

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, MULTAN**  
**BENCH, MULTAN**  
**(JUDICIAL DEPARTMENT)**

**Murder Reference No. 45 of 2019**

&

**Criminal Appeal No. 289-J of 2019**

*Sajid Hussain vs The State*

**Criminal Appeal No. 457 of 2019**

*Malik Muhammad Saleem vs The State etc.*

**J U D G M E N T**

|                    |  |
|--------------------|--|
| Date of hearing    | 09.10.2023   |
| The appellant by   | Mr. James Joseph, Advocate.                                |
| The State by       | Malik Riaz Ahmad Saghla,<br>Additional Prosecutor General. |
| The complainant by | Nemo.  |

**Murder Reference in, and appeal against conviction & acquittal** passed in, judgment dated 03.04.2019 handed down by learned Additional Sessions Judge, Multan in case FIR No. 70/18 dated 02.02.2018 u/s 302/34 PPC, P/S Mumtazabad, Multan whereby Sajid Hussain accused was convicted u/s 302(b) PPC and sentenced to death as ta'zir and ordered to pay compensation of Rs. 200,000/- to the legal heirs of deceased, for default to undergo SI for six months, and Tahir Imam co-accused was acquitted.

**Muhammad Amjad Rafiq, J:-** Prosecution case theory presented a woman as host, for marriage arrangements of her daughter, who while responding to a knock at the door of her house in wee hours of the morning tasted her death at the hands of a boy who was aspirant to marry her daughter. It was claimed an intentional murder committed by Sajid Hussain/appellant by a pistol fire shot when in the company of co-accused Tahir Imam (since acquitted). Defence negated the theory by labeling it a motive-less blind murder and involvement of accused due to party faction.

2. The factual matrix in legal context collected through FIR and evidence of parties viewed the happening of occurrence on

02.02.2018 at 6:50 a.m. prior to sun arise when Shamim Bibi wife of complainant Muhammad Saleem (PW-9) responded to a knock at the door after hearing voice of someone asking for drop of axillaries for marriage; when she opened the main gate, Sajid Hussain/appellant fired a pistol shot hitting on the left side of her chest and she fell down; co-accused also made one fire hitting at the main gate. Occurrence was viewed by her husband Malik Muhammad Saleem, PW-9 (complainant), her brother Muhammad Amjad, PW-10 and other witnesses, allegedly sitting in TV lounge reportedly facing garage of the house; both accused succeeded to decamp by riding on motorcycle despite a catch-effort by PWs. Motive was annoyance of Sajid Hussain/appellant over his rejection for marriage with Nadia Saleem, daughter of the complainant.

3. Matter was reported to the police at 11:10 a.m. on the same day with a delay of more than four hours with the justification that time was consumed while shifting Shamim Bibi in injured condition to hospital and on the way when she died, her deadbody was kept at Nishtar Hospital Multan and police on receiving information reached there. These four hours are very crucial to decide the fate of first phase of prosecution reel. PW-9 states that his son informed the Rescue 1122 Emergency Ambulance Service and it reached at 7:00 a.m. and according to him ***“we had shifted the dead body at 7:15 a.m.”***. If Shamim Bibi had died, there was no question of shifting her to hospital in injured condition, and this fact is also mentioned in a report of Emergency Service 1122 available in the file that on 02.02.2018 at 7:03 a.m., when they reached at the place of occurrence, woman had died. Therefore, there was no occasion for complainant to wait further for a moment to report the matter to the police.

