

Stereo. H.C. JD A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
JUDICIAL DEPARTMENT

Murder Reference No.64 of 2018
(The State Vs. Irfan alias Punna)

Criminal Appeal No. 518 of 2019
(Irfan alias Punna and another Vs. The State and another.)

Criminal Appeal No.674 of 2019
(Khalid Hussain Vs. The State and four others.)

J U D G M E N T

Date of hearing:	26.09.2023.
Appellants by:	Rana Muhammad Nadeem Kanju, Advocate.
State by:	Malik Riaz Ahmad Saghla, Additional Prosecutor General .
Complainant by:	Rana Asif Saeed, Advocate.

SADIO MAHMUD KHURRAM, J.— Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar (convicts) were tried alongwith Qaswar Hussain alias Pappi, Umar Daraz alias Dazi, Shahid Hussain and Amjad (since acquitted), the co-accused of the convicts by the learned Additional Sessions Judge , Multan in the case instituted upon the private complaint titled “*Khalid Hussain Vs. Irfan alias Punna and five others*” (relating to F.I.R. No. 24 of 2016 dated 21.02.2016 registered at Police Station Budhla Sant, District Multan) in respect of offences under sections 302,334,324, 148 and 149 P.P.C. for committing the *Qatl-i-Amd* of Muhammad Abid son of

Muhammad Rafique (deceased). The learned trial court vide judgment dated 06.05.2019 convicted Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar (convicts) and sentenced them as infra:

Irfan alias Punna son of Umar Daraz alias Dazi:-

Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Abid son of Muhammad Rafique (deceased) and directed to pay Rs.2,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.

The convict was ordered to be hanged by his neck till dead.

Muhammad Ashraf alias Kaloo son of Muhammad Asghar:-

Imprisonment for life under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Abid son of Muhammad Rafique (deceased) and directed to pay Rs.2,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment. The benefit available under Section 382-B of the Code of Criminal Procedure, 1898 was extended to the convict namely Muhammad Ashraf alias Kaloo by the learned trial court

Qaswar Hussain alias Pappi, Umar Daraz alias Dazi, Shahid Hussain and Amjad, the co-accused of the convicts, were however acquitted by the learned trial court.

2. Feeling aggrieved, Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar (convicts) lodged the Criminal appeal No.518 of 2019, assailing their convictions and sentences. The learned trial court submitted Murder Reference No.64 of 2018 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the

appellant namely Irfan alias Punna son of Umar Daraz alias Dazi. The complainant of the case namely Khalid Hussain filed Criminal Appeal No.674 of 2019 against the acquittal of the accused namely Qaswar Hussain alias Pappi, Umar Daraz alias Dazi, Shahid Hussain and Amjad by the learned trial court. We intend to dispose of the Criminal Appeal No.518 of 2019, the Criminal Appeal No.674 of 2019 and the Murder Reference No.64 of 2018 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as stated by Khalid Hussain (PW-1), the complainant of the case, are as under:-

“ On 21.02.2016 1 alongwith my brother Abid Hussain who was tailor master, Muhammad Ashraf son of Muhamad Yousaf after got closing the shop. 1 alongwith my brother Abid Hussain on one motorcycle Honda 125 while on the other motorcycle of China Company there was Muhammad Ashraf went to our house. When we reached near the Brick Killen of Nazeer Gujjar, all of a sudden, two motorcycles came in front of us. One motorcycle was riding by Muhammad Irfan alias Punna armed with Repeater 12-bore, Muhammad Ashraf alias Kalo armed with Repater 12-bore and Muhammad Qaswar alias Puppi son of Muhammad Asghar armed with toka on motorcycle 125 while on the other motorcycle, there was Umerdraz alias Drazi son of Allah Ditta armed with pistol 30-bore, Muhammad Shahid son of Falik Sher armed with hatchet and Muhammad Amjid son of Muhammad Ramzan armed with pistol 30-bore. Shahid Hussain while un-boarding from the motorcycle caught hold the collar of Abid Hussain, injured. Irfan alias Punna made straight fire from front side, which hit on the left side of Naaf of Abid Hussain. In the meanwhile Muhammad Ashraf alias Kalo son of Muhammad Asghar made fire, which hit on left thigh of Abid Hussain due to which my brother Abid Hussain fell down on the ground upside down (facing downwards). In the meanwhile Irfan alias Punna, Ashraf alias Kalo son of Muhammad Asghar with the respective weapons made fires which hit on the left side of Koolha of Abid Hussain. When the fires were hit to Abid Hussain, during this, Qaswar alias Buppi son of Muhammad Asghar with his Toka chopped the leg of Abid Hussain below the knee. After that we made repeated requests to the accused persons but the accused persons accede to our requests. During this time Amjid son of Muhammad Ramzan made a fire which hit on the Tank of motorbicie of Abid Hussain. On hearing hue and cry the people of locality gathered there. Umerdraz alias Drazi while taking the chopped leg and while making the aerial firing and brandishing the leg fled away towards his house.

The motive behind the occurrence was that one year before the occurrence the accused persons committed theft of a dog valuing Rs.10,00,000/- regarding which a criminal case was got lodged by us at p/s Budhlasant, Multan. Due to the above revenge on 14th August, 2015 the accused persons made fires while coming to my home on which my Behnoi Muhammad Saeed Javaid son of Muhammad Shakoor received the fires. I and my cousin Ghulam Hussain also received fires. The above said incident was also reported to the police. Due to this grudge the accused persons committed the occurrence with intention to kill my brother Abid Hussain.

Apart from me this occurrence was witnessessed by Muhammad Ashraf son of Muhammad Yousaf. We made a call on 1122 rescue and also made call on 15-police rescue. I alongwith Muhammad Ashraf escorted my brother Abid Hussain on my motorcycle and went to Budhlasant. When reached at Budhlasant 1122 reached there on which we shifted Abid Hussain on the vehicle of 1122 and went to Nishtar Hospital,, Multan and reached at Emergency Ward and Abid Hussin got admitted there. Ghulam Mustafa, ASI alongwith other police officials came at Nishtar Hopsital, Multan. I narrated the occurrence to Ghulam Mustafa, ASI who drafted the complaint Ex-PA and my signature over it is Ex-PA/1. On 22.02.2016 my brother Abid Hussain died at about 5:55 a.m. I made a call to Ghulam Mustafa. ASI and informed him about the death of my brother. My supplementary statement was recorded by the police in this regard. My brother Sajid Hussain and my Behnoi Saeed Ahmad also witnessed the occurrence who reached at the spot. After the post mortem examination of deceased I received the dead body from Nishtar Hospital, Multan after giving its receipt Ex-PB. My other statement was recorded by the police in which I narrated that leg of my brother was taken away by Umerdraz alias Drazi ete while brandishing, on which the offence u/s 7-ATA was added.

Police made a raid for the arrest of the accused persons in my presence and when we reached at the house of Umerdraz, a chopped leg of my brother was recovered from the house of Umerdraz. Police prepared Fard identification of chopped right leg wearing black colour sock and Jogger Ex-PC. I put my signature over it. DNA test of Chopped leg was conducted and I received the same after the test while giving its receipt Ex-PD. Identification parade regarding one unknown accused was conducted in jail. I identified Muhammad Amjid son of Muhammad Ramzan during identification. Regarding this occurrence news was telecasted at Samma T.V. Channel and I downloaded the same in USB and was produced by me to the police, which was made a part of police file through recovery memo Ex-PE, attested by me.

During investigation in connivance of the police with the accused my case was destroyed and the police declared accused Qaswar alias Puppi who chopped the leg of my deceased brother innocent. I submitted many application before the High-ups of the police but in vain so I filed a

private complaint Ex-PF by engaging a counsel alongwith list of witnesses
Ex-PF/1”

4. The accused were summoned to face trial in the case instituted upon the private complaint titled “*Khalid Hussain Vs. Irfan alias Punna and five others*” (relating to F.I.R. No. 24 of 2016 dated 21.02.2016 registered at Police Station Budhla Sant, District Multan) in respect of offences under sections 302,334,324, 148 and 149 P.P.C. for committing the *Qatl-i-Amd* of Muhammad Abid son of Muhammad Rafique (deceased). The learned trial court framed the charge against the accused on 31.03.2018, to which the accused pleaded not guilty and claimed trial.

5. The complainant of the case in order to prove its case got recorded statements of as many as **eleven** witnesses. The ocular account of the case was furnished by Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3). Irfan Hayat, draftsman (PW-4) prepared the scaled site plan of the place of occurrence (Exh.PS) and prepared the scaled site plan of the place of recovery of the lower limb of the leg (Exh.PT). Kajeer Khan 2230/C (PW-5) stated that on 22.02.2016, he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Riaz Ali 1774/HC (PW-9) stated that on 21.02.2016 he recorded the formal F.I.R (Exh.PFF) and on the same day Ghulam Mustafa, SI (PW-6) handed over to him one sealed parcel said to contain blood stained earth , one sealed parcel said to contain the empty cartridges, one motorcycle, a shoe and a sock recovered from the place of occurrence and on 22.02.2016 Ghulam Mustafa, SI (PW-6) handed over to him a

sealed envelope, a sealed plastic jar, one plastic wad, last worn clothes of the deceased , a shoe, a sealed parcel containing the lower part of the leg of the deceased and on 23.02.2016, he handed over the sealed parcel said to contain blood stained earth and the sealed parcel said to contain empty cartridges to Ghulam Mustafa, SI (PW-6) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 06.03.2016, the Investigating Officer of the case handed over to him a sealed parcel said to contain a *Repeater* gun with three live cartridges and another sealed parcel said to contain a blood stained *Toka* and another sealed parcel said to contain a *Repeater Gun* with one live cartridge which all parcels he handed over to Amir Maqsood, ASI (PW-7) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Abbas Ali 1983/HC (PW-10) stated that on 22.02.2016, Irshad ul Hassan, Inspector (CW-1) handed over to him a part of the leg of the deceased which he produced before the Medical Officer for its examination and received the shoe and socks from the Medical Officer after its examination and further stated that on 05.04.2016, Irshad ul Hassan, Inspector (CW-1) took into possession the photographs (P-16 to P-29) of the dead body of the deceased and also stated that on 19.03.2016, Amjad (since acquitted) was arrested by the Investigating Officer of the case. Mr. Mudassar Maqsood, the learned Magistrate (PW-11) stated that on 24.03.2016, he supervised the test identification parade proceedings held to establish the identity of Amjad (since acquitted) and prepared the report (Exh.PSS). Ghulam Mustafa, SI (PW-6) investigated the case from 21.02.2016 till 22.02.2016 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The complainant also got Dr. Liaqat Ali Ansari (PW-8) examined, who on 22.02.2016 was posted as Medical Officer at R.H.C. Makhdoom Rasheed and on the same day conducted the post-mortem examination of the dead body of the deceased, namely Muhammad Abid son of Muhammad Rafique. Dr. Liaqat Ali Ansari (PW-8) on examining the dead body of the deceased namely Muhammad Abid son of Muhammad Rafique, observed as under:-

“Detail of Injuries:

- i) A lacerated wound 05cm x 02cm on left side of abdomen 3cm lateral to umbilicus, wound was packed with bandage, bandage removed, profuse bleeding present, wound going deep with inverted margin i.e. entry wound. Abdomen distended to some extent. On dissection abdomen full of blood, small intestine and large intestine damaged multiple sites, mesentery tissue also damaged vigorously, abdominal blood vessels injured multiple pallets received with plastic wad recovered from abdomen, lower end of right lobe and left lobe of liver also damaged by pallets of bullets. Spleen kidneys healthy, stomach healthy and distended on opening air removed and 200ml of liquid material present. Bladder empty and genitalia healthy.
- ii) A lacerated wound 05cm x 3-1/2cm upper part of left gluteal region with inverted margins and packed with guaze. On removing the guaze blood coming profusely, 13cm from left iliac crest.
- iii) A lacerated wound 04cm x 03cm on left buttock 2cm from injury 2 packed with guaze, Guaze removed, bleed profusely going deep. Injury No.2 and 3 on dissection, fracture of left pelvic bone present, tissues, muscles and blood vessels shattered, multiple pallets recovered from wounds, tissue and muscles ecchymosed and blackening present.
- iv) A lacerated wound 08cm x 06cm interiorly on upper part of left thigh, 22cm from left knee joint (Glazed wound) edges blackened, clothes over the wound burnt.
- v) Below right knee joint (06cm) multiple chopped wound present. Right lower leg 06cm below right knee joint amputated by sharp edged (heavy) weapon, wound was wrapped with crepe bandage and tourniquet applied above knee joint in the emergency of Nishtar Hospital, Multan. Patient admitted in emergency of Nishtar Hospital, Multan on 21.02.2016 about 08:00 p.m. and expired on 22.02.2016 at 5:45 a.m. as per hospital record. All the injuries were anti-mortem in nature and due to fire arm except injury No.5 by heavy sharp edged weapon

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In my opinion injury No.1 to injury No.4 and 5 caused the death of deceased which injured the vital organs, liver, and small intestine, blood vessels and lead to severe hemorrhage and shock and death. These were sufficient to cause death in ordinary course of life. All injuries were anti-mortem in nature and due to

fire-arm (injury No.1 to injury No.4) and by heavy sharp edge weapon injury No.5..”

On 22.02.2016, Dr. Liaqat Ali Ansari (PW-8) also conducted the post mortem examination of the right lower leg of the deceased . Dr. Liaqat Ali Ansari (PW-8), on examining the right lower leg of the deceased, observed as under:-

“ A piece of leg with foot recovered from accused-house of deceased Abid Hussain son of Muhammad Rafique and following findings observed:-

- i) Piece of leg with foot was of right leg
- ii) Male leg
- iii) Having hairs of male type huge hairs present
- iv) The foot wearing jogger of Service Company black colour socks
- v) The leg cut is bellow knee 26cm from ankle joint. The length of foot was 10-inches
- vi) The cut ends chopped with heavy sharp edge weapon. The bone of tibia and fibula shaft seen. The leg was stained with dust and grass also. The chopped edge having similarities with the findings of deceased Abid Hussain son of Muhammad Rafique; whom right leg was cut below the knee joint with upper end of tibia and fibula present. The cut mussels were chopped wound with heavy sharp edge weapon. However, blood sample taken for DNA-typing and sent to PFSA, Lahore and final opinion regarding resemblance with deceased Abid Hussain having PMR No.01/2016 dated 22.02.2016

.....

After receiving the said report the final opinion regarding the piece of leg with foot was the missing piece of leg with foot of the deceased Abid Hussain.”

7. The learned trial court examined Irshad ul Hassan, Inspector (CW-1), the Investigating Officer of the case, as a Court witness who investigated the case from

22.02.2016 till 26.07.2016, arrested the appellants namely Irfan alias Punna and Muhammad Ashraf alias Kaloo on 22.02.2016 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

8. On 27.10.2018, the learned counsel for the complainant gave up the witnesses namely Muhammad Amjad, Sajid Hussain, Muhammad Naveed and Muhammad Javed as being unnecessary. On 20.02.2019, the learned Deputy District Public Prosecutor gave up the prosecution witnesses, namely Muhammad Arshad 1982/C and Ameer Hassan, SI as being unnecessary. On 10.04.2019, the learned counsel for the complainant closed the evidence of the complainant after submitting photocopies of expiry notes and ward report (Mark-1, Mark-2 and Mark-3). On 10.04.2019, the learned Deputy District Public Prosecutor tendered in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PTT, Exh.PUU and Exh. PVV).

9. After the closure of prosecution evidence, the learned trial court examined the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar under section 342 Cr.P.C. and in answer to question *why this case against you and why the P.W.s have deposed against you*, they replied that they were innocent and had been falsely involved in the case. Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar further stated that they had not committed any offence and had been made a scapegoat in the case in order to show efficiency by the police. The appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad

Asghar opted not to get themselves examined under section 340(2) Cr.P.C , however, the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi produced documents (Exh.D/1 to Exh.D/6) as evidence in his defence.

10. At the conclusion of the trial, the learned Additional Sessions Judge, Multan convicted and sentenced the appellant as referred to above.

11. The contention of the learned counsel for the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar precisely is that the whole case is fabricated and false and the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible, and relevant evidence. Learned counsel for the appellants further contended that the story of the prosecution mentioned in the statements of the witnesses, on the face of it, was highly improbable. Learned counsel for the appellants further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellants also submitted that the recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar were full of procedural defects, of no legal worth and value, and were result of fake proceedings. The learned counsel for the appellants also argued that the appellants had been involved in the occurrence only on suspicion. The learned counsel for the appellants finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

11. On the other hand, the learned Additional Prosecutor General along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond the shadow of doubt by producing independent witnesses. The learned Additional Prosecutor General along with the learned counsel for the complainant, further argued that the deceased died as a result of injuries suffered at the hands of the appellants. The learned Additional Prosecutor General along with the learned counsel for the complainant, further contended that the medical evidence also corroborated the statements of the eye witnesses. The learned Additional Prosecutor General along with the learned counsel for the complainant, further argued that the recovery of the Repeater gun (P-5) and the Toka (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the Repeater gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar also corroborated the ocular account. The learned Additional Prosecutor General along with the learned counsel for the complainant, further contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. Lastly, the learned Additional Prosecutor General along with the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar. The learned counsel for the complainant also argued that the Criminal Appeal No.674 of 2019, assailing the acquittal of Qaswar Hussain alias Pappi, Umar Daraz alias Dazi, Shahid Hussain and Amjad by the learned trial court from the charges also merited acceptance.

12. We have heard the learned counsel for the appellant, the learned counsel for the complainant, the learned Additional Prosecutor General and with their assistance carefully perused the record and evidence recorded during the trial.

13. A perusal of the prosecution evidence reveals that the whole prosecution case as against the appellants is based on the statements of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3). The relationship of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) with the deceased is on record. Muhammad Abid (deceased) was the brother of the prosecution witness namely Khalid Hussain (PW-1) and the brother-in-law of the prosecution witness namely Muhammad Saeed Javed (PW-3) and the cousin of the prosecution witness namely Muhammad Ashraf (PW-2). The prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) were also admittedly not the residents of the place of occurrence. According to the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) all of them had their residences at a distance of about *as much as about 6/7 kilometres* from the place of occurrence. The prosecution witness namely Khalid Hussain (PW-1), during cross-examination stated as under:-

“ The inter-se distance between the shop of Abid Husain and my residence is **05/06 kilometers**. The same is the distance between the house of Muhammad Ashraf and the shop of Abid Hussain. The inter-se distance between the shop of Abid Hussain and place of occurrence is about **1-1/2 kilometer**. The house of Muhammad Saeed Javaid is 05-acre away from my house as well as the house of Muhammad Ashraf” (emphasis supplied)

Similarly, prosecution witness namely Muhammad Ashraf (PW-2) during cross-examination, stated as under:-

“ The inter-se distance between my house and the shop of deceased is about **04-kilometers**. The inter-se distance between the place of occurrence and the shop of Abid Hussain is about **1-1/2 kilometer**.

.....

I do not know that how much population of that Basti. The distance between the alleged place of occurrence and my house is at about 2-1/2 kilometer”

In this manner, the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) can be validly termed as “*chance witnesses*” and therefore were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. We have noted with grave concern that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place. The prosecution witness namely Khalid Hussain (PW-1) had claimed that it was after the closing of the shop of the deceased that he had accompanied the deceased on the motorcycle of the deceased for proceeding to their house when they were waylaid by the accused. A perusal of the statements of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) reveals that in fact there was no reason for the prosecution

witness namely Khalid Hussain (PW-1) to have gone to the shop of the deceased and then to have accompanied him to the place of occurrence. The prosecution witness namely Khalid Hussain (PW-1) admitted that it was a routine of the deceased that he would go to his shop alone and also return from the same alone. The prosecution witness namely Khalid Hussain (PW-1), admitted during cross-examination , as under:-

“ In the course of business Abid Hussain deceased went to his shop alone and he also returned from his shop towards alone”

Being conscious of this practice of the deceased of going to his shop alone, the prosecution witness namely Khalid Hussain (PW-1) improved upon his previous statement and claimed that he had a purpose for going to the shop of the deceased on the day of occurrence and the said purpose was to close the same. It has not been explained by the prosecution witness namely Khalid Hussain (PW-1) that why it was only on the day of occurrence that the deceased needed any assistance of the prosecution witness namely Khalid Hussain (PW-1) to close his shop. Even otherwise the said reason is bordering on absurd for the fact that the assistance of the prosecution witness namely Khalid Hussain (PW-1) was not at all required for merely closing the shop, which feat could have been performed by the deceased himself, as was it being done earlier by the deceased himself. Furthermore, during cross-examination, it was brought on record that the prosecution witness namely Khalid Hussain (PW-1) had contrived his reason for arrival at the shop of the deceased and had not mentioned the same in his earlier statements. During cross-examination, the prosecution witness namely Khalid Hussain (PW-1), was questioned in this regard and the learned trial court observed as under:-

“ Except Sunday Abid Hussain deceased went to his shop with his children but on Sunday he went to his shop alone On the day of occurrence, he went to his shop alone. I had mentioned in the FIR the reason of my visit to the shop of deceased Abid Hussain on the day of occurrence for closing his shop. **Confronted with Ex-PA and Ex.DB where it is not so mentioned.** ”(emphasis supplied)

In this manner, the prosecution witness namely Khalid Hussain (PW-1) impeached his own credit by improving his previous statements so as to provide a reason for him to have accompanied the deceased on the day of occurrence. Furthermore, Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, also admitted during cross-examination that he did not verify the claim of the prosecution witness namely Khalid Hussain (PW-1) that he had gone to the shop of the deceased to close the same and stated as under:-

“I have not verified nor collected any evidence that how the complainant was with the deceased and from where he was coming ”

Moreover, Irshad ul Hassan, Inspector (CW-1), another Investigating Officer of the case, also admitted during cross-examination that he did not collect any evidence in support of the claim that the prosecution witness namely Khalid Hussain (PW-1) had gone to the shop of the deceased and then had accompanied the deceased to the place of occurrence and stated as under:-

“It is correct that there was no one in the city who had stated that he had seen the deceased going with the complainant and PWs on the day of occurrence.”

14. A perusal of the evidence of the prosecution recorded during the course of the trial also proves that even the prosecution witness namely Muhammad Ashraf (PW-2) had no reason to have accompanied the deceased from his shop to the

place of occurrence, contrary to what was claimed by Muhammad Ashraf (PW-2).

The prosecution witness namely Muhammad Ashraf (PW-2) ,while appearing before the learned trial court, stated that as he was working with the deceased, therefore, on the day of occurrence, after closing the shop of the deceased, he followed the deceased till they were waylaid by the accused. This claim of the prosecution witness namely Muhammad Ashraf (PW-2) that he was working with the deceased was exposed to be a sham. The prosecution witness namely Muhammad Ashraf (PW-2) was questioned in this regard and the learned trial court observed as under:-

“I have recorded in my examination in chief that I do work as a tailor alongwith the deceased Abid and I recorded the same fact in my statement under Sec. 161 Cr. PC. Ex-DF. The witness said that he did not remember that whether he recorded this fact in his statement under Séc.161 Cr.P.C., however **confronted with Ex-DF where it is not so recorded and it is recorded that he works labour**

....

I have got recorded in my statements Ex-DJ and in Ex-DF that I do work as Tailor alongwith Abid Hussain. **Confronted with Ex-DJ and Ex-DF where it is not recorded.** I have got recorded in my statements Ex-DJ and Ex-DF that I was working in my shop alongwith Abid deceased when Khalid Hussain son of Muhammad Rafique came. **Confronted with Ex-DJ and Ex-DF where it is not recorded”** (emphasis supplied)

The above referred portion of the cross-examination of the prosecution witness namely Muhammad Ashraf (PW-2) conclusively proves that Muhammad Ashraf (PW-2) had no purpose to be present with the deceased prior to the occurrence and

to had followed the deceased to the place of occurrence, contrary to what was claimed by him.

15. The case of the third eye witness as produced by the complainant before the learned trial court namely Muhammad Saeed Javed (PW-3) is in itself very unique. It was admitted by all the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) that the prosecution witness namely Muhammad Saeed Javed (PW-3) was not mentioned as a witness of the occurrence in the oral statement (Exh. PA) of Khalid Hussain (PW-1) upon the basis of which the formal F.I.R (Exh. PFF) was recorded. It was candidly admitted by all the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) during their statements recorded by the learned trial court. The prosecution witness namely Khalid Hussain (PW-1) during cross-examination , admitted as under:-

“I have recorded in my examination in chief that my brother Sajid and Behnoi Saeed (PW-3) also witnessed the occurrence who reached at the spot. Confronted with Ex.DB and Ex.PA where it is not so recorded.

.....

I have not got recorded in my private complaint Ex-PF, which was dictated by me to my learned counsel and in complaint Ex-PA that my brother Sajid Hussain and my Behnoi Saeed Ahmad also witnessed the occurrence who reached at the spot.

.....

I have not got recorded in my private complaint Ex-PF and in my statement Ex-PA that this occurrence is also witnessed by Sajid Hussain and Muhammad Saeed Javaid.” (emphasis supplied)

The prosecution witness namely Muhammad Ashraf (PW-2) during cross-examination, was confronted with his previous statement and the learned trial court observed as under:-

“I have recorded in my examination in chief that during the occurrence Saeed Ahmad and Muhammad Sajid also attracted at the spot and witnessed the occurrence. Confronted with Ex-DG where it is not so recorded.”

Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case who had recorded the oral statement (Exh.PA) of Khalid Hussain (PW-1) also admitted during cross-examination that the prosecution witness namely Muhammad Saeed Javed (PW-3) was not named as a witness by the complainant in the oral statement (Exh. PA) and stated as under:-

“It is correct that Saeed PW has not been mentioned in FIR.”

The question of the prosecution witness namely Muhammad Saeed Javed (PW-3) having not witnessed the occurrence was conclusively answered when during cross-examination, the prosecution witness namely Muhammad Saeed Javed (PW-3) himself admitted that he had not been cited as an eye witness in the oral statement (Exh.PA) of Khalid Hussain (PW-1) upon the basis of which the formal F.I.R (Exh. PFF) was recorded and he was not even named as a witness who had seen the occurrence in the private complaint (Exh. PF) as filed by the complainant Khalid Hussain (PW-1) and admitted as under:-

“ It is correct that in the complaint Ex-PA, FIR of the instant case and in this private complaint Ex-PF **I am not cited as an eyewitness by the complainant**”

16. During the cross-examination, the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) were badly exposed with regard to that there did not exist any reason for their arrival at the place of occurrence, at the time of occurrence. Irshad ul Hassan, Inspector (CW-1), another Investigating Officer of the case, admitted during cross-examination that he did not collect any evidence in support of the claim that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) had accompanied the deceased to the place of occurrence and stated as under:-

“It is correct that when Adil Mehmood made the statement in the presence of the complainant Adil stated that the deceased left the Tailor Shop alone and the complainant and PWs were not with him. It is correct that no evidence or any person was produced by the complainant or PWs to prove that they were accompanying the deceased and they were present at the place of occurrence. Volunteered that only the complainant and PWs stated that they were present at the spot. It is correct that there was no one in the city who had stated that he had seen the deceased going with the complainant and PWs on the day of occurrence.”

The proven failure of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to provide a reason for their arrival at the place of occurrence, on the day of the incident, has repercussions, proving that there was no reason actually for the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to be visiting the place of occurrence. The very

inception of the prosecution case is thus put in doubt due to the said abject failure of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3).

17. We have also noted that though it was claimed by the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) that they had gone to the place of occurrence on two motorcycles whereas the deceased was riding a separate motorcycle with the prosecution witness namely Khalid Hussain (PW-1), however, during the course of the investigation as well as before the learned trial court, the said motorcycles, allegedly used by the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), to arrive at the place of occurrence, were not produced. The prosecution witness namely Khalid Hussain (PW-1) during cross-examination admitted that the motorcycles used by the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to arrive at the place of occurrence were never produced before the Investigating Officer of the case and stated as under:-

"During the whole investigation we have not produced the second motorcycle. My clothes were smeared with blood when I took care of my brother. **The second motorcycle also stained with blood** and the same is the case of Muhammad Ashraf as his clothes were also smeared with blood. Neither 1 nor Muhammad Ashraf produced our blood stained clothes during the course of investigation. **We also did not produce the second motorcycle which was blood stained during the course of investigation** "(emphasis supplied)

Similarly, the prosecution witness namely Muhammad Ashraf (PW-2) admitted during cross-examination that the motorcycle used by him to arrive at the place of

occurrence was never produced before the Investigating Officer of the case and stated as under:-

“My motorcycle might be stained with blood but the same was not produced before the I.O”

Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, also admitted during cross-examination that at the time of his arrival at the place of occurrence , the motorcycles used by the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to arrive at the place of occurrence were not present there and neither same were produced before him despite his demand and admitted as under:-

“The other two motorcycles were not found present at the place of occurrence. Even the complainant and prosecution witnesses had also not produced the other two motorcycles inspite of my asking till the investigation remained with me.”

Even Irshad ul Hassan, Inspector (CW-1), another Investigating Officer of the case, admitted during cross-examination that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) never produced before him the motorcycles used by them to arrive at the place of occurrence and stated as under:-

“It is correct that the complainant or PWs never produced before me the motorcycle on which they were allegedly travelling alongwith deceased nor they mentioned the registration numbers of motorcycles.” (emphasis supplied)

The non-production and the non-availability of the motorcycles used by the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to arrive at the place of occurrence and the failure of the prosecution

witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to produce the same before the Investigating Officers of the case, despite their repeated demands, leads to only one conclusion and that being that no such motorcycles were available. Had such motorcycles been used by the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to arrive at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case and Irshad ul Hassan, Inspector (CW-1) and the same would necessarily have been taken into possession by the Investigating Officers of the case but they were not and it proves that a false claim was made by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) that the prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) had arrived at the place of occurrence on two motorcycles. In this manner, the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening. Reliance in this regard is placed on the case of "*Muhammad Ali Vs. The State*" (**2015 SCMR 137**) wherein the august Supreme Court of Pakistan has held as under:-

"The Investigating Officer during the cross-examination has admitted that the 'Dala' was not present when he visited the spot and he had not taken into possession the said 'Dala' during investigation. So the story introduced by the eye-witnesses that they were travelling on the 'Dala' when the incident took place is not supported by any connecting material."

In this manner, the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) failed miserably to establish the reason for their presence at the place of occurrence, at the time of occurrence and the mode through which they arrived at the place of occurrence. The prosecution was under a bounden duty to establish not only that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) had a reason to proceed to the place of occurrence but also to prove the mode through which the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) arrived at the place of occurrence. The failure of the prosecution to prove the said fact has vitiated our trust in Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) as being truthful witnesses. In this respect, reliance is placed on the case of "Muhammad Rafiq v. State" (**2014 SCMR 1698**) wherein the august Supreme Court of Pakistan rejected the claim of witnesses who lived one kilometer away from the place of occurrence, but on the day of occurrence stated to be present near the spot as they were working as labourers, inasmuch as they failed to give any detail of the projects they were working on. Reliance is also placed on the case of "Usman alias Kaloo v. State" (**2017 SCMR 622**) wherein the august Supreme Court of Pakistan held that the ocular account of the incident had been furnished by Zahoor Ahmad, Ghulam Farid and Manzoor Ahmed in the said case who were all residents of some other houses and they were not the inmates of the house wherein the occurrence had taken place and therefore the said eye-witnesses were, thus, declared chance witnesses and not worthy of reliance. Reliance is also placed on the case of "Nasrullah alias Nasro v. The State" (**2017 SCMR 724**).

18. We have also noted that according to the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), the motive of the occurrence was that the prosecution witness namely Khalid Hussain (PW-1) had a dog stolen for which theft he got a case registered against the appellants and that subsequently an incident of firing had taken place between the prosecution witness namely Khalid Hussain (PW-1) and the accused, in retaliation of which the accused acted on the day of the occurrence. The prosecution witness namely Khalid Hussain (PW-1) himself admitted that he was the main accused named by the complainant of the cross-version case of the F.I.R No. 207 of 2015 and the deceased had absolutely no enmity with the accused and even in the case of the theft of his dog, the prosecution witness namely Khalid Hussain (PW-1) admitted that the deceased was not even named as a witness. The prosecution witness namely Khalid Hussain (PW-1) admitted during cross-examination, as under:-

“ The FIR relating to the motive of the stolen dog, I was the complainant of that FIR. It is correct that in FIR No. 221/2015 dated 25.08.2015 Ex.DC I had mentioned that I was the owner of the dog. **It is correct that in the above said FIR name of deceased Abid is not mentioned anywhere.** It is correct that a cross-version was recorded against me alongwith other PWs regarding the FIR No. 207/2015 dated 15.08.2015. It is correct that in the cross-version registered against us in the above mentioned FIR, the fire was made by Muhammad Hanif with 12-bore weapon to the accused Muhammad Qaswar which hit on the backside of the accused Muhammad Qaswar. It is correct that in FIR No. 207/2015 my father was the complainant. It is correct that in the cross-version registered against us Ex.DE I alongwith my father Muhammad Rafique, Abid deceased and Muhammad Hanif were the accused persons. **It is correct that I**

alongwith Muhammad Hanif were the main accused in that cross-version. It is correct that in the above said case, no overt role was attributed to the accused (deceased) Abid Hussain.” (emphasis supplied)

In these circumstances, the prosecution witness namely Khalid Hussain (PW-1) should have been the prime target of the assailants. Furthermore, according to the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), the prosecution witness namely Khalid Hussain (PW-1) was in clear view, at a meagre distance, from the assailants and unarmed whereas the accused were allegedly armed with various firearm and other weapons. Neither there was any dearth of ammunition nor that of intent and opportunity on the part of the appellants or their co-accused for not doing away with the prosecution witness namely Khalid Hussain (PW-1), who, according to his own statement, was the main adversary of the accused and who, at the time of occurrence, was present at the place of occurrence and there did not exist any obstacle in the line of the sight of the accused and the place where the prosecution witness namely Khalid Hussain (PW-1) was present. In this situation, it is hard to believe that the prosecution witness namely Khalid Hussain (PW-1) would have been shown the courtesy of being not fired at all when Khalid Hussain (PW-1) should have been the prime target of the assailants. In the midst of the firing by the accused persons, the prosecution witness namely Khalid Hussain (PW-1) did not receive even a single scratch on his body during the whole occurrence nor was even targeted at all. The prosecution witness namely Khalid Hussain (PW-1) claimed during cross-examination as under:-

“It is correct that although the motive is against me but at the time of occurrence **none of the accused persons even touched me** nor they even touched of any PWs.

.....

It is correct that the FIR relating to the dog I was the complainant and stated in the said I that the said pet dog belongs to me. It is correct that during the whole occurrence none of us including me had received even a single scratch”.
(emphasis supplied)

If the prosecution witness namely Khalid Hussain (PW-1) had been present in the view of the assailants, then he would not have been spared. Blessing the prosecution witness namely Khalid Hussain (PW-1) with such incredible consideration and showing him such favour, the person with whom the assailants had a direct dispute with, is implausible and opposed to the natural behaviour of any accused. It is all the more illogical that being perceptive of the fact that if the witnesses were left alive, they would depose against the accused, even then the appellants and their co-accused did not cause any injury to them. Such behaviour, on the part of the accused as deposed by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) runs counter to natural human conduct and behaviour. Article 129 of the Qanun-e-Shahadat Order, 1984 allows the courts to presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. We thus trust the existence of this fact, by virtue of the Article 129 of the Qanun-e-Shahadat Order, 1984, that the conduct of the assailants, as deposed to by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2)

and Muhammad Saeed Javed (PW-3) was opposed to the common course of natural events and human conduct. Hence, we are holding that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) did not witness the occurrence. The august Supreme Court of Pakistan in its binding judgments has repeatedly held that in a scenario where the motivation was against the complainant or the witnesses but the accused did not cause any harm to them, notwithstanding being within the range of their firing, would reveal that the said witnesses had not witnessed the occurrence. The august Supreme Court of Pakistan in the case Tariq Mehmood v. The State and others (2019 SCMR 1170) has observed as under:

“First sight cannot escape preponderance of evidence, however on a closer view, emerges a picture incompatible with the events, narrated in the crime report. The accused mounted assault, as per prosecution's own case to settle score with Muhammad Usman, PW for his alleged affair with the lady related to the appellant; it is disgrace that brought the assailants, face to face, with Muhammad Usman, PW, well within their view and reach it is astonishing that while being merciless without restraint upon others they spared prime target of assault. There can be no other inference that either Muhammad Usman was not present at the scene or the occurrence took place in a backdrop other than asserted in the crime report.”

The august Supreme Court of Pakistan in case Rohtas Khan v. The State (2010 SCMR 566) at page 571 observed as under:

“The alleged motive was against the complainant, but it is noted that the appellant did not cause any injury to the complainant, though he was present within the range of firing, thus it supports the contention of the learned counsel of appellant that P.Ws. were not present at the place of occurrence.”

The august Supreme Court of Pakistan in the case of Muhammad Farooq & another v. The State (2006 SCMR 1707) at page 1712 held as under:-

"Had P.W.9 been present on the spot, he was not likely to be spared because the number of injuries on the person of deceased show that at least eighteen rounds were fired. It only shows the degree of venom the killer had for the deceased."

We are also guided by the binding judgment of the august Supreme Court of Pakistan passed in the case of Mst. Rukhsana Begum & others v. Sajjad & others (2017 SCMR 596) where at page 601 it was observed as under:-

"Another intriguing aspect of the matter is that, according to the F.I.R., all the accused encircled the complainant, the PWs and the two deceased thus, the apparent object was that none could escape alive. The complainant being father of the two deceased and the head of the family was supposed to be the prime target. In fact he has vigorously pursued the case against the accused and also deposed against them as an eye witness. The site plan positions would show that, he and the other P.W.s were at the mercy of the assailants but being the prime target even no threat was extended to him. Blessing him with unbelievable courtesy and mercy shown to him by the accused knowing well that he and the witnesses would depose against them by leaving them unhurt, is absolutely unbelievable story. Such behavior, on the part of the accused runs counter to natural human conduct and behavior explained in the provision of Article 129 of the Qanun-e-Shahadat, Order 1984, therefore, the court is unable to accept such unbelievable proposition."

19. We have also noted with grave concern that despite the fact that repeated blows were made with a sharp edged weapon to cut the lower part of the right leg of the deceased, however, the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) made contradictory statements with regard to the identity of the accused who had cut off the said leg of the deceased. According to the Dr. Liaquat Ali Ansari, (PW-8), at the time of the post-mortem examination of the dead body, he had observed that the right leg of the dead body was cut below the knee joint and there were multiple chopped wounds present. As mentioned above, it must have taken some time for the accused to inflict the said multiple blows and according to the claim of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2)

and Muhammad Saeed Javed (PW-3), it was all done in their presence, however, still the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) made contradictory statements with regard to the identity of the accused who had inflicted the said multiple blows, chopping off the right leg of the deceased under the knee. According to the prosecution witness namely Khalid Hussain (PW-1) it was Qaswar Hussain alias Pappi (accused since acquitted) who had inflicted the said blows and Khalid Hussain (PW-1) in his statement before the learned trial court stated as under:-

“Qaswar alias Buppi son of Muhammad Asghar with his Toka chopped the leg of Abid Hussain below the knee ” (emphasis supplied)

Contradicting the prosecution witness namely Khalid Hussain (PW-1) that it was Qaswar Hussain alias Pappi (accused since acquitted) who had inflicted the said blows, the prosecution witness namely Muhammad Ashraf (PW-2) in his statement before the learned trial court stated that it was Umar Daraz alias Dazi (accused since acquitted) who had chopped off the right leg of the deceased from under the knee. The prosecution witness namely Muhammad Ashraf (PW-2), in his statement before the learned trial court, stated as under:-

“Umerdraz with the help of his Toka chopped the right leg of deceased under the knee.” (emphasis supplied)

This contradiction in the statements of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) regarding the identity of the accused who had chopped off the right leg of the deceased from under the knee also proves that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed

(PW-3) had not witnessed the occurrence and therefore made such contradictory statements.

20. We have also noted that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) claimed that their clothes were smeared with the blood of the deceased, however at the same time also admitted that they did not hand over the said clothes to the Investigating Officer of the case. The prosecution witness namely Khalid Hussain (PW-1), during cross-examination, stated as under:-

“My clothes became blood stained during the rescue of Abid Hussain in injured condition but I had not produced my blood stained clothes to the I.O.

.....

Neither I nor Muhammad Ashraf produced our blood stained clothes during the course of investigation.”(emphasis supplied)

Similarly the prosecution witness namely Muhammad Ashraf (PW-2) also admitted during cross- examination as under:-

“The clothes of mine and complainant were stained with blood but the same were not produced before the I.O.”

Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case and Irshad ul Hassan, Inspector (CW-1), the other Investigating Officer of the case did not take any such blood-stained clothes of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) into possession which lays bare the untruthful and false claim of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and

Muhammad Saeed Javed (PW-3) to have been present at the place of occurrence, at the time of occurrence and having their clothes stained with the blood of the deceased. Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case admitted during cross- examination as under:-

“It is correct that PWs including the complainant never showed their dresses if it was stained with blood of the deceased.”

Irshad ul Hassan, Inspector (CW-1), the other Investigating Officer of the case, admitted during cross- examination that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) failed to provide their clothes as worn by them on the day of occurrence, allegedly stained with blood, as proof of their presence and stated as under:-

“Complainant (sic) or PWs had not stated before me nor they produced any blood stained clothes of theirs to prove that their hands or clothes got blood stained when they were shifting the injured to the ambulance 1122 to the hospital.”

Moreover, if Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case and Irshad ul Hassan, Inspector (CW-1), the other Investigating Officer of the case had taken the clothes of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), which clothes according to the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) were stained with blood, into possession and if these were sent to the Punjab Forensic Science Agency, Lahore for examination and grouping with that of the blood-stained clothes of the deceased, the same would have provided the strongest corroboration to the testimony of the prosecution witnesses namely Khalid Hussain (PW-1),

Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), but now the omission creates a doubt of equal magnitude. This omission strikes at the roots of the case of the prosecution and lays bare the untruthful and false claim of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to have been present at the place of occurrence, at the time of occurrence. Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of Mst. SUGHRA BEGUM and another versus QAISER PERVEZ and others (2015 S C M R 1142) wherein it has been held as under:-

“20. Both the eye-witnesses admitted that their clothes were stained with the blood of the deceased while lifting and handling him but the investigating officer, otherwise showing extraordinary interest in the case, did not take the same into possession because if these were sent to the Chemical Examiner for examination and grouping with that of the blood stained clothes of the deceased, the same would have provided strongest corroboration to the testimony of the two eye-witnesses. This omission strikes at the roots of the case of the prosecution and bespeaks volumes about the dishonest and false claim of the said witnesses.”

The august Supreme Court of Pakistan in the case of Mst. MIR ZALAI versus GHAZI KHAN and others (2020 S C M R 319) has held as under:-

“Both the eye-witnesses produced by the prosecution had claimed that while handling Afsar Khan deceased their clothes had been smeared with the blood of the deceased but admittedly no such blood-stained clothes of the said eye-witnesses had been secured or produced”.

The august Supreme Court of Pakistan in the case of NADEEM alias KALA versus The State and others (2018 S C M R 153) has held as under:-

“For the following reasons the prosecution case against the appellant is doubtful in nature:-

(a)

(b) *Presence of both the witnesses of ocular account i.e. Tariq Mehmood complainant (PW.8) and Tahir Mehmood (PW.9) at the place of occurrence is also not free from doubts. During cross-*

examination the complainant stated that Maqsood Ahmad (deceased) in injured condition was shifted to Civil Hospital on a carry van but he could not disclose the registration number of the van or name of the driver of vehicle. He also deposed during his cross-examination that his clothes were also stained with blood but stated that he did not produce the blood stained clothes to the Police.”

21. Another aspect drawing our grave concern is the fact that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) made blatant improvements to their previous statements in order to bring the ocular account as narrated by them in line with the opinion and observations of Dr. Liaquat Ali Ansari (PW-8), who had conducted the post mortem examination of the dead body. The prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) made a deliberate and dishonest departure from their earlier narrations of the occurrence while deposing before the learned trial court. The prosecution witness namely Khalid Hussain (PW-1) was cross-examined in this regard and the learned trial court observed as under:-

“ I had recorded in my examination in chief that Irfan alias Punna made straight fire from the front side which hit on the left side of Naaf (abdomen) of Abid Hussain. **Confronted with Ex.DB where it is not so recorded, however, it is recorded that Irfan alias Punna and Muhammad Ashraf alias Kalo made repeated fires with their respective weapons which hit on the abdomen of deceased, left side of Naaf, left thigh and left buttock of deceased Abid Hussain.** I had recorded in my examination in chief that in the meanwhile Ashraf alias Kalo made fire which hit on the left thigh of Abid Hussain due to which my brother Abid fell down on the ground. **Confronted with Ex.DB where it is not so recorded, however, it is recorded that Irfan alias Punna and Muhammad Ashraf alias Kalo made repeated fires with**

their respective weapons which hit on the abdomen of deceased, left side of Naaf left thigh, left buttock of deceased Abid Hussain. It is recorded in examination in chief that in the meanwhile Irfan, Ashraf accused with their respective weapons made fires which hit on the left side of buttock of Abid. **Confronted with Ex.DB where it is not so recorded, however, it is recorded that Irfan alias Punna and Muhammad Ashraf alias Kalo made repeated fires with their respective weapons which hit on the abdomen of deceased, left side of Naaf, left thigh, left buttock of deceased Abid Hussain.** I had mentioned in my examination in chief we made repeated requests to the accused persons but the accused persons did not accepted our requests. Confrotned with Ex.DB where it is not so recorded. I have mentioned in my examination in chief that during this time Amjad S/o Muhammad Ramzan made a fire which hit on the tank of motor bike of Abid Hussain. Confronted with Ex.DB where it is not so recorded.

.....

I have got recorded in my statement Ex-DB that Muhammad Ashraf made a fire with repeater which hit Abid Hussain on the left thigh of Abid Hussain due to which my brother Abid Hussain fell down on the ground upside down. **Confronted with Ex-DB where it is not recorded so.** I have also got recorded in my statement Ex-DB that Muhammad Ashraf alias Kalo son of Muhammad Asghar made a fire which hit on the left side of Kohal of Abid Hussain. **Confronted with Ex-DB where it is not so recorded.** "(emphasis supplied).

The other prosecution witnesses namely Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) also made dishonest and blatant improvements to their previous statements which have already been alluded to in the earlier part of

the judgment. By improving their previous statements , the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) impeached their own credit. Article 151 of the Qanun-e-Shahadat Order 1984 provides as under: -

“151. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:

(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be un worthy of credit;

(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;”

As the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) introduced dishonest, blatant and substantial improvements to their previous statements and were duly confronted with their former statements, hence their credit stands impeached and the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) cannot be relied upon on, being proved to have deposed with a slight, intended to mislead the court. The august Supreme Court of Pakistan in the case of “Muhammad Ashraf Vs. State” (**2012 SCMR 419**) took serious notice of the improvements introduced by witnesses and rejected their evidence. We, thus, are satisfied that the evidence of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) has no intrinsic worth and is to be rejected outrightly. The

august Supreme Court of Pakistan in a recent case reported as “Muhammad Mansha Vs. The State” (**2018 SCMR 772**) has enunciated the following principle:

“Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence”.

The august Supreme Court of Pakistan in the case reported as Muhammad Arif Vs. The State (**2019 SCMR 631**) has enunciated the following principle:

“It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge.”

Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of “Amin Ali and another Vs. The State” (**2011 SCMR 323**) where the august Supreme Court of Pakistan was pleased to reject the evidence of injured witnesses and held as under:-

“11. All the three witnesses deposed that the deceased had received three injuries, but the Medical Officer found six injuries on the person of the deceased. One of them had blackening. None of the witnesses deposed that any of the appellants had caused the injuries from a close range but on the contrary in the site plan the place of firing has been shown 8 feet away from the deceased. Thus from such a distance injury with blackening cannot be caused as it can be caused from a distance of less than 3 feet as per Modi's Medical Jurisprudence. The Medical Officer did not show as to which of the injury was entry or exit wound on the person of the deceased. The medical officer stated that metallic projectile was recovered from wound No.1/B which was an exit wound. If it was an exit wound then the metallic projectile would have been out of the body. The presence of metallic projectile in the body clearly establishes the fact that it is not an exit wound but an entry wound. The medical officer has not shown that any of the injuries had inverted or averted margins so as to ascertain as to which of the injuries is entry or exit wound. Thus on this count there is a conflict between the medical and oral evidence. Furthermore, according to Medical Officer, the P.W.15 had four injuries out of them two were entry and two were exit wounds but the P.Ws. 13 and

14 deposed that the injured had received three injuries. Thus the P.Ws. have shown one exit wound as entry wound. With regard to the injured Tanveer Hussain, the Medical Officer showed two injuries one entry wound on the chest and one exit wound on the back but all the three eye-witnesses deposed that P.W.14 had received two injuries on his chest. As regards injuries on the person of Mst. Maqbool Bibi. The Medical Officer found one entry wound on her back with blackening, whereas P.Ws. 13, 14 and 15 deposed that the fire shot was fired from the roof of the shop. Entry wound with blackening marks cannot be caused from such a long distance. From the above position it is manifest that the ocular testimony is in conflict with the medical evidence. Thus, the deceased and injured did not receive the injuries in the manner, as alleged by the prosecution.

.....

13. From the above evidence of the P. Ws., they do not appear to be truthful witnesses; therefore, no implicit reliance can be placed on their evidence.”

22. We have also noticed with concern that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) made statements not supported by any other evidence with regard to what transpired after the accused had fled from the spot. According to the prosecution witness namely Khalid Hussain (PW-1) , after the accused had fled away from the spot, he and the prosecution witness namely Muhammad Ashraf (PW-2) took the deceased in an injured condition on a motorcycle to Badhla Sant and there shifted the deceased, then injured, to the ambulance of the Punjab Emergency Service Rescue 1122 which took the injured to the Nishtar Hospital Multan and the deceased remained admitted at the Nishtar Hospital Multan till his death. The prosecution witness namely Khalid Hussain (PW-1) in his statement before the learned trial court, stated as under:-

“ We made a call on 1122 rescue and also made call on 15-police rescue. I alongwith Muhammad Ashraf escorted my brother Abid Hussain on my motorcycle and went to Budhlasant. When reached at Budhlasant 1122 reached

there on which we shifted Abid Hussain on the vehicle of 1122 and went to Nishtar Hospital.. Multan and reached at Emergency Ward and **Abid Hussin got admitted there.”**

During the course of cross-examination , the prosecution witness namely Khalid Hussain (PW-1) himself admitted that he had not mentioned the shifting of the deceased in an injured condition to Badhla Sant by him and the prosecution witness namely Muhammad Ashraf (PW-2) on a motorcycle in any earlier statement. The prosecution witness namely Khalid Hussain (PW-1) admitted during cross-examination, as under:-

“It is correct that I have not mentioned anywhere that I alongwith Muhammad Ashraf shifted Abid Hussain deceased to the hospital. I have not produced the motorcycle to the I.O. on which we shifted the deceased to Budhla road”. (emphasis supplied)

Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, admitted during cross-examination that in the proceedings recorded by him on the oral statement (Exh. PA), it had been mentioned by him that after recording the oral statement (Exh. PA) of Khalid Hussain (PW-1), the injured Abid Hussain (deceased) was being shifted to the Nishtar Hospital, Multan. Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, stated during cross-examination, as under:-

بیان سن لیا ہے درست بے کاروائی کو written “ It is correct that it is lastly and thereafter in Ex-PA that **after the words it has been separately written that Abid Hussain is shifted to Nishtar Hospital.”** (emphasis supplied)

Irshad ul Hassan, Inspector (CW-1), the other Investigating Officer of the case, stated that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad

Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) never told him that the deceased , in an injured condition, was taken to the Nishtar Hospital Multan on the ambulance of the Punjab Emergency Service Rescue 1122. Irshad ul Hassan, Inspector (CW-1), during cross-examination , stated as under:-

“ PWS or the complainant never stated before me that who had telephone 1122 and who had shifted the deceased on 1122”

Another grave contradiction in the prosecution evidence which reflects that the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) were not present at the place of occurrence and did not have knowledge about the details of the occurrence is the contradictions in the statements of the prosecution witnesses with regard to the place where post mortem examination of the dead body was conducted. According to the prosecution witness namely Khalid Hussain (PW-1) and the prosecution witness namely Kajeer Khan 2230/C (PW-5), the post-mortem examination of the dead body was conducted at **Nishtar Hospital, Multan**, whereas according to the statement of Dr. Liaquat Ali Ansari (PW-8), he conducted the post mortem examination of the dead body at **RHC Makhdoom Rasheed, Multan**. The prosecution witness namely Khalid Hussain (PW-1) stated during cross-examination , as under:-

“ After the mortem examination of deceased I received the dead body from Nishtar Hospital.”

The prosecution witness namely Kajeer Khan 2230/C (PW-5), in his statement before the learned trial court, stated as under:-

“ I reached at RHC, Makhdoom Rasheed where Dr. Liaquat Ali Ansari directed me to get conduct post mortem of deceased from, Nishtar Hospital. Multan. **After that I reached Nishtar Hospital, Multan at about 11:45 a.m. where post mortem examination of deceased was conducted at 1:00 p.m**” (emphasis supplied)

Contradicting both the prosecution witness namely Khalid Hussain (PW-1) and the prosecution witness namely Kajeer Khan 2230/C (PW-5), that the post mortem examination of the dead body was conducted at **Nishtar Hospital, Multan**, Dr. Liaquat Ali Ansari (PW-8) stated that he had conducted the post mortem examination of the dead body at **RHC Makhdoom Rasheed, Multan**. Dr. Liaquat Ali Ansari (PW-8), in his statement recorded by the learned trial court, stated as under:-

“ On 22.02.2016 I was posted as Medical Officer at RHC, Makhdoom Rasheed, Multan. On the same day, the dead body of deceased Abid Hussain son of Muhammad Rafique, aged about 26-year, caste Sahoo r/o Chah Jhal Mouza Multani Wala was brought before me by Kajeer Khan 2230/C P/s Budhlasant, Multan for post mortem examination alongwith injury statement/application Ex-PZ.

.....

I received the dead body of deceased with documents at 12:10 p.m. As soon as I received the complete documents I started the post mortem examination at 12:30 p.m.”

The witnesses who did not even know where the post mortem examination of the dead body was conducted cannot be believed with regard to other facts deposed by them.

23. The learned Additional Prosecutor General and the learned counsels for the complainant placed much emphasis on the promptitude with which the oral statement (Exh. PA) of Khalid Hussain was recorded by Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, and stated that this excluded the possibility of any pre-concert prior to the recording of the oral statement (Exh. PA). We have noted with grave concern that the prosecution failed miserably to prove with any consistency the place where the oral statement (Exh. PA) was recorded. According to the prosecution witness namely Khalid Hussain (PW-1) when he was present at the Nishtar Hospital, Multan and the deceased had been admitted to the said hospital, that the oral statement (Exh. PA) was recorded by Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case. Khalid Hussain (PW-1), in his statement before the learned trial court, stated as under:-

“ I alongwith Muhammad Ashraf escorted my brother Abid Hussain on my motorcycle and went to Budhlasant. When reached at Budhlasant. 1122 reached there on which we shifted Abid Hussain on the vehicle of 1122 and went to Nishtar Hospital, Multan and reached at Emergency Ward and Abid Hussain got admitted there. **Ghulam Mustafa, ASI along with other police officials came at Nishtar Hospital, Multan.** I narrated the occurrence to Ghulam Mustafa. ASI who drafted the complaint Ex-PA and my signature over it is Ex-PA/1.”
(emphasis supplied)

The prosecution witness namely Khalid Hussain (PW-1) was contradicted by the prosecution witness namely Muhammad Ashraf (PW-2) in so much so that Muhammad Ashraf (PW-2) stated that the police had already arrived at the place of occurrence prior to the departure from the same to the hospital and it was after

giving information to the police at the place of occurrence that they had gone to the hospital. Muhammad Ashraf (PW-2), during cross-examination, stated as under:-

“ After the occurrence I remained at the place of occurrence till 9:00 p.m. and police reached at 9:00 p.m. and we left after informing the police to the Hospital.”

The above referred reply of Muhammad Ashraf (PW-2) also proves that the oral statement (Exh. PA) was recorded later than 09.00 p.m and not at 07.45 p.m, the time of recording the oral statement (Exh. PA) as was mentioned by Ghulam Mustafa, SI (PW-6). We have already referred to the statement of Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, that according to the proceedings recorded on the oral statement (Exh. PA), it was after the same had been recorded that the deceased was taken to the Nishtar Hospital, Multan. It is also worrying to know that despite the claim of the prosecution witness namely Khalid Hussain (PW-1) that the deceased was admitted at the Nishtar Hospital, Multan on 21.02.2016 and Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, had also recorded his oral statement (Exh. PA) at the Nishtar Hospital, Multan but no medical record of the Nishtar Hospital, Multan is available proving that the deceased was brought to the said hospital in an injured condition or that the deceased was admitted in the Emergency Ward of the Nishtar Hospital, Multan in an injured condition or that any Medical Officer had examined him in the said hospital. The learned counsel for the complainant has rightly pointed out that there was evidence that the deceased died in the Nishtar Hospital, Multan, however, has not been able to deny this fact also that there does not exist any documentary record that the deceased was ever brought to the Nishtar Hospital, Multan in an

injured condition and who had brought the deceased in an injured condition to the Nishtar Hospital, Multan and when the deceased was admitted in the said hospital and who was the Medical Officer who had treated the deceased in an injured condition at the Nishtar Hospital, Multan. We have also noted that Ghulam Mustafa, SI (PW-6), the Investigating Officer of the case, claimed that after recording the oral statement (Exh. PA) he prepared the injury statement regarding the injuries observed by him on the body of the deceased, who was alive at the time of recording of the oral statement (Exh. PA), however, the said injury statement was not produced before the learned trial court and there is not even the copy of the said document available with the record. All the documents which were produced by the prosecution relate to the death of the deceased in the Nishtar Hospital, Multan, however, there is no document reflecting or proving the admission of the deceased in an injured condition in the Nishtar Hospital, Multan. This fatal flaw in the prosecution case denudes the effort made by the police officials to prop up the failing prosecution case and to deflect attention from the obvious indicators proving the absence of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) at the time of occurrence, at the place of occurrence. The scrutiny of the statements of the prosecution witnesses reveals that the oral statement (Exh. P.A.) of Khalid Hussain (PW-1) was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. No corroboration of the prosecution evidence can be had from the said oral statement (Exh. PA) of Khalid Hussain (PW-1). Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard.

24. The learned Additional Prosecutor General and the learned counsels for the complainant, have submitted that the recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar offered sufficient corroboration of the statements of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3). Regarding the recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar which was in clear violation of section 103 Code of Criminal Procedure, 1898. Irshad ul Hassan, Inspector (CW-1), the Investigating Officer of the case, admitted during cross-examination , as under:-

“At the time of alleged recoveries, I had not associated any respectable of the locality etc.”

The provisions of section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

"103.--(1) Before making a search under this chapter, the officer or other person about to make it **shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.**"

Therefore, the evidence of the recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar cannot be used as incriminating evidence against the appellants, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence. The august Supreme Court of Pakistan in the case of Muhammad Ismail and others Vs. The State (2017 SCMR 898) at page 901 has held as under:-

"For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus, the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard."

Moreover, the prosecution witness namely Muhammad Saeed Javed (PW-3) was contradicted during cross-examination with his previous statement recorded during the inquiry proceedings of the instant case instituted upon the private complaint, where he had not mentioned that any recovery of any weapon or the motorcycle was made from the appellants, contrary to what was stated by him in his statement before the learned trial court . Muhammad Saeed Javed (PW-3) was questioned in this regard and the learned trial court observed as under:-

"I have got recorded in my cursory statement Ex-DK that on the same day I joined the investigation at police station and police took us with them to arrest the accused persons and when we alongwith the police reached at the house of accused Umerdraz in kitchen under Makkhi Dan a chopped leg of deceased

wearing jogger of service company with black colour sock were lying, which was identified by the complainant and the same was taken into possession by the I.O. vide recovery memo (Ex-PL), attested by me and Sajid Hussain PW. The I.O. recorded my statement in this regard at the spot. **Confronted with Ex-DK where the all above said facts/statements were not recorded.** I have also got recorded in my cursory statement Ex-DK that on 06.03.2016 I again joined the investigation at police station Saddar, Multan and during investigation the accused Irfan disclosed that the repeater with which I made a fire to the deceased is lying in my residential room and I can get recovered the same and on the pointation of the accused Muhammad Irfan repeater 12-bore P/5 was recovered from the residential room of accused Muhammad Irfan and the I.O. into possession. **Confronted with Ex-DK where it is not recorded.** I have got recorded in my cursory statement Ex-DK that at the same time during the investigation the accused Irfan disclosed that a Toka with which the leg of the deceased was cut is lying in the room of his father/co-accused Umerdraz and the blood stained Toka was recovered on the pointation of the accused Irfan from the residential room of the co- accused/father of the accused Muhammad Irfan and the said Toka P/6 was taken into possession by the I.O. through recovery memo, attested by me and Muhammad Amjid and the I.O. recorded our statements in this regard. Confronted with Ex-DK where it is not recorded. **I have correctly recorded my cursory statement Ex-DK before the Hon'abe Judge of ATC. I have got recorded my cursory statement Ex-DK in my senses.**

Whatever I have got recorded in my cursory statement the Ilon'able Judge of ATC recorded the same without any omission.

.....

I have not got recorded in my cursory statement Ex-DK that the repeater which was recovered on the pointation of accused Irfan was unloaded by the police and three live cartridges (P7/1-3) were recovered which were taken into possession vide recovery memo (Ex-PM) and police asked from the accused Irfan about the

licence of repeater but he could not produce due to which separate proceedings were initiated against him. **I have recorded my cursory statement only to the extent of narration of private complaint and I have not given the statement about recovery at that time. I have not got recorded in cursory statement Ex-DK about the recoveries, which I have mentioned in my examination in chief despite the fact that those have been allegedly recovered before my recording cursory statement.** I have not got recorded in my cursory statement Ex-DK that on 06.03.2016 the accused Muhammad Ashraf during investigation disclosed the repeater 12-bore with which he made fire to the deceased can get recovered the same. I have also not got recorded in my cursory statement that on 21.03.2016 during the course of interrogation the accused Muhammad Ashraf made disclosure for recovery of motorcycle 125 black colour used in the occurrence and can get recovered from the nephew of Muhammad Sajid. I have also not got recorded in my cursory statement Ex-DK that the I.O. took the same into possession vide recovery memo .

.....

Since the institution of this private complaint Ex-PF we have not changed our counsel. I have got recorded my cursory statement voluntarily and with my own free consent.

I have never moved an application before the learned ATC that my cursory statement is not correctly recorded.” (emphasis supplied)

The above referred portion of the statement of prosecution witness namely Muhammad Saeed Javed (PW-3) makes it abundantly clear that no reliance upon the statement of Muhammad Saeed Javed (PW-3). We have also noted that the appellants namely Irfan alias Punna and Muhammad Ashraf alias Kaloo were arrested on **22.02.2016**, the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the *Repeater* gun from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad

Asghar were recovered on **06.03.2016**, however the empty cartridges taken into possession from the place of occurrence were sent to Punjab Forensic Science Agency, Lahore on **23.02.2016** though there was no reason for keeping the empty cartridges which were taken into possession of on the day of occurrence at the Police Station and not sending them to the office of Punjab Forensic Science Agency, Lahore till **23.02.2016** i.e. after the appellants had been arrested on **22.02.2016**. In this manner the report of Punjab Forensic Science Agency, Lahore. (Exh. PUU) regarding the comparison of the empty cartridges taken from the place of occurrence with the *Repeater* guns recovered from the appellants, has no evidentiary value as the possibility of fabrication is apparent. Reliance is placed on the case of Muhammad Amin Vs. The State and another (2019 S C M R 2057) wherein the august Supreme Court of Pakistan has held as under:-

“Interestingly, two empty cartridges (P-4/1-2) were secured from the place of occurrence by the investigating officer Akhtar Ali, SI (PW12) on the night of 11.10.2012, but the same were sent to the office of Punjab Forensic Science Agency on 23.01.2013 i.e. after arrest of the appellant in this case. In these circumstances, the positive report of FSL is of no avail to the prosecution and is inconsequential.”

With regard to the recovery of the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo on 21.03.2016, we have noticed that none of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) mentioned either the Make, the model, the colour or the registration number of the motorcycle which they had noted the appellants arriving on at the place of occurrence. The prosecution witness namely Khalid Hussain (PW-1) admitted during cross-examination , as under:-

“I have not mentioned any specific made/model, colour and registration number of the motorcycles of the accused persons.”

In view of the above statement of Khalid Hussain (PW-1), the recovered motorcycle (P-10) cannot be said to be the same motorcycle which was used by the appellants to arrive at the place of occurrence, hence, the recovery of the motorcycle (P-10) offers no support of the prosecution case. In view of the above-mentioned facts, the alleged recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar are not proved and the same cannot be used as a circumstance against the appellants. Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of the recovery of the *Repeater* gun (P-5) and the *Toka* (P-6) from the appellant namely Irfan alias Punna son of Umar Daraz alias Dazi and the recovery of the *Repeater* gun and the motorcycle (P-10) from the appellant namely Muhammad Ashraf alias Kaloo son of Muhammad Asghar would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

25. The Learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) was that the prosecution witness namely Khalid Hussain (PW-1) had a dog stolen for which theft he got a case registered against the appellants and that subsequently an incident of firing had taken place

between the prosecution witness namely Khalid Hussain (PW-1) and the accused, in retaliation of which the accused acted on the day of the occurrence. As has been already discussed by us, had the motive of occurrence been as was stated by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), then the prosecution witnesses namely Khalid Hussain (PW-1) would have been the prime target, however, he was not targeted at all, clearly proving the fact that the motive as stated by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) was not the motivation of the assailants. Furthermore, it is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the appellants to murder the deceased, it equally was a ground for the complainant to falsely implicate them in this case.

The august Supreme Court of Pakistan has held in the case of Muhammad Ashraf Alias Acchu v. The State (2019 S C M R 652) as under:-

“7. The motive is always a double-edged weapon. The complainant Sultan Ahmad (PW9) has admitted murder enmity between the parties and has also given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse.”

Reliance is also placed on the case of “Liaqat Ali and 11 others v. The State (1992 S C M R 372) wherein it has been held as under:-

“In this behalf, it may be observed that the motive is a double-edged weapon which could be one of the reasons for false implication as well as has been held by the Supreme Court in the case of Allah Bakhsh and another v. The State (PLD 1978 SC 171).”

26. We have also noted that video footage of a program recorded by the News Channel namely *Sama News* with the interviewer being Zeeshan Malik , stored in a USB flash drive, taken into possession through recovery memo (Exh.PE), was also handed over by the complainant of the case to the Investigating Officer of the case on 25.07.2016, which video footage showed the appellants namely Irfan alias Punna and Muhammad Ashraf alias Kaloo admitting to their guilt. Furthermore, the said video footage as contained in the USB flash drive, taken into possession through recovery memo (Exh. PE), was also used during cross-examination to confront the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3). The guidelines to prove an audio or video in the Court have been enumerated by the august Supreme Court of Pakistan in the case of "Ishtiaq Ahmed Mirza and others v. Federation of Pakistan and others" (**PLD 2019 SC 675**), as under:

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

- * No audio tape or video can be relied upon by a court until the same is proved to be genuine and not tampered with or doctored.
- * A forensic report prepared by an analyst of the Punjab Forensic Science Agency in respect of an audio tape or video is per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.
- * Under Article 164 of the Qanun-e-Shahadat Order, 1984 it lies in the discretion of a court to allow any evidence becoming available through an audio tape or video to be produced.
- * Even where a court allows an audio tape or video to be produced in evidence such audio tape or video has to be proved in accordance with the law of evidence.
- * Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, has to be produced so as to rule out any possibility of tampering with the record.
- * An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.
- * The person recording the conversation or event has to be produced.
- * The person recording the conversation or event must produce the

audio tape or video himself.

- * *The audio tape or video must be played in the court.*
- * *An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.*
- * *The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognizes such voice or person.*
- * *Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.*
- * *The voices recorded or the persons shown must be properly identified.*
- * *The evidence sought to be produced through an audio tape or video has to be relevant to the controversy and otherwise admissible.*
- * *Safe custody of the audio tape or video after its preparation till production before the court must be proved.*
- * *The transcript of the audio tape or video must have been prepared under independent supervision and control.*
- * *The person recording an audio tape or video may be a person whose part of routine duties is recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.*
- * *The source of an audio tape or video becoming available has to be disclosed.*
- * *The date of acquiring the audio tape or video by the person producing it before the court ought to be disclosed by such person.*
- * *An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.*
- * *A formal application has to be filed before the court by the person desiring an audio tape or video to be brought on the record of the case as evidence.” (emphasis supplied)*

Irshad ul Hassan, Inspector (CW-1), Investigating Officer of the case, admittedly did not record the statement of the person who had recorded the video footage as stored in the USB flash drive ,taken into possession through recovery memo (Exh.PE). Admittedly no person who had recorded the video footage as stored in the USB flash drive ,taken into possession through recovery memo (Exh.PE), appeared before the learned trial court as a witness. Moreover the video footage as stored in the USB flash drive, taken into possession through recovery memo

(Exh.PE) was not analyzed by the Punjab Forensic Science Agency, Lahore regarding its genuineness or otherwise. In the absence of any report of the Punjab Forensic Science Agency, Lahore about the genuineness or otherwise of the said video footage as stored in the USB flash drive ,taken into possession through recovery memo (Exh.PE), no reliance can be placed on such piece of evidence as held in the case of "Asfandyar and another v. Kamran and another" (**2016 SCMR 2084**). The learned trial court rightly held that the video footage of a program recorded by the News Channel namely *Sama News* with the interviewer being Zeeshan Malik , stored in a USB flash drive, taken into possession through recovery memo (Exh.PE), which video footage showed the appellants namely Irfan alias Punna and Muhammad Ashraf alias Kaloo admitting to their guilt, could not be considered as admissible and relevant evidence. As mentioned above, the said video footage as stored in the USB flash drive, taken into possession through recovery memo (Exh.PE), was also used during cross-examination to confront the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3), which confrontation should also have not been allowed by the learned trial court .

27. The only other piece of evidence left to be considered by us is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr. Liaquat Ali Ansari (PW-8) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by this Court, therefore, the appellant's conviction cannot be upheld on the basis of medical

evidence alone. The august Supreme Court of Pakistan in its binding judgment titled “*Hashim Qasim and another Vs. The State*” (**2017 SCMR 986**) has enunciated the following principle of law:

“The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit.”

The august Supreme Court of Pakistan in its binding judgment titled “*Naveed Asghar and two others Vs. The State*” (**P L D 2021 Supreme Court 600**) has enunciated the following principle of law:

“31. The prosecution has attempted to complete the chain of circumstantial evidence by medical evidence relating to the post mortem examinations of the deceased persons. This evidence proves only the factum that death of the deceased persons was caused by cutting their throats through some sharp edge weapon; it does in no way indicate who had cut their throats and with what particular weapon. Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.³² Therefore, the medical evidence is of little help to the prosecution for bringing home the guilt to the petitioners.”

28. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar in the present case. It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent

person is available, then the such benefit is to be extended to an accused not as a matter of concession but as of right. The august Supreme Court of Pakistan in the case of "Muhammad Mansha Vs. The State" (**2018 SCMR 772**) has enunciated the following principle:

"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akramv.The State (2009 SCMR 230) and Muhammad Zamanyv.The State (2014 SCMR 749)."

Reliance is also placed on the judgment of the august Supreme Court of Pakistan "Najaf Ali Shah Vs. the State" (**2021 S C M R 736**) in which it has been held as:-

"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. 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. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court

observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."

29. For what has been discussed above the Criminal Appeal No.518 of 2019 lodged by the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar is allowed and the convictions and sentences of the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar awarded by the learned trial court through the impugned judgment dated 06.05.2019 are hereby **set-aside**. Both the appellants namely Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar are ordered to be acquitted by extending them the benefit of doubt. Irfan alias Punna son of Umar Daraz alias Dazi and Muhammad Ashraf alias Kaloo son of Muhammad Asghar are in custody and they are directed to be released forthwith if not required in any other case.

30. The complainant of the case namely Khalid Hussain filed Criminal Appeal No.674 of 2019 against the acquittal of the accused namely Qaswar Hussain alias Pappi, Umar Daraz alias Dazi, Shahid Hussain and Amjad (all since acquitted), the co-accused of the appellants by the learned trial court. We have observed that the learned trial court has rightly acquitted the said accused. The prosecution witness namely Khalid Hussain (PW-1) stated that it was Qaswar Hussain alias Pappi (accused since acquitted) who had chopped off the right leg of the deceased from under the knee whereas the prosecution witness namely Muhammad Ashraf (PW-2), in his statement before the learned trial court stated that it was Umar

Daraz alias Dazi (accused since acquitted) who had chopped off the right leg of the deceased from under the knee, clearly revealing the bereft nature of statements made against both Qaswar Hussain alias Pappi and Umar Daraz alias Dazi. With regard to the accused Amjad, he was not named in the F.I.R and was shown to be identified by the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) in test identification parade proceedings held on 24.03.2016 however the prosecution witness namely Khalid Hussain (PW-1) admitted during cross-examination that Amjad was already known to him. Khalid Hussain (PW-1) admitted during cross examination as under :-

“Accused Ajmad is my nominated accused in the FIR which I got registered for the theft of my dog before the occurrence of this case. I do not know whether accused Ajmid sought his pre- arrest from the competent court. It is correct that in the said case FIR compromise was effected in the court. It is correct that at the compromise of said pre-arrest bail in the said case FIR **I and accused Ajmad were present in the court**” (emphasis supplied)

In this manner the failure of the prosecution witnesses namely Khalid Hussain (PW-1), Muhammad Ashraf (PW-2) and Muhammad Saeed Javed (PW-3) to name Amjad as accused proves that he was not seen by them at the place of occurrence otherwise they would have named him as an accused. The allegations against Shahid Hussain could also be not proved. It is important to note that according to established principle of the criminal administration of justice once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless

and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse. The said principle has been enunciated by the august Supreme Court of Pakistan in the judgment reported as "Ghulam Sikandar and another Versus Mamaraz Khan and Others" (**P L D 1985 Supreme Court 11**) wherein it has been held as under:

"The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous."

Reliance is placed on the case of "Muhammad Inayat Versus The State" (**1998 SCMR 1854**) wherein it has been held as under:

"The judgment of acquittal qua Muhammad Yousaf, Muhammad Sated and Muhammad Nawaz cannot, in the given situation, be termed as perverse or foolish inasmuch as the view having been taken by the High Court can possibly be taken for acquitting them in the peculiar facts and circumstances of this case. It cannot be said that the impugned judgment of the High Court acquitting Muhammad Yousaf and two others is fanciful, artificial, shocking or ridiculous. It is based on convincing reasons"

The august Supreme Court of Pakistan in the case of "Mst. Sughran Begum and another Vs. Qaiser Pervaiz and others" (**2015 SCMR 1142**) has held as under:

"On acquittal, an accused person earns twofold innocence particularly, in the case when there are concurrent findings to that effect by the trial Court and the Court of First Appeal (High Court), is the bedrock principle of justice. In a case of acquittal, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. Unless the concurrent findings of the two Courts below are found perverse, fanciful,

arbitrary and are based on misreading and non-reading of material evidence causing miscarriage of justice, the Supreme Court would not lightly disturb the same because on reappraisal, another view might be possible therefore, sanctity is attached under the law to such concurrent findings in ordinary course.”

Pursuant to the discussion made and conclusions arrived at above, the Criminal Appeal No.674 of 2019, lodged by the complainant of the case namely Khalid Hussain assailing the acquittal of Qaswar Hussain alias Pappi, Umar Daraz alias Dazi, Shahid Hussain and Amjad by the learned trial court from the charges is hereby **dismissed**.

31. **Murder Reference No.64 of 2018** is answered in **Negative** and the sentence of death awarded to Irfan alias Punna son of Umar Daraz alias Dazi is **Not Confirmed**.

**(MUHAMMAD AMJAD RAFIQ)
JUDGE**

**(SADIQ MAHMUD KHURRAM)
JUDGE**

Raheel

APPROVED FOR REPORTING

JUDGE