

fourwalls of her residential premises "ربائشی احاطہ" after litting electric bulb; in the intervening night of 01.08.2015, accused persons No.1, 2 and 3 (i.e. Faisal, Mujahid and Nishan, respectively) with firearm weapons came into the courtyard after jumping the wall whereas two unknown remained present outside; accused No.1 (Faisal) fired straight shot at Abdul Razzaq (son of the complainant) which hit him above right side of temporal region "پٹپڑی"; after hearing report (آواز) of shot fired and noise when the complainant awoke, she identified accused persons No.1, 2 and 3 (i.e. Faisal, Mujahid and Nishan, respectively) in the light of bulb and when the accused persons ran, two muffled faces also fled away with them; after hearing report (آواز) of shot fired and noise, Fazil, Allah Yar and other people of the vicinity also reached the place of occurrence who also saw the occurrence and accused persons succeeded to flee away after brandishing their weapons; Abdul Razzaq was taken to District Hospital, Okara in injured condition from where medical certificate (نتیجہ ڈاکٹری) was obtained and due to his critical condition, he was referred to Lahore; complainant was busy in taking care of her son, came to the police station on 02.08.2015 at 01:50 p.m. and prayed for registration of case. On the basis of aforementioned application (Ex.PA), case was registered *vide* F.I.R. No.176/2015 (Ex.PJ) on 02.08.2015 under Sections: 324, 148, 149 PPC (subsequently, after death of Abdul Razaque on 14.08.2015 at Jinah Hospital, Lahore, offence under Section: 302 PPC was added) at Police Station: Ravi, District: Okara.

Being dissatisfied with the conduct of the police, complainant filed "**complaint**" (Ex.PB) against Faisal, Mujahid, Iqbal *alias* Shan and Zubaida Bibi *alias* Baido under Sections: 302, 324, 148, 149, 109 PPC alleging therein that she is resident of *Basti Noorekey, Tehsil & District: Okara* and a housewife; in the intervening night of 31/01.08.2015, she along with Fazil and Allah Yar slept in the courtyard of fourwalls of her residential premises after litting electric bulb; accused persons namely Faisal armed with pistol, Mujahid armed with pistol and Iqbal *alias* Shan armed with pistol came into the courtyard after jumping the wall and opened the gate whereas two unknown remained present outside; on hearing the noise "کھڑاک کی آواز پر", complainant, Fazil and Allah Yar awoke and in their view, Faisal armed with pistol raised lalkra that today he will take revenge of murder of his father and will not left Abdul Razaq alive; in their view, Faisal fired shot at Abdul Razzaq (son of the complainant) with pistol with the intention to kill him,

which hit at right side above his temporal area "پٹھری"; occurrence was seen by the witnesses in the light of bulb; when complainant and witnesses tried to apprehend the accused persons, Iqbal *alias* Shan pointed his pistol at the witnesses whereas Mujahid accused pointed his pistol at the complainant that if anyone tried to intervene, he would be killed; accused persons while raising lalkara fled away from the spot.

Motive behind the occurrence (as per complaint Ex.PB) was that it was an allegation of accused Faisal that Abdul Razzaq had murdered his father and in this respect, case arising out of F.I.R. No.43/10 dated: 16.05.2010 was registered under Sections: 302/34 PPC at Police Station: Kalyana, District: Pakpattan Sharif against Abdul Razzaque and due to this grudge, accused persons have committed the occurrence.

It has been also mentioned in aforementioned complaint (Ex.PB) that in this occurrence, Mst. Zubaida Bibi *alias* Baido had given information through phone to accused Faisal about presence of Abdul Razzaque (now deceased of the case) in the house and got stayed accused Faisal as well as Mujahid in her house prior to the occurrence; planning for the occurrence was made in the house of Mst. Zubaida Bibi *alias* Baido; on 31.07.2015 at about 05/06:00 p.m., Muhammad Amir and Walayat had seen and heard Faisal, Mujahid, Iqbal *alias* Shan and Mst. Zubaida Bibi *alias* Baido while making planning for the occurrence. The complainant got lodged case arising out of F.I.R. No.176/2015 (Ex.PJ) under Sections: 302, 324, 148, 149, 109 PPC at Police Station: Ravi, District: Okara against accused persons, however, local police was destroying the evidence of the complainant, hence complaint was filed.

It is pertinent to mention here that out of four accused persons {mentioned in the complaint Ex.PB}), Iqbal *alias* Shan was separately tried as "juvenile" in the case and Mujahid was declared as "proclaimed offender" whereas Faisal (appellant) and Mst. Zubaida Bibi *alias* Baido were formally charge sheeted to which they pleaded not guilty and claimed trial; complainant produced twelve witnesses to prove the charge against the accused whereas three witnesses were examined by the trial court as Court Witnesses; ocular account was furnished by Mst. Khurshid Bibi (complainant/PW-1) and Allah Yar (PW-2), evidence regarding abetment was given by Amir Shahzad (PW-3), medical evidence was furnished by Dr. Ishtiaq Ali (PW-5) and Dr. Abdul Hameed (PW-7) whereas Abdul Sattar S.I. (PW-8), Nazir Ahmad S.I. (PW-10), Yaqoob S.I. (PW-12), Aslam Parvaiz

S.I. (CW-1) and Muhammad Imran S.I. (CW-2) deposed about investigation of the case. Thereafter statements of the appellant and his co-accused 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. and the appellant did not produce any evidence in his defence, however, Mst. Zubaida Bibi *alias* Baido produced photocopy of petition tilted as “Zubaida Bibi vs. D.P.O. etc.” as Mark-DA alongwith carbon copy of MLC No.722/15 as Ex.DC in her defence.

Trial Court after conclusion of trial while acquitting co-accused namely Mst. Zubaida Bibi *alias* Baido, has convicted and sentenced the appellant as mentioned above through impugned judgment dated: 28.06.2019.

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

5. Learned Deputy Prosecutor General and learned counsel for the complainant have supported the impugned judgment and prayed for dismissal of the appeal.

6. **Arguments heard. Record perused.**

7. As per case of prosecution, occurrence took place during the intervening night of 31/01.08.2015 (however exact time not disclosed) whereas case was registered *vide* F.I.R. (Ex.PJ) at 01:50 p.m. on 02.08.2015 on the application (Ex.PA) moved by Mst. Khurshid Bibi (complainant/PW-1) at 01:50 p.m. on 02.08.2015 to Zulfiqar Ali A.S.I. (PW-6) in Police Station: Ravi, District: Okara. Admittedly, case has not been registered promptly although place of occurrence was just at a distance of 01-kilometer from the police station as per Column No.4 of F.I.R. (Ex.PJ). Undoubtedly, in case of receipt of injuries by the person, usually attendants prefer to first take him to hospital for medical aid and then to move for registration of case, however, each case has its own facts, therefore, “aspect of time” consumed in registration of case has to be examined in the light of circumstances of the case; as per application (Ex.PA), after receipt of injury by Abdul Razzaq (the then injured), he was shifted to District Hospital, Okara, from there he was referred to Lahore; Mst. Khurshid Bibi (complainant/PW-1) remained busy in

looking after (تیمارداری) the injured, then on 02.08.2015 came to police station and moved application for registration of case. However, close scrutiny of the record reveals that Mst. Khurshid Bibi (complainant/PW-1) herself admitted in her statement before the Court that just after 20-minutes of the occurrence, police reached at the place of occurrence, she i.e. Mst. Khurshid Bibi (complainant/PW-1) narrated whole occurrence to the police, her statement regarding the occurrence was recorded by the police, preliminary investigation was also conducted by the police at the place of occurrence and police accompanied Abdul Razzaque (the then injured) to District Headquarter Hospital, Okara; relevant portions of statement of Mst. Khurshid Bibi (PW-1) are hereby reproduced: -

“After 20 minutes of this occurrence police reached the place of occurrence. I narrated the whole occurrence before the police. Police recorded my statement regarding this occurrence.”
(emphasis added)

“Police conducted preliminary investigation at the place of occurrence at about 10/15 minutes. Thereafter we shifted Abdul Razzaq the then injured to DHQ Hospital, Okara in private car, local police were also accompanied with us.”
(emphasis added)

In this regard, relevant portion of statement of Muhammad Yaqoob S.I. (PW-12) is also being reproduced below: -

“It is correct that Abdul Razzaq was medical his examined through police.”

Perusal of Medicolegal Examination Certificate of Abdul Razzaq (Ex.PK, available at Page No.191-192 of the paper book) also reveals that said certificate was received by police official.

Aforementioned facts clearly show that police reached at the place of occurrence just after 20 minutes of the occurrence i.e. during night of 31/01 of August, 2015, conducted preliminary investigation there, recorded statement of Mst. Khurshid Bibi (complainant/PW-1) there, accompanied injured to District Headquarter Hospital, Okara and obtained his MLC, therefore, first information regarding the occurrence in this case as required and defined in Section: 154 Cr.P.C. is that statement which was got recorded by Mst. Khurshid Bibi at the spot just after the occurrence and case must had been registered on the basis of said statement but same has been suppressed by the prosecution and case has been registered with much delay on 02.08.2015 on the basis of application (Ex.PA) moved by the complainant in the police station.

Of course, F.I.R. is an important document which brings machinery of law into motion; reason for giving/attaching much weight to this document is that it contains first information regarding the occurrence which is provided to police after the occurrence and it is presumed that it contains firsthand knowledge about the occurrence without any adulteration, addition or omission so promptness of its recording enhances its efficacy; furthermore, the very first narration regarding the occurrence got recorded by complainant to police official is practically first information under Section: 154 Cr.P.C. whereas any statement or application subsequently given or moved to police is statement under Section: 161 Cr.P.C. Hence, in peculiar facts and circumstances of this case, statement got recorded by complainant to police at the spot (mentioned above) is as a matter of fact “first information” which has been suppressed by the prosecution and not brought on record whereas application (Ex.PA) moved by the complainant at the most can be termed as “statement under Section: 161 Cr.P.C.” and cannot be treated as “first information under Section: 154 Cr.P.C.”. Non-bringing of first statement regarding the occurrence got recorded by complainant to police at the spot on the record gives rise to the presumption that had it been brought on record as “F.I.R.” than it was not going to support the case of prosecution. Aforementioned state of affairs clearly reflects that when police station was just 01-k.m. away from the spot, police came at the spot just after 20 minutes of the occurrence, accompanied the injured to hospital, obtained MLC also, in spite of recording statement of complainant at the spot of occurrence as well as conducting preliminary investigation did not register the case till 02.08.2015, then case has been registered with unexplained delay and in this regard, relevant portion of statement of Muhammad Yaqoob S.I. (PW-12) is reproduced below: -

“It is correct that F.I.R. of this case was registered after the delay of two days.”

which further reflects that this time has been consumed for deliberation, consultation, concoction and tailoring false story after engaging and procuring witnesses and thereafter case has been registered through F.I.R. (Ex.PJ) on the basis of application (Ex.PA). Therefore, F.I.R. which is always considered as “cornerstone” has lost its value in the case and superstructure i.e. case of prosecution erected on the basis of this F.I.R. is bound to fall like house of cards; in this regard, guidance has been sought from the case of **“GHULAM**

ABBAS and another versus The STATE and another” (2021 S C M R 23),
“PERVAIZ KHAN and another versus The STATE” (2022 S C M R 393) and
“ABDUL GHAFUOR versus The STATE” (2022 S C M R 1527)

Although police immediately reached at the place of occurrence just in 20 minutes after the occurrence yet neither any empty-shell of bullet/cartridge **nor blood stained earth could be collected from there** thus question does arise that either said claimed place was the place of occurrence? Any bulb, pedestal fan or cot was also not taken into possession from the spot; in this regard, relevant portion of statement of Muhammad Yaqoob S.I. (PW-12) is reproduced as under: -

*“It is correct that I had not taken into possession any bulb through recovery memo from the place of occurrence. **It is correct that I also had not taken into possession blood stained earth, any crime empty pedestal fan, any cot from the place of occurrence.**”*

(emphasis added)

Now coming to the ocular account produced by prosecution which comprises of statements of Mst. Khurshid Bibi (complainant/PW-1) and Allah Yar (PW-2). Mst. Khurshid Bibi (complainant/PW-1) is mother of Abdul Razzaq (deceased of the case). Perusal of application for registration of case (Ex.PA) reveals that occurrence took place during night, complainant was sleeping, making of more than one fire shot by accused is not mentioned therein, complainant awoke on hearing report (آواز) of shot fired and noise meaning thereby that she could not see that who fired? Furthermore, as per application (Ex.PA), Fazil, Allah Yar and other men (مردمان) of village came at spot on hearing report (آواز) of shot fired as well as noise, so they also did not see any one making fire at Abdul Razzaque because repetition of making fire is not mentioned in the application (Ex.PA); in this regard, relevant portions of statement of Muhammad Yaqoob S.I. (PW-12) are reproduced as under: -

“It is correct that it was the version of the complainant in Ex.PA that the PWs also attracted to the place of occurrence after hearing the noise of fire.”

“It was version of the PWs before me that after hearing the noise of fire they reached at the house of Khurshid Bibi/complainant where complainant told that she had identified accused Faisal, Mujahid and Shan.”

This shows that neither complainant nor cited eyewitnesses saw any assailant while making fire shot at Abdul Razzaque. Specific kind of firearm weapon was not narrated by complainant in Ex.PA and in this regard, relevant portion of Muhammad Yaqoob S.I. (PW-12) is reproduced as under: -

"It is correct that as per Ex.PA complainant had not mentioned any specific kind of weapon in Ex.PA."

Even at the time of preparing un-scaled site plan of occurrence (Ex.PM), kind of firearm weapon was not disclosed by the complainant or cited eyewitnesses; in this regard, relevant portions of statement of PW-12 are as under: -

"I prepared the un-scaled site plan on the pointation of complainant and PWs."

"It is correct that neither the complainant nor the PWs pointed out before about the kind of fire arm weapon nor I mentioned the same in Ex.PM."

Complainant (PW-1) after introducing dishonest improvements and omissions filed complaint (Ex.PB) with much delay on 08.12.2016 and while appearing as PW-1, Mst. Khursheed Bibi (complainant) made following dishonest improvements and deliberate omissions for strengthening the case; -

"I got recorded in my application Exh.PA that I alongwith Fanzal, Allah Yar, Abdul Razzaq and other family members were sleeping in the courtyard. Confronted with Exh.PA where words "I alongwith Faazal. Allah Yar and Abdul Razzaq" were not so recorded. I got recorded in my application Exh.PA that accused Faisal armed with pistol 30-bore, Mujahid armed with pistol 30-bore sons of Sadiq, Iqbal alias Shan armed with pistol 30-bore. Confronted with Ex.PA where the words "armed with pistol 30-bore" were not so recorded whereas firearm weapon was mentioned. I got recorded in my statement that the accused persons unlocked the chain of door of Ahata and we woke up while hearing the voice of chain/kundi. Confronted with Ex.PA where it is not so recorded. I got recorded in my application Exh.PA that in the meanwhile accused Faisal raised lalkara that today Abdul Razaq be murdered because he had murdered my father. Confronted with Ex PA where it is not so recorded. I got recorded in my application Exh PA that on our view accused made a fire shot. Confronted with Ex PA where the word on our view not so recorded. I got recorded in my application Exh.PA that we tried to catch hold of accused Faisal then the accused Mujahid and Iqbal aimed their pistols toward us and threatened if anyone tried to intercept, would face the consequences. Confronted with Ex PA where it is not so recorded: I got recorded in my application Exh.PA that thereafter the above said accused persons decamped from the place of occurrence while raising lalkara. Confronted with Ex PA where it is not so ear recorded. However, it is recorded that they succeeded to flee away while brandishing their respective weapons. I got recorded in my application ExhiPA that when we followed the accused persons, two unknown accused persons armed with deadly weapons were also present in the house. Confronted with Ex PA where it is not so recorded. I did not get recorded in my statement that after hearing the noise and voice of fire I awoke up and identified the accused persons in the light of bulb. Confronted with Ex PA where it is so recorded from portion "A" to "A" Witness volunteers that I awoke up after hearing the voice of chain/kundi and identified the accused persons. It is

incorrect to suggest that, volunteer portion of my statement is incorrect and false. I did not get recorded in my application Exh.PA that when accused persons fled away alongwith two unknown muffled faces, then while hearing the noise and voice of fire Faazal son of Baila, Allah Yar son of Mohsin and other people of vicinity came the place of occurrence and witnessed the occurrence. Confronted with Ehx.PA where it was so recorded from 'B' to 'B' Witness volunteers that witnesses were already sleeping inside the house and witnessed the occurrence, It is incorrect to suggest that I have made dishonest improvement in order to become the eye witness of this case. It is incorrect to suggest that I have made dishonest improvements in order to strengthen my false case. I got recorded in my application Exh.PA that motive behind the occurrence was that Faisal accused had leveled allegation that Abdul Razzaq deceased had murdered his father and due to this grudge accused Faisal etc. committed the murder of my son Abdul Razzaq Confronted with Ehx.PA where it is not so recorded. It is incorrect to suggest that I had introduced a false motive to strengthen my false case. It is incorrect to suggest that I had introduced a false motive in my private complaint at belated stage after taking legal assistance just to strengthen my case."

"I got recorded in my application Exh.DA that whole the occurrence was committed on the abetment of said Zubaida Bibi. I got recorded in application Exh.DA that Mst Zubaida Bib accused telephonically informed about the presence of Abdul Razzaq to accused Faisal and Mujahid, Confronted with Exh.DA where it is not so recorded. I got recorded in application Exh.DA that on 31.07.2015 at about 5/6:00 p.m. accused persons Mujahid, Faisal, Iqbal and Zubaida made plan regarding the murder of my son Abdul Razzaq. Confronted with Exh.DA where it is not so recorded. I got recorded in my statement Exh.DA that Walayat son of Mohsin, Amir son of Yasin heard and witnessed the above mentioned conspiracy and thereafter informed me. Confronted with Exh.DA where it is not so recorded. It is incorrect to suggest that I have made a dishonest improvement at belated stage in order to create a false evidence against the accused persons. It is incorrect to suggest that I introduced a false piece of evidence just to strengthen my false case."

Similarly, Allay Yar (PW-2) also introduced dishonest improvements as well as intentional omissions in his statement before the Court; relevant portion of his statement is as under: -

"I got recorded in my statement under section 161, Cr.P.C., Exh.DB that on 31/1-07/08-2015 | alongwith Mst. Khurshid Bibi., Abdul Razzaq and other family members were present at Basti Noorekey, Mouza Joyyia and the electric bulbs were glowing and we slept there in the courtyard of the house. Confronted with Exh.DB where it is not so recorded, I got recorded in my statement under section 161, Cr.P.C., Exh.DB when we slept, the accused persons Faisal armed with pistol 30-bore, Mujahid armed with pistol 30-bore sons of Sadiq, Iqbal alias Shan armed with pistol 30-bore son of Muhammad Amin residents of Basti Noorekey, Tehsil & District, Okara, entered into the house while scaling over the wall. Confronted with Exh.DB where it is not so recorded. I got recorded in my statement under section 161, Cr.P.C., Exh.DB that the above accused persons unlocked the chain of outer door of the house. Confronted with Exh.DB where it hot so recorded. I

got recorded in my statement under section 161. Cr.P.C.. Exh.DB that on hearing the voice of chain/kundi I and Khurshid Bibi awoke up: Confronted with Exh.DB where it is not so recorded. I got recorded in my statement under section 161, Cr.P.C., Exh.DB that Faisal accused present in the court blared that today he will take revenge of the murder of his father and today they would murder him/Abdul Razzaq. Confronted with Exh.DB where it is not so recorded. I got recorded in my statement under section 161, Cr.P.C, Exh.DB that Faisal accused made a fire with his pistol 30-bore which landed on the right temporal bone of Abdul Razzaq which was seen by us in the light of bulbs. Confronted with Exh.DB where it is not so recorded. I got recorded in my statement under section 161, Cr.P.C., Exh.DB that we tried to apprehend Faisal accused. Confronted with Exh.DB where it is not so recorded. I got recorded in my statement under section 161. Cr.P.C., Exh.DB that at that time accused Mujahid and Muhammad Iqbal alias Shan (Juvenile accuse being tried separately) daimed their pistols upon us and threatened if any one step forwarded would face the same consequences. Confronted with Exh.DB where it is not so recorded I got recorded in my statement under section 161. Cr.P.C.. Exh DB that accused persons fled away from the place of occurrence raising lalkaras alongwith two unknown accused persons and were armed with deadly weapons who were present at the outside door of the house. Confronted with Exh.DB where it is not so recorded, I did not get recorded in my statement Exh DB that after hearing the noise and voice of fire shot, I alongwith Faazal PW attracted at the place of occurrence and saw that five persons were running. Confronted with Exh.DB where it is so recorded from portion 'A' to 'A' I did not get recorded in my statement Exh.DB that Khursheed Blib told us that she identified accused Faisal, Mujahid and Iqbal alias Shan, Confronted with Exh.DB where it is so recorded from Portion 'B' to 'B'. It is incorrect to suggest that I have made a dishonest Improvement in order to strengthen the falso prosecution case. It is incorrect to suggest that I have made a dishonest improvement just to establish my presence at the time of occurrence at the place of occurrence. I got recorded in my statement under section 161, Cr.PC, Exh.DB that motive behind the occurrence was that Faisal accused stated that Abdul Razzaq deceased had murdered my father. Due to this grudge accused Faisal committed the murder of Abdul Razzaq deceased Confronted with Exh DB where it is not so recorded. got recorded in my statement under section 161, Cr.PC.. Exh DB that Faisal accused also got registered a criminal case regarding the murder of his father against Abdul Razzaq deceased at Police Station Kalyana, District Pakpattan. Confronted with Exh.DB where it is not so recorded. I got recorded my statement regarding the conspiracy of the above said murder case under section 161, Gr.P.C. (At this stage, learned defence counsel requests that the copy of such statement was not delivered to accused under section 285-C. so the copy of said statement be provided for the purpose of confrontation. Learned DDPP for the state perused the police file and states that no such statement is available on record so it cannot be provided). It is incorrect to suggest that I have made a false statement regarding the statement of conspiracy before police.”

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.

Even otherwise, Allah Yar (PW-2) is not resident of place of occurrence rather his village “*Thatha Baqarka, Dakhli Murdani*” is at a distance of 12/13 k.m. from the place of occurrence; in this regard, relevant portion of statement of complainant/PW-1 is reproduced as under: -

“Thatha Baqir Ka is situated at about 12/13 K.Ms from Basti Nooreki/place of occurrence.”

So, he is a chance witness and though it was claimed by the complainant that he was residing at place of occurrence 7-months prior to the occurrence yet any plausible reason in this regard could not be brought on record; relevant portion of statement of Muhammad Yaqoob S.I. (PW-12) in this regard is reproduced below: -

“It is correct that at the time of recording the statement of Allah Yar son of Mohsin u/s 161 Cr.P.C. he had not stated before me that 7 months prior to this occurrence he had shifted his residence from Thatha Bakara to Basti Nooraka.”

Admittedly, Allah Yar (PW-2) is husband of Sheman Bibi daughter of complainant but she is not witness of the case; in this regard, relevant portion of statement of the complainant (PW-1) is hereby reproduced: -

“It is correct that I did not cite Sheman Bibi as witness in this case.”

Perusal of Medicolegal Examination Certificate (Ex.PK) of Abdul Razzaq does not contain name of complainant or any other cited eyewitness as attendants; even otherwise, if they were accompanying Abdul Razzaq in injured condition in the hospital, then why they did not tell name of accused and detail of the occurrence to Muhammad Yaqoob S.I. (PW-12); in this regard, relevant portion of statement of PW-12 is hereby reproduced: -

“It is correct that at the time of preparation of Ex.PK/1 injury statement neither attendant of Abdul Razzaq injured narrated the name and number of the accused persons nor I mentioned the same in Ex.PK/1. It is correct that neither attendant of Abdul Razzaq deceased narrated before me the mode and manner of occurrence nor I mentioned the same in Ex.PK/1.”

When all the aforementioned factors are taken into consideration in totality, then ocular account furnished by complainant/PW-1 and Allah Yar (PW-2) is neither confidence inspiring nor truthful; hence, same cannot be relied and is hereby discarded.

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.

As far as recovery of pistol (P-2) from Faisal (appellant) is concerned, suffice it to say that any crime-empty was not secured from the place of occurrence so it could not be established that said allegedly recovered pistol was used in the occurrence; report of Punjab Forensic Science Agency, Lahore (Ex.PZ) is only to the extent of working capability i.e. “**mechanical operating condition**” of the pistol and in this regard, case of “**MUHAMMAD ARIF versus The STATE**” (2019 SCMR 631) can be advantageously referred wherein it has been held as under: -

“Recovery of the weapons of offence along with live bullets allegedly effected at the instance of the appellant is not of much help to the prosecution because report of the Forensic Science Laboratory (Ex.PHH) is simply to the effect that rifle 222 bore was in working order.”

therefore, said recovery is inconsequential and of no help to the prosecution.

So far as motive is concerned, no motive was mentioned in the application (Ex.PA) as well as in the F.I.R. (Ex.PJ) but introduced through complaint (Ex.PB) at belated stage; however, it is relevant to mention here that it was claimed by the complainant in the complaint (Ex.PB) that father of Faisal was killed by Abdul Razzaq and Mujahid (now co-accused in this case/since P.O.); relevant portion of statement of the complainant (PW-1) in this regard is reproduced: -

*“It is correct that after the marriage my son Abdul Razzaq started reside at Chak No.14/G.B. alongwith accused Mujahid since P.O, and Faisal, The marriage remained intact at about one year. It is correct that after the above said marriage father of accused Mujahid since P.O. and Faisal was murdered Faisal accused become complainant of the above said murder case and got registered case F.I.R. 43/10 under section 302 P.P.C. against accused Mujahid since P.O. and deceased Abdul Razzaq, Accused Mujahid since P.O. and Abdul Razzaq deceased remained in judicial lock up with period of two years in the above said murder case. **Thereafter a compromise had been effected and accused Mujahid since P.O. transferred his inherited land in the name of accused Faisal, complainant of said murder F.I.R. and his brothers and acquitted from the above said murder case. Witness volunteers that we also paid Diyat amount Rs.300.000/- to complainant party and thereafter my son Abdul Razzaq acquitted from said case.**”*

(emphasis added)

However, it has come on the record that said case was compromised and thereafter till now, no litigation took place between the parties; in this regard, relevant portion of statement of complainant (PW-1) is reproduced below: -

“After the acquittal of the above mentioned murder case in 2012 we had no visiting terms with each other i.e. accused persons and the complainant party. It is correct that no litigation was pending prior to this occurrence between us.”

Hence, on the one hand, when compromise in said case was effected and it is not the case of prosecution that same was broken, then it is weak and feeble motive and on the other hand, now what happened after compromise which compelled the appellant and his companions including Mujahid (now P.O.) to kill Abdul Razzaq i.e. immediate cause of the occurrence in the case, could not be proved; furthermore, motive cuts both the ways, it can also be a reason for false implication, even otherwise, when substantive evidence has been discarded, then motive becomes immaterial for conviction. Needless to add that as per statements of the complainant and cited eyewitness before the Court, in the area of place of occurrence, dacoity occurrence was used to be committed; in this regard, relevant portion of statement of the complainant (PW-1) is reproduced below: -

“Dacoity occurrence used to occur in the area of Ravi, our village which is situated in the area of Ravi.”

Similarly, Allah Yar (PW-2) stated as under: -

“The dacoity occurrence often took place surrounding the place of occurrence.”

Abdul Razzaq (deceased of the case) was also arrested in a dacoity case; in this regard, relevant portion of statement of the complainant (PW-1) is hereby reproduced: -

“It is correct that police of Police Station City Renala Khurd apprehended my son Abdul Razzaq deceased alongwith his friend in dacoity case. Witness volunteers that friend of my son Abdul Razzaq deceased was arrested by the police and at that time my son was also with them that's why he was also arrested by the police.”

As far as abscondance of the appellant is concerned, suffice it to say that it has to be proved like any other fact, however, in this case, warrant of arrest (Ex.PR, available at Page No.200 of the paper book) reveals that it was not issued to any police officer or public servant for execution; similarly, it has not been mentioned in the proclamation (Ex.PU, available at Page No.205 of the paper book) that in how much **period** or till which

date, accused had to surrender; therefore, both warrant and proclamation are defective, mandatory requirements in the same have not been fulfilled and prosecution could not prove this limb of its case. It is important to mention here that abscondance is not proof of the charge; in this regard, guidance has been sought from the cases of “WAJEEH-UL-HASSAN versus The STATE” (2019 SCMR 1994) and “KHALID MEHMOOD alias KHALOO versus The STATE”(2022 S C M R 1148); furthermore, when ocular account has been disbelieved, then abscondance is of no help to the case of prosecution. Reliance is placed on the case of “ROHTAS KHAN versus The STATE” (2010 SCMR 566).

8. 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 GHAFUOR versus The STATE” (*supra*) can be safely referred.

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

10. In view of, what has been discussed above, Criminal Appeal No.66322-J/2019, filed by Faisal (appellant), is allowed; conviction recorded and sentence awarded to the appellant through impugned judgment dated: 28.06.2019 is hereby set aside. Appellant is acquitted of the charge, he shall be released from the jail forthwith, if not required in any other case.

11. Resultantly, death sentence awarded to Faisal (appellant) is NOT CONFIRMED and Murder Reference (M. R. No.194 of 2019) is answered in NEGATIVE.

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge