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

Murder Reference No.164 of 2018
(The State *versus* Ali Ahsan alias Sunny)

Crl. Appeal No.193932 of 2018
(Ali Ahsan alias Sunny *versus* The State, etc.)

Crl. Appeal No.206624 of 2018
(Muhammad Khalid *versus* The State, etc.)

JUDGMENT

Date of hearing: 22.05.2023.

Appellant by: M/s Nasir Mehboob Tiwana and Bashir Ahmad Khan, Advocates.

State by: Mr. Muhammad Waqas Anwar, Deputy Prosecutor General.

Complainant by: M/s Muhammad Ahsan Bhoon and Syed Ali Zubair Karmani, Advocates.

AALIA NEELUM, J:- The appellant-Ali Ahsan alias Sunny, son of Anwar Hussain, Caste Balouch, resident of Basti Mai Roshan Tehsil Kallur Kot, District Bhakkar, along with his co-accused, was involved in the case F.I.R. No.227 of 2017, dated 15.07.2017, registered under Sections 302, 34 P.P.C., at the police station, Kallur Kot, District Bhakkar and was tried by the learned Additional Sessions Judge, Kallur Kot, District Bhakkar. The trial court seized with the matter in terms of the judgment dated 30.03.2018, convicted Ali Ahsan alias Sunny (the appellant) **under Section 302(b) PPC** as Tazir and sentenced to **Death** for committing Qatl-e-Amd of Saddam Khalid (the deceased), with the direction to pay compensation of Rs.5,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I

further. The benefit of Section 382-B of Cr.P.C was also extended in favour of the accused.

2. Feeling aggrieved by the trial court's judgment, Ali Ahsan alias Sunny, the appellant, has assailed his conviction and sentence by filing the instant appeal bearing Criminal Appeal No.193932 of 2018. The trial court also referred **M.R. No.164 of 2018** (**The State. Vs. Ali Ahsan alias Sunny**) to confirm the death sentence awarded to the appellant-Ali Ahsan alias Sunny. Whereas the complainant also filed Crl. Appeal No.206624 of 2018 against the acquittal of respondent No.2, namely Touseef. All the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. The prosecution story, as alleged in the F.I.R (Ex.PF/1) lodged on the statement (Ex.PF) of Muhammad Khalid (PW-8)-the complainant, is that on 15.07.2017, at about 06:15 p.m., the complainant (PW-8) along with Arsalan (given up-PW) and Nadir Ali (PW-9) was standing near Masjid Jafaria, Village Basti Mai Roshan, whereas son of the complainant namely Saddam Khalid (deceased) was coming towards his house from the cattle shed of his "Mamoo" Nasir Hussain and when he reached near the masjid Jafaria, the accused, Ali Ahsan alias Sunny (the appellant) along with his co-accused while equipped with their respective weapons emerged there and raised lalkara not to spare Saddam Khalid; after that, they all started to give fist blows upon the person of Saddam Khalid; then the accused, Touseef (co-accused since acquitted), Zaheer Abbas (co-accused since P.O) and Yawar Abbas (co-accused since P.O) caught hold of Saddam Khalid (the deceased) and Ali Ahsan alias Sunny (the appellant) made a knife blow which hit Saddam Khalid (deceased) on his chest. After that, Ali Ahsan alias Sunny (the appellant) made a second knife blow, which landed upon the left flank of Saddam Khalid (deceased). After receiving said injuries, Saddam Khalid (the deceased) fell, whereas the accused, Ali Ahsan alias Sunny (the appellant), decamped from the place of occurrence after brandishing a knife; after that, the complainant (PW-8) along with Arsalan (given up-PW) and Nadir Ali (PW-9) shifted Saddam Khalid (deceased) in injured condition to

Tehsil Headquarter Hospital, Kallur Kot, who succumbed to the injuries. The motive behind the occurrence was that, two days back, an altercation occurred between Saddam Kahlid (the deceased) and Ali Ahsan alias Sunny, etc.; due to that grudge, the accused murdered Saddam Khalid (the deceased).

4. After the incident, the complainant reported the matter to the police through his oral complaint (Ex. PF), and after that, formal F.I.R (Exh.PF/1) was chalked out by Khan Muhammad A.S.I (PW-6). After the registration of the case, the investigation of this case was entrusted to Sajjad Hussain S.I/H.I.U (PW-11), who found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C., and sent the same to the court of competent jurisdiction. On 16.10.2017, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as eleven (11) witnesses.

5. Ocular account, in this case, has come out from the statements of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, whereas Dr. Mahmood Ali Raza (PW-4), who conducted the postmortem examination of Saddam Khalid (the deceased) found the following injuries on his person:

INJURIES

- 1) A stab wound measuring 1.5 x 1 cm on the left side of the front of the chest, 12 cm below the nipple, and 2 cm lateral to the sternum with corresponding holes on Kameez and Bunyan.
- 2) A stab wound measuring 1.5 cm x 1 cm in the left loin region 10 cm above the iliac crest with corresponding holes in clothes.

After conducting the postmortem examination, the doctor opined that the death was caused by hemorrhage and shock as a result of injuries No.1 & 2, which caused damage to the vital organs of the body; these injuries were grievous and sufficient to cause death in the ordinary

course of nature. All injuries were anti-mortem and enough to cause death by sharp-edged weapons. The probable time between injuries and death was half an hour, whereas between death and postmortem was about three hours.

6. The learned Assistant District Public Prosecutor gave up PWs-Arsalan, Ahmad Nawaz, Shah Nawaz 209/HC, and Muhammad Rafi, SI/HIU as being unnecessary and after tendering reports of Punjab Forensic Science Agency (Ex. PN and Ex. PO) closed the prosecution evidence.

7. The appellant was also examined in terms of Section 342 Cr.P.C., wherein he did not opt to appear as his own witness in terms of Section 340(2) Cr.P.C.; however, he produced Mark D.A to Mark D.D in his defence evidence. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“This case was falsely registered against myself as well as against the co-accused persons. So far as the PWs are concerned they are related inter se, they hence deposed falsely against me. Infact, on the day of occurrence, Saddam Khalid deceased was playing Cricket with some youngsters in the play ground of village Basti Mai Roshan and during the said match a sudden fight erupted in between the two groups. Saddam Khalid deceased was hard headed, street criminal and he used to remain indulged in nefarious activities, so during the said open fight sustained injuries mysteriously by some unidentified culprits, but the complainant involved me in this case falsely after due deliberation and hectic consultation on account of party factions in the village. Even otherwise, I was present on my duty at southern railway crossing Bhakkar City as being railway employee at the time of alleged occurrence. Neither complainant nor alleged PWs witnessed the occurrence. Neither I nor my co-accused persons were present at the spot. Muhammad Khalid complainant was called from his house and he got registered this false case against me and other co-accused persons, after due deliberation and consultation and with padding.

I am innocent, I have been involved in this case merely on suspicion; I am a poor person and only bread earner of my whole family. I cannot even think to commit murder of my whole family. I have become pauper due to this false case.”

8. After evaluating the evidence available on record in light of arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction and sentence in the above terms.

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

10. The incident took place on 15.07.2017 at 06:15 p.m. near Masjid Jafria situated in village Basti Mai Roshan, within the area of Police Station, Kallur Kot, District Bhakkar, which is at a distance of 25/26-kilometers from the place of occurrence. Muhammad Khalid Khan (PW-8)-the complainant reported the incident through oral complaint (Exh. PF) to Sajjad Hussain, S.I./H.I.U. (PW-11) at 07:45 p.m. at THQ Hospital, Kallur Kot, who reached the hospital upon receiving information of the incident and he (PW-11) incorporated police proceedings at the bottom of the oral complaint (Exh. PF) and referred the same through Ahmad Sher 412/C (not cited as PW) to the police station, based on which, formal F.I.R. (Exh. PF/1) was chalked out on the same day at 07:55 p.m. by Khan Muhammad A.S.I (PW-6). Muhammad Khalid Khan (PW-8)-the complainant, took one hour and forty minutes to report the incident to the police.

11. As per the prosecution case, Saddam Khalid-the deceased (then injured), was taken to THQ Hospital, Kallur Kot, for treatment, and Saddam Khalid-the deceased (then injured) scummed to the injuries. The deposition of Dr. Mahmood Ali Raza (PW-4) reveals that the dead body of Saddam Khalid (the deceased) was produced before him on 15.07.2017 at 06:50 p.m. He (PW-4) deposed during cross-examination that:

“The dead body was produced before me at 6.50 P.M on 15.07.2017. When the dead body was produced before me, I examined it and after examining I recorded the time of death in the relevant column as 6.53 P.M.”

Muhammad Khalid Khan (PW-8)-the complainant deposed during cross-examination that:

“We almost consumed half an hour to reach in the hospital. When doctor reached to check the deceased Saddam Khalid, he after examining the injured informed us that he had expired. The deceased was un-conscious after receiving the injuries. The deceased at the spot was un-conscious and he did not expire at the spot. We shifted the deceased from the place of occurrence in injured condition.”

Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer deposed during examination in chief that: -

“On 15.07.2017 I was posted as SI/HIU circle Kallur Kot. On the same day, after receiving the information, regarding the occurrence, I reached at THQ Kallur Kot, where Muhammad Khalid Khan complainant of this case met me and I recorded his statement Exh.PF which is in my hand and bears my signatures. Exh.PF was read over to Muhammad Khalid Khan complainant and he signed the same as a token of correctness. I sent the complaint for registration of case through Ahmad Sher 412/C.”

The oral complaint (Exh.PF) shows that Muhammad Sajjad Hussain, S.I./H.I.U. (PW-11)-investigating officer incorporated police proceedings at the bottom of the oral complaint (Exh. PF) at 07:45 p.m. at THQ Hospital, Kallur Kot. He (PW-11)-the investigating officer referred the same through Ahmad Sher 412/C (not cited as PW) to the police station, based on which formal F.I.R. (Exh. PF/1) was chalked out on the same day at 07:55 p.m. by Khan Muhammad A.S.I (PW-6). Whereas, per the prosecution case, the incident occurred at 06:15 p.m. on 15.07.2017. Dr. Mahmood Ali Raza (PW-4) deposed that the dead body of Saddam Khalid

(the deceased) was produced before him on 15.07.2017 at 06:50 p.m. and in the column of post-mortem report (Exh. PC), he entered the time of death at 06:53 p.m. Whereas Muhammad Sajjad Hussain, S.I./H.I.U. (PW-11)-investigating officer deposed during cross-examination that: -

“I do not remember the exact time when I received the information regarding the occurrence. I reached at THQ Kallur Kot at about 6.50 P.M. As soon as I reached in THQ Kallur Kot, I recorded the statement of complainant Muhammad Khalid Khan. Many persons were available with the complainant at that time, but I cannot tell as to whether the eye witnesses were present or not at that time

Instead, the fact that Saddam Khalid (the deceased) expired due to injuries came to the surface at 6:53 p.m. on 15.07.2017. During cross-examination, Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer deposed that: -

“I consumed about 55 minutes in recording the statement of the complainant and preparing inquest report etc.”

In view of the deposition of Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer, it reveals that he took 55 minutes to record the complainant's statement, prepare the inquest report, etc. After the preparation of the inquest report, etc. (etc. was not explained), within 55 minutes, he (PW-11)-the investigating officer, sent the oral complaint (Ex.PF) to the police station for the recording of FIR. It reveals that before the registration of the FIR, the investigating officer conducted a partial investigation. Admittedly, a statement under section 154 Cr.P.C. of Muhammad Khalid Khan (PW-8)-the complainant was not incorporated in the register for FIRs registration. Khan Muhammad A.S.I (PW-6) deposed during examination-in-chief that on receiving the oral complaint (Ex. PF), endorsed and dispatched by Sajjad Hussain SI/HIU (PW-11) through Ahmad Sher 412/C, he (PW-6) dictated the FIR (Exh.PF/1) to the Computer Operator, who typed it without any addition or deletion. The prosecution has not produced the Computer Operator to whom dictation was given by Khan Muhammad A.S.I. (PW-6), and he typed the FIR (Exh.PF/1). According to

Rule 24.5 of Police Rules 1934, the F.I.R. shall be filled in the printed Form in Form 24.5 (1) with pages serially numbered with three carbon copies (each of the four pages of the register bearing the same serial number) since the oral complaint (Ex.PF) was not recorded in the first information report register it throws doubt on the time of reporting the incident to the police. The copy of the FIR entered in the first information report register is not being exhibited by the prosecution. Whenever an information regarding cognizable offence is lodged with the police officer, he is obliged to take the same down in writing if it is made orally or receive the complaint in writing and straightaway proceed to enter the substance of it in the book/register kept for that purpose in terms of Section 154 of the Criminal Procedure Code. The First Information Report was not entered into the register, suggesting that F.I.R. (Exh.PF/1) was not chalked out as stated. The evidential value of the First Information Report will be reduced if it is made after the unexplained delay, particularly when the same was not entered in the printed Form 24.5 (1) of Police Rules 1934.

12. The prosecution failed to prove the time and place where Saddam Khalid (the deceased) took his last breath. Reading together the above deposition of Dr. Mahmood Ali Raza (PW-4), Muhammad Khalid Khan (PW-8)-the complainant, and Sajjad Hussain SI/HIU (PW-11) first gave an impression that the first information report was promptly lodged, and the investigation commenced without delay. However, scrutiny of the depositions of the three witnesses above would reveal that the first information report was ante-timed, and the investigation was tainted, fictitious, and wholly unreliable. Police proceedings incorporated at the bottom of the oral complaint (Exh.PF) by Muhammad Sajjad Hussain, S.I./H.I.U. (PW-11)-investigating officer, reveals that Muhammad Sajjad Hussain, S.I./H.I.U. (PW-11)-investigating officer on receiving information reached the mortuary of THQ Hospital, Kallur Kot, where the dead body of Saddam Khalid (the deceased) was lying and Muhammad Khalid Khan (PW-8)-the complainant got recorded his oral complaint (Ex.PF). The dead body of Saddam Khalid (the deceased) was referred for postmortem

examination to THQ Hospital, Kallur Kot. Police proceedings incorporated at the bottom of the oral complaint (Exh. PF) by Muhammad Sajjad Hussain, S.I./H.I.U. (PW-11)-investigating officer read as under: -

"کاروائی پولیس: اس وقت میں معہ عیسیب خان 689۔ اختر اقبال C/793 فلک شیر
C/767۔ احمد شیر C/412 ملازمان کے بسواری سرکاری گاڑی BKG/333 ڈرائیور
اکرم الہی C/371 کے اطلاع وقوعہ پا کر مردہ خانہ THQ ہسپتال کلور کوٹ پہنچا نعش ازاں
صدام خالد جو مردہ خانہ میں پڑی ہے محمد خالد سائل نے پیش ہو کر بیان بالا تقریری دیا جو
ضبط تحریر میں لایا جا کر مذکورہ کو پڑھ کر سنایا و سمجھایا گیا جس نے صحت بیان خود کو درست
تسلیم کرتے ہوئے زیر بیان خود اپنے دستخط بحروف انگریزی کر دیئے نعش ازاں صدام خالد
کا ملاحظہ جسم کیا گیا صدام خالد مقتول کا نقشہ مضروب۔ نقشہ صورت حال مرتب کر کے
برائے پوسٹ مارٹم زیر حفاظت فلک شیر C/767 THQ ہسپتال کلور کوٹ بھجوائی جا رہی
ہے بیان بالا سائل حالات واقعات سے سردست صورت جرم 34/302 ت پ پائی جا کر
استغاثہ ہذا جرم مذکور مرتب کر کے بغرض اندراج مقدمہ بدست احمد شیر C/412 بھجوا یا جا
رہا ہے مقدمہ درج کر کے نمبر مقدمہ سے اطلاع دی جاوے میں مصروف تفتیش ہوں سپیشل
رپورٹ ہائے افسران مجاز بھجوائی جائیں تفتیشی کٹ ہمراہ ہے۔"

از THQ ہسپتال کلور کوٹ (دستخط اردو) سجاد حسین SI/Hiu سرکل کلور کوٹ
بوقت 7/45 بجے شام
15-7-17

On perusal of the inquest report (Exh.PE), in column No.24, it was mentioned that the dead body was lying in the mortuary. This creates doubt about the testimonies of Dr. Mahmood Ali Raza (PW-4), Muhammad Khalid (PW-8)-the complainant, Sajjad Hussain S.I./H.I.U. (PW-11)-the investigating officer, and Falak Sher 767/C (PW-3), about the time when Saddam Khalid, the deceased, succumbed to the injuries, brought to the hospital. After that, the dead body was sent to the mortuary. So, the dead body of Saddam Khalid (the deceased) was produced before Dr. Mahmood Ali Raza (PW-4) by Falak Sher 767/C (PW-3) on 15.07.2017 at 06:50 p.m. At the cost of repetition, we have reproduced the relevant part of the deposition of Dr. Mahmood Ali Raza (PW-4), which reads as under:

"The dead body was produced before me at
6.50 P.M on 15.07.2017. When the dead body
was produced before me, I examined it and

after examining I recorded the time of death in the relevant column as 6.53 P.M.”

The only document, Dr. Mahmood Ali Raza (PW-4) prepared was the post-mortem report (Ex.PC). At the same time, he conducted a post-mortem examination of the dead body of Saddam Khalid-the deceased, at 10:00 p.m. on 15.07.2017. Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer admitted that on receiving information about the incident, he (PW-11) reached THQ Hospital, Kallur Kot, at 06:55 p.m. Besides, in column No.3 of the inquest report (Ex. PE), the date and time of receiving information about the death was mentioned as “15.07.2017 at 06:55 p.m.” and in column No.2 relating to the distance between the police station and the place where the death took place or where the dead body was recovered, was mentioned as “01-kilometer”. Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer deposed during cross-examination that: -

“THQ Kallur Kot is at a distance of about one km towards south west direction from the building of P.S. Kallur Kot. Place of occurrence is at a distance of 25/26 kms from P.S. Kallur Kot.”

Muhammad Khalid Khan (PW-8)-the complainant deposed during examination-in-chief that he (PW-8), Muhammad Arslan (given up PW), and Nadir Ali (PW-9) brought Saddam Khalid in injured condition to THQ Hospital Kallur Kot, where he succumbed to the injuries. In similar lines, Nadir Ali (PW-9)-the eyewitness, stated. Admittedly, Saddam Khalid-the deceased (then injured), was accompanied by Muhammad Khalid Khan (PW-8)-the complainant, Nadir Ali (PW-9)-the eye witness, and Muhammad Arslan (given up PW) to THQ Hospital Kallur Kot, and none of them reported the incident to the police, whereas the police station was at a distance of 01-kilometer from THQ Hospital, Kallur Kot. The matter remained shrouded in mystery about who informed the police about the incident. Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer stated that he reached THQ Hospital, Kallur Kot, on receiving information about the incident at 06:55 p.m. Sajjad Hussain S.I/H.I.U (PW-11)-the investigating officer deposed during cross-examination that:-

“I do not remember the exact time when I received the information regarding the occurrence. I reached at THQ Kallur Kot at about 6.50 P.M. As soon as I reached in THQ Kallur Kot, I recorded the statement of complainant Muhammad Khalid Khan. Many persons were available with the complainant at that time, but I cannot tell as to whether the eye witnesses were present or not at that time. Complainant did not point out about the presence of eye witnesses in THQ Kallur Kot. Had the eye witnesses met me at that time, then I would have recorded their statements u/s 161 Cr.P.C.”

The inquest report (Ex.PE) also revealed that any eyewitness or complainant did not sign the same. We have noted that the contents of F.I.R. (Ex.PF/1) were re-produced ad verbatim in the inquest report (Ex.PE). Muhammad Khalid Khan (PW-8)-the complainant, deposed during cross-examination that: -

“We did not inform the police while shifting the deceased from the place of occurrence in the hospital. Police reached in the THQ hospital Kallur Kot after 5/10 minutes of our reaching in the hospital.”

Nadir Ali (PW-9)-the eye witness deposed during cross-examination that: -

“We did not call police, i.e. at 15 or Rescue 1122. We did not approach to police at Police chowki Maibal Sharif, volunteered that as the injured was in serious condition, so our first target was to save his life.”

In the instant case, the prosecution has not given a reason for the delay in lodging the first information report (Exh.PF/1). The deposition of Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer doubts the presence of witnesses, i.e., Nadir Ali (PW-9) and Muhammad Arslan (given up PW) at THQ Hospital, Kallur Kot. At the same time, the prosecution witnesses were not present at THQ Hospital, Kallur Kot. Sajjad Hussain S.I/H.I.U (PW-11)-the investigating officer deposed in his examination-in-chief that after referring the oral complaint (Exh.PF) to police station

through Ahmad Sher 412/C for registration of formal FIR, he (PW-11) prepared injury statement (Exh.DD) and inquest report (Exh.PE) of Saddam Khalid-the deceased. Then he handed over the dead body for post-mortem examination to Falak Sher 767/C (PW-3). Falak Sher 767/C (PW-3) deposed in his examination-in-chief that the dead body was handed over to him by Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer for postmortem examination. He (PW-3) did not state a single word about wherefrom the dead body was handed over to him. Rather, he (PW-3) had deposed during cross-examination that they reached THQ Hospital at 07:00 p.m. and at 8:30 p.m./9:00 p.m. post-mortem examination started. Dr. Mahmood Ali Raza (PW-4) deposed during examination-in-chief that: -

“The post mortem was conducted at 10.00 P.M, and according to the information given by the police injuries were caused by knife.”

All this leads us to look into the medical evidence brought on the record by the prosecution through Dr. Mahmood Ali Raza (PW-4) and the postmortem report (Exh.PC). On external examination, Dr. Mahmood Ali Raza (PW-4) observed that rigor mortis was developed, and this fact is also mentioned in the postmortem report (Exh. PC). Dr. Mahmood Ali Raza (PW-4) deposed during cross-examination that: -

“The rigor mortus process almost starts in acute summer season within about 2.30/3 hours.”

The doctor opined that there is probably three hours lapse between death and postmortem. If the incident occurred at the time as alleged by the prosecution witnesses and Saddam Khalid-the deceased, expired between 6:50 p.m. and 07:00 p.m., possibility of rigor mortis on the dead body of the deceased would not be present. The inquest report (Ex. PE) also showed that the complainant or any eyewitnesses did not sign the same. Although Nadir Khan (PW-9) had deposed during examination-in-chief that he, along with Muhamad Khalid Khan (PW-8) and Muhammad Arsalan (given up PW), took Saddam Khalid-the deceased, to THQ Hospital Kallur

Kot. During cross-examination, he stated that Doctor informed them that Saddam Khalid-the deceased, had expired. If Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer reached THQ Hospital Kallur Kot at 06:50 p.m. then should have met with Nadir Khan (PW-9) or if Nadir Khan (PW-9) was present at the time of arrival of Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer, his name and signatures should be available on the inquest report (Ex.PE). All the above facts throw a cloud of doubt and reveal that the prosecution took time to manage the witnesses. The absence of details in the inquest report may be indicative of the fact that the prosecution story was still rudimentary and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultation and was then ante-timed to provide it with a color of promptly lodged FIR. Whether FIR was registered at the time as stated or not? The same could be checked from an external check; equally important is sending the copy of the FIR along with the dead body and its reference in the inquest report. Even though the inquest report, prepared under Section 174 Cr.P.C., is aimed at serving a statutory function to lend credence to the prosecution case, the details of the FIR and the gist of statements recorded during inquest proceedings get reflected in the report. The absence of those details is indicative of the fact that the prosecution story was still in a rudimentary state and had not been given any shape and that the FIR came to be recorded later on after due deliberations and consultations and was then ante-time to give it the color of a promptly lodged FIR. It gets support from the recovery memo of last worn clothes (Ex.PB), recovery memo of blood-stained earth (Ex.PI), and un-scaled site plan (Ex.PK), from which it reveals that after writing “بنام” space was left blank. This suggests that until receiving the deceased's last worn clothes by Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer, the FIR was not in existence, the Roznamcha was withheld, and ante-timed FIR was registered. Dr. Mahmood Ali Raza (PW-4) deposed that post-mortem examination of the dead body was conducted at 10:00 p.m. on 15.07.2017. FIR (Ex. PF/1) was chalked out at 07:55 p.m., but the same was not produced before him (PW-4). Dr. Mahmood Ali Raza (PW-4) deposed during examination-in-chief that: -

“Ex.PC is the correct carbon copy of the postmortem report, which is in my hand and bears my signatures. I also prepared the pictorial diagram Exh.PC/1, besides that I signed the injury statement Exh.PD and inquest report Exh.PE.”

In our opinion, on account of the infirmities, as noticed above, the FIR has lost its value and authenticity. It appears to us that the same has been ante-timed and had not been recorded till the post-mortem examination of the dead body was over, and handing over the last worn clothes of the deceased to Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer.

13. Besides, we have also noted that the prosecution witnesses, i.e., Muhamad Khalid Khan (PW-8) and Nadir Khan (PW-9), stated that due to the severe condition of Saddam Khalid-the deceased, then injured, was taken to the THQ Hospital. The presence of these witnesses was alleged to be doubtful at the spot because if they had been present and witnessed the occurrence, they would have tried to stop the blood oozing from the body of the son of Muhamad Khalid Khan (PW-8). Still, on the contrary, they did not provide the first aid. Muhammad Khalid (PW-8)-the complainant deposed during cross-examination that: -

“We did not attempt to stop oozing of blood.”

Similarly, Nadir Ali (PW-9)-the eye-witnessed deposed during cross-examination that: -

“The blood was oozing profusely from the wounds of the deceased. We did not make any bandage around the wounds of the deceased.”

Dr. Mahmood Ali Raza (PW-4) deposed during cross-examination that: -

“As I have mentioned the probable duration between injury and death about half an hour, so it can be said that he remained alive for maximum period of half an hour.”

Muhammad Khalid (PW-8)-the complainant, deposed during cross-examination that different hospitals and medical centers were available from

the place of occurrence to THQ Hospital Kallur Kot. Muhammad Khalid (PW-8)-the complainant deposed during cross-examination that: -

“The place of occurrence is at a distance of half farlang towards west of main Bhakkar, Kallur Kot road. From the main Bhakkar Kallur Kot road another link pakka road leads towards the place of occurrence, but just for about 100 feet. There is only one path from the place of occurrence to reach at the main road near telephone exchange. From that exchange, there is a hospital of Basti Mai Roshan towards north at a distance of half farlang. Whereas the said hospital is adjacent to the main Bhakkar, Kallur Kot road. From village Basti Mai Roshan, the village Shah Alam is towards north at a distance of 2/2-1/2 kms, the said village is called Shah Alam ADA. From Shah Alam, maibal city is towards north at a distance of about 5 kms. The hospital is also available in Maibal city adjacent to Bhakkar, Kallur Kot road. Police post maibal sharif is situated at a distance of about 250/300 karmas from maibal hospital towards north-west. THQ hospital is situated at a distance of 12/14 kms from Maibal Sharif on the same road. Bhakkar, Kallur Kot road connects with Sargodha road which leads to Chandni Chowk, Chandni Chowk is situated towards east from Kallur Kot. Building of P.S Kallur Kot is exists on Kallur Kot Sargodha Road. P.S. Kallur Kot is situated at a distance of ½ km towards north east direction from THQ Kallur Kot. THQ Kallur Kot is situated at a distance of 22/23 kms from the place of occurrence, while building of P.S Kallur Kot is situated about 24/25 kms from the place of occurrence. While moving from the place of occurrence towards THQ Kallur Kot, hospital of Basti Mai Roshan, Shah Alam ADA, civil hospital Maibal Sharif, police post maibal Sharif & Maibal city comes on the way. I did not informed the police chowki maibal and also did not escort the then injured to hospitals of Basti Mai Roshan & Maibal Sharif, volunteered that as the then injured was in very serious condition and we were struggling to save his life, so apparently we did not approach the said hospitals or chowki maibal.”

Nadir Ali (PW-9)-the eye witness deposed during cross-examination that: -

“The deceased was in un-conscious condition, we were not confirmed at that time as to whether the deceased has died or alive. We did not approach the hospitals of the Basti Mai Roshan & Mebal for first aid, volunteered that these hospitals are small and injured was in serious condition, due to this reason we brought him in THQ Kallur Kot. ----- We did not approach to police at Police chowki Maibal Sharif, volunteered that as the injured was in serious condition, so our first target was to save his life.-----THQ hospital is at a distance of 20/21 kms from the place of occurrence towards north. We reached in THQ Kallur Kot after 25/30 minutes of the occurrence. It was not in our knowledge, that when we reached in THQ Kallur Kot, injured was alive or dead. When we reached THQ Kallur Kot, the doctor came there immediately.”

Both witnesses admitted that different hospitals were available on the way from the place of occurrence to THQ Hospital, Kallur Kot. Still, they did not take Saddam Khalid-the deceased (then injured), to any nearby hospital for providing medical treatment. Both the witnesses, i.e., Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, admitted during cross-examination that they took him to THQ Hospital, Kallur Kot, due to the severe condition of Saddam Khalid-the deceased. The act of the prosecution witnesses, i.e., Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, remained unnatural. They did not try to stop the profusely oozing of blood from the deceased's wounds, nor they took him to any nearby hospital to provide him first aid to save his life. Instead, they opted to take him to the hospital, which was far from the place of occurrence at a distance of 25/26 kilometers, which also threw a cloud of doubt on the presence of both witnesses, including the complainant.

14. We have noted that the star witnesses, Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, have

brought on record a somewhat different story about blood-stained clothes and hands, which conflicts with the evidence of Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer. Muhammad Khalid (PW-8)-the complainant deposed during cross-examination that: -

“We did not chase the accused persons, as we attended the deceased; soon after falling after receiving the knife blows, our clothes were stained with blood. We did not sustain any injury during the occurrence. ----- We consumed 2/, 2/1/2 minutes at the place of occurrence. We shifted the injured to hospital in the Car. The seats of Car were also smeared with blood. Arslan and Nadir PWs also accompanied with me towards the hospital. -----We all the three persons showed our blood stained clothes to the police at THQ Kallur Kot, however, police did not take into possession our said blood stained clothes. I had then informed the police that Nadir and Arslan PWs are eyewitnesses of the occurrence. -----The I.O did not collect our blood stained clothes at the place of occurrence.”

Nadir Ali (PW-9)-the eye witness deposed during cross-examination that: -

“We had attended the then injured at the place of occurrence. Our hands and clothes were smeared with blood. Only clothes of the Muhammad Khalid (complainant) and myself were smeared with blood. The seats of the car were also smeared with blood. We told the I.O that we are the eye witnesses of the occurrence. we had shown our blood stained hands to the I.O, we also had shown our blood stained clothes to the I.O, but he did not take the same into possession.”

Contrary to the depositions of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eyewitnesses, Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer deposed during cross-examination that: -

“I did not notice that as to whether at that time hands and clothes of the complainant were smeared with blood or not. The complainant did not show me his blood stained hands and

clothes at that time. Had the complainant showed me his blood stained clothes, I would have taken into possession the same. It is incumbent upon the I.O to collect the entire relevant evidence which relates to the occurrence. If the blood stained clothes of the any witness are stained with blood, then it is the obligation of I.O to take it into possession as relevant evidence.”

There is a conflict between the statements of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eyewitness, with the testimony of Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer, which also creates doubt about the presence of both the witnesses at the place of occurrence.

15. On the point of prosecution witnesses, i.e., Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9), they are chance and interested witnesses. In the totality of the infirmities pointed out above, the presence of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9) becomes doubtful. Admittedly, Saddam Khalid-the deceased, was the son of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, is the son of Haseena Bibi, who is the paternal cousin of the complainant's wife and Muhammad Arslan is the son of the sister of complainant's wife, namely Parveen Bibi. Muhammad Khalid (PW-8)-the complainant deposed during cross-examination that: -

**“The house of Nadir Ali pw is located on the northern side at about 200/250 karmas from the place of occurrence. our house is also located at about 200 karmas towards north of the place of occurrence, whereas the house of Arslan pw is located at about 10 karmas towards west north of the place of occurrence. Arslan PW works alongwith his father in their business of cattles and sometimes he also drives vehicles.-----
-The place of occurrence is at a distance of half farlang towards west of main Bhakkar, Kallur Kot road. From main Bhakkar Kallur Kot road another link pakka road leads towards the place of occurrence, but just for about 100 feet.”**

Contrary to the deposition of Muhammad Khalid (PW-8)-the complainant about the presence of the deceased, Nadir Ali (PW-9)-the eye witness deposed during cross-examination that: -

“It is correct that my mother is Phophi Zaad of the deceased. My house is situated at a distance of 5/5-1/2 acres towards north from the place of occurrence. The house of complainant is towards south from my house at a distance of 1/1/2/2 acres. The house of Arslan pw is situated at a distance of 6/7 acres from my house towards south.”

There is no dispute over the fact that from the main Bhakkar Kallur Kot Road, another link, pakka road, leads towards the place of occurrence. The way through which one could reach the place of occurrence was not the only way. It is settled law that the evidence of a witness cannot be discarded only on the ground that he is a related witness. But it is only the rule of prudence, the rule of caution, that evidence of such witness is scrutinized with some extra caution. Once the Court is satisfied that the witness was present at the scene of occurrence and his evidence inspires confidence, the same cannot be discarded on the sole ground of relationship with the deceased or chance witness. Muhammad Khalid (PW-8)-the complainant further deposed during cross-examination that: -

“We were standing at a distance of 50 feet from Jafaria mosque towards south. I did not mention the reason of our presence at that place in my statement before the police.”

Heinous cases, like murders, are not committed with previous notice to witnesses, soliciting their presence. If murder is committed at a thoroughfare, the presence of witnesses having a relation with the deceased would be considered chance witnesses; if the incident took place in the house, the inmates of the house are natural witnesses. If murder is committed in the street or thoroughfare, only passersby will be witnesses. The place of occurrence was thoroughfare and the prosecution witnesses i.e. Muhammad Khalid Khan (PW-8)-the complainant and Nadir Ali (PW-9) have not got any reason to be present at the place of occurrence at the time

of its taking place. Muhammad Khalid (PW-8)-the complainant further deposed during cross-examination that: -

“Cattle shed from where the Saddam Khalid deceased was coming was located towards north from the place where we were standing, the said cattle shed is situated at a distance of about 20/25 karams from the place where we were standing. Whereas the accused came from eastern side from the place where we were standing.”

Nadir Ali (PW-9)-the eye witness deposed during cross-examination that: -

“The cattle shed of Nasir Hussain is situated at a distance of 100 feet towards north from the place where we were standing. The cattle shed is at a distance of about 150 feet towards north west from the place of occurrence. There is abadi of two sides of the place of occurrence. There are residential houses of people of the vicinity from two sides. Accused persons suddenly appeared there. They came from eastern side. We were jointly present at the spot. Deceased was present at a distance of 50 feet towards south east from us at the time of occurrence. Prior to the arrival of the accused persons suddenly at the spot, we did not see them prior to reaching at the spot. We did not see Sadam Khalid, when he was coming from cattle shed/Warra, volunteered that deceased crossed us.”

Whereas Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer, deposed during cross-examination that: -

“Cattle shed of Nasir Hussain is situated at a distance of about 300 feet towards north from the place of occurrence. I did not show said cattle shed in my un-scaled site plan. Complainant and witnesses did not point out the said cattle shed.”

Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer also deposed during cross-examination that eyewitnesses told him they had witnessed the occurrence from a distance of 50 feet. The presence of

Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness at the relevant time of occurrence, is belied from the site plan prepared on their pointing. The un-scaled site plan (Ex.PK) and scaled site plans (Ex.PA and Ex.PA/1) show the presence of witnesses at the height in the Northwestern near the Jafaria mosque at a distance of 50 feet, and the accused and deceased were in the southeast across the steep road. Hence, they cannot witness the incident. Whereas during the cross-examination Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, improved their statements by stating that they were at 7 feet when a knife blow was given by accused Ali Ahsan alias Sunny. But the position of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness near the deceased, was not shown in the un-scaled site plan (Ex. PK) and scaled site plans (Ex. PA and Ex. PA/1). Although the site plan is not a substantive piece of evidence in *Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211)*, but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses. All these circumstances make the presence of the eyewitnesses, i.e., Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9), at the spot doubtful.

16. Regarding motive, it is a double-edged sword that cuts both sides/ways. In the instant case, the prosecution, to establish the motive part of the incident, produced Muhammad Khalid Khan (PW-8)-the complainant, who deposed in his examination in chief that: -

“Motive behind the occurrence was that two days before the occurrence, an altercation took place between Sadam Khalid and Ali Ahsan alias Sunny and other accused persons, so due to this reason, they committed murder of my deceased son Sadam Khalid.”

Similarly, Nadir Ali (PW-9)-the complainant, deposed. Whereas, during cross-examination, Muhammad Khalid (PW-8)-the complainant, deposed that: -

“I have disclosed the motive part of this occurrence before the police. I had not

mentioned the detail of said motive part of occurrence, i.e., place, time & Pws of the said altercation. I had not disclosed the reason for said altercation of motive part off occurrence to the police. I had not informed the police in any way about the said altercation. I had not produced any witness before the police regarding the motive part of the occurrence.”

The defence brought improvement in the deposition of Nadir Ali (PW-9)-the eye witness. Nadir Ali (PW-9)-the eye witness deposed during cross-examination that:-

“My statement was recorded by the I.O in this case. I had not got recorded in my statement before the I.O that two days prior to this occurrence an altercation took place in between the accused Ali Ahsan etc and Saddam Khalid deceased.”

Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer deposed during cross-examination that: -

“I correctly recorded the statement of Nadir Ali without any addition, deletion or omission. Both eye witnesses namely Nadir Ali and Arslan did not describe about the motive of this occurrence in their statements.”

The motive is a double-edged weapon that cuts both ways. If, on the one hand, it provided a reason for the accused to commit the occurrence in question, on the other hand, it equally provided to the first informant to implicate his rival. The motive for the commission of the crime by the accused was not proved through cogent and convincing evidence.

17. So far as recovery of the weapon of offence, i.e., knife (P-4) from the possession of the accused/appellant and positive report of Punjab Forensic Science Agency (Ex. PO) regarding the presence of human blood on the blade of a knife, is concerned, as per the prosecution case, on 16.08.2017, the accused was arrested. On 21.08.2017, upon his disclosure, a knife (P-4) was recovered from the northern room of his residential house. As per the recovery memo (Ex.PJ) knife (P-4) was kept in a cloth bag, which was hung on the room's western wall. Sajjad Hussain S.I/H.I.U. (PW-11)-the

investigating officer deposed during examination-in-chief that after proceedings at the place of occurrence, he raided the houses of the accused persons, but they were not traceable. He (PW-11)-the investigating officer, further deposed that he raided the houses of the accused persons on various dates, but they were not traceable. It is astonishing that soon after the incident, the accused persons escaped from the place of occurrence, as per the prosecution case, and Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer made efforts to effect the arrest. Even otherwise, it does not appeal to reason that the accused, Ali Ahsan alias Sunny might have kept a knife (P-4) in his house intact to produce it before the Investigating Officer on his arrest. The accused, Ali Ahsan alias Sunny, cannot be expected to keep the Knife (P-4) in his house when he could have easily disposed of the same. Reliance is placed on the judgment of the Hon'ble Supreme Court of Pakistan in the case of "Bashir Ahmed alias Mannu v. The State" (NLR 1996 Criminal 234), wherein the learned Apex Court had disbelieved the prosecution evidence on this count. Besides, during cross-examination, Sajjad Hussain S.I/H.I.U. (PW-11)-the investigating officer admitted that: -

"I recorded the statement of Shah Nawaz 209/HC and Akhtar Iqbal 793/C correctly. Above said witnesses did not mention in their statements that knife was blood stained. I did not mention in the recovery memo of knife that the said knife P.4 was blood stained, volunteered that it was blood stained, however, I could not mention as blood stained in the recovery memo."

It was not mentioned in the recovery memo (Ex. PJ) that the knife was blood stained. Akhtar Iqbal 793/C (PW-10) deposed during cross-examination that: -

"My statement was recorded by the I.O after 10 A.M. I got recorded in my statement that recovered knife P.4 was blood stained. Confronted with Exh. D.B wherein it is not so recorded."

In these circumstances, the recovery of the weapon of offence and a positive report are not of any consequence.

18. As it is difficult to rely upon the testimonies of Muhammad Khalid (PW-8)-the complainant, and Nadir Ali (PW-9)-the eye witness, and for other reasons enumerated hereinbefore, we are persuaded to hold that the prosecution had not been able to prove its case against the appellant beyond any shadow of a doubt as there were many dents in the prosecution story. The conviction and sentence the learned trial court recorded could not be sustained. It is held in the case of “**Muhammad Akram v. The State**” (2009 SCMR 230) that: -

“It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of “Tariq Pervez v. The State” (1995 SCMR 1345) that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

19. The upshot of the above discussion is that the prosecution had severely failed to bring home a charge against the appellant beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Crl. Appeal No.193932 of 2018, filed by Ali Ahsan alias Sunny, the appellant, is accepted in toto. The sentence awarded by the learned Additional Sessions Judge, Kallur Kot, vide judgment dated 30.03.2018, is set aside. The appellant is acquitted of the charge in case FIR No.227/2017 dated 15.07.2017, registered under sections 302/34 PPC, at P.S. Kallur Kot, District Bhakkar. The appellant-Ali Ahsan alias Sunny, son of Anwar Hussain, is ordered to be released forthwith, if not required in any other case.

20. **Murder Reference No.164 of 2018**, forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convict fails, which is answered in Negative.

21. So far as **CRIMINAL APPEAL No.206624 of 2018** seeking the conviction of respondent No.2-Touseef is concerned, we have noted that no role has been assigned to the respondent No.2-Touseef, and no injury was attributed to him towards the deceased or prosecution witnesses. For what has been discussed above in the light of prosecution, medical, and documentary evidence, the acquittal of respondent No.2-Touseef does not suffer from any illegality to call for our interference with the impugned judgment to his extent. We have also taken note of the settled principle of criminal jurisprudence that unless it can be shown that the lower court's judgment is perverse or that it is entirely illegal. No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting in a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to his case. The acquittal order cannot be interfered with, whereby a charge earns double presumption of innocence as held in **Muhammad Mansha Kausar** v. **Muhammad Ashgar and others** (2003 SCMR 477). In this case, the prosecution has not been able to bring on record adequate incriminating evidence against respondent No.2, which connects him with the alleged crime. The learned trial Judge has advanced valid and plausible reasons for recording acquittal in favor of respondent No.2. The judgment of acquittal does not call for any interference. Consequently, we find no merit in this **Criminal Appeal bearing No.206624 of 2018**, which is, as a result of this, **dismissed** as being without prices.

(Muhammad Amjad Rafiq)
Judge

(Aalia Neelum)
Judge

Approved for Reporting

Judge

Judge

*This judgment has been
dictated, pronounced on
22.05.2023, and signed
after its completion on
30.05.2023.*

*Ikram**