

Criminal Appeal No.228667-J/2018

Abu Bakar *alias* Samosa, etc. vs The State

Criminal Appeal No.213552/2018

Master Ansar vs **The State and another**

P.S.L.A. No.211801/2018

Shazia Siddique vs **Mian Nasir and two others**

Crl. Revision No.211803/2018

Shazia Siddique vs Master Ansar and four others

Murder Reference No.04/2019

The State vs **Abu Bakar *alias* Samosa**

J U D G M E N T

Date of hearing:	<u>19.12.2023.</u>
Appellants by:	<p>Mrs. Nighat Saeed Mughal, Advocate for Abu Bakar (appellant in Crl. Appeal No.228667-J/2018).</p> <p>Ch. Sajid Ali Bull, Advocate for and with Jamshed and Javed (appellants Crl. Appeal No.228667-J/2018).</p> <p>Mr. Muhammad Asif Bhatti, Advocate along with Mr. Dabeer Ali Awan, Advocate for and with Master Ansar (appellant in Crl. Appeal No.213552/2018).</p>
State by:	Mr. Munir Ahmad Sayal, Additional Prosecutor General.
Complainant by:	Mr. Asghar Ali Gill, Advocate for Shazia Siddique (complainant in Crl. Appeal No.228667-J/2018, Crl. Appeal No.213552/2018, petitioner in P.S.L.A. No.211801/2018 and Crl. Revision No.211803/2018).

FAROOQ HAIDER, J.:- This single judgment will dispose of **Crl. Appeal No.228667-J/2018** filed by Abu Bakar *alias* Samosa, Master Ansar, Jamshed and Javed (appellants) against their “convictions & sentences” {since Master Ansar (appellant, mentioned above) has also assailed his conviction and sentence by way of filing Crl. Appeal No.213552/2018 through a private counsel, which is also pending adjudication before this Court and being decided today; therefore, aforementioned jail appeal i.e. Crl. Appeal No.228667-J/2018 to the extent of Master Ansar (appellant) has become

superfluous and the same is disposed of to said extent accordingly}, **Crl. Appeal No.213552/2018** filed by Master Ansar (appellant) separately through private counsel against his “conviction & sentence”, **P.S.L.A. No.211801/2018** filed by Shazia Siddique (petitioner) against judgment of acquittal of Mian Nasir and Mst. Bismillah Begum (respondents), **Crl. Revision No.211803/2018** for enhancement of sentences of Master Ansar, Jamshed, Javed (respondents) and **Murder Reference No.04/2019** sent by trial court, as all the matters have arisen out of one and the same judgment dated: 19.04.2018 passed by learned Addl. Sessions Judge, Nowshera Virkan/trial court.

2. Abu Bakar *alias* Samosa, Master Ansar, Jamshed and Javed (appellants) along with their co-accused persons namely Mian Nasir and Bismillah Begum were tried in complaint case titled as “**Shazia Siddique versus Abu Bakar alias Samosa, etc.**” and trial court after conclusion of the trial, *vide* impugned judgment dated: 19.04.2018 while acquitting Mian Nasir and Bismillah Begum (aforementioned co-accused) has convicted and sentenced the appellants as under: -

ABU BAKAR ALIAS SAMOSA

<u>Conviction</u>	<u>Sentence</u>
<u>Under Section:</u> 302 (b) PPC	“ <i>Death</i> ” with payment of compensation of Rs.1,00,000/- under Section: 544-A Cr.P.C. to the legal heirs of Muhammad Umair (deceased) and in default of payment of compensation amount to further undergo S.I. for six months.

MASTER ANSAR, JAVED AND JAMSHED

<u>Conviction</u>	<u>Sentence</u>
<u>Under Section:</u> 302 (b) PPC	“ <i>Imprisonment for Life</i> ” as <i>Taz’ir</i> each with payment of compensation of Rs.50,000/- each under Section: 544-A Cr.P.C. to the legal heirs of Muhammad Umair (deceased) and in default of payment of compensation amount to further undergo S.I. for three months each. They were also extended benefit of Section: 382-B, Cr.P.C.

3. Primarily, Shazia Siddique (complainant/PW-1) set the machinery of law into motion by moving application (Ex.PA) to Munir Ahmad ASI/DO (PW-10) in Police Station: Nowshera Virkan, District: Gujranwala mentioning therein that she is serving as Nursing Staff in Civil Hospital, Quetta;

on 11.11.2015 at about 08:30 p.m. (night), she received information through phone that on 11.11.2015 at about 08:15 p.m. (night), her husband namely Umair *alias* Khalshi along with his brother namely Hafiz Umar and Shafique son of Muhammad Siddiq were going back to their home after taking tea from tea shop opposite to Rasheeda Khanam Hospital, Matta Virkan Road, Nowshera Virkan; 1) Abu Bakar *alias* Samosa (2) Master Ansar armed with pistol .30 bore on foot whereas Jamshed and (2) Javed armed with pistol .30 bore along with one unknown while riding on motorcycle HONDA CD-70/APL, being driven by unknown, came from Matta Virkan Road; immediately after arrival, Jamshed and Javed made straight firing from their weapon upon husband of the complainant due to which, two fires hit at front of chest of her husband; thereafter, Abu Bakar and Ansar made straight firing upon husband of the complainant, due to which, two fires hit in the belly of her husband and one fire hit at his left hand in result whereof, husband of the complainant after becoming severe injured, fell down; accused persons while making firing fled away; husband of the complainant was immediately taken to Civil Hospital, Nowshera Virkan by Hafiz Umar and Shafique from where he was referred by the doctor to District Headquarter Hospital (DHQ), Gujranwala and after 1½ hour of reaching there, during medical treatment, Umair (husband of the complainant) died. It has further been alleged in aforementioned application that after bringing dead body of the deceased from D.H.Q. Hospital, Gujranwala, same is lying in the mortuary of Civil Hospital, Nowshera Virkan and complainant after leaving Umar s/o Shafique for guarding the dead body, came to the police station; occurrence was witnessed by Hafiz Umar and Shafique.

Motive behind the occurrence as per aforementioned application (Ex.PA) for registration of case was that Muhammad Umair (husband of the deceased) was an eyewitness of case arising out of F.I.R. No.637/2012, registered under Section: 302 PPC at Police Station: Nowshera Virkan, due to which, this occurrence took place on the abetment and consultation of Mian Nasir and Bismillah Begum.

On the basis of aforementioned application (Ex.PA), case was registered *vide* F.I.R. No.632/2015 (Ex.PH/1) on 12.11.2015 under Sections: 302, 109, 148, 149 PPC at Police Station: Nowshera Virkan. However, being dissatisfied with the conduct of the police as well as declaring some accused

persons as innocent in the case, Shazia Siddique (complainant/PW-1) filed “**complaint**” (Ex.PB) against Abu Bakar *alias* Samosa, Master Ansar, Jamshed, Javed, Mian Nasir, Mst. Bismillah and one unknown under Sections: 302, 109, 148, 149, 109 PPC alleging therein the same facts as mentioned in aforementioned F.I.R. (detailed above).

Abu Bakar *alias* Samosa, Master Ansar, Jamshed and Javed (appellants) along with their co-accused persons namely Mian Nasir and Bismillah Begum {mentioned in the complaint (Ex.PB)}, were summoned and formally charge sheeted to which they pleaded not guilty and claimed trial; prosecution produced ten witnesses to prove the charge against the accused persons whereas four witnesses were examined by the trial court as Court Witnesses; ocular account was furnished by Shazia Siddiq (complainant/PW-1), Hafiz Muhammad Umar Wakeel (PW-2) and Muhammad Shafiq (PW-3), medical evidence was furnished by Dr. Ghulam Sarwar Cheema (PW-8) whereas Investigating Officers namely Nisar Ahmad S.I. (CW-1), Farrukh Tufail S.I. (CW-2) and Adnan Shahzad S.I. (CW-3) deposed about investigation of the case. Thereafter statements of the appellants and their co-accused persons were recorded under Section: 342 Cr.P.C. in which they refuted the allegations levelled against them; they did not opt to appear as their own witnesses under Section: 340(2) Cr.P.C., however, only Mian Nasir (since acquitted) produced some documentary evidence in his defence.

Trial Court after conclusion of trial while acquitting co-accused persons namely Mian Nasir and Bismillah Begum has convicted and sentenced the appellants as mentioned above through impugned judgment dated: 19.04.2018.

4. Learned counsel for the appellants have jointly submitted that convictions recorded and sentences awarded to the appellants through the impugned judgment are against the ‘law and facts’ of the case; ocular account is neither trustworthy nor corroborated by any other independent evidence; prosecution has remained unable to prove its case. Learned counsel for the appellants finally prayed for acquittal of the appellants.

5. Learned Additional Prosecutor General has supported the impugned judgment to the extent of convictions recorded against and sentences awarded to the appellants and prayed for dismissal of their appeals.

6. Learned counsel for the complainant while supporting conviction and sentence recorded against Abu Bakar *alias* Samosa (appellant) and supporting conviction recorded against Master Ansar, Jamshed and Javed (appellants) prayed for dismissal of appeals filed by the convicts; he while supporting criminal revision prayed for enhancement of sentences of Master Ansar, Jamshed and Javed (respondents); whereas he in support of P.S.L.A. filed against order of acquittal of Mian Nasir and Mst. Bismillah Begum submitted that said acquittal is against the law and facts as well as result of misreading and non-reading of evidence; complainant has proved his case against them too up to hilt. Lastly prayed for setting aside the order of the acquittal as well as convicting and awarding punishment to the acquitted accused persons in accordance with law.

7. **Arguments heard. Record perused.**

8. As per case of prosecution, occurrence took place at about 08:15 p.m. on 11.11.2015; Umair *alias* Khalshi (now deceased of the case) was shifted in injured condition to Civil Hospital, Nowshera Virkan, from there he was referred by the doctor to District Headquarter Hospital, Gujranwala where he died during treatment after 1½ hours; death of Umair *alias* Khalshi occurred during treatment, dead body was brought from there and kept in dead house of Civil Hospital, Nowshera Virkan and while leaving Umar for guarding dead body, complainant lady (Shazia Siddiq/PW-1) came to police station at 07:00 a.m., submitted application (Ex.PA) for registration of case and resultantly F.I.R. (Ex.PH/1) was recorded. Though after the occurrence, first preference is to shift the injured to hospital for medical treatment and then to get registered the case, and time consumed in shifting of injured justifies delay in reporting the occurrence to the police yet it has to be proved by the prosecution that complainant/witnesses carried deceased in injured condition to hospital and time/period which was consumed for bringing him to hospital as well as in his medical treatment, and if actual time spent for said purpose tallies with the period of delay in reporting matter to police, then said delay is termed as “explained delay” and cannot be considered as fatal for prosecution. Therefore, in this case, prosecution was bound to prove that deceased was shifted in injured condition to hospital by cited eyewitnesses and he died during medical treatment. However, any entry of register of Civil Hospital, Nowshera Virkan regarding arrival of Umair *alias* Khalshi (now deceased of

the case) in injured condition there, any record of provision of any medical treatment to him there, copy of his medico legal examination certificate issued by Civil Hospital, Nowshera Virkan, copy or record of his referral slip from there to District Headquarter Hospital, Gujranwala, copy or record of any entry showing his arrival there in District Headquarter Hospital, Gujranwala, copy of his medical treatment chart or any record showing detail of his medical treatment there, copy of his death certificate issued from District Headquarter Hospital, Gujranwala or any other document issued by said hospital to show that he expired during medical treatment there and any document to show that when i.e. at what time, he expired, have not been produced by the prosecution. So much so any doctor who provided medical treatment to Umair *alias* Khalshi (now deceased of the case) in Civil Hospital, Nowshera Virkan and referred him to District Headquarter Hospital, Gujranwala, has not been produced to prove the same; similarly, doctor who medically treated him in District Headquarter Hospital, Gujranwala and under whose treatment, he died, have also not been produced. Furthermore, any document issued by afore-mentioned hospital to show that when i.e. at what time Umair *alias* Khalshi was brought in injured condition in Civil Hospital, Nowshera Virkan, when i.e. at what time he was received in District Headquarter Hospital, Gujranwala, at what time his dead body was handed over from District Headquarter Hospital, Gujranwala and when received in dead house of Civil Hospital, Nowshera Virkan, has also not been produced. So, afore-stated claim of the prosecution that deceased of the case was firstly taken to Civil Hospital, Nowshera Virkan in injured condition, then to District Headquarter Hospital, Gujranwala where he remained under medical treatment and then died after 1½ hours of arrival in said hospital, could not be proved. Hence, prosecution could not prove reason for delay in reporting the matter to police. Thus, there is **unexplained** and considerable delay of about 10-hours and 45 minutes in registration of the case. It is well settled that when there is delay in reporting the incident to the police, then prosecution is under obligation to explain such delay and failure to do that will badly reflect upon the credibility of prosecution version. In this regard, guidance has been sought from the case of “**Mst. ASIA BIBI versus The STATE and others**” (PLD 2019 Supreme Court 64); relevant portion from paragraph No.29 of said case law is hereby reproduced: -

“There is no cavil to the proposition, however, it is to be noted that in absence of any plausible explanation, this Court has always considered the delay in lodging of FIR to be fatal and casts a suspicion on the prosecution story, extending the benefit of doubt to the accused. It has been held by this Court that a FIR is always treated as a cornerstone of the prosecution case to establish guilt against those involved in a crime; thus, it has a significant role to play. If there is any delay in lodging of a FIR and commencement of investigation, it gives rise to a doubt, which, of course, cannot be extended to anyone else except to the accused...”

It is also relevant to mention here that post-mortem examination over dead body of the deceased was conducted at 11:30 p.m. on 12.11.2015 and there was no administrative reason in hospital for delay in autopsy of dead body rather it was due to receiving of documents from police at 11:15 p.m. on 12.11.2015 and in this regard, relevant portion of statement of Dr. Ghulam Sarwar Cheema (PW-8) is hereby reproduced: -

“It is correct that doctors were available around the clock in the hospital. As soon as I received police papers, I conducted post mortem and there was no delay on my part. Police papers were not presented before me prior to 11.15 p.m on 12.11.2015.”

Afore-mentioned state of affairs reflects that F.I.R. (Ex.PH/1) was not recorded even at the stated time rather with much delay however ante-time was mentioned in it and further suggests that none of the cited eyewitnesses was present at the “time & place” of occurrence, time was consumed for procuring, introducing, engaging eyewitnesses as well as tailoring/concocting story after deliberation and consultation for the prosecution and then getting the case registered in its present form as well as completing police papers for postmortem examination; therefore, neither any sanctity nor evidentiary value can be attached to the First Information Report (F.I.R.) in the case and it cannot provide any corroboration to the case of prosecution against the appellant rather it has lost its efficacy and damaged the case of prosecution; in this regard, guidance has been sought from the case of **“HAROON SHAFIQUE versus The STATE and others”** (2018 SCMR 2118), **“MUHAMMAD RAFIQUE alias FEEQA versus The STATE”** (2019 SCMR 1068), **“MUHAMMAD ADNAN and another versus The STATE and others”** (2021 SCMR 16) and **“GHULAM MUSTAFA versus The STATE”** (2021 SCMR 542).

Prosecution produced Shazia Siddiq (complainant/wife of deceased/ PW-1), Hafiz Muhammad Umar Wakeel (brother of deceased/PW-2) and Muhammad Shafiq (brother-in-law of deceased/ PW-3). Admittedly, Shazia Siddiq (PW-1) is not eyewitness of the

occurrence rather she received information through phone regarding the occurrence.

It is not mentioned in the F.I.R. that occurrence was witnessed in the light; in this regard, relevant portion of statement of Hafiz Muhammad Umar Wakeel (PW-2) is also reproduced below: -

“I got my statement recorded to police at the spot at 8.30 a.m. I had not got recorded in said statement that I had witnessed the occurrence, in light. I had got recorded statement in the court on 15.07.2016. I also did not get recorded in that statement that I witnessed the occurrence in light.”

Similarly, Muhammad Shafiq (PW-3) also did not claim availability of any light at the “time & place of occurrence”.

Hafiz Muhammad Umar Wakeel (PW-2) and Muhammad Shafiq (PW-3) were neither having residence nor business place at or adjacent to the place of occurrence; therefore, they both are “chance witnesses”. Though they claimed that they were going after taking tea from a tea shop yet neither name of said tea shop was disclosed nor owner nor any serving boy/person of said tea shop was produced in support of said claim and in this regard, relevant portion of statement of Muhammad Shafiq (PW-3) is mentioned as under: -

“Tea seller was not produced before the I.O.”

It was also claim of both said witnesses that they shifted Umair (deceased) in injured condition to Civil Hospital, Nowshera Virkan and then to District Headquarter Hospital, Gujranwala where he expired after 1½ hours during medical treatment but prosecution did not produce any document from said hospitals to show that the deceased was brought there by these witnesses and in this regard, relevant portion of statement of Hafiz Muhammad Umar Wakeel (PW-2) is hereby reproduced below: -

“I had not got recorded in my statement to I.O. on 12.11.2015 that on 11.11.2015 I and Akhtar were present in Civil Hospital Noshara Virkan for treatment of Umair.”

Police station and Civil Hospital, Nowshera Virkan were in front of each other; in this regard, relevant portion of statement of Shazia Siddiq (PW-1) is reprocedured as under: -

“It is correct that police station and hospital are opposite to each other and there is a road only in between the two.”

Similarly, relevant portion of statement of Muhammad Shafiq (PW-3) is mentioned below: -

“Police station is near to the hospital.”

Hafiz Muhammad Umar Wakeel (PW-2) is real brother of the deceased whereas Muhammad Shafiq (PW-3) is brother-in-law of the deceased; they took the deceased in injured condition to Civil Hospital, Nowshera Virkan and then also brought him from District Headquarter Hospital, Gujranwala but did not get registered the case promptly; in this regard, relevant portion of statement of PW-2 is reproduced as under: -

“I did not get recorded statement to police in the whole night of 11.11.2015. I did not even make any attempt to inform the police.”

It is also relevant to mention here that Hafiz Muhammad Umar Wakeel (PW-2) introduced dishonest improvements during his statement before the court regarding injury on right hand; in this regard, relevant portions of his statement are reproduced below: -

“As a result of which, two fire shots hit at bally and one at right hand of Umair.”

“I had got recorded in my statement before the court that fire hit at left hand of the deceased. Right hand was not mentioned.”

whereas relevant portion of statement of Muhammad Shafiq (PW-3) is mentioned as under: -

“I had made statement in the court. I had mentioned in the said statement that a fire had hit at right hand of Umair. (Confronted with Ex.DD where not so recorded). It is incorrect to suggest that I had recorded left hand. (Confronted with Ex.DD where it is so recorded).”

Hafiz Muhammad Umar Wakeel (PW-2) and Muhammad Shafiq (PW-3) also introduced dishonest improvements regarding making of video of Umair (deceased of the case) in injured condition and in this regard, relevant portion of statement of PW-2 is reproduced below: -

“I had not got recorded in said statement that Akhtar made video and inquired Umair as to who had injured him. I had also not got recorded that Umair replied that Abu Bakar, Master Ansar and Nasir injured him. I had not got recorded in said statement that Akhtar made video. Volunteered video was not prepared.”

Similarly, relevant portions of statement of Muhammad Shafiq (PW-3) are reproduced below: -

“I had not recorded in said statement that on 11.11.2015 at 8.30 p.m. Akhtar made a video of Umair in Civil Hospital Noshehra Virkan in my presence and that of Hafiz Umar, or that Akhtar asked Umair as to who had injured him, or Umair replied that Master Anser, Abu Bakar alias Samosa and Mian Nasir had injured him. Volunteered that on 12.11.2015 nothing was stated by me regarding CD.”

“I had not recorded in Ex.DD the entire story of making video by Akhtar on 11.11.2015.”

By now it is well settled that witness who introduces dishonest improvement or omission for strengthening the case, cannot be relied; in this regard, case of **“MUHAMMAD ARIF versus The STATE” (2019 SCMR 631)** and **“KHALID MEHMOOD and another versus The STATE and others” (2021 SCMR 810)** can be advantageously referred.

While taking into consideration all the afore-mentioned reasons collectively, ocular account produced by the prosecution has not been found by us as confidence inspiring or truthful; therefore, same cannot be relied and is hereby discarded.

So far as making of video of Umair *alias* Khalshi (in injured condition) through mobile phone by Akhtar Ali (CW-4) on 11.11.2015 at 08:30 p.m., preparing CD (P-2) of this video and handing over the same to Investigating Officer on 10.02.2016 through recovery memo (Ex.PE) is concerned, suffice it to say that Hafiz Muhammad Umar Wakeel (PW-2) and Muhammad Shafiq (PW-3) introduced dishonest improvements in this regard (as discussed above); as per own claim of the prosecution, said video was prepared at 08:30 p.m. on 11.11.2015 but why it was not produced to the police during same night by Akhtar Ali (CW-4) or at the time of registration of case or on that day, and why it was produced after about 3-months of the occurrence, any convincing, plausible, cogent and acceptable reason appealing to common prudent man could not be brought on the record by the prosecution; in this regard, relevant portion of statement of CW-4 is reproduced below: -

“Police reached at the hospital at about 8:30 p.m. I had not told anything about this case to the police at that time. I had also not told to the police at police station about this case at that time. Police remained in the hospital in my present for about 35/40 minutes. I had also not told to the police on the next day about my recording the statement. I had also not submitted any application to the police including DPO/CPO recording of statement of injured.”

It goes without saying that Akhtar Ali (CW-4) stated in his statement before the court that he recorded statement of Umair *alias* Khalshi in his mobile and then converted the statement of deceased from his mobile phone into CD (P-2) and handed over CD (P-2) to the Investigating Officer; in this regard, relevant portion of his statement is mentioned below: -

“On 11.11.2015 at about 8:30 p.m. I was present in THQ hospital Nowshera Virkan with Umair injured, on my asking he told me that fire has been made upon him by Abu Akar *alias* Samosa, Master Ansar and Mian Nasir, I recorded his statement in my mobile after that Umair injured died, I also remained silent due to fear after that I converted the

statement of the deceased from my mobile into CD p-2 and handed over this CD to the I.O on 10.02.2016 in presence of Hafiz Umar and Shafiq and the I.O took into possession this CD vide recovery memo Ex.P-E attested by PWs. I.O also recorded my statement.”

In the F.I.R. (Ex.PH/1), presence of Akhtar Ali (CW-4) with Umair *alias* Khalshi (in injured condition) in Civil Hospital, Nowshera Virkan is not mentioned. Statement of any doctor that Umair *alias* Khalshi remained in injured condition in Civil Hospital, Nowshera Virkan or he was fit to make statement or CW-4 was accompanying said injured, is not available on the record.

It is relevant to mention here that dishonest improvement introduced by Akhtar Ali (CW-4) *qua* time i.e. 08:30 p.m. as well as presence of PW-2 and PW-3 also stands proved and in this regard, relevant portion of his statement is as under: -

“I recorded my first statement to the police on 10.02.2016 and I had recorded in my statement the time of 8:30 p.m. confronted with Ex.DF wherein not so recoded. I had also recorded name of Shafiq and Hafiz Umar in my statement confronted with Ex.DF wherein not so recorded.”

Akhtar Ali (CW-4) even did not sign recovery memo of CD (P-2) i.e. Ex.PE and relevant portion of his statement in this regard is reproduced as under: -

“I had not signed Ex.PE.”

It is also very much relevant to mention here that as per claim of CW-4, statement of Umair *alias* Khalshi (now deceased of the case) was recorded on mobile phone, then subsequently converted to CD (P-2) but admittedly said mobile was neither produced during investigation nor during trial rather only CD (P-2) was produced and by now it is well settled that though conversation recorded in Audio or Video can be proved yet production of actual record of conversation is necessary for the same; in this regard, case of “ISHTIAQ AHMED MIRZA and 2 others Versus FEDERATION OF PAKISTAN and others” (P L D 2019 Supreme Court 675) can be safely referred and relevant portion of the same is hereby reproduced: -

“11. The precedent cases mentioned above show that in the matter of proving an audio tape or video before a court of law the following requirements are insisted upon: -

- * No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.

.....

- * An audio tape or video sought to be produced in evidence must be the **actual record** of the conversation as and when it was made or of the event as and when it took place. (**emphasis added**)
.....
- * Safe custody of the audio tape or video after its preparation till production before the court must be proved.
.....”

Therefore, due to non-production of mobile of Akhtar Ali (CW-4) wherein statedly said conversation of Umair *alias* Khalshi (now deceased of the case) was recorded, said conversation has not been proved and by production of afore-mentioned CD (P-2), said conversation cannot be proved; therefore, its forensic analysis is also of no avail.

So far as medical evidence is concerned, it is trite law that medical evidence is mere supportive/confirmatory type of evidence; it can tell about locale, nature, magnitude of injury and kind of weapon used for causing injury but it cannot tell about identity of the assailant who caused the injury; therefore, same is also of no help to the prosecution in peculiar facts and circumstances of the case, in this regard, case of “**SAJJAN SOLANGI versus The STATE**” (2019 SCMR 872) can be safely referred.

It also goes without saying that nothing was recovered from Master Ansar, Jamshed and Javed (appellants) whereas on 25.03.2016, a pistol .30 bore (P-7) was recovered on the pointing out of Abu Bakar *alias* Samosa (one of the appellants) but empties/cartridge cases secured from the place of occurrence were not found to have been fired from said pistol as per report of Punjab Forensic Science Agency, Lahore (EX.PR); therefore, said recovery is inconsequential and of no help to the prosecution.

Now coming to motive of the occurrence; it was mentioned in the application (Ex.PA), F.I.R. (Ex.PH/1) and complaint (Ex.PB) that Umair *alias* Khalshi (deceased of the case) was an eyewitness of case arising out of F.I.R. No.637/2012 registered under Section: 302 PPC at Police Station: Nowshera Virkan but admittedly, none of the present appellants was accused in said case; so it was not directly against them; furthermore, motive is a double edged weapon, it cuts both the ways, it can also be a reason for false implication; even otherwise, when substantive evidence has been discarded, then motive loses its significance and becomes immaterial for conviction.

9. It is well established principle of law that single dent/circumstance in case of prosecution is sufficient for acquittal; in this regard, case of “**ABDUL GHAFOOR versus The STATE**” (2022 S C M R 1527) can be safely referred.

10. Nutshell of the above discussion is that prosecution has been failed to prove its case against the appellants; therefore, there is no need to discuss defence version.

11. In view of, what has been discussed above, **Criminal Appeal No.228667-J/2018** filed by Abu Bakar *alias* Samosa, Jamshed, Javed (appellants) and **Criminal Appeal No.213552/2018** filed by Master Anser (appellant), are allowed; convictions recorded and sentences awarded to the appellants through impugned judgment dated: 19.04.2018 are hereby set aside. Appellants are acquitted of the charge; Abu Bakar *alias* Samosa (appellant) shall be released from the jail forthwith, if not required in any other case whereas Master Ansar, Jamshed and Javed (appellants) are on bail as during pendency of the appeals, execution of their sentences were suspended by this Court, therefore, their sureties stand discharged from their liabilities of bail bonds.

12. Resultantly, death sentence awarded to Abu Bakar *alias* Samosa (appellant) is **NOT CONFIRMED** and Murder Reference (**M. R. No.04 of 2019**) is answered in **NEGATIVE**.

13. So far as acquittal of Mian Nasir and Mst. Bismillah Begum (respondents) passed by trial court through impugned judgment dated: 19.04.2018 is concerned, we have noticed that in the application (Ex.PA) and F.I.R. (Ex.PH/1), name of any witness of abetment is not mentioned rather Yasmin Kausar (PW-6) and Muhammad Yousaf (PW-7) were subsequently introduced as witnesses of abetment and the trial court while disbelieving their evidence in paragraphs No.24 and 25 of the impugned judgment, has observed as under: -

“24. Admittedly, Yasmeen Kausar PV-6 is close relative of the complainant and in her cross examination admitted that she had never disclosed this fact to Shazia Saddique. PW-7 Muhammad Yousif has not corroborated the conspiracy as deposed by Yasmeen Kausor PW-6 and both these witnesses also admitted in their cross examination that they did not tell this fact to complainant, and PW-7 also admitted that he did not know whether Shazia Saddique complainant had heard about the abetment or not. Both the PWs of ocular account PW-2~PW-3 along with complainant (PW-1) who deposed that this occurrence has been committed on the abetment of accused Mian Nasir and Bismillah Begum has never stated and named these two witnesses regarding the abetment. PW-7 admitted in his cross examination that on 28.03.2016 he made statement to the police and these two witnesses are deposing the evidence regarding conspiracy dated 03.11.2015 and 07.11.2015, it means they remained silent and no written application regarding abetment was made to the police. It seems that these two witnesses have been mounoward regarding the role of abetment to the accused

25. Adnan Shahzad SI (CW-3) admitted in his cross examination that no material was produced before him during investigation against

the accused Bismillah Begum volunteered oral evidence was available, copy of passport (Ex.DG) of Mian Nasir accused also shows that he is national of UK and at the time of occurrence was in England, in his statement u/s 342 Cr.P.C he also took the plea, which corroborate with his passport (Ex. DG). The oral evidence which has been discussed above, to the extent of accused Mian Nasir and Bismillah Begum, is not confidence inspiring, so the prosecution has failed to prove the charge against the accused Nasir and Bismillah Begum regarding abetment.

Hence, for the reasons mentioned in paragraphs No.24 and 25 of the impugned judgment, acquittal of Mian Nasir and Mst. Bismillah Begum is neither perverse, nor capricious nor arbitrary rather judgment in this regard has been passed perfectly in accordance with law, facts and record of the case. After acquittal, accused persons have attained double presumption of innocence and courts are always slow to disturb the same and in this regard, reliance can be placed upon the case of “HAJI PAIO KHAN versus SHER BIAZ and others” (2009 SCMR 803) and “MUHAMMAD SHAFI alias KHDDOO versus The State and others” (2019 SCMR 1045); from, latter case law, relevant portion is reproduced:-

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

Thus, P.S.L.A. No.211801/2018 is dismissed.

14. For the reasons recorded *supra*, Criminal Revision No.211803/2018 filed by Shazia Siddiq (complainant/PW-1) for enhancement of sentences of Master Ansar, Jamshed and Javed, also stands dismissed.

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge