

Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.33345 of 2021

(Muhammad Shahbaz & another v. The State & another)

and

Criminal Revision No.36862 of 2021

(Muhammad Akram v. The State & 2 others)

JUDGMENT

Date of hearing: 21.11.2025

Appellants by: M/S Naveed Anayat Malik & Adnan Ramay, Advocates.

Complainant by: Mian Pervaiz Hussain, Omais Nasir Bhatti & Rai Bilal Hussain, Advocates.

State by: Ch. Muhammad Ishaq, Additional Prosecutor General with Javed SI.

ABHER GUL KHAN, J. The appellants Muhammad Shehbaz & Muhammad Irshad alias Babboo along with four other co-accused, namely Javed Iqbal, Sajjad Haider, Ashfaq alias Bao and Muhammad Ali Ashraf were tried by learned Additional Sessions Judge, Shahkot in a private complaint titled as **Muhammad Akram v. Muhammad Shehbaz & 5 others** for the offences under Sections 302, 324, 109, 148 & 149 PPC, arising out of case FIR No.561/2017 dated 23.12.2017 registered at Police Station Saddar Shahkot. Trial court *vide* judgment dated 30.04.2021 acquitted the afore-said co-accused, however convicted and sentenced the appellants as follows:-

(1).The appellant-Muhammad Shehbaz

Under Section 302(b) PPC to suffer imprisonment for life for committing qatl-i-amd of Muhammad Ramzan as ta'zir. He was further directed to pay Rs.20,00,000/- as compensation to the legal heirs of the deceased under Section 544-A Cr.P.C. which was ordered to be recovered as arrears of land revenue and in default whereof to further undergo six months' simple imprisonment.

(2).The appellant-Irshad alias Babboo

(i).Under Section 324 PPC to suffer imprisonment for seven years. He was further directed to pay fine of Rs.2,00,000/-.

(ii).Under Section 337-F(iii) PPC to suffer imprisonment for three years along with payment of Daman of Rs.10,000/- and in default whereof to further undergo simple imprisonment for two months. He was also directed to pay Rs.2,00,000/- as compensation to injured Waheed Ahsan under Section 544-A Cr.P.C.

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Benefit of Section 382-B Cr.P.C. was, however, extended to the appellants.

Challenging their conviction and sentence, the appellants filed Criminal Appeal No.33345 of 2021, whereas the complainant Muhammad Akram (PW.1) filed Criminal Revision No.36862 of 2021 seeking enhancement of sentence awarded to the afore-mentioned convicts. Both these matters are being adjudicated through this consolidated judgment.

2. Briefly stated the facts of the prosecution case as unveiled by the complainant Muhammad Akram (PW.1) in FIR (Exh.CW.6/A) are that he is resident of Chak No.176/RB Panwan and labourer by profession. On 23.12.2017 at about 10:30 a.m. a small trivial took place between his brother Muhammad Ramzan and Waheed Ahsan son of Muhammad Nazir with accused Javed Iqbal over the possession of the public pond. His brother Muhammad Ramzan and Waheed Ahsan forbade Javed Iqbal accused from taking possession of public pond through police upon which Javed Iqbal nourished a grudge. At about 4:30 p.m., Javed Iqbal accused was instigating his co-accused namely Shehzad Ramay, Haji Irshad and Sajjad Haider while being present at Addah Panwan that Muhammad Ramzan and Waheed Ahsan be killed, whereas this conversation was heard by Muhammad Tanvir and Shahid Bashir PWs. At about 5:00 p.m., the complainant along with Muhammad Ramzan, Asghar Ali, Waheed Ahsan and Jameel was going to Adda Panwan from their home and Muhammad Ramzan was ahead of them. When they reached the Chowk of Master Barkat Ali they saw that from the eastern side, accused Shahbaz, Sajjad Haider, Javed Iqbal all armed with Kalashnikovs, Muhammad Irshad armed with .244 bore rifle, Ali and Ashfaq alias Bao armed with guns .12 bore along with four unknown accused equipped with firearm weapons rushed towards them. Javed Iqbal accused raised Lalkara that they be taught a lesson for creating a hindrance in taking possession of government pond, upon which accused Shehzad fired a straight shot with his Kalashnikov upon Muhammad Ramzan which hit at his face below the right nostril and

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he being injured fell down. Irshad accused fired shot from his .244 rifle upon Waheed Ahsan which hit at his right knee, due to which he became injured and fell down. Irshad accused made indiscriminate firing upon Waheed Ahsan but fortunately the bullets did not hit him. Muhammad Ramzan succumbed to the injuries at the spot. All the accused retreated back to the different Chowks while resorting to firing. Accused continued indiscriminate firing in different Chowks for 15 to 20 minutes while creating fear and insecurity. Due to the firing of accused, one Hameedan Bibi wife of Anayat Ali also sustained firearm injuries. Upon hearing the noise of firing, Tanvir Ahmad, Shahid Rasheed and many other persons of the vicinity attracted to the spot and witnessed the occurrence. Javed Iqbal accused made continuous firing at the spot and remained instigating co-accused prior to the occurrence for murder of Muhammad Ramzan.

3. The proceedings in this case were initiated upon the written application (Exh.PA) submitted by the complainant, Muhammad Akram (PW.1) before Muhammad Shehzad 953/HC (CW.6) at Police Station Saddar Shahkot, which led to the registration of FIR No.561/2017 (Exh.CW.6/A). The investigation was initially assigned to Saifullah Niazi SI (CW.7) who on 23.12.2017 visited THQ Hospital Shahkot at about 7:15 p.m., prepared inquest report (Exh.CW.7/A), injury statement (Exh.CW.8/A), application for postmortem examination (Exh.CW.4/A) and handed over the dead body of Muhammad Ramzan to Asad Ali 1314/C for autopsy. Thereafter, he visited the crime scene and prepared a rough site plan (Exh.CW.10/A). From the spot, he secured blood stained soil (P.4), thirty empties of Kalashnikov (P.1/1-30), 8 empties of .244 bore (P.2/1-8), 20 empties of .12 bore gun (P.3/1-20) vide memo Exh.PE. On 27.12.2017 he went to Allied Hospital Faisalabad and recorded statement of injured Hameedan Bibi under Section 161 Cr.P.C. On 30.12.2017 injured namely Waheed Ahsan (PW.2) joined the investigation before him and his statement under Section 161 Cr.P.C. was recorded. On 02.01.2018 he received Robkar of accused Muhammad Shehbaz regarding the protective bail granted by Lahore

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High Court and on 11.01.2018 he arranged confrontal meetings of the complainant and accused which was entered in dairy diary No.16 on 13.01.2018. Subsequently upon the transfer of Saifullah Niazi SI (CW.7), the task of investigation was assigned to Arif Ali Inspector (CW.8) on 26.01.2018, who deferred the arrest of accused Javed Iqbal, Sajjad Haider and Ali Ashraf, out of them during investigation former two accused were found not involved with the occurrence. On 06.02.2018 the complainant Muhammad Akram (PW.1) produced accused Muhammad Shehzad, Muhammad Ashfaq and Muhammad Arshad before him and on the same day their arrest was incorporated in the instant case. On 18.02.2018 the appellants Muhammad Irshad and Muhammad Shehzad during interrogation made separate disclosures and in pursuance thereof led to the recovery of .244 bore rifle (P.8) and Kalashnikov (P.9) which were taken into possession through memos Exh.CW.14/A & Exh.CW.16/A respectively. Arif Ali Inspector (CW.8) also performed the steps towards the completion of investigation of other accused and after complying all the codal formalities submitted report under Section 173 Cr.P.C.

4. Being dissatisfied with the conduct of the investigation, the complainant, Muhammad Akram (PW.1), filed a private complaint which led to the trial. During the proceedings, the prosecution produced six witnesses. Among them, Muhammad Akram (PW.1), the injured Muhammad Waheed Ahsan (PW.2) and Muhammad Asghar (PW.3) provided the ocular account of the incident. The trial court also examined eight CWS, out of them, Dr.Majid Saleem (CW.4) on 24.12.2017 conducted the postmortem examination of the deceased Muhammad Ramzan and issued postmortem report along with pictorial diagrams (Exh.CW.4/A & Exh.CW.4/A/1), Dr.Mubashar Rafique (CW.5) on 23.12.2017 at about 6:45 p.m. conducted the medico legal examination of injured Waheed Ahsan and issued his MLC (Exh.CW.5/A), while Saif Ullah Niazi SI (CW.7) and Arif Ali Inspector (CW.8) investigated the case. Upon the closure of the prosecution's evidence, the trial court recorded the statements of the appellants along with their co-accused under Section 342 Cr.P.C.,

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confronting them with the incriminating material. The appellants denied the allegations, claimed their innocence, and asserted false implication. They neither chose to get recorded statements under Section 340(2) Cr.P.C., nor did they produce any defence evidence. Upon conclusion of the trial, the court convicted and sentenced the appellants as stated above, hence the instant criminal appeal and criminal revision.

5. Arguments heard. Record perused.

6. A careful examination of the record reveals that the instant case arises out of an incident which took place on 23.12.2017 at about 5:00 p.m. in the locality known as Panwan, situated eight kilometers away from Police Station Saddar Shahkot, District Nankana Sahib. As narrated in the FIR (Exh.CW.6/A), Muhammad Shehbaz, the appellant, allegedly fired a shot from his Kalashnikov, striking the deceased Muhammad Ramzan beneath the nostril and causing him to collapse and die at the spot. It is further alleged that another appellant, Irshaad, fired a shot from his .244 bore rifle, which hit Waheed Ahsan (PW.2) on his right knee, causing him to fall. Additionally, Mst.Hameedan Bibi is said to have suffered injuries as a result of the firing made by the accused. The record also shows that the complainant Muhammad Akram (PW.1) informed the police of the occurrence through a written application (Exh.PA) which he handed over to Muhammad Shehzad, Head Constable (CW.6), at Police Station Saddar Shahkot about two and a half hours after the incident. On this basis, learned counsel for the complainant argued that the prompt reporting of the occurrence left little room for fabrication or the development of a false narrative. Conversely, learned defence counsel maintained that the incident was not reported to the police in the manner alleged by the prosecution and that the record had been manipulated to create such an impression. In order to reach a conclusion capable of inspiring judicial confidence, I scrutinized the record with utmost care and found merit in the submissions advanced by learned defence counsel. Notably, it is on record that Waheed Ahsan (PW.2), who allegedly sustained a firearm injury during the

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incident, was transported to THQ Hospital, Shahkot, where he was examined by Dr.Mubashar Rafique (CW.5) on 23.12.2017 at about 6:45 p.m. The complainant, Muhammad Akram (PW.1) during trial stated that he accompanied the injured Waheed Ahsan (PW.2) to the hospital in an ambulance, and that the distance from the place of occurrence to the hospital, connected by a metaled road, could be covered within 10 to 15 minutes. During cross-examination, he also admitted that Police Station Saddar Shahkot lies on the same route and is located on the main road. Owing to the importance of this aspect, the relevant extract from the cross-examination of Muhammad Akram (PW.1) is reproduced below:-

“It is correct that in order to reach from the place of occurrence to the hospital first PS Saddar, Shahkot comes on the way which is on the main road. It takes 10 to 12 minutes on motorbike in reaching from the place of occurrence to the police station.”

Furthermore, although all three eyewitnesses, including the injured witness, admitted that they possessed mobile phones, yet they asserted that their phones were not with them at the relevant time but this justification seems to be implausible. Be that as it may, since the complainant Muhammad Akram (PW.1) conceded during cross-examination that he alone accompanied the injured witness in the ambulance the matter could easily be reported to the police by Muhammad Asghar (PW.3), who was not accompanying the complainant or the deceased. Similarly, it is repellent to common sense that when the complainant Muhammad Akram (PW.1) reached the hospital along with the deceased Muhammad Ramzan and injured Muhammad Waheed Ahshan (PW.2), why he delayed the conveying of information to the police especially when the distance between the hospital and the police station could be covered within 10 to 12 minutes on a motorbike. Moreover, Muhammad Akram (PW.1) also stated during cross-examination that he got the written complaint (Exh.PA) drafted from an unknown individual but his identity never surfaced either during investigation or at trial.

In addition to above, I am also aware of the fact that the inquest report prepared under Rule 35 of Chapter XXV of the Police Rules,

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1934, is a detailed 34-column form completed at the start of a murder investigation. It includes key information gathered from eyewitnesses, examination of the dead body, and inspection of the crime scene. The report gives a complete picture of the incident, such as the distance between the crime scene and the place where the police was informed, details and identifying features of the deceased, the condition of the body, the injuries found, the suspected weapon, and any items found near the body if it was not moved. A short summary of how the incident happened is also included. Its importance is highlighted by the rule that all this information must be shared with the medical officer before the autopsy. These steps act as safeguards to prevent any foul play and ensure that eyewitness statements are properly recorded before the postmortem begins. Therefore, the medical officer must sign each page of the inquest report as acknowledgment of its receipt before beginning the postmortem examination. This requirement ensures that, prior to the autopsy, the eyewitness statements, details of the weapon used, and the locations of the injuries inflicted by the accused are already on record with the police, thereby preventing any possibility of later tampering. Reliance is placed upon the case reported as Hafeez Ahmed and others v. The State and others (2023 YLR 2503) wherein the learned Division Bench of this Court while dealing with the importance of signing the inquest report by the medical officer held as under:-

“The medical officer is required to sign each page of the inquest report as token of its receipt before the commencement of postmortem examination. Needless to mention here that the requirements so mentioned above are primarily focused at ensuring that before the commencement of autopsy statements of eyewitnesses are on file, the kind of weapon used in the crime and locales of injuries inflicted by accused have been conveyed to police so as to exclude the possibility of subsequent tampering.”

Reverting to the record of the present case, it is noticeable that none of the four pages of the inquest report (Exh.CW.7/A) bears the signatures of the doctor. It is indeed astonishing that, although the prosecution asserts that the application for post-mortem examination (Exh.CW.4/A) was submitted to the medical officer by Saifullah SI

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(CW.7), however neither Saifullah SI (CW.7) nor Dr.Majid Saleem (CW.5) recorded the date on its submission beneath their respective signatures. Furthermore, the inquest report does not mention the FIR number. These deficiencies clearly indicate that the inquest report (Exh.CW.7/A) and the autopsy application (Exh.CW.4/A) were not delivered to the medical officer prior to the post-mortem examination. The defence counsel, fully conscious of the significance of these inconsistencies, cross-examined Dr.Majid Saleem (CW.5), yet no satisfactory legal explanation emerged. Given the substantial importance of these irregularities, I find it appropriate to reproduce the relevant portion of the cross-examination of Dr.Majid Saleem (CW.5), which is as under:-

“It is correct that upon complaint for registration of the case, FIR, injury statement of the deceased Muhammad Ramzan as well as on inquest report of the deceased, my signatures are not available. It is correct that no number of FIR is mentioned on postmortem examination of the deceased. It is correct that I endorsed only those documents which were produced before me at the time of postmortem examination. As soon as I received the documents, I without any delay on my part, conducted postmortem examination of the deceased Muhammad Ramzan.”

Furthermore as per the inquest report (Exh.CW.7/A), the police received information about the occurrence on 23.12.2017 at around 7:15 p.m., and the dead body at the THQ Hospital was identified by Muhammad Ashiq (given-up PW) and Muhammad Nazir (PW.5). The fact that these individuals, rather than the complainant Muhammad Akram (PW.1) or any other eyewitness identified the deceased leads this Court to conclude that neither the complainant nor any other eyewitness was present at the spot. A reasonable inference in this regard is that had they actually been present at the time of occurrence, they would themselves have identified the dead body. Similarly, Saifullah Niazi SI (CW.7) during cross-examination admitted that at the time of his visit at THQ Hospital, Shahkot neither the complainant nor any other witness met him and he completed the inquest report in the presence of Muhammad Ashiq and Muhammad Nazir. Since this is an important aspect, hence the relevant excerpts from the cross-examination of Saifullah Niazi SI (CW.7) are reproduced hereunder:-

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“I reached THQ Hospital Shahkot. Complainant of this case did not meet me at said hospital. Similarly, no eyewitness met me in the said hospital. It is correct that I prepared all my documents in THQ Hospital where the corpse was present including inquest report..... I completed inquest report in the presence of Muhammad Ashiq and Muhammad Nazir. The above mentioned witnesses are only the witness of identification of dead body. The above mentioned witnesses did not claim themselves to be eyewitnesses of occurrence.”

This Court is mindful of the fact that the delay in the registration of the FIR (CW.6/A) is merely two and a half hours, and in certain situations such a delay may carry little weight. However, in the context of the present case, the delay assumes considerable significance, as it may reasonably be attributed to consultation, seeking instructions, and the deliberate preparation of the first information report. In this context reference may be made to the case reported as *Abdul Ghafoor v. The State (2022 SCMR 1527)* wherein the Supreme Court of Pakistan held as under:-

“This Court while holding that the delay of two hours in lodging the FIR has assumed great significance as the same can be attributed to consultation, taking instructions and calculatedly preparing the report keeping the names of the accused open for roping in such persons whom ultimately the prosecution may wish to implicate charge and put to trial.”

7. Before proceeding further, it is important to note that in the FIR (Exh.CW.6/A), in addition to the appellants Muhammad Shehbaz and Muhammad Irshad, four named and four unknown accused were alleged to have reached the crime scene armed with firearms of various bores. It is further observed that, during the investigation, two of the named accused Javed Iqbal and Sajjad Haider were not found involved. Nonetheless, they along with two other co-accused, Ashfaq and Muhammad Ali Ashraf, were tried in a private complaint filed by the complainant, Muhammad Akram (PW.1), and were ultimately acquitted. Although the complainant challenged their acquittal through PSLA No.35511 of 2021 but it was dismissed on merits on 07.03.2022, and that order admittedly was never assailed before the Supreme Court of Pakistan. As a result, the acquittal of the aforementioned four accused has attained finality. Moreover, the identities of the four unknown co-accused remained mystery both

during the investigation and at the trial stage. In view of the acquittal of the co-accused who were specifically named in the FIR and assigned distinct roles, the central question which arises is whether, on the same set of evidence, the conviction and sentence of the present appellants can still be upheld. In addressing this issue, this Court bears a great responsibility to scrutinize the evidence with utmost care, requiring that the ocular account be strongly supported by other evidence of unimpeachable quality. Reference in this regard is made to the case reported as *Altaf Hussain v. The State* (**2019 SCMR 274**) wherein the Supreme Court of Pakistan gave the following observation:-

“It is well settled by now that if a set of witnesses is disbelieved to the extent of some accused the same cannot be believed to the extent of remaining accused facing the same trial without there being any independent and strong corroboration.”

8. The circumstances outlined in the preceding paragraph compelled this Court to examine the ocular evidence furnished by the complainant Muhammad Akram (PW.1), Muhammad Waheed Ahsan (PW.2), and Muhammad Asghar (PW.3) with utmost care and caution. Among them, Muhammad Waheed Ahsan (PW.2), who admittedly was a constable and serving as Naib Court in Lahore High Court Lahore, claimed to have sustained a firearm injury on his right knee, and the prosecution portrayed this injury as confirmation of the truthfulness of his testimony. While I acknowledge that an eyewitness who suffers harm during a murder incident is generally considered to have been present at the crime scene, yet such injury does not constitute conclusive proof of the veracity of his statement. Even the testimony of an injured eyewitness must be evaluated according to the established principles governing the assessment of evidence before the conviction can be recorded. The notion that an injured witness rarely lies may hold some weight in cases involving a single accused, but it becomes an overgeneralization where multiple assailants are implicated. It would therefore be unjust to base the conviction solely on the statement of an injured witness without subjecting his evidence to rigorous scrutiny to determine its reliability. Reference can be made

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to the case reported as *Amin Ali v. The State* (**2011 SCMR 323**) wherein the Supreme Court of Pakistan observed as under:-

“Certainly, the presence of injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the person of P.Ws. would not stamp them truthful witnesses.”

In another case reported as *Nazir Ahmad v. Muhammad Iqbal and another* (**2011 SCMR 527**), the Supreme Court of Pakistan while examining the case of an injured witness held as under:-

“It is settled law that injuries of PWs are only indication of his presence at the spot but are not affirmative proof of his credibility and truth. See Said Ahmed’s case (1981 SCMR 795) and Muhammad Pervez’s case (2007 SCMR 670).”

It is further observed by this Court that according to the prosecution, the first Investigating Officer, Saifullah Niazi SI (CW.7), reached THQ Hospital, Shahkot on 23.12.2017 at about 7:15 p.m., where he prepared the inquest report (Exh.CW-7/A), the injury statement of the deceased Muhammad Ramzan (Exh.CW-8/A), and the application for post-mortem examination (CW-4/A). He thereafter handed over the dead body of the deceased Muhammad Ramzan to Asad Ali 1314/C for its transfer from the Emergency Department to the morgue for autopsy. However, it is noteworthy that Saifullah Niazi SI (CW.7) did not prepare any injury statement in respect of the injured Muhammad Waheed Ahsan (PW.2). Moreover, during the spot inspection, he secured bloodstained cotton only from the place where the deceased Muhammad Ramzan had fallen, and failed to collect any blood from the location where Muhammad Waheed Ahsan (PW.2) had received his injury. Additionally, the bloodstained trouser (shalwar) was produced by the complainant himself before Arif Ali Inspector (CW.8) on 07.02.2018, approximately two months and fourteen days after the incident. From the perusal of record, it is evident that the incident took place on 23.12.2017, yet the statement of Muhammad Waheed Ahsan (PW.2) under Section 161 Cr.P.C. was not recorded until 30.12.2017. The prosecution attempted to justify this delay of nearly seven days by attributing it to the allegedly critical

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medical condition of PW.2. However, the record shows that he was brought to THQ Hospital, Shahkot, on the same day of the incident and was examined by Dr.Mubashir Rafique (PW.5) at about 6:45 p.m., who issued the MLC (Exh.CW.5/A). I have minutely examined MLC (Exh.CW.5/A) and found it to be a fabricated document, as at the time Dr.Mubashar Rafique (CW.5) conducted the medico legal examination of Muhammad Waheed Ahsan (PW.2), no police official or private person was present and the medico legal examination was held without any court order. The MLC (Exh.CW.5/A) is also silent qua the time of admission and his discharge from THQ Hospital, Shahkot and in this regard the relevant columns were kept blank. In such situation, I consider it appropriate to reproduce the relevant portion of the cross-examination of Dr.Mubashar Rafique (CW.5) which is as follows:-

“I have not mentioned the name of any constable/police employees who has brought the injured/patient in THQ Hospital, Shahkot for medical checkup. I have also not mentioned any date of admission or any date of discharge in relevant column of MLC Exh.W.5/A.”

Similarly, Muhammad Waheed Ahsan (PW.2) in his examination-in-chief took the stance that he along with deceased Muhammad Ramzan was shifted to THQ Hospital Shahkot through ambulance and from there he was referred to Allied Hospital, Faisalabad. For advantage sake, this portion of the examination-in-chief of Muhammad Waheed Ahsan (PW.2) is mentioned hereunder:-

“I along with Muhammad Ramzan shifted to THQ Hospital Shahkot by ambulance, from where I was then shifted to Allied Hospital Faisalabad.”

However, Dr.Mubashar Rafique (CW.5) in his statement before the court did not mention a single word in support of the stance of Muhammad Waheed Ahsan (PW.2). Though Muhammad Waheed Ahsan (PW.2) during cross-examination stated that he produced documents pertaining to his admission and discharge from THQ Hospital as well as from Hospital Faisalabad, however the record of the case is silent in this regard. The complainant Muhammad Akram (PW.1) also failed to confirm whether he ever provided proof of the

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injured Waheed Ahsan's admission or discharge from the hospital during the investigation, and acknowledged that he had not supplied any such record to his counsel when the private complaint was filed. The relevant portion of Muhammad Akram's (PW.1) cross-examination is reproduced below for reference:-

"I did not give any proof of admission or discharge of our witnesses, namely Waheed Ahsan from the hospital to my counsel at the time of filing of private complaint."

It is further noticed that according to MLC (Exh.CW.5/A), Muhammad Waheed Ahsan (PW.2) was stable at the time of examination and narrated a brief history of having received a gunshot wound inflicted by eight persons. This leads to a crucial question that if Muhammad Waheed Ahsan (PW.2) was fully conscious when examined on 23.12.2017, why was his statement under Section 161 Cr.P.C. deferred until 30.12.2017. The record further reveals that the Investigating Officer Saifullah Niazi SI (CW.7) had reached the hospital while Muhammad Waheed Ahsan (PW.2) was under treatment, but he made no attempt to record his statement. The unexplained delay in recording PW-2's statement becomes even more significant in light of the fact that no satisfactory explanation was offered either during the trial or before this Court. Such an unexplained lapse invites serious doubt about the reliability of PW-2's version. It raises the possibility that the actual culprits were initially unknown to him and that the appellants might have been implicated later through substitution. Even otherwise, the delay occasioned in recording 161 Cr.P.C. statement of PW.2 is more catastrophic for the prosecution keeping in view the fact that on the day of occurrence he was serving as Naib Court in Lahore High Court Lahore. Moreover, Muhammad Waheed Ahsan (PW.2) did not place on record any document showing that on the day of occurrence he was on leave. It is a well-established principle for evaluating the evidence that when two interpretations of a fact are possible, the one favouring the accused must be preferred. Even a delay of 2/3 days in recording the statement of an eyewitness of a homicide incident is deemed fatal if not properly

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explained. Therefore, in the absence of any legally acceptable justification, the testimony of such a witness cannot be relied upon. Reliance is placed on case reported as Bashir Muhammad Khan v. The State (2022 SCMR 986) wherein the Supreme Court of Pakistan observed as under:-

“Delayed recording of statement of PW under section 161, Cr.P.C. reduces its value to nil unless and until it is explained rendering justiciable reasonings. Reliance is placed on the judgment reported as Abdul Khaliq v. The State (1996 SCMR 1553). This judgment was followed by this Court in another judgment reported as Noor Muhammad v. The State (2020 SCMR 1049) as also in an unreported judgment passed in Criminal Petition No. 537/2021. Keeping in view the conduct of the PWs, it would not be safe to only rely upon their statements to sustain conviction of the appellant and there must be some independent corroboration to the extent of his involvement in commission of the crime.”

I have also scrutinized the testimonies of the complainant Muhammad Akram (PW.1) and Muhammad Asghar (PW.3) with utmost care and have arrived at the conclusion that they have failed to convincingly establish their presence at the scene of the crime. At the cost of repetition, it is observed that the complainant Muhammad Akram (PW.1) in his examination-in-chief claimed to be accompanying the deceased Muhammad Ramzan, Asghar Ali (PW.3), and Waheed Ahsan (PW.2) on their way to Adda Panwan when, upon reaching the Chowk of Master Barkat Ali, the appellants and their co-accused arrived there armed with various weapons, killed Muhammad Ramzan, and injured Muhammad Waheed Ahsan (PW.2). However, it has been observed that at the relevant time, Muhammad Akram (PW.1) was employed at Sphere Textile Mills, Feroze-Wattoan, and he also admitted that he had not mentioned any reason in his complaint (Exh.PA) for going to Adda Panwan. Furthermore, his residence is located at 12/13 houses away from the place of occurrence. Although Muhammad Akram (PW.1) stated during cross-examination that he and the other witnesses could not rescue Muhammad Waheed Ahsan (PW.2) immediately because the accused continued firing for 20/25 minutes in different Chowks, however his stance did not find corroboration from other witnesses of ocular account because Muhammad Waheed Ahsan (PW.2) and Muhammad

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Asghar (PW.3) categorically deposed during cross-examination that firing continued for only 2/3 minutes. Upon the perusal of the testimony of the complainant Muhammad Akram (PW.1) several other discrepancies appear, as he admitted during cross-examination that Mst.Hameedan Bibi, who was injured during the incident, remained hospitalized, yet he was unable to specify the duration of her hospitalization. This Court has also observed that both the complainant Muhammad Akram (PW.1) and Muhammad Asghar (PW.3) are real brothers of the deceased Muhammad Ramzan. According to the prosecution, heavy firing occurred at the time of the incident, however, it is quite surprising that neither of these two PWs sustained even a minor injury. Additionally, being real brothers, it would be natural to expect that they would have attended to the deceased, in which case their clothes would likely have become stained with blood, yet no such bloodstained clothing was taken into possession during the investigation nor produced during the trial. Moreover, Dr.Majid Saleem (CW.4) stated in his examination-in-chief that during the postmortem examination he noted the deceased Muhammad Ramzan's eyes were closed while his mouth was slightly open. This observation also undermines the prosecution's claim that any eyewitness was present at the time of the incident. Moreover, the complainant Muhammad Akram (PW.1) has stated that the dead body of Muhammad Ramzan and the injured PW.2 were shifted to THQ Hospital through Rescue-1122. However, no official from Rescue-1122 was produced either during the investigation or at trial, nor were any officials of Rescue-1122 cited as witnesses in the FIR or in the private complaint. Given the significance of this aspect, the relevant portion of the cross-examination of Muhammad Akram (PW.1) is reproduced below:-

“The officials of 1122 who rescued were not produced by me before the police. I have also not cited them as witnesses in my FIR or the complaint. I filed private complaint after about 03 months of the occurrence i.e. on 21.03.2018.”

This Court has further noted that Mst.Hameedan Bibi also sustained firearm injuries during the occurrence and her statement under Section

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161 Cr.P.C. was recorded by Saifullah Niazi SI (CW.7) on 27.12.2017. In her statement recorded under Section 161 Cr.P.C., injured Hameedan Bibi took the stance that she did not see the incident nor did she nominate any person of whose fire hit her. This fact was categorically admitted by Saifullah Niazi SI (CW.7) with the following words:-

“I correctly recorded the statement of injured Hameedan Bibi without any addition or omission. Hameedan Bibi did not state in her statement that she had seen the occurrence herself. It is correct that Hameedan Bibi did not nominate any person of whose fire she received.”

Though the complainant Muhammad Akram (PW.1) while filing private complaint (Exh.PC) cited Mst.Hameedan Bibi as a prosecution witness, however neither was she given up nor produced by the prosecution during trial. The prosecution's failure to produce such an important witness leads this Court to the inevitable conclusion that, had she been examined during the trial, her testimony would not have supported the prosecution's version. In drawing this inference, the Court is guided by Illustration (g) of Article 129 of the Qanun-e-Shahadat Order, 1984, which provides as follows:-

“129. Court may presume existence of certain facts. The Court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and the public and private business, in their relation to the facts of the particular case.

Illustrations

The court may presume:

(g) that evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it.”

The Supreme Court of Pakistan in the case of Muhammad Rafique, etc. v. State & others (PLJ 2011 Supreme Court 191) held as under:-

“that if any party withholds the best piece of evidence then it can fairly be presumed that the party had some sinister motive behind it. The presumption under Article 129 (g) of Qanun-e-Shahadat Order can fairly be drawn that if PW would have been examined, his evidence would have been unfavourable to the prosecution”.

In another case reported as *Lal Khan v. The State* (2006 SCMR 1846), the Supreme Court while dealing with the omission of the prosecution in not producing a material witness held as under:-

“The prosecution is certainly not required to produce a number of witnesses as the quality and not the quantity of the evidence is the rule but non-production of most natural and material witnesses of occurrence, would strongly lead to an inference of prosecutorial misconduct which would not only be considered a source of undue advantage for possession but also an act of suppression of material facts causing prejudice to the accused.”

9. This Court has also noted that the medical evidence in this case was provided by Dr.Majid Saleem (CW.4) and Dr.Mubashar Rafique (CW.5). Dr.Majid Saleem conducted the postmortem examination of the deceased, Muhammad Ramzan, while Dr.Mubashar Rafique performed the medico-legal examination of the injured witness, Muhammad Waheed Ahsan (PW.2). According to Dr.Majid Saleem (CW.4), he carried out the post-mortem examination and issued the post-mortem report (Exh.CW-4/A). A review of this report shows that the examination took place at 3:50 a.m. on 24.12.2017. However, it does not mention the date and time when the body was received in the mortuary. This omission is significant, particularly in light of the statement of the complainant Muhammad Akram (PW.1) during cross-examination that the postmortem facility was only a 2/3-minute walk away. Despite this, the column titled “when brought: village, thana, district” was left blank by Dr.Majid Saleem (CW.4). Additionally, in the postmortem report (Exh.CW-4/A), Dr. Majid Saleem recorded the time and date of death as “according to police report: 23.12.2017 at about 7:15 p.m.” Yet, the FIR (Exh.CW-6/A) states that the incident occurred at about 5:00 p.m. This discrepancy shows that the time of death noted in the post-mortem report does not align with the FIR. Even if the Court accepts 5:00 p.m. as the time of death and compares it with the recorded time of the postmortem, an unexplained delay of about fourteen hours emerges. Such a delay is considered detrimental to the prosecution’s case, as it raises doubts about the credibility of the FIR and the accuracy of the details of the crime. After carefully examining the record, I find no valid

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explanation for the delay in providing the necessary police documents for the autopsy. In my view, this fourteen-hour gap appears to have been used to construct a fabricated version of events and to arrange the presence of witnesses. Reference in this context may be made to the case reported as *Muhammad Ilyas v. Muhammad Abid alias Billa* (**2017 SCMR 54**) wherein the Supreme Court of Pakistan gave the following observation:-

“Post-mortem examination of the dead body of Muhammad Shahbaz deceased had been conducted after nine hours of the incident which again was a factor pointing towards a possibility that the time had been consumed by the local police and complainant party in procuring and planting eye-witnesses and cooking up a story for the prosecution.”

It is further noted that Dr.Majid Saleem (CW.4) observed two injuries on the body of the deceased, out of them injury No.1 was described as a punctured entry wound measuring 1×1 cm with inverted edges, located at the junction of the upper lip and right nostril, 1 cm to the right of the midline, while injury No.2 was exit punctured wound with everted edges. The doctor also observed blackening around the wound of injury No.1. As per the prosecution, this injury was caused by the appellant Muhammad Shehbaz with a shot fired from his Kalashnikov. However, the site-plan (Exh.CW-10/A) indicates that the appellant was positioned at a distance of six feet when he fired. This raises a significant question as to how blackening could appear on the wound of the deceased when, according to standard forensic principles, such blackening typically occurs only if a shot is fired from a distance of about one yard (i.e., three feet). This aspect is further reinforced by the doctor’s admission during cross-examination that blackening appears around a wound when the shot is fired from about one yard and that, if a weapon such as a Kalashnikov is discharged from that distance, the resulting injury would be more severe. Given the relevance of this issue, the pertinent portion of the cross-examination of Dr.Majid Saleem (CW.4) is reproduced below:-

“Blackening on an injury appears if the injury is caused from the distance of almost one yard. As regard injury No.1, possibility cannot be ruled out that if the weapon used is rifle or Kalashnikov

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and the fire is shot within the distance of one yard, injury can be more severe.”

In case reported as Barkat Ali v. Muhammad Asif & Others (2007 SCMR 1812), the Supreme Court of Pakistan, while relying on Modi's medical jurisprudence which states that blackening around a wound caused by a weapon such as a Kalashnikov can only occur if the shot is fired from a distance of approximately four feet, held as follows:-

"It is an admitted fact that eye witnesses had stated that the deceased was hit by the respondents at about 30-35 feet whereas according to the medical report, there was burning and blackening and is evident from the statement of PW.2, therefore, ocular account furnished by the two eye witnesses is not in consonance with the medical evidence which clearly contradicts the statements of the eye-witnesses. It is a settled law that blackening appears on the dead body in case the deceased has received injuries at a distance of 4 feet according to medical jurisprudence by Modi. It is a settled law that oral evidence cannot be accepted to the extent of its inconsistency with the medical evidence. See Mardan Ali's case 1980 SCMR 889, Bagh Ali's case 1983 SCMR 1292, Sain Dad's case 1972 SCMR 74 and Zardshad case 1969 SCMR 644" Criminal Appeal No. 88-J of 2015 Muhammad Umar vs. The State & 2 others".

Similarly, in case reported as Mian Sohail Ahmed and others v. The State and others (2019 SCMR 956), the Supreme Court of Pakistan held as under:-

"Site-plan (Ex-PL) shows one of the appellants to be standing next to the driving seat of the car at a distance of 4 feet. A fire-shot from this distance is likely to cause blackening but the medical evidence (Post-mortem examination reports Ex-PM and Ex-PM/1 and the statement of PW-10) does not support this, once again raising a suspicion that the events may have unfolded differently than as reported."

In view of the foregoing, it may be deduced that the medical evidence adduced during the trial falls markedly short of furnishing any meaningful corroboration to the ocular testimony.

10. This Court has further observed that after their arrest the appellants Muhammad Irshad and Muhammad Shehbaz purportedly made separate disclosures on 18.02.2018 before Arif Ali, Inspector (CW.8) and in consequence thereof, led to the recovery of a .244 bore rifle (P.8) and a Kalashnikov (P.9), which were taken into possession through memos Exh.CW.14/A and Exh.CW.16/A, respectively.

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Similarly, during the spot inspection conducted by Saif Ullah Niazi, SI (CW.7) on 23.12.2017, thirty Kalashnikov empties (P.1/1-30), eight .244 bore empties (P.2/1-8), and twenty .12-bore gun empties (P.3/1-20) were secured vide memo Exh.PE. All recovered weapons and crime-scene empties were sent to PFSA for forensic comparison. According to the PFSA report (Exh.CW-18/A), although the weapons recovered from the appellants were found to be in proper mechanical working condition, yet the crime empties could not be matched with them due to lack of corresponding individual characteristics. Consequently, the PFSA report (Exh.CW-18/A) provides no support to the prosecution and is rendered inconsequential.

11. I have also carefully considered the motive alleged in the FIR as well as in the private complaint. According to the complainant Muhammad Akram (PW.1), at about 10:30 a.m., prior to the murder incident, a minor dispute occurred between his brother Muhammad Ramzan and Waheed Ahsan (PW.2) on one side, and the accused Javed Iqbal on the other, over a public pond because the deceased Muhammad Ramzan and Waheed Ahsan (PW.2) had restrained Javed Iqbal co-accused (since acquitted) from attempting to take possession of the public pond with the help of the police, which allegedly caused Javed Iqbal (since acquitted) to harbor a grudge. Although both Muhammad Akram (PW.1) and Muhammad Asghar (PW.3) mentioned this alleged motive during their examination-in-chief, yet they candidly admitted during cross-examination that the said altercation had not taken place in their presence. For clarity, a relevant portion of the cross-examination of the complainant Muhammad Akram (PW-1) is reproduced below:-

“I was not present when altercation took place between Waheed Ahsan, Ramzan and Javed..... Muhammad Ramzan my brother had informed me about the altercation taken place regarding motive part.”

Furthermore, the prosecution has alleged that the deceased Muhammad Ramzan had prevented the accused Javed Iqbal (since acquitted) from obtaining possession of the public pond through the police. This assertion naturally suggests that the dispute over the pond

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must previously have been brought before the police for inquiry or some proceedings. However, no such police record has been produced either during the investigation or at the trial. In these circumstances, I am convinced that the motive advanced by the prosecution is merely an overzealous effort to strengthen an otherwise weak case.

12. This Court is mindful that the appellants stand blamed with taking the life of a young man and inflicting firearm injuries upon another, however even in such heinous offences, the prosecution cannot be relieved of its duty to establish the case beyond even a scintilla of doubt. A thorough examination of the record reveals multiple inconsistencies in the prosecution's evidence, the benefit of which must inevitably go to the appellants, and which can most appropriately be granted through an order of acquittal. As the Holy Prophet (ﷺ) taught, it is better to err in releasing a guilty person than to punish an innocent one. Same principle was also followed by the Supreme Court of Pakistan in the case reported as Ayub Masih v. The State (PLD 2002 SC 1048), wherein, it was observed as follows:-

“.... It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic Law and is enforced rigorously in view of the saying of the Holy Prophet (p.b.u.h) that the “mistake of Qazi (Judge) in releasing a criminal is better than his mistake in punishing an innocent.”

In supra mentioned case of Ayub Masih, the Supreme Court was also pleased to observe as under:-

“...The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which cannot be ignored while dispensing justice in accordance with law. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted.”

13. For the reasons stated above, Criminal Appeal No.33345 of 2021 is allowed. The conviction and sentence awarded by the learned trial Court to appellants Muhammad Shehbaz and Muhammad Irshad alias Babboo are hereby set aside, and they are acquitted of the charge. Appellant Muhammad Shehbaz, who is currently in custody, shall be released forthwith if he is not required in any other case. As appellant Muhammad Irshad alias Babboo is already on bail, his sureties are accordingly discharged from their bail bonds. As a result,

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Criminal Revision No.36862 of 2021 which seeks enhancement of the sentence of Muhammad Shehzad & Muhammad Irshad alias Babloo (respondents No.2 & 3), being devoid of merit, is accordingly dismissed.

(ABHER GUL KHAN)
JUDGE

APPROVED FOR REPORTING

(ABHER GUL KHAN)
JUDGE

The judgment was announced on 21.11.2025, dictated, prepared and signed on 28.11.2025.
Najum*