However, let's move forward with the story of prosecution. Complainant stated that he along with witnesses while accompanying Shamim Bibi reached the hospital within 20 to 25 minutes, whereas PW-10 Muhammad Amjad deposed that ambulance 1122 took only

Saleem (complainant) and Shamim Bibi to hospital. Further deposed that when he had left for hospital, he received information about death of her sister and he reached the hospital within 15 minutes. With this contradiction, complainant further ran the story that police reached the hospital at 10:30 or 10:45 a.m., and he had already got dictated an application for registration of case through a relative whose name he did not disclose. PW-11 Noor Akbar SI confirmed this fact that he received information about the occurrence at 10:20 a.m. and reached the Emergency ward of Nishtar Hospital where complainant handed over him the written application for registration of FIR which the complainant signed in his presence. Though drafting style of such application Ex. PH was highly professional which is not expected to be written by a layman, yet leaving this aspect aside, it was observed that during cross examination, Noor Akbar SI, investigating officer (PW-11) conceded that after receiving the formal FIR, he prepared inquest report that obviously was showing inspection of deadbody at that time and further deposed that he handed over the deadbody to Naila Naheed, lady constable, who never appeared as a witness during the trial. It was 12:00 noon when postmortem on deadbody was conducted and PW-9 (complainant), investigating officer (PW-11) and doctor (PW-6) were unanimous that deadbody was brought by Asif Abrar 4901/C (PW-5) instead of Naila Naheed, Lady Constable. A report of Nishtar Hospital is available on the record at page 125 of case bundle showing deposit of deadbody of Shamim Bibi in the morgue at 9:20 a.m. on 02.02.2018 by Asif Abrar 4901/C and it was received back by him at 11:30 a.m. on the same day for postmortem and later during the day it was handed over to Muhammad Akram, brother of the complainant (a given-up eye witness). Presence of Asif Abrar in hospital prior to reaching of investigating officer throws suspicion that occurrence was in the knowledge of police from very early hours and due to absence of complainant, the registration of FIR was delayed and by the time postmortem was got conducted; that was the reason instead of complainant, his brother Akram received the

deadbody and later was given up to hide the facts that might have been caught during his cross examination. Absence of complainant gets further strength from the statement of PW-9 (complainant) who concede that he had two wives, one living in Qasba Maral at a distance of 30/40 kilometer from the place of occurrence. We have also observed that had the FIR been registered before the postmortem, the inquest report must have contained the FIR number, which is not there. In this way we can simply hold that complainant was not present at the place of occurrence, therefore, his testimony cannot be relied upon as trustworthy. Reliance is placed on the cases reported as ZAFAR HAYAT versus THE STATE, (1995 SCMR 896); MUHAMMAD RAFIQUE versus THE STATE and another, (2004 SCMR 755) and MST. SUGHRA BEGUM and another versus QAISER PERVEZ and others, (2015 SCMR 1142).

4. Before dilating further upon the presence of PWs at the place of occurrence, it is necessary to see what the investigating officer has done at the crime scene. He collected two crime empties, prepared visual site plane, secured blood on a cotton; got prepared one snap of deadbody and three snaps of place of occurrence through Mubashir 2587/C PW-1; recorded statement of witnesses and later received last worn clothes of the deceased, i.e., blood-stained shirt, but no mention of shalwar and dupatta being blood stained; doctor has also explained the similar description of such clothes as well as Asif Abrar, PW-5 which shows that due to injury on the chest only shirt was soaked with blood. Such clothes though were sent to PFSA along with blood on cotton, yet no PW deposed about this fact who actually had deposited such articles in the PFSA and for what purpose. We have examined the PFSA report consist of two pages Ex. PQ & PQ/1 which surprisingly shows that all three clothes were blood stained, and DNA profile obtained from these clothes was consistent with a single source of female origin but to our further surprise the DNA profile obtained

from blood on cotton was mixture of at least two individuals and the source of DNA obtained from clothes was eliminated as being the possible contributor to the DNA obtained from blood on cotton. This was so shocking for us that the DNA on clothes did not match with DNA obtained from blood on cotton, which was secured from the place of occurrence. Thus, it was a clear indication that place of occurrence was doubtful.

5. With this information when we examined the snap (P/1) of deadbody, the investigating officer did not opt for whole view of the body of deceased showing blood on her clothes rather it was a capture of only face of deceased with red lipstick on her lips, similar description was also observed and deposed by the doctor through her postmortem report as well as her deposition before the Court. This was an eye brow raising fact for us that how a woman at 6:50 a.m. in the month of February, 2018 when the sun has not arisen could be in such a polished condition of make-up, particularly when the doctor has observed during postmortem that her bladder was full of urine and shalwar was not blood-stained, though shirt was drenched with blood. It gives us an impression that probably she was killed at the time when she was sleeping or if not, but for sure, just a moment later she got out of dormancy. We made up this observation under the impression that the occurrence has not been committed in the manner as being claimed by the prosecution. In this respect we have examined the evidence explaining the place of occurrence. There were two doors of house, i.e., main gate with width of around 8 feet, and a little gate of about 2 and half feet and behind that gate there was a large garage and after that acclaimed TV lounge which we did not find in the site plan. Witnesses were claiming to have their seat in TV lounge which is not visible from the main gate yet their position in the site plan was shown inside the garage. On knock, no male member opted to go out to attend the calling by the accused; though husband, brother and Dewar (husband's brother) were amongst the witnesses. However,

considering that it was Shamim Bibi who opened the gate, but it was not expected that she should have exposed her to the accused through main gate of 8 feet (which is the case of prosecution) rather in normal course she would have opened the little gate; that was the reason PW-9 & PW-10 have given different description of width of gate while viewing the accused in a situation when he fired at Shamim Bibi. PW-9 stated during cross examination as under:-

“The deceased was standing at the door, which is 8-feet in width”

Whereas PW-10 stated as under: -

“The outer door was 2/2-1/2 feet in width.”

According to site plan accused were standing in front of main gate and witnesses were sitting a little right inside behind the main gate, but the little gate was away from them; therefore, if the accused were present at the little gate, witnesses could not view them while firing at deceased, similarly their position in site plan also do not make them capable to see the act of firing even at the main gate. this anomaly shows that at the time of occurrence either PW-9 was not present or the PW-10 because while attending the above contradiction of witnesses with respect to width of gate, we have observed that PW-9 stated during cross examination that ***“the witnesses had come to my house in the evening prior to the occurrence”***; whereas Muhammad Amjad PW-10 stated that his house is at a distance of 06/07 acre away from the house of complainant and ***“I reached at the house of my brother in law/complainant at the time of Fajar prayer”***. Even there is contradiction with respect to their own distance from the deceased; according to PW-10, they were sitting at a distance of 10 feet from the outer door, whereas PW-9 stated that all the relatives including witnesses were sitting in TV lounge which is at a distance of 04/05 feet away from the outer door. We are of the firm opinion that witnesses were not present at the place of occurrence and the reason advanced by them i.e., marriage of Nadia Saleem, for their presence is not supported with any article available in the house of complainant

showing that it was a house with marriage function. So much so Nadia Saleem whose statement was claimed to have been recorded by the investigating officer PW-11, did not appear in the dock.

6. Prosecution through snaps P/2-4 of crime scene tried to show that bullet mark is available on the main gate and it be read in favour of prosecution story that fire by co-accused hit at the gate. Examination of one of the snaps shows that it was a mark inside the door of main gate otherwise in a normal course it should have been from the outer side; however, in both situations, investigating officer must have searched for led of bullet which hit the main gate but it was not found. Further, when it was opted by the investigating officer to take snaps of crime scene, the view should have encompassed all the material points, like TV lounge, place where crime empties were available and whole view of blood trail, article available in the house showing marriage function; but it has not been done; therefore, this deliberate lacuna creates a strong presumption that investigating officer was trying to hide something detrimental and devastating to prosecution case theory. Investigating officer as well as draftsman did not use their skills while drafting the site plans to throw light on the clear situation of crime scene which was a deliberate deviation from their lawful duty. A site plan is required to be prepared by a qualified police officer or other suitable agency or patwari, but if it is an inhabited enclosure or of land inside a town or village site, the site plan shall not be prepared by Patwaris. The requirement of site plan in law is referred in Rule 25.13 of Police Rules, 1934 which is reproduced 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 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.*

The underlined text above showing importance and necessity of drafting a map or site plan correctly. However, requirement of preparing two site plans shows that in the first plan, 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. Thus, the law requires that one site plan prepared by the police officer or expert shall be on the basis of their own observation of crime scene and second shall include some facts based on the statement of witnesses to show connection of



this site plan with the case under inquiry and this second site plan shall not be sent to the court but can help the investigating officer to refresh his memory when appearing in the dock to depose as witness. We have observed that both expert or the investigating officer have failed to perform their duty to prepare the site plan accurately which is a violation of sub-rule (v) above.

7. Prosecution has claimed that recovery of pistol from the appellant is supportive to prosecution case because one of the empties collected from the place of occurrence was reported by PFSA as having been found fired from the pistol recovered on the lead of appellant. It has been observed that similar evidence of matching report against the co-accused Tahir Imam has been discarded by the learned trial court while acquitting him. We have further observed that Noor Akbar SI PW-11 was the man who deposited the empties and pistol in the office of PFSA, though fact of depositing of empties on 07.20.2018 is available in his statement as well as in the statement of Moharrir PW-4 but he did not depose about the fact of depositing the pistols rather stated that he recorded the statement of Moharrir for depositing of pistols before PFSA. In normal circumstances, it may be considered an innocent omission but we have observed that two pistols were received by PFSA in two separate parcels but Moharrir Nazar Hussain PW-4 deposed during cross examination that both pistols were sealed in one parcel which is a dent in recovery of pistols and transmission of that very pistol which was allegedly stood recovered from the appellant. Even pistols after recovery were handed over to the Moharrir on 15.02.2018 but they were deposited in PFSA with further delay of 8 days on 23.02.2018. therefore, recovery of pistol from the appellant has become doubtful.

8. Medical evidence for the prosecution was materialized through postmortem of deceased which was conducted by Dr. Meraj Fatima PW-6 at 12.00 (noon) on 02.02.2018 with a delay of 5 hours and observed following injuries:-

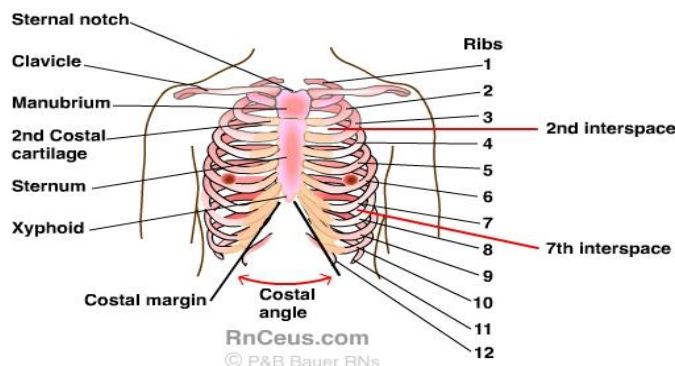
*Injury No.1); Lacerated wound measuring 03 x 04 cm over the front of left side of the chest 6 cm left nipple. The wound was having tattooing around (3-5 cm). The wound was having abraded collar and inverted margins;*

*I-A (wound of exit): Lacerated wound of 01cm x  $\frac{3}{4}$  cm with everted margins on right side of chest below 05cm inferior angle of right scapula.*

From the above observation of doctor, it seems that injury entered from left side of chest and exited from right side of chest, but mentioning the words “below 5 cm inferior angle of right scapula” shows that the exit wound was on the back of chest, that was the reason in pictorial diagram, exit wound was shown on the back under the scapula; however, we have observed that doctor has mentioned the track of bullet on dissection of body in following words:-

*“After piercing skin, fascia the bullet entered through 5<sup>th</sup> and 6<sup>th</sup> intercostals space on the left side 6 cm about left nipple further pierced the left pleura left middle lob of left lung pulmonary artery left side of heart, right lower lob of lung and finally made its exit on right 8<sup>th</sup> intercostals space. Whole chest cavity was full of blood.”*

What are the 5<sup>th</sup> and 6<sup>th</sup> intercostals space on the left side and 8<sup>th</sup> intercostals space on the right side, let’s see the following diagram;



9. Understanding the above diagram clearly shows that bullet entered from left side of rib cage and exited from right side of the rib cage without its exit from the back, otherwise doctor must have mentioned the further exit of bullet from the back side as she has mentioned while showing its entry inlet. Therefore, there was a contradiction in medical evidence as bullet entered from the left side of chest whereas prosecution claimed it a fire on the front of chest. Another touchy aspect in medical evidence is the size of entry wound which is bigger than the exit wound and it is not possible in ordinary

circumstances but presence of tattooing can produce such type of effect if the fire is made with palleted weapon because the central mass of pellets begins to disperse, entry wounds have a large central defect, the edges of which appear scalloped, looking somewhat “rat-nibbled” or resembling the pattern of a cookie cutter, but in bullet injury it is possible only in situations as explained in Parikh’s Textbook of Medical Jurisprudence, Forensic Medicine and Toxicology (SEVENTH EDITION), 2003; Section IV, MECHANICAL INJURIES-GENERAL ASPECTS at Page 4.46; which are as follows:-

*“(1) In a contact range shot, when the soft tissues at the entry are torn by in-rushing gases (2) when bullet is yawing as it enters perhaps because of ricochet (3) when an entire bullet enters and breaks up with only a small portion exiting (4) Tangential entry wounds with local avulsion of tissue and bone (5) Bullets entering through creased or folded skin but exiting through a less complicated surface.”*

Deceased apparently from her snap seemed us like bulky, therefore, bullet-hit on the left side was any entry in soft tissues; likewise ‘yawing’ connotes twist or oscillate because of ricochet about a vertical axis and it occurs due to striking of bullet on a hard object before entering the body (though ricochet also happens within the body by striking of bullet on the bony area). In this case if it is read that bullet hit on the main gate first and then enters the body, the case of prosecution becomes more doubtful because investigating officer has shown mark of bullet on the gate from inside as depicted from one of the snaps (P/2-4) whereas it was not the prosecution case that assailants had entered the garage. Prosecution had also claimed two fire shots at the place of occurrence but the investigating officer failed to collect any led bullet from the place of occurrence nor its further mark on nearby wall after hitting the main gate. The other related sign could be the tangential entry wound with local avulsion of tissue and bone which could happen in close range fire when assailant is taller than the victim or if he fires with pointed pistol up into down. If it be considered in this case then assailant must have been in a close range

of 1-2 feet because doctor has observed the tattooing but while scanning the evidence we have observed that witnesses deposed the inter se distance between appellant and victim as 5 feet, and the same distance is mentioned in the site plan; therefore, such type of wound description is not possible from 5 feet when doctor has also observed the abraded collar at entry wound. So, there is serious conflict in medical and ocular account which shows that occurrence was not committed in the manner as being claimed by the prosecution. This contradiction is fatal to the prosecution. Reliance is placed on case reported as “MUHAMMAD IDREES and another Vs. The STATE and others” (2021 SCMR 612) and such contradiction also leads us to draw an inference that as a matter of fact the prosecution witnesses were not truthful in their stance and were not present at the place of occurrence at the relevant time and had not witnessed the occurrence. Reliance in this regard is placed on the cases “MUHAMMAD ASHRAF alias ACCHU versus The STATE” (2019 SCMR 652) and “ZAFAR Versus The STATE and others” (2018 SCMR 326).

10. CDR of phone number 923004313801 in use of Tahir Imam co-accused was brought on record showing that on 02.02.2018 at 5/11 a.m., a call was received by him from the cell number 3050321281 of Sajid appellant and it lasted for 52 minutes and other call he received from the same number at 6.00 a.m., for a duration of 13 minutes. Data seems manipulated because if the first call lasted for 52 minutes, then by adding 52 minutes in 5/11 a.m., it would turn out to be a time as 06:03 a.m.; therefore, it is real impossibility that in between running call, another call was received from the same number. Moreover, except these two calls no other call was shown to have made by said Sajid ever to Tahir Imam co-accused, and investigating officer also did not opt to obtain CDR of Sajid appellant. Even otherwise “Voice Record Transcript” or “End to End Audio Recording” was not available to show that said Phone numbers were in actual use of both the accused or through said phones numbers they were interacting

with each other; therefore, CDR was not in the form as held by Full Bench of this Court in case reported as “Mst. Saima Noreen vs The State and another” (PLJ 2023 Cr. C 371 (FB); for reference, relevant paragraph is reproduced:-

*10. Although any accused or witness can claim or admit possession and use of any SIM “Subscriber Identity Module” by him or anybody else at the time of occurrence or any other relevant time yet mere such claim or admission is not sufficient for relying on CDR “Call Data Record” of said SIM because CDR only shows use of SIM in territorial/geographical jurisdiction of “Cell Phone Tower” installed by telecom operator and does not disclose that who is actually/exactly carrying and using said SIM; however, “Voice Record Transcript” or “End to End Audio Recording” can reflect the detail/identification of the user. Therefore, without “Voice Recording Transcript”, mere “Call Data Record” (CDR) alone of the SIM is inconclusive piece of evidence regarding identity of its user/carrier.”*

This managed attempt on the part of investigating agency clearly shows that occurrence took place much prior to the time shown by the prosecution, which fact also had a support of observation of doctor that duration between injury and post mortem was 6-8 hours. Stretching it back from 12-noon (time of postmortem) the time of occurrence becomes as of 6:00 a.m. or 4:00 a.m., therefore, it is clear that no one had seen the occurrence but later in order to hide something bad, the present appellant was dragged into this case

11. The presence of PW-9 & PW-10 at the crime scene was highly doubtful as observed above, therefore, the best evidence in this case was the deposition of Nadia Saleem, being inmate of house, directly connected with the motive, but she has been withheld, though her statement was recorded by investigating officer PW-11, therefore, this Court is justified to hold that had she appeared in the dock, her statement would not have been favourable to the prosecution. An adverse inference is therefore, drawn against the prosecution.

12. For what has been discussed above, in the instant case the prosecution has totally failed to establish the charge against the accused/appellant beyond any reasonable of doubt and it is trite that to extend benefit of doubt to an accused person, it is not necessary that

there should be several circumstances creating doubt, rather one reasonable doubt is sufficient to acquit an accused. This principle was expounded by august Supreme Court of Pakistan in the cases reported as *“Najaf Ali Shah case vs. The State”* (2021 SCMR 736) in the following words:-

*“It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner”*

Consequently, appeal (Crl. Appeal No. 289-J of 2019) is allowed and the accused/appellant is acquitted of the charge. He shall be released forthwith if not required in any other case. The case property, if any, shall be disposed of in accordance with law and the record of the trial court be sent back immediately.

13. As regards Crl. Appeal No.457 of 2019 qua acquittal of Tahir Imam, we have found that reasoning advanced by the learned trial court to record his acquittal, is well founded and no perversity in the judgment of his acquittal has been observed by us; hence, this appeal against acquittal is dismissed.

Murder Reference No. 45 of 2019 is answered in the negative.

Sentence of death is not confirmed.

(SADIQ MAHMUD KHURRAM) (MUHAMMAD AMJAD RAFIQ)  
JUDGE JUDGE

**APPROVED FOR REPORTING**

**JUDGE**

**JUDGE**