

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

Murder Reference No.22 of 2019
(The State Vs. Ejaz Ahmed)

Criminal Appeal No. 788-J of 2019
(Ejaz Ahmed Vs. The State)

Criminal Appeal No.588 of 2019
(Abdul Razzaq Vs. Muhammad Khan and seven others)

J U D G M E N T

Date of hearing:	28.11.2023.
Appellant by:	Mr. James Joseph, Advocate.
State by:	Malik Riaz Ahmad Saghla, Additional Prosecutor General.
Complainant by:	Sardar Shehryar Mehboob, Advocate.

SADIO MAHMUD KHURRAM, J. –Ejaz Ahmed son of Nazar Hussain (convict) was tried alongwith Muhammad Khan, Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz (since acquitted), the co-accused of the convict by the learned Additional Sessions Judge, Multan in case F.I.R No. 97 of 2015 dated 20.03.2015 registered in respect of offences under sections 302, 148,149 and 114 P.P.C. at the Police Station Budhla Sant, District Multan for committing the *Qatl-i-Amd* of Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) and Muhammad Asghar son of Muhammad Aslam (deceased) (The F.I.R was initially registered in respect of offence made

punishable under section 7 of the Anti-Terrorism Act,1997 also however the said offence was deleted and the accused were not charged for the said offence.) . The learned trial court vide judgment dated 11.02.2019, convicted Ejaz Ahmed son of Nazar Hussain (convict) and sentenced him as infra:

Ejaz Ahmed son of Nazar Hussain :

Death on two counts under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) and Muhammad Asghar son of Muhammad Aslam (deceased) and directed to pay Rs.200,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each deceased and in case of default whereof the convict was directed to undergo further simple imprisonment of six months.

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

Muhammad Khan, Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz, the co-accused of the convict, were however acquitted by the learned trial court.

2. Feeling aggrieved, Ejaz Ahmed son of Nazar Hussain (convict) lodged Criminal Appeal No.788-J of 2019 assailing his conviction and sentence. The learned trial court submitted Murder Reference No.22 of 2019 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Ejaz Ahmed son of Nazar Hussain. The complainant of the case namely Abdul Razzaq filed Criminal Appeal No.588 of 2019 against the acquittal of the accused namely Muhammad Khan ,Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz by the learned trial court. We intend to decide the Criminal Appeal No. 788-J of 2019, the Criminal Appeal No.588 of 2019 and Murder Reference No.22 of 2019 through this single judgment.

3. Precisely, the necessary facts of the prosecution case, as stated by Abdul Razzaq (PW-1), the eye witness of the case, are as under:-

“Stated that on 20.03.2015, I alongwith my sons Saif ur Rehman, Muhammad rizwan, while riding on motor cycle, My brother Muhammad Asghar S/o Muhammad Ibrahim, Muhammad Asghar s/o Muhammad Aslam, riding on other motor cycle bearing registration No.MNP-2919 going ahead of us were returning after saying Jumma Prayer, when we reached near godown of wheat, where 08 persons were already standing they were Muhammad Khan, Shabbir, Iqbal, Faraz, Mudassar, Azeem, Ijaz and Mujahid s/o Shabbir, accused persons, all present in the court. Shabbir and Muhammad Khan raised lalkara that the complainant party should not go from there safely, Ijaz was armed with Kalashnikov while Mujahid was armed with 30 bore pistol. Both the said accused persons fired burst on the back side of Muhammad Asghar S/o Muhammad Aslam, who was sitting on rear seat of the motor cycle. Due to which he sustained injuries and fell down on the ground. The said both accused persons fired on him which ruptured his brain. My brother Muhammad Asghar S/o Muhammad Ibrahim in order to save his life did speed up the motor cycle. While accused persons Iqbal, Faraz, Azeem and Mudassar all armed with Kalashnikov chased my brother who was riding on motor cycle. During the said course the said accused persons kept on continuous firing) After a short distance Muhammad Iqbal accused made a burst on the person of my brother Asgher due to which he sustained injuries and fell on the ground. Accused Faraz while going near to my fallen brother made a burst on his head due to which his brain was ruptured, where after accused Azeem and Mudasar inflicted fire arms injuries on different parts of the body of my brother. Later on, all the accused persons raised alarm if anyone would come near the dead bodies he will be done to death. Thereafter the accused persons took out wallet of my deceased brother, the said wallet was containing 20 thousand rupees, I.D card and driving license alongwith other

necessary documents. We did not go near them due to fear/terror caused by the said accused persons. This occurrence was witnessed by Muhammad Rizwan S/o Abdul Razaq and Saif ur Rehman S/o Fazal Mehmood besides me. The accused persons had already committed near about 13 other murders. Muhammad Khan and Shabbir had used to give shelter to Ijaz previously and had also provided him weapons, while had committed murder of Muhammad Afzal S/o Fazal Mehmmod for which occurrence FIR No.324/15 P.S Budhla Sant was registered. The deceased Muhammad Asghar S/o Muhammad Aslam was the eye witness of said occurrence and my said brother used to support complainant party of said case. That was the grudge of this occurrence. They wanted to get finished the support of my brother towards complainant of the above said occurrence so they committed the murder of my brother. I presented application Ex.P.A, the accused persons be punished in accordance with law.”

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 accused were sent to face trial. The learned trial court framed the charge against the accused on 04.01.2017, 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 **seventeen** witnesses recorded. The ocular account of the case was furnished by Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) . Riaz Ali 1774/HC (PW-4) stated that on 02.06.2015, he was posted as Moharrir of the Police Station and at that time, the parcels said to contain empty shells of the bullets and blood stained earth recovered from the place of occurrence were already present in the Malkhana of the Police Station and on 11.09.2015 Bashir Ahmad, SI (PW-15) handed over to

him a sealed parcel said to contain a rifle and on 30.09.2015, he handed over the said sealed parcel said to contain a rifle to Bashir Ahmad, SI (PW-15) for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Abdul Rasheed 285/C (PW-5) stated that on 20.03.2015 he escorted the dead body of the deceased namely Muhammad Asghar son of Muhammad Aslam 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 . Amjad Ali 1452/C (PW-7) stated that on 20.03.2015 he escorted the dead body of the deceased namely Ch. Muhammad Asghar son of Muhammad Ibrahim 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. Zia Ullah 2432/HC (PW-8) stated that on 20.03.2015, he recorded the formal F.I.R (Exh.PA/1). Muhammad Akram (PW-9) stated that after the occurrence, the Investigating Officer of the case collected empty shells of the bullets, the motorcycle (P-10) and the blood stained earth from the place of occurrence. Muhammad Anwar, ASI (PW-10) and Abdul Sattar 1667/HC (PW-11) stated that on 12.08.2015, the appellant namely Ejaz Ahmed was arrested and the Kalashnikov rifle (P-11) was recovered from his possession. Muhammad Furqan (PW-12) stated that he identified the dead bodies of both the deceased at the time of their post mortem examinations and the Medical Officer handed over the last worn clothes of both the deceased to the Investigating Officer of the case in his presence. Irfan Hayat, draftsman (PW-13) prepared the scaled site plan of the place of occurrence (Exh.PN). Muhammad Akram (PW-14) stated that on 20.03.2015, he identified the dead body of the deceased. Jehanzeb Hayat 3380/HC (PW-17) produced the copies of *Rapt* No.17 (Exh.PS), *Rapt* No.11 (Exh.PT) and F.I.R No.

556 of 2015 (Exh.PU). Imran Arif, Inspector (PW-16), the Investigating Officer of the case, investigated the case from 20.03.2015 till 24.06.2015 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court. Bashir Ahmad, SI (PW-15), the Investigating Officer of the case, investigated the case from 07.07.2015 till 30.09.2015, arrested the appellant Ejaz Ahmed on 31.08.2015 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. Liaquat Ali Ansari (PW-6) examined, who on 20.03.2015 was posted as Medical Officer at RHC, Makhdoom Rasheed and on the same day conducted the post mortem examination of the dead body of Ch. Muhammad Asghar son of Muhammad Ibrahim on the same day. Dr. Liaquat Ali Ansari (PW-6) after conducting the post mortem examination of the dead body of Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) observed as under:-

“INJURIES

- 1) Multiple lacerated wound (entry wound) with inverted margin, abraded collar on right side of cheek, right eye. Due to blastic affected the skull bone fractured into multiple pieces and muscles, bones and brain matter spilled out, eyes absent. Face left side absent only musculature with right side of mandible right ear, nose musculature and some parts of occipital area present. Beared on right side of face present.
- 2) Multiple lacerated entry wound in area about 12 cm x 6 cm on the back of left upper arm and multiple lacerated wound having $\frac{1}{2}$ x $\frac{1}{2}$ cm in measurement and inverted margin. Multiple lacerated wound 1 x 1 cm on antero-lateral aspect in an area of 11 cm x 8 cm with everted margins (exit wound of the same injury). Bullets in its passage broken the humerus bones into multiple pieces and damaged the fascia muscles and blood vessels.
- 3) A lacerated wound $\frac{1}{2}$ x $\frac{1}{2}$ cm 4 cm medial to left armpit with inverted margins (entry wound).
- 4) A lacerated wound 2 cm x 1 cm on top of left shoulder joint with everted margins (exit wound).

- 5) A lacerated wound 1 cm x ½ cm (entry wound) with inverted margin present, lateral side of left chest 5 cm below the armpit.
- 6) A lacerated wound 3 cm x 1 cm on back of the chest 4 cm below the injury No.4 at the level of left scapular area with everted margins. This was the exit wound of injury No.5. During the passage of bullