

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

Murder Reference No. 35 of 2022
(The State Vs. Irshad Saeed)

Criminal Appeal No. 597 of 2022
(Irshad Saeed Vs. The State and another.)

Date of hearing: 03.04.2023
Appellant by: Syed Zeeshan Haider, Advocate.
State by: Ch. Asghar Ali Gill, Deputy Prosecutor General.
Complainant by : Messrs Muhammad Umair Mohsin and Muhammad Sharif, Advocates.

JUDGMENT.

SADIO MAHMUD KHURRAM, J.– Irshad Saeed son of Saeed Ahmed (convict) was tried with Shahzad Saeed son of Saeed Ahmed (since acquitted) by the learned Additional Sessions Judge, Liaquatpur in the case F.I.R. No. 604 of 2020 dated 11.12.2020 registered in respect of offences under sections 302 and 34 P.P.C. at the Police Station Pacca Laran, District Rahim Yar Khan , for committing the *Qatl-i-Amd* of Siraj Ahmed son of Rasool Bakhsh (deceased). The learned trial court, vide judgment dated 29.10.2022, convicted Irshad Saeed son of Saeed Ahmed (convict) and sentenced him as infra:

Irshad Saeed son of Saeed Ahmed :

Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Siraj Ahmed son of Rasool Bakhsh (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of Siraj Ahmed son of Rasool Bakhsh (deceased) and in case of default thereof, the convict was directed to undergo further six months of simple imprisonment.

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

Shahzad Saeed son of Saeed Ahmed, the co-accused of the convict, was however acquitted by the learned trial court.

2. Feeling aggrieved, Irshad Saeed son of Saeed Ahmed (convict) lodged Criminal Appeal No.597 of 2022 assailing his conviction and sentence. The learned trial court submitted Murder Reference No.35 of 2022 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Irshad Saeed son of Saeed Ahmed . We intend to dispose of the Criminal Appeal No. 597 of 2022 and Murder Reference No.35 of 2022 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as narrated by Muhammad Ali (PW-1), the complainant of the case, are as under:-

“ Stated that on 11.12.2021 at about 10.00 am. my father Jam Siraj Ahmed (since deceased) went at his landed property to see Banna situated near our house at a distance of about 03 acres away Accused Irshad Saeed present before this court, facing trial, had sold his landed property measuring 05 acres to one Haji Raffaqat showing our 15/20 feet Banna towards his side. My father came at his landed property, as there was previous dispute with the accused party, therefore, I also came behind my father. As soon as my father Siraj deceased reached at the spot, on the road, accused Shahzad Saeed present before this court, facing trial, while driving motorcycle and accused Irshad Saeed was sitting behind him, reached at the spot. Accused Irshad Saeed asked my

father why he had come there, whereupon my father replied that as he (accused party) had occupied 15/20 feet Banna (land of my father) towards his side, whereupon accused Irshad Saeed took out his pistol 30 bore and made five fires on the person of my father, out of which, one landed at left leg of my father, two hit in abdomen while two hit left side of his chest. The occurrence was witnessed by me, Pws Abdul Karim and Muhammad Akram. We tried to apprehend the accused, who threatened not to come forward otherwise we will be done to death. Then accused Irshad Saeed while sitting behind the motorcycle of accused Shahzad Saeed fled away. Then the motorcycle was driving by Shahzad Saeed accused. My father succumbed to injuries at the spot.

Motive behind the occurrence is dispute of land, due to which, accused persons committed murder of my father. Then we went to the hospital alongwith dead body of my father, where police came and got recorded my statement Ex.P.A. After reducing my statement into writing, Thanedar read-over the same to me and I signed the same as a token of its correctness.”

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the appellant namely Irshad Saeed son of Saeed Ahmed was sent to face trial. The learned trial court framed the charge against the accused on 08.11.2021, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case got statements of as many as **fourteen** witnesses recorded. The ocular account of the case was furnished by Muhammad Ali (PW-1) and Abdul Kareem (PW-2). Muhammad Saleem 330/C (PW-3) and Ishfaq Ahmad 918/C (PW-7) stated that on 16.06.2021, the appellant got recovered the motorcycle (P-10) in their presence from his house. Muhammad Naeem Patwari (PW-4) prepared the scaled site plan of the place of occurrence (Exh.PJ). Nazar Hussain 967/C (PW-6) stated that on

11.12.2020, 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. Muhammad Jameel ASI (PW-8) stated that on 11.12.2020, he got registered the formal F.I.R (Exh.PA/3). Muhammad Saleem 2177/C (PW-11) stated that he was handed over the warrants (Exh.PQ) issued under section 75 Cr.P.C. for the arrest of the appellant and thereafter was handed over the proclamation (Exh.PR) issued under section 87 Cr.P.C. upon which he recorded his reports. Muhammad Samiullah 2000/C (PW-12) stated that on 11.12.2020, he transmitted the oral complaint (Exh.PA) recorded by Muhammad Riaz SI (PW-5) to the police station. Ghulam Shabbir 986/HC (PW-13) stated that on 16.06.2021, Muhammad Shahbaz SI (PW-9), the Investigating Officer of the case, handed over to him the motorcycle (P-10) for parking it in the police station and on 20.06.2021, Muhammad Shahbaz SI (PW-9), the Investigating Officer of the case, handed over to him one sealed parcel said to contain the recovered pistol and live bullets which parcel he handed over to Muhammad Shahbaz SI (PW-9) on 07.07.2021 for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Muhammad Akram 2200/HC (PW-14) stated that on 11.12.2020, Muhammad Riaz SI (PW-5), handed over to him one sealed parcel said to contain blood stained earth, one sealed parcel said to contain empty shells of the bullets recovered from the place of occurrence, one motorcycle and a mobile phone device and on 23.12.2020, he handed over the said parcels to Muhammad Riaz SI (PW-5) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Muhammad Riaz SI (PW-5) investigated the case from 11.12.2020 till

19.01.2021 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court. Muhammad Shahbaz SI (PW-9), investigated the case from 21.01.2021 till 20.11.2021, arrested the appellant on 12.06.2021, and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr.Shahwaiz (PW-10) examined who, on 11.12.2020, was posted as Medical Officer at the RHC, Feroza and on the same day had conducted the post mortem examination of the dead body of the deceased namely Siraj Ahmed son of Rasool Bakhsh. On conducting the post mortem examination of the dead body of the deceased namely Siraj Ahmed son of Rasool Bakhsh, Dr.Shahwaiz (PW-10) observed as under:-

“Description of Injuries:

Injury No.1.

There is a lacerated wound of 1x1 cm. with burning and blackening, margins are inverted located on chest. 04 c.m. above right nipple below the clavicle which is wound of entry.

Injury No.2.

There is a lacerated wound of 1x1 c.m. with burning and blackening, margins are inverted located on chest 04 c.m. lateral to right nipple approximately anterior axillary line, which is wound of entry.

Injury No.3.

There is a lacerated wound of 2x2 c.m. margins are everted located in mid axillary line below the axilla, which is a wound of exit.

Injury No.4.

There is a lacerated wound of 1x1 c.m. with inverted margins located on abdomen 10 c.m. below and lateral to umbilicus, which is wound of entry. Burning and blackening were present.

Injury No.5.

There is a lacerated wound of 3x2 c.m. margins are everted located in abdomen in left inguinal region, which is a wound of exit.

Injury No.6.

There is a lacerated wound of 1x1 c.m. with inverted margins located on lateral aspect of thigh about 20 c.m. anterior, superior iliac (sic) spine, which is wound of entry. Burning and blackening were present

.....

OPINION:

According to my opinion, cause of death is firearm injury which are injuries No. 1 to 6, which leads to the damage to lungs, pleura, abdominal viscera causing massive bleeding which cause cardiopulmonary arrest and death occurred on the spot.

REPORT OF EXPERTS:

Clothes sent for forensic labs.

FINAL OPINION:

Already described injuries opinion death is occurred due to firearm injuries which leads to massive blood loss which cause cardiopulmonary arrest caused death.”

7. On 22.01.2022, the complainant gave up the prosecution witness namely Muhammad Akram as being unnecessary. On 17.09.2022, the complainant gave up the prosecution witnesses namely Sajid Hussain and Muhammad Akbar as being unnecessary. On 19.09.2022, the learned Assistant District Public Prosecutor closed the prosecution evidence after tendering in evidence, the reports of the Punjab Forensic Science Agency, Lahore (Exh.PS, Exh.PT and Exh.PU).

8. After the closure of prosecution evidence, the learned trial court examined the appellant namely Irshad Saeed son of Saeed Ahmed under section 342 Cr.P.C. and in answer to the question *why this case against you and why the P.W.s have deposed against you*, he replied that he had been involved in the case falsely and was innocent. The appellant namely Irshad Saeed son of Saeed Ahmed opted not to get himself examined under section 340(2) Cr.P.C. and did not adduce any evidence in his defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge, Liaquatpur convicted and sentenced the appellant as referred to above.

10. The contention of the learned counsel for the appellant 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 appellant 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 appellant further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant also argued that

the appellant had been involved in the occurrence due to suspicion alone. The learned counsel for the appellant 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 Deputy Prosecutor General along with the learned counsels for the complainant, contended that the prosecution had proved its case beyond the shadow of a doubt by producing independent witnesses. The learned Deputy Prosecutor General along with the learned counsels for the complainant, further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned Deputy Prosecutor General along with the learned counsels for the complainant further contended that the medical evidence also corroborated the statements of Muhammad Ali (PW-1) and Abdul Kareem (PW-2). The learned Deputy Prosecutor General along with the learned counsels for the complainant further argued that the recoveries of the Motorcycle (P-10) and the pistol (P-9) from the appellant also corroborated the ocular account. The learned Deputy Prosecutor General along with the learned counsels for the complainant contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offender with the innocent in this case. Lastly, they prayed for the rejection of the appeal.

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

13. The ocular account of the incident was narrated by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2). The relationship of the said witnesses with the deceased is on record. Siraj Ahmad (deceased) was the father of the prosecution witness namely Muhammad Ali (PW-1) and the paternal uncle of the prosecution witness namely Abdul Kareem (PW-2). The prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were also admittedly not the residents of the place of occurrence. According to the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2), both of them had their residences at a distance of about *09 acres* from the place of occurrence. The prosecution witness namely Muhammad Ali (PW-1), during cross-examination stated as under:-

“Banna, i.e. place of occurrence is at a distance of **8/9 acres away from my house**. Even the houses of rest of the Pws are also situated at the same distance.” (emphasis supplied)

Even the prosecution witness namely Muhammad Naeem Patwari (PW-4) admitted during cross-examination that the houses of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were not shown by him in the scaled site plan of the place of occurrence (Exh.PJ) as prepared by him. Muhammad Naeem Patwari (PW-4), during cross-examination, stated as under:-

“Houses of complainant and Pws were not pointed out to me at the time of preparation of site plan,”

In this manner, both the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) 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 Muhammad Ali (PW-1) and Abdul Kareem (PW-2) 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. According to the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2), their reason for the arrival at the place of occurrence was that the deceased had a dispute with the appellant regarding the property of the deceased and it was for that reason that the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) followed the deceased to the place of occurrence. The prosecution witness namely Muhammad Ali (PW-1), in his statement before the learned trial court stated as under:-

“My father **came at his landed property**, as there was previous dispute with the accused party, **therefore I also came behind my father.**”
(emphasis supplied)

The prosecution witness namely Abdul Kareem (PW-2), in his statement before the learned trial court stated as under:-

“My uncle went to see his landed property where I alongwith Muhammad Akram followed him.”

During the cross-examination, the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were badly exposed to have deposed falsely with regard to the reason mentioned by them in their statements before the learned trial court, for their arrival at the place of occurrence, at the time of occurrence. It was brought on record during the cross-examination of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) that the reason stated by them before the learned trial court for their arrival at the spot had not been mentioned by them either in the oral statement (Exh.PA) or in the statement recorded under section 161 Cr.P.C. During cross-examination the prosecution witness namely Muhammad Ali (PW-1) was confronted with his oral statement (Exh.PA) and the learned trial court observed as under:-

“I got recorded the reason of my presence at the spot, i.e. previous dispute of landed property with accused persons. Confronted with EX.P.A where it is recorded that motive is dispute of land, **however it is not recorded that "as there was previous dispute with the accused party, therefore, I also came behind my father"**. I got recorded in Ex.P.A that my father replied to accused as you (accused) had occupied 15-20 Banna (land of deceased) towards his side and this is the reason of visit of deceased. Confronted with Ex.P.A wherein no such conversation between accused and deceased finds mentioned.

.....

I did not get record in Ex.P.A that my father **alone went to see his Banna**. Confronted with Ex.P.A wherein it is so recorded.” (emphasis supplied)

More important is the fact that according to the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2), the occurrence took place when the deceased had come to his landed property however, the prosecution witness namely Muhammad Naeem Patwari (PW-4) admitted during cross-examination that there was no landed property of the deceased at or around the place of occurrence. Muhammad Naeem Patwari (PW-4), during cross-examination, stated as under:-

“It is correct that it is nowhere mentioned in Ex.P.J as to who owns or possession the land situated in surroundings of the place of occurrence.

There is no population in surroundings of place of occurrence. As water level in the area of occurrence is high, due to this, no crops had been cultivated in the land adjacent to the place of occurrence. One side of the place of occurrence, a matled road is situated whereas on the other side, a SAIM NALLA is situated. The said NALLA is 25/30 feet wide. There exists no bridge or PULLI. Drainage NALLA, place of occurrence, ie. Katcha Path shown in scaled site plan are of State Land. **I have not shown any Banna in site plan.**

.....

On all around the place of occurrence, i.e. point No.1 to point No.4, State land is situated.” (emphasis supplied)

Even the prosecution witness namely Muhammad Ali (PW-1) admitted during cross-examination that he did not produce any proof of ownership of any land which was owned by the deceased and which land he had gone to visit and was present at when the occurrence took place. The prosecution witness namely Muhammad Ali (PW-1), during cross-examination, admitted as under:-

“I did not produce any proof of ownership of any land at the spot throughout the investigation of this case.”

Muhammad Riaz SI (PW-5), the Investigating Officer of the case, also admitted that neither he had shown any property owned by the deceased in which he was present when the occurrence took place in the rough site plan (Exh.PL) of the place of occurrence as prepared by him nor any such land owned by the deceased was shown to him by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2). Muhammad Riaz SI (PW-5), the Investigating Officer of the case, during cross-examination, admitted as under:-

“The Banna which was bone of contention in this case **was not pointed out by me in inspection notes or rough site plan**. It is correct that landed property of accused party was also not shown by me in rough site plan.

.....

No proof with regard to ownership of any property was produced before me by any party” (emphasis supplied)

In this manner, the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) failed to prove their stated reason for their arrival at the place of occurrence.

14. We have also noted that according to the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2), the deceased had gone to the place of occurrence on a motorcycle and the said motorcycle was present at the spot when the Investigating Officer of the case, came to the place of

occurrence. The prosecution witness namely Muhammad Ali (PW-1) during cross-examination, stated as under:-

“The motorcycle belongs (sic) to my father was lying at the spot when police came there. Even mobile phone of the deceased was also lying there. The police officer at his own accord secured motorcycle and phone cell of the deceased from the spot.”

A similar claim was made by the prosecution witness namely Abdul Kareem (PW-2) and stated that the motorcycle of the deceased (P-2) was taken into possession by the police from the place of occurrence however, Muhammad Riaz SI (PW-5), the Investigating Officer of the case, contradicted both the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) and stated that when he arrived at the place of occurrence, the motorcycle of the deceased was not present there rather the same was subsequently produced before him. Muhammad Riaz SI (PW-5), the Investigating Officer of the case, during cross-examination, admitted as under:-

“It is correct that when **I inspected the place of occurrence, mobile phone and motorcycle of the deceased were not present there**, rather the same were produced by the complainant on the same date, i.e. day of occurrence”(emphasis supplied)

Then both the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) also claimed to had arrived at the place of occurrence on their motorcycles . The prosecution witness namely Muhammad Ali (PW-1) during cross-examination, stated as under:-

“Pws of this case are my paternal cousins. **We approached to the place of occurrence while riding on a motorcycle.** We did not hand over the said motorcycle to the police. **The motorcycle where on we PWs were riding belongs to me.**” (emphasis supplied)

The prosecution witness namely Abdul Kareem (PW-2) during cross-examination, stated as under:-

“I reached at the spot on motorcycle. **The said motorcycle was owned by me but I did not hand over the said motorcycle to the police.** When police reached at the spot, even at that time, my motorcycle was stationed there. **Motorcycle owned by complainant was not present there when police visited the spot.**”(emphasis supplied)

As mentioned above, Muhammad Riaz SI (PW-5), the Investigating Officer of the case, visited the place of occurrence, after the occurrence and remained there for a considerable time. During the course of his stay at the place of occurrence, Muhammad Riaz SI (PW-5), the Investigating Officer of the case did not take into possession the motorcycles allegedly used by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) to arrive at the place of occurrence ,alongwith the other recoveries, though there was no occasion for the said motorcycles not to have been present at the place of occurrence or not being taken into possession by the Investigating Officer during his visit at the place of the occurrence, if the same were available. The said motorcycles which were allegedly used by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were not even produced during the entire period of investigation nor were produced before the learned trial court. , Muhammad Riaz SI (PW-5), the Investigating Officer

of the case, even admitted that no such motorcycles were produced before him and stated during cross examination as under :-

“Except motorbike of the deceased, no other motorbike was produced before me.”

The non-production of the motorcycles used by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) to arrive at the place of occurrence and the failure of Muhammad Ali (PW-1) and Abdul Kareem (PW-2) as well as the Investigating Officer of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such motorcycles were available. Had motorcycles been used by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) 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 Muhammad Riaz SI (PW-5), the Investigating Officer of the case and the same would necessarily have been taken into possession by Muhammad Riaz SI (PW-5), the Investigating Officer of the case but they were admittedly not and it proves that a false claim was made by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) that they had arrived at the place of occurrence on their motorcycles. In this manner, the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) 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.”

We have also noted that Muhammad Naeem Patwari (PW-4) admitted during cross-examination that he had not mentioned the names of the witnesses in the scaled site plan of the place of occurrence (Exh. PJ) . Muhammad Naeem Patwari (PW-4) , during cross-examination admitted as under:-

“The name of witnesses is not mentioned in site plan.”

15. We have also noted that the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) 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 . Muhammad Ali (PW-1), during cross-examination, stated as under: -

“I wearing (sic) clothes were smeared with blood. However, clothes of Pws were not having any blood stained. **I did not hand over my wearing clothes to the police.**”(emphasis supplied)

Abdul Kareem (PW-2), during cross-examination, stated as under: -

“My wearing clothes were smeared with blood.”

Muhammad Riaz SI (PW-5), the Investigating Officer of the case, did not take any such blood-stained clothes of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) in possession during the

investigation of the case. Muhammad Riaz SI (PW-5) , the Investigating Officer of the case, who otherwise showed extraordinary interest in the case, did not take the clothes of prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) which 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 Muhammad Ali (PW-1) and Abdul Kareem (PW-2) . 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) and in the case of Mst. MIR ZALAI versus GHAZI KHAN and others (2020 S C M R 319) and in the case of NADEEM alias KALA versus The State and others (2018 S C M R 153). To compound the doubt with regard to the presence of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) at the place of occurrence Muhammad Riaz SI (PW-5) , the Investigating Officer of the case, contradicted the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) and stated that the clothes of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were not even stained with the blood of the deceased. Muhammad Riaz SI (PW-5) , the Investigating Officer of the case, during cross-examination, stated as under :- .

“Neither I observed the presence of blood on wearing clothes of complainant and Pws nor I secured the same.”

The abovementioned statement of Muhammad Riaz SI (PW-5) , the Investigating Officer of the case, lays bare the untruthful and false claim of prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) 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 .

16. We have also noted with concern that the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) made a failed attempt to portray that the prosecution witness namely Abdul Kareem (PW-2) was already present at the place of occurrence before the occurrence however were found to have deposed falsely in this regard and having improved their statements. It was brought on record during the cross-examination of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) that it had been mentioned in the oral statement (Exh.PA) and in the statement (Exh.DA) of Abdul Kareem (PW-2) recorded under section 161 Cr.P.C. that the prosecution witness namely Abdul Kareem (PW-2) had arrived at the place of occurrence after hearing the sound of firing. During cross-examination the prosecution witness namely Muhammad Ali (PW-1) was confronted with his oral statement (Exh.PA) and the learned trial court observed as under:-

“I did not get record in Ex.P.A that Pws Abdul Karim and Akram rushed towards the spot on reports of fire. **Confronted with Ex.P.A wherein it is so recorded.**”(emphasis supplied)

Similarly the prosecution witness namely Abdul Kareem (PW-2) was confronted with his statement (Exh.DA) recorded under section 161 Cr.P.C. during cross-examination and the learned trial court observed as under:-

“I did not get record in my statement u/s 161 Cr.P.C before the police that I alongwith Akram Pw and complainant attracted to the spot on the report of fire. **Confronted with Ex.D.A wherein it is so recorded.**”

Even Muhammad Riaz SI (PW-5), the Investigating Officer of the case admitted as under :-

“Eye-witnesses of this occurrence reached at the place of occurrence after **hearing reports of fire.**” (emphasis supplied)

The above referred portions of the cross-examination of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) as well as Muhammad Riaz SI (PW-5), Investigating Officer of the case, clearly is reflective of the fact that the prosecution witness namely Abdul Kareem (PW-2) arrived at the place of occurrence only after hearing the noise of the firing and was not present there before.

17. Another aspect of the prosecution case revealing of the absence of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) at the place of occurrence, at the time of occurrence, is the contradictory statements made by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) regarding the place and time of the death of the deceased. According to the prosecution witness namely Muhammad Ali (PW-1), the deceased died at the spot whereas the prosecution witness namely Abdul Kareem (PW-2), in his examination in chief, stated that the deceased died after arriving at the hospital. The prosecution witness namely Muhammad Ali (PW-1), in his statement before the learned trial court stated as under:-

“My father succumbed to injuries at the spot.”

Abdul Kareem (PW-2), in his examination in chief, stated as under:-

“Then we attended the deceased in **injured and took him to hospital, where he succumbed to the injuries.**” (emphasis supplied)

Moreover, during cross-examination, the prosecution witness namely Abdul Kareem (PW-2) changed his version with regard to the death of the deceased at the hospital and went on to claim that the deceased had died at the spot and his dead body was available at the spot even when the police arrived there. The prosecution witness namely Abdul Kareem (PW-2) during cross-examination, stated as under:-

“Police arrived at the spot for the first time at 10.30 a.m. **Dead body of deceased was lying at the spot when police firstly reached at the spot.** No police official accompanied the dead body. Police instead of accompanying the dead body remained present at the spot.” (emphasis supplied)

The prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) also made contradictory statements with regard to the circumstances as to how the dead body arrived at the hospital. The prosecution witness namely Muhammad Ali (PW-1) claimed that he went to the hospital with the dead body of the deceased and there got recorded his oral statement (Exh.PA) whereas, as mentioned above, the prosecution witness namely Abdul Kareem (PW-2), initially claimed that the deceased was taken to the hospital in an injured condition, however, subsequently stated that the dead body was at the place of occurrence even at the time of arrival of the police. Moreover, the prosecution witness namely Muhammad Ali (PW-1) admitted

during cross-examination that he did not mention in his statements to the police that how the dead body of the deceased was taken to the hospital or whether he had any documentary evidence in proof of the claim that it was him who had taken the dead body to the hospital. The prosecution witness namely Muhammad Ali (PW-1), admitted during cross-examination as under:-

“I produced the proof of bringing dead body in hospital to the IO during investigation of this case. Again said **I did not produce any proof** to bringing the dead body of deceased to hospital from the spot. **I even did not disclose the mode of** shifting the dead body in hospital. It is correct that whenever any patient or deceased is brought to any hospital, a receipt/token is always issued by the hospital. I did not receive any such receipt from the hospital.” (emphasis supplied)

Furthermore, the prosecution witness namely Muhammad Ali (PW-1) claimed that the police had followed the dead body to the hospital and during cross-examination, stated as under:-

“Police reached at the spot at 10.12 a.m. and remained there. I alongwith Pws shifted the dead body to hospital. One police vehicle of police post Feroza reached at the spot firstly. Official of police post Feroza also accompanied the dead body to hospital while following the Ambulance on official vehicle. Volunteered SHO P.S.Pacca Laran also reached in hospital. Police officials also helped us in lifting the dead body from the spot.”

Whereas, as mentioned above, the prosecution witness namely Abdul Kareem (PW-2) contradicted Muhammad Ali (PW-1) and stated that no police official had accompanied the dead body to the hospital. Muhammad Riaz SI (PW-5), also admitted that he did not secure any documentary record to establish as to

how and by whom the dead body was brought to the hospital and admitted during cross-examination as under:-

“I did not secure any record from RHC, Feroza to verify about the person who brought the dead body there. The vehicle which used for transportation of dead body was never produced before me.”

The contradictory and mutually destructive claims of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) regarding how the dead body of the deceased was shifted to the hospital from the place of occurrence are indicative of the fact that the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) did not know how and by whom Jam Siraj Ahmad (deceased) was shifted to the hospital as he would have been shifted from the place of occurrence to the hospital only if he was injured and alive at the place of occurrence and not when he had already died at the spot and his death was also in the knowledge of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2). The prosecution witness namely Muhammad Ali (PW-1) admitted during cross-examination as under:-

“I became sure at the spot that my father had died.”

18. We have noted with grave concern that not only the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) did not state with any consistency regarding the taking of the dead body of the deceased to the hospital but also it is the fact of the prosecution case itself that the oral statement (Exh.PA) of Muhammad Ali (PW-1) was recorded by Muhammad Riaz SI (PW-5) at the hospital at **01.20 p.m. on 11.12.2020**, the

formal F.I.R (Exh.PA/3) was registered on **11.12.2020 at 02.05 p.m.** by Muhammad Jameel ASI (PW-8), however, the post mortem examination of the dead body was conducted on **11.12.2020 at 12.40 p.m., much before the lodging of the F.I.R.** .Dr.Shahwaiz (PW-10), in his statement before the learned trial court, stated as under:-

“According to police papers, the date & time of death was 11.12.2020 at 10.00 a.m. and dead body was received in dead house on the same day at 12.40 p.m. I received the complete documents of police on the same day at 12.30 p.m. **I conducted autopsy on the same date, i.e. 11.12.2020 at 12.40 p.m.**” (emphasis supplied)

In this manner, the dead body had been brought to the hospital and the post mortem examination of the dead body had already been conducted even prior to the recording of the oral statement (Exh.PA) of Muhammad Ali (PW-1) by Muhammad Riaz SI (PW-5). It establishes the fact that the deceased was brought to the hospital by someone else and not by the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) as claimed by them, albeit unsuccessfully. In this manner we have arrived at an irresistible conclusion that both prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were not present at the place of occurrence and did not even know how the dead body had arrived at the hospital much before the recording of the oral statement (Exh.PA) of Muhammad Ali (PW-1). The contradictions in the statements of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) with regard to various facets of the prosecution case are obvious. Despite our repeated queries, the learned Deputy Prosecutor General as well as the learned counsels for the

complainant remained unable to explain these obvious contradictions. The failure of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) to make consistent statements has repercussions, proving that the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) were not present at the place of occurrence, at the time of the occurrence and had not witnessed the same.

19. Another worrying aspect of the prosecution case is that both the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) candidly admitted that when the police had first arrived at the place of occurrence, they did not make any statement to the police officials regarding the occurrence and when the police was present at the hospital even then, the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) did not make any statement regarding the occurrence and it was only subsequently that the statements of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) regarding the occurrence were recorded. The prosecution witness namely Muhammad Ali (PW-1), during cross-examination, admitted as under:-

“At 10.12 a.m. when police firstly met us at the spot, even at that time, my father had already died. **When police firstly visited the spot, neither I nor any of my Pw made any statement.**” (emphasis supplied)

The prosecution witness namely Abdul Kareem (PW-2), during cross-examination, admitted as under:-

“In our first meeting with the police at the spot, none of us made any statement to the police.

.....

Police completed its investigation at the spot till 12.00/1.00 noon at the place of occurrence. Throughout the proceedings of police at the spot, I remained present there. After completion of entire investigation at the place of occurrence, I visited RHC, Feroza on our own vehicle. I visited RHC Feroza for the first time on the day of occurrence at 12.00/1.00 noon. Postmortem examination of the deceased had not yet conducted when I reached there. **My no statement was recorded by the police till my reaching hospital.** The complainant of this case was not present at the spot during the police proceedings. Even the complainant was not present at the place of occurrence, when police firstly visited the crime scene. Complainant met the police in RHC, Feroza for the first time. **Even my statement was not recorded in hospital by the police. I made statement before the police first time at police station.**

.....

When I visited the police station for the first time on the day of occurrence, complainant also met us. We remained present at the police station for about one hour on the day of occurrence. **Complainant got lodged F.I.R at police station in my presence.**” (emphasis supplied)

Moreover, both the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) also admitted candidly that their statements were recorded after the post mortem examination of the dead body of the deceased had already been conducted. The prosecution witness namely Muhammad Ali (PW-1) admitted during cross-examination as under:-

“Even when we became sure about the death of my deceased father in RHC, Feroza, I did not try to report the matter to police by visiting any

police station. **After the completion of postmortem examination of deceased, we visited the police station and got lodged FIR of this case.** I alongwith Pws of F.I.R together visited Police Station Pacca Laran for lodging F.I.R. We had already received the dead body after autopsy when we proceeded for police station. Again said my brother Jam Imran after receiving dead body shifted it to our house and then we proceeded towards Police Station Pacca Laran for registration of F.I.R. **At police station, my statement as well as statements of Jam Abdul Karim and Jam Muhammad Akram Pws were recorded.”**
(emphasis supplied)

The prosecution witness namely Abdul Kareem (PW-2), during cross-examination, admitted as under:-

“Dead body had already been shifted to home after postmortem examination when F.I.R of this case was lodged.”

The prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) themselves admitted that the oral statement (Exh. P.A.) of Muhammad Ali (PW-1) and the formal F.I.R (Exh.PA/3) were prepared after probe, consultation, planning, investigation and discussion. The scrutiny of the statements of the prosecution witnesses reveals that the oral statement (Exh. P.A.) of Muhammad Ali (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 Muhammad Ali (PW-1). Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard.

20. The learned Deputy Prosecutor General and the learned counsels for the complainant, have submitted that the recoveries of the *Motorcycle (P-10)* and the *pistol (P-9)* offered sufficient corroboration of the statements of the eye-witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2). Regarding the recoveries of the *Motorcycle (P-10)* on 16.06.2021 and the *pistol (P-9)* on 20.06.2021 from the appellant namely Irshad Saeed, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recoveries of the said *Motorcycle (P-10)* and the *pistol (P-9)* from the appellant which was in clear violation of section 103 Code of Criminal Procedure, 1898. The prosecution witness namely Abdul Kareem (PW-2), admitted during cross-examination, as under:-

“None from the vicinity of recovery associated the recovery proceedings.”
(emphasis supplied).

The prosecution witness namely Ishfaq Ahmad 918/C (PW-7), also admitted during cross-examination as under:-

“Place of recovery was not locked. However, doors were bolted which were got opened by the accused Irshad Saeed by knocking. 2/3 private persons were present at the place of recovery. However, they were not associated into recovery proceedings.”

Muhammad Shahbaz SI (PW-9), the Investigating Officer of the case also admitted during cross-examination as under:-

“Private prosecution witnesses were accompanying me at the time of recovery of motorcycle. Neither the said private witnesses endorsed the recovery memo nor their statements were recorded by me.

.....

On 20.06.2021 I again effected recovery of pistol from accused Irshad Saeed from the said house. Since no independent witness from the locality was ready to record his statement so I did not associate any independent witness in recovery proceedings on that day. However, I have not mentioned this fact black & white in any case diary.”

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 recoveries of the *Motorcycle (P-10)* on 16.06.2021 and the *pistol (P-9)* on 20.06.2021 from the appellant cannot be used as incriminating evidence against the appellant, 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, as mentioned above, the pistol (P-9) was recovered on **20.06.2021** from the same house from where the Motorcycle (P-10) had been recovered on **16.06.2021**. Muhammad Shahbaz SI (PW-9), the Investigating Officer

of the case had already visited the said house on 12.06.2021 with regard to getting the motorcycle (P-10) recovered and had conducted a search of the said house on the said date, however, did not observe the presence of the pistol (P-9) on the said date rather went on to claim that the appellant got recovered the pistol (P-9) from the same house on 20.06.2021. This also lays bare the attempt of Muhammad Shahbaz SI (PW-9), the Investigating Officer of the case to pad up the prosecution case with false evidence. Furthermore, according to the report of Punjab Forensic Science Agency, Lahore, the empty shells of the bullets recovered from the place of occurrence were of .9mm whereas, the pistol (P-9) was of 30-bore, hence, no comparison was made to determine as to whether the empty shells of the bullets recovered from the place of occurrence had been fired in the pistol (P-9). Therefore, the recoveries of the *Motorcycle (P-10)* on 16.06.2021 and the *pistol (P-9)* on 20.06.2021 from the appellant do not further the case of the prosecution in any manner. In view of the above-mentioned facts, the alleged recoveries of the *Motorcycle (P-10)* on 16.06.2021 and the *pistol (P-9)* on 20.06.2021 are not proved and the same cannot be used as a circumstance against the appellant. Even otherwise, as we have disbelieved the ocular account in this case, hence, the evidence of recoveries of the *Motorcycle (P-10)* on 16.06.2021 and the *pistol (P-9)* on 20.06.2021 would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

21. The learned Deputy Prosecutor General and the learned counsels for the complainant have also relied upon the evidence of motive and submitted

that it corroborated the ocular account. According to the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2), the motive of the occurrence was that the appellant had sold land belonging to the complainant of the case to one Haji Rafaqat and when the appellant was confronted with this fact, the appellant murdered the deceased. We have perused the statements of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) and find that they failed to prove the motive of the occurrence as stated by them. Haji Rafaqat, the person to whom the land belonging to the deceased had been sold by the appellant, neither joined the investigation of the case nor appeared before the learned trial court in support of the claim of the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2). The prosecution witness namely Muhammad Ali (PW-1), admitted during cross-examination as under:-

“One Haji Rafaqat never joined investigation of this case. I even did not produce any proof of sale of land by accused persons to one Haji Rafaqat.”.

Furthermore, the prosecution witnesses namely Muhammad Ali (PW-1) and Abdul Kareem (PW-2) also admitted that they did not produce any documentary evidence in support of the motive of the occurrence as alleged by them and went on to admit that in fact, they had no evidence available with them with regard to the motive of the occurrence. The prosecution witness namely Muhammad Ali (PW-1), admitted during cross-examination as under:-

“I even did not produce any proof of sale of land by accused persons to one Haji Rafaqat. No suit regarding partition of land was ever filed in any court either from our side or from accused side. Even no injunctive order was

passed in favour of any of party. No application for demarcation was moved by any party before this occurrence. **I did not produce any sort of evidence regarding the dispute of land between me and accused persons throughout the investigation of this case..**”(emphasis supplied)

The prosecution witness namely Abdul Kareem (PW-2), admitted during cross-examination as under:-

“I did not get record in Ex.D.A that Irshad Saeed accused sold out 20 feet land of deceased. I got recorded in Ex.D.A that regarding the exchange of hot words between the deceased and accused Irshad Saeed. Confronted with Ex.D.A wherein it is not so recorded

.....

I did not produce any proof of any dispute between the accused and deceased during investigation. I even did not produce any proof of ownership of disputed land to the police.”(emphasis supplied)

Muhammad Shahbaz SI (PW-9), the Investigating Officer of the case also admitted during cross-examination that he did not collect any evidence in support of the motive of the occurrence. During cross-examination, Muhammad Shahbaz SI (PW-9), the Investigating Officer of the case, stated as under:-

“Neither the complainant and Pws produced any evidence of motive part of this occurrence nor I gave my findings in this regard.”

There is no evidence on record that Siraj Ahmed son of Rasool Bakhsh (deceased) was facing any threat to his life at the hands of the appellant prior to the occurrence. The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged and the fact

that the said motive was so compelling that it could have led the appellant to have committed the *Qatl-i-Amd* of the deceased. There is a poignant hush with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of Muhammad Javed v. The State (2016 SCMR 2021) as under:

“The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case.”

22. The learned Deputy Prosecutor General and the learned counsels for the complainant have also laid much premium on the abscondence of the appellant namely Irshad Saeed as proof of his guilt. The fact of abscondence of an accused can be used as a corroborative piece of evidence, which cannot be read in isolation but it has to be read along with the substantive piece of evidence. The august Supreme Court of Pakistan has held in the case of Asadullah v. Muhammad Ali (PLD 1971 SC 541) that both corroborative and ocular evidence are to be read together and not in isolation. As regards abscondence, the august Supreme Court of Pakistan has held in the case of Rasool Muhammad v. Asad Muhammad (1995 SCMR 1373) that abscondence is only a suspicious circumstance. In the case of Muhammad Sadiq v. Najeeb Ali (1995 SCMR 1632) the august Supreme Court of Pakistan observed that abscondence itself has no value in the absence of any other evidence. It was also held in the case of Muhammad Khan v. State (1999 SCMR 1220) that abscondence of the accused can never remedy the defects in the prosecution

case. In the case of Gul Khan v. State (1999 SCMR 304) it was observed by the august Supreme Court of Pakistan that abscondence per se is not sufficient to prove the guilt but can be taken as a corroborative piece of evidence. In the cases of Muhammad Arshad v. Qasim Ali (1992 SCMR 814), PirBadshah v. State (1985 SCMR 2070) and Amir Gul v. State (1981 SCMR 182) it was observed that conviction on abscondence alone cannot be sustained. In the present case, substantive piece of evidence in the shape of ocular account has been disbelieved, therefore, no conviction can be based on abscondence alone. Reliance is also placed on the cases of “Muhammad Farooq and another Vs. The State” (2006 SCMR 1707) and “Nizam Khan and 2 others Vs. the State” (1984 SCMR 1092) and Rohtas Khan vs. The State (2010 SCMR 566).

23. 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.Shahwaiz (PW-10) 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 occurrence. As all the other pieces of evidence relied upon by the prosecution, in this case, have been disbelieved and discarded by us, 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.”

24. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellant namely Irshad Saeed son of Saeed Ahmed , in the present case. It is a settled principle of law that for giving the 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 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 Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. 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 observed as infra :-

“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 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.”

25. For what has been discussed above, Criminal Appeal No.597 of 2022 lodged by Irshad Saeed son of Saeed Ahmed (appellant) is **allowed** and the conviction and sentence of the appellant awarded by the learned trial court

through the impugned judgment dated 29.10.2022 are hereby set-aside. Irshad Saeed son of Saeed Ahmed (appellant) is ordered to be acquitted by extending him the benefit of the doubt. Irshad Saeed son of Saeed Ahmed (appellant) is in custody and is directed to be released forthwith if not required in any other case.

26. **Murder Reference No.35 of 2022** is answered in **Negative** and the sentence of death awarded to Irshad Saeed son of Saeed Ahmed is **Not Confirmed.**

(AHMAD NADEEM ARSHAD)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

APPROVED FOR REPORTING

JUDGE

JUDGE