complainant party. More so, it is not mentioned in the site plan of the place of occurrence that the land of the complainant party was irrigated by the accused persons or there was any proof of sowing wheat crop. Muratab Ali injured (PW.2) failed to disclose *Khasra number* of land owned by them. Relevant portion of his cross-examination reads as under:-

“I cannot say about any khasra numbers which are in our ownership.”

Similarly, Ulfat Hayat Inspector/I.O (CW.10) has stated in his cross-examination as infra:-

“It is correct that the place where occurrence took place and from where I collected blood stained earth is owned and cultivated by Ameen, Idres and Shafique. It is correct that at the place of occurrence there was a partition (ء) as well as heap of mud. It is correct that agricultural land of Haji Muhammad Yousaf, etc. is four feet high than the place of occurrence, owned by Ameen, Idrees and Shafique. It is correct that in the land owned by complainant, no occurrence took place. It is correct that I had not shown any watercourse (نہر) in the land of complainant party. It is correct that no water can flow from the place of occurrence to the land of complainant party because it is four feet high than the place of occurrence. It is correct that no equipment for sowing wheat crop such as tractor, wheat seed or any other kind of machinery was available at the place of occurrence, necessary for sowing wheat crop.”

It is noteworthy that Syed Muhammad Younas Bukhari (CW.1) has stated in his cross-examination as under:-

“I prepared scaled site plan on instructions of I.O. pointation of complainant and witnesses as well as my visualization at the place of occurrence. Place of occurrence is situated in Khasra No. 4622 which is owned by Ameen and Idrees while cultivated by Shafique, etc. I have not mentioned in the site

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plan that the place of occurrence is owned by the complainant or witnesses as it was neither told to me by them nor intimated by the investigating officer. It is correct that I have not mentioned that on place of occurrence wheat crop was being cultivated as it was neither intimated to me by the investigating officer nor pointed out by the complainant and witnesses. It is correct that I have not shown any agricultural property of the deceased, complainant and eyewitnesses in my scaled site plan Exh.CW-1/A and Ex.-CW.1/B on the northern, western and southern side of the place of occurrence as neither it was intimated to me by the investigating officer nor pointed by the complainant and witnesses. It is correct that I have not shown any water-channel in the scaled site plan as neither it was intimated to me by the investigating officer nor told by the complainant and witnesses. ”

In the light of above-mentioned facts, I am quite confident to hold that first episode of the occurrence is not proved.

So far as the contention of learned counsel for the complainant that site plan is not a substantive piece of evidence and cannot be given preference over the direct evidence of eyewitnesses is concerned, I am in agreement with the proposition that although site plan is not a substantive piece of evidence as held in case of “*Ellahi Bakhsh vs. Rab Nawaz and another*” (**2002 SCMR 1842**) but it reflects the view of crime scene and the same can be used to contradict or disbelieve the eyewitnesses. In the above-mentioned case law, which has been referred by learned counsel for the complainant, it has been held as under:-

We have also examined the esteemed view of Sardar Muhammad Latif Khan Khosa, learned Senior Advocate. Supreme Court that it was physically impossible for Ellahi Bukhsh (P.W.7) to see the place of occurrence as he was shown to have been standing on a long distance. In this regard site plan (Exh.P.M at page 147 of the paper book) has been referred with specific mention to point No. 1 and point No.4. It is worth mentioned that in fact the site plan is Exh.P.C (page 133 of the paper book) wherein it has been clarified that the place of occurrence was without a boundary wall and accordingly Ellahi Bukhsh (P.W.7) was in a position to see point No.4 (place of occurrence) from point No.1 (place where Ellahi Bukhsh was present). In this regard we have also perused carefully the statement of Ellahi Bukhsh (P.W.7) and cross-examination conducted by learned defence counsel which makes it abundant clear that Ellahi Bukhsh (P.W.7) was never confronted with site plan (Exh.P.C) and, therefore, the said contention deserves no consideration. Even otherwise the site plan is not a

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substantive piece of evidence and can be ignored when the witness was not confronted with it.

I am, however, of the view that there must be some purpose behind the preparation of site plan which is arranged twice during the course of investigation. Initially, the investigating officer himself prepares a rough site plan at the time of his first visit to the place of occurrence and thereafter, a scaled site plan is also drafted by the expert under the direction of investigating officer and on pointation of eyewitness(es). If it has to be treated as a waste-paper and cannot be given any consideration, then there must have been no necessity at all for its preparation that too for twice. It is also not the case that the investigating officer of his own prepares the rough site plan and then gets prepare a scaled site plan from the expert as of routine or without any purpose rather he is required to carry this exercise in terms of Rule 13, Chapter-25, Volume-3 of the Punjab Police Rules, 1934, which is hereby described as under: -

25.13. Plan of scene. - (1) In all important cases two plans of the scene of the offences shall be prepared by a qualified police officer or other suitable agency one to be submitted with the charge sheet or final report and the other to be retained for departmental use.

(2) The following rules shall govern the preparation of maps or plans by patwaris or other expert :-

(i) Pursuant to paragraph 26 of the Patwari Rules, the Financial Commissioner, with the concurrence of the Inspector General of Police, issues the following instructions concerning the preparation by patwaris of maps needed to illustrate police inquiries.

(ii) In ordinary cases no demands for such maps will be made upon patwaris.

(iii) In the case of heinous crime, especially in cases of murder or riots connected with land disputes, the police officer investigating the case will, if he considers an accurate map is required, summons to the scene of the crime the patwari of the circle in which it occurred and cause him to prepare two maps, one for production in court as evidence and the other for the use of the police investigating agency. In the former reference relating to facts observed by the police officer should be entered while in the latter references based on the statement of witnesses which are not relevant in evidence may be recorded. He will be careful not to detain the

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patwaris longer than is necessary for the preparation of maps.

(iv) It is necessary to define clearly the responsibility of the patwari and police officer in respect of these maps.

(v) The police officer will indicate to the patwari the limits of the land of which he desires map, and the topographical items to be shown therein. The patwari will then be responsible for drawing the maps correctly, by tracing, if necessary, the second copy, for making accurately on maps all these items and for entering on the maps due distances. He will not write on the map, intended for production as evidence in the court any explanations. The police officer may write any explanations on the traced copy of the map.

(vi) It is for the police officer himself to add to the second copy of the map such remarks as may be necessary to explain the connection of the map with the case under inquiry. He is also responsible equally with the patwaris for the correctness of all distances, but on the copy of the map drawn by the patwari for presentation, in court he will make no remarks or explanations based on the statements of witnesses.

(vii) It will be convenient if all the entries made by the patwari are made in black ink, and those added by the police officer in red ink.

(viii) Patwaris will not in any case be required by a police officer to make a map of an inhabited enclosure or of land inside a town or village site.

Similarly, Rule 33(5), Chapter-25, Volume-3 of the Punjab Police Rules, 1934, also requires the investigating officer to draw a correct plan of the scene of death including all features necessary to a right understanding of the case and Rule 35(4)(a) of the Rules *ibid* forms it as a part of the inquest report. This means that there is definitely some purpose behind the preparation of site plan.

It is true that ocular account is given preference over the site plan yet there is a condition precedent that the ocular account must be cogent, trustworthy and not tainted, otherwise, site plan can be used to corroborate or contradict other evidence, because, it is used to give true picture and salient features of the occurrence. In the present case, the defence has denied the place of occurrence as well as presence of eyewitnesses at the spot. It is also noteworthy that the purported

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eyewitnesses have been duly confronted with site plan, which was prepared by the draftsman at the instructions of investigating officer and pointation of complainant as well as eyewitnesses. It can, therefore, be referred to determine the location of incident as well as respective positions of the deceased and the injured. Reliance in this respect is hereby placed upon the case-law titled as "Mst. Rukhsana Begum and others vs. Sajjad and others" (2017 SCMR 596).

13. What to say about the untrustworthy, unreliable and tainted ocular account which is even not synchronized with medical evidence. According to the crime report (Exh.CW6/A), Muhammad Nawaz appellant has been burdened with the responsibility of making fire shots with his pistol, which landed on left arm and armpit of Salman Ali (deceased) but while appearing before the trial court, Sharafat Ali complainant (PW.1) and Muratab Ali injured (PW.2) have attributed only one pistol fire shot to Muhammad Nawaz appellant. Moreover, according to the statements of eyewitnesses, fire shot made by Muhammad Nawaz appellant had hit on left arm and armpit of Salman Ali (deceased) whereas, according to the post mortem report of Salman Ali (deceased) and statement of Dr. Mohsin Munawar (CW.9), entry wound was on the outer top right shoulder which is described as injury No.1-A. He (CW.9) further clarified in his cross-examination as under:-

"It is correct that when single firearm foreign body made more than one injuries, then all those injuries are written as 1-A, 1-B, 1-C and 1-D. It is correct that as per post mortem examination report all the four injuries are the result of one bullet."

According to cross-examination on Ulfat Hayat, Inspector/I.O. (CW.10) the accused and the injured as well as deceased, as per site plan, were standing on a plain agriculture land, meaning thereby, the deceased and the appellant were standing at equal footing, whereas, Dr. Mohsin Munawar (CW.9) has disclosed in cross-examination that injury No.1-A is on upper part of body, whereas injuries No.1-B, 1-C and 1-D are on lower side of body. He admitted it correct that direction of injuries was in

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form of upward to downward. He also stated in his cross-examination as under:-

“It is correct that possibility cannot be ruled out that the assailant was on the higher pedestal than the victim.”

Similarly, he (CW.9) also admitted in his cross-examination that in the whole post mortem report, it is not mentioned that entry wound was received by the deceased on his armpit. In the light of above, I am of the considered view that ocular account is not in unison with medical evidence, making the prosecution case further doubtful. A reference in this respect may be made to the cases of “Zahir Yousaf and another vs. The State and another” (**2017 SCMR 2002**), “Mian Sohail Ahmad and others vs. The State and others” (**2019 SCMR 956**) and “Khalid Mehmood and another vs. The State and others” (**2021 SCMR 810**).

14. There is another significant fact that Sharafat Ali complainant (PW.1) and Muratab Ali injured (PW.2) made blatant and dishonest improvements to their earlier statements with which they were duly confronted and for the purpose of clarity, relevant lines from their cross-examination highlighting those improvements are as under:-

Sharafat Ali complainant (PW.1)

“....Earlier my cursory statement was also recorded before the Court. I had stated in my cursory statement that I went to police station and moved application Ex-PA for registration of case. Confronted with cursory statement **Ex/DA**, wherein it is not so recorded. I had stated in my cursory statement that I identified dead body of my deceased brother at hospital on which I.O prepared memo of identification Ex-PB, attested by me, Maalik and Nasir PWs. Confronted with cursory statement **Ex-DA**, it is not so recorded. I had got recorded in my cursory statement that then I came back at police station and handed over my blood stained shirt (uniform) before the I.O, which he took into his possession vide recovery memo Ex-PC, attested by witnesses. Confronted with cursory statement **Ex-DA**, it is not so recorded. I also recorded in my cursory statement that then I went to dead house and received dead body of my brother through receipt Ex-PD, attested by me, Maalik and Nasir PWs and that I.O also recorded my statement u/s 161 of Cr.P.C. Confronted with cursory statement **Ex-DA**, wherein it is not so recorded”

Muratab Ali (PW.2)

“Police recorded my statement in this case. I had recorded in my statement before police u/s 161 Cr.P.C that at 01:30

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p.m I called my brother Sharafat Ali through my mobile phone No.0308-4124726 on his mobile phone No.0300-4046035 and told him entire episode. Confronted with **Ex-DB**, wherein it is not so recorded in this form. I had recorded in my statement before police u/s 161 Cr.P.C. that after sometime, my brother Sharafat Ali on his own vehicle ACG-730 reached at the spot. Confronted with **Ex-DB**, wherein it is not so recorded in this form. I had recorded in my statement before police that I stepped ahead to save Salman Ali on which accused Muhammad Talal made fire-shot on me with his pistol which landed on my left thigh کوبہ. Confronted with **Ex-DB**, wherein it is not so recorded in this form. I had recorded in my statement before police that my brother Sharafat Ali made call on mobile police emergency. Confronted with **Ex-DB**, wherein it is not so recorded....”

In a slew of decisions, the Supreme Court of Pakistan has declared that the witnesses are untrustworthy if they make dishonest improvements in their statements on material aspects of the case in order to fill up the lacunas and gaps in the prosecution case or to bring their statements in line with the other prosecution evidence. Reference in this respect may be made to the judgments of Supreme Court of Pakistan reported as “Mst. Saima Noreen and another vs. The State” (2024 SCMR 1310) and “Muhammad Jahangir and another vs. The State and others” (2024 SCMR 1741).

15. Learned counsel for the complainant has also drawn the attention of this Court towards an application submitted by Muhammad Nawaz appellant to the Superintendent of Police (Investigation), Cantt, Lahore, for registration of cross version wherein it has been narrated by Muhammad Nawaz appellant that on 21.11.2021 at 01:30 p.m. he along with his son namely Talal was working in his fields, when his paternal cousins namely Muratab Ali injured (PW.2), Salman Ali (since deceased) and Sakhawat Ali armed with hatchets and sota entered in the fields while abusing and raising *lalkara* that the appellant should be taught a lesson for stopping them from irrigating the crops with dirty water to the crops, therefore, he should not be spared. The appellant requested that they will resolve the matter amicably but in the meantime Sakhawat Ali, who was armed with hatchet, made a hatchet blow from the front side. The

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appellant saved his head from the blow and raised his right hand in the air, upon which, the hatchet blow was landed on his right hand and the same was injured. Salman Ali (since deceased) also made straight hatchet blow which landed on his right arm, thereafter, Salman Ali (since deceased) again made hatchet blow which landed on the chest of the appellant and upon receipt of those injuries, he fell down. When son of the appellant namely Talal tried to rescue him, the supra-mentioned persons gave fists, kicks and *sotas* blows to Talal. In order to save his life, he (Talal) ran away from the spot, whereupon, Salman Ali (since deceased) made two hatchet blows from the back side which landed on the back of appellant. Thereafter the appellant took out his licensed pistol from the box of tractor in order to save his life and made aerial firing and extended threats and because of the injury on his right hand made firing with his left hand then the bullet was stuck in the pistol. In the meantime, Sakhawat Ali (jettisoned PW) asked to first snatch his pistol and then done him to death with his own pistol, upon which the above mentioned PWs suddenly attempted to snatch the pistol from the appellant and during the scuffle the appellant made attempt to retrieve the bullet from the pistol which was stuck in the chamber of pistol. The above mentioned PWs tried to snatch the pistol but due to pressing the trigger fire went off. When the PWs did not get the pistol from the appellant then Muratab Ali made hatchet blow from the front side which landed on the head of the appellant. Upon receipt of those injuries the appellant fell down and became unconscious. The occurrence was witnessed by Ghaffar son of Muhammad Hussain and Talal (son of the appellant). Thereafter the appellant was shifted to nearby Health Centre namely Awan Dhai Wala, Lahore, for medical treatment. It was also alleged that during scuffle for snatching pistol, one fire hit Salman Ali which resulted in his death.

Learned counsel for the complainant has contended that although said application has not been exhibited but the same is available on judicial file and this Court for the sake of justice can look into its contents according to which the defence has admitted the occurrence. He has also

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placed reliance upon the case-law titled as "*Muhammad Azam vs. Muhammad Iqbal and others*" (**PLD 1984 SC 95**).

There is no cavil to the proposition that for safe administration of justice and fair play, the Court can look into the averments of any document which is available on judicial file but at the same time, it does not mean that the contents of the same can be referred in the judgment because it is a well settled principle of law that the document, which has not been produced and exhibited in evidence, cannot be read and relied upon. In case titled as "*Mazhar Iqbal vs. The State and another*" (**2022 MLD 752**) it has been held as under:-

"It is a well settled law that document which has not been exhibited, cannot be read in the evidence. It is also settled that no conviction can be based upon the evidence which has not been put to accused in his statement under Section 342, Cr.P.C. In this regard, reliance is placed on a case titled as "State Life Insurance Corporation of Pakistan and another v. Javaid Iqbal" (2011 SCMR 1013), wherein it has been held by the Hon'ble Supreme Court of Pakistan that:

"We are not convinced that, such document, which has not been produced and proved in evidence but only "marked", can be taken into account by the Courts as a legal evidence of a fact."

16. Now coming to the objection of complainant's counsel that the trial court has wrongly exhibited the photocopy of Rapat No.11 dated 21.11.2021 as Exh.DE, despite the objection of complainant's counsel and the same should be brush aside. It is not disputed that the photocopy of any document cannot be exhibited and read in evidence except as a secondary evidence. It is true that in absence of any evidence with regard to loss of any document, photocopy of the same even if taken on record and exhibited without any objection would not qualify the document as admissible in evidence, in this way, I agree with the contention of learned counsel for the complainant that the trial court has wrongly exhibited photocopy of Rapat No.11 dated 21.11.2011 as Exh.DE but at the same time, I have also taken into account that Amjad Shakeel 9036/C (CW.7) and Ulfat Hayat, Inspector/I.O. (CW.10) who were posted at police station Manawan on the day of occurrence, have categorically admitted in their

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cross-examination that Muratab Ali injured (PW.2) was admitted in Services Hospital, Lahore, on 21.11.2021 at 01.15 p.m. and Moharrar Chowki of police post Services Hospital informed telephonically at the police station about the admission of Muratab Ali in injured condition. Relevant portion of cross-examination upon Amjad Shakeel 9036/HC (CW.7) is hereby reproduced as under:-

“It is correct that vide Rapat No. 11 dated 21.11.2021 roznamcha of our police station, a telephonic message was received at 01.15 p.m. from the Services Hospital, Lahore through Tallat Muharrer police post service hospital that Muratab son of Yousaf is admitted in the Services Hospital vide COD No. 8422934 in injured condition, so any investigating officer may be deputed. Abdul Majeed ASI was deputed for said purpose (At this stage, learned defence counsel requested to place on record copy of Rapat No. 11 dated 21.11.2021, which is objected by learned counsel for the complainant. Since, Rapat in question is relevant to instant controversy, therefore, copy of Rapat No. 11 is placed on record as Exh. DE.”

Similarly, Ulfat Hayat, Inspector (CW.10) being the investigating officer was well aware about the facts concerning to the case and he has also conceded regarding the admission of Muratab Ali (PW.2) in injured condition in Services Hospital, Lahore as well as the information in this respect made at Police Station Manawan by Moharrar Chowki Services Hospital, Lahore on 21.11.2021 at 01.15 p.m. Relevant lines of his cross-examination read as under:-

“It is correct that in the Roznamcha vide Rapat No. 11 dated 21.11.2021 at 01.15 p.m it is written that at 01.15 p.m. Muharrer chowki Services Hospital lodged report through telephone that one Muratab Ali son of Muhammad Yousaf aged 42 years is admitted in the COD No. 8422934 in injured condition in Services Hospital, hence, investigating officer be deputed and on the basis of said telephonic message said Rapat was incorporated in the Roznamcha and Abdul Majeed ASI was informed in this respect. I have not written throughout the investigation qua to Rapat No. 11 dated 21.11.2021 that Muratab Ali was injured prior to 01.15 p.m. dated 21.11.2021 that Murtab Ali was injured prior to 01.15 p.m. dated 21.11.2021 and was shifted to hospital prior to present occurrence. I did not obtain any MLC of injured Muratab Ali on 21.11.2021 concerning to COD No. 84422934 from Services Hospital, Lahore

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It is noteworthy that when it has been clearly mentioned in the crime report (Exh.CW6/A) that Muratab Ali injured PW2 was taken to Services Hospital, Lahore in injured condition for the purpose of treatment then this fact is sufficient to hold that Rapat No.11 dated 21.11.2021 was entered at Police Station Manawan. Although it was incumbent upon the prosecution to prove that Muratab Ali injured (PW.2) was not admitted in Services Hospital, Lahore on 21.11.2021 at 01.15 p.m. but the prosecution witnesses themselves have conceded about the admission of Muratab Ali injured (PW.2) in the Services Hospital, Lahore. I have also observed that the whole prosecution evidence is silent on the point that Muratab Ali (PW.2) was admitted in the Services Hospital after 02.00 p.m. on 21.11.2021. As the witnesses namely Amjad Shakeel 9036/HC (CW.7) and Ulfat Hayat, Inspector/ I.O. (CW.10) have admitted in their evidence that Muratab Ali (PW.2) was admitted in Services Hospital at 01.15 p.m. on 21.11.2024, in this way, defence version is proved that the occurrence had not taken place at the time alleged by the prosecution.

17. Now coming to the stance of learned counsel for the complainant that the evidence regarding the occurrence deposited by the eyewitnesses in their examination-in-chief on some material aspects has not been cross-examined by the defence, for the reason, the portion of uncross-examined evidence should be admitted as correct. In this context, I have observed that record clearly reflects that the defence has taken the plea that the occurrence has not taken place as stated by the prosecution in crime report (Exh.CW6/A) rather the complainant party assaulted upon the accused party at their *Dera* and caused injuries to them.

So far as the case-laws referred by learned counsel for the complainant about the above-mentioned proposition are concerned, the same are not relevant because every criminal case is to be decided on the basis of totality of impressions gathered from the circumstances of the case and not on the narrow ground of cross-examination. Even otherwise the point agitated by learned counsel for the complainant is applicable in

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the civil cases and not in criminal cases. Guidance in this respect has been sought from the cases reported as “Juwarsing and others v. The State of Madhya Pradesh” (**AIR 1981 Supreme Court 373**) and “Nadeem Ramzan v. The State” (**2018 SCMR 149**).

Similarly in case of “*Mst. Asia Bibi vs. The State and others*” (**PLD 2019 Supreme Court 64**) it has been held as under:-

“In this regard it is important to note that this Court has held that the principle, namely, the part of the statement which remains un-rebutted amounts to admission, does not attract in criminal cases. In criminal cases, the burden to prove the guilt of the accused rests heavily upon the prosecution, who has to prove its case beyond any shadow of doubt. Reliance in this behalf may be made to judgments of this Court reported as Nadeem Ramzan v. the State (2018 SCMR 149), S. Mahmood Aslam Shah v. the State (PLD 1987 SC 250) and State v. Rab Nawaz and another (PLD 1974 SC 87). Thus, the learned High Court has erred in law while deciding this aspect of the matter.”

18. Another argument of learned counsel for the complainant is that the defence has taken a specific plea during the cross-examination upon the PWs, which it failed to prove, for the reason, inference can be drawn against the defence. It is well settled by now that general principle in criminal jurisprudence is that the prosecution has to stand on its own legs and this burden does not shift from prosecution even if accused takes up any particular plea and fails to prove it. Reliance can be placed upon the case-laws titled as “*Hakim Ali and four others vs. The State and another*” (**1971 SCMR 432**) and “*Ashiq Hussain vs. The State*” (**1993 SCMR 417**).

19. With regard to the recovery of pistol (P-6) taken into possession *vide* recovery memo Exh.CW2/C on 28.12.2021 at the pointation of appellant from his *Dera* situated at *Lakhodair* and positive report of PFSA (Exh.PH), I have noticed that Ulfat Hayat, Inspector/I.O. (CW10) has admitted in his cross-examination that on 06.12.2021 after 15 days of the occurrence he sent blood stained earth, crime empties and live bullets, parcel seven in number to the PFSA for analysis. The above highlighted unexplained delay in sending the crime empties to the office of Punjab

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Forensic Science Agency, Lahore, creates a reasonable doubt qua the authenticity of this corroborative evidence against the appellant. Reliance is placed upon the case-law reported as “*Muhammad Farooq and another vs. The State*” (**2006 SCMR 1707**).

Furthermore, he (CW.10) also admitted that from 21.11.2021 till the completion of investigation of the case, there is no mentioning in the *Roznamcha* that he handed over the parcel to Moharrar and deposited the same in the Office of PFSA. In the attending circumstances, safe custody of pistol P-6 and its transmission to the office of PFSA becomes highly doubtful, therefore, recovery of pistol (P-6) and its positive report of Punjab Forensic Science Agency, Lahore (Exh.PH) is inconsequential to the prosecution case.

Apart from the above, it is an admitted position of the case that in column No.23 of the inquest report (Exh.CW10/A), no crime empty has been shown present near the dead body, albeit in the recovery memo (Exh.CW3/A) and site plan (Exh.CW10/E), thirteen empty cartridges had been shown recovered lying very close to the dead body of deceased. This deliberate omission creates further reasonable doubts regarding the credibility of recovery of weapon of offence as well as PFSA report as held by the Supreme Court of Pakistan in the case-law titled as “Mst. Rukhsana Begum and others vs. Sajjad and others” (2017 SCMR 596).

20. Now the only piece of evidence which still remains in the field is the motive advanced by the prosecution behind the unfortunate incident, which, as per prosecution case was that the complainant party forbade the accused from diverting the flow of water in the land of the complainant party as they were sowing wheat crop. I have noted that prosecution has failed to prove the alleged motive and the PWs have not produced any cogent or convincing evidence to prove the same. Similarly, Ulfat Hayat, Inspector/I.O. (CW.10) has admitted this fact in his cross-examination. In this view of the matter, the trial court has rightly disbelieved the motive part. Even otherwise, law is quite settled by now that if the prosecution asserts a motive but fails to prove the same, then such failure on the part of prosecution may react against a sentence of death/life on the charge of

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murder and reliance in this regard can be placed upon the cases reported by the Supreme Court of Pakistan as “*Muhammad Hassan and another vs. The State and others*” (**2024 SCMR 1427**), “*Iftikhar Hussain alias Kharoo vs. The State*” (**2024 SCMR 1449**) and “*Muhammad Jahangir and another vs. The State and others*” (**2024 SCMR 1741**).

21. After analyzing the prosecution case from every angle, I have concluded that the case against the appellant is replete with doubts and his conviction and sentence cannot be upheld on the basis of such a shaky and untrustworthy evidence. The apex Court of the country has time and again held that in the event of a doubt, its benefit must be given to the accused not as a matter of grace, but as of right. Reliance is placed upon case laws titled as “*Sajjad Hussain vs. The State and others*” (**2022 SCMR 1540**) and “*Saghir Ahmad vs. The State and others*” (**2023 SCMR 241**).

22. For the foregoing reasons, Criminal Appeal No.83167 of 2023 is accepted and Muhammad Nawaz appellant is acquitted of the charge by extending the benefit of doubt to him. Muhammad Nawaz appellant is in jail; he be released forthwith if not required in any other case.

23. As a natural corollary, Criminal Appeal No.2404 of 2024 filed against the acquittal of Muhammad Talal respondent No.1 and Criminal Revision No. 2407 of 2024 preferred by Sharafat Ali complainant for enhancement of sentence and compensation amount are dismissed.

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

Judge

*Announced, dictated on 21.10.2024 but prepared
and singed on 06.11.2024
Khurram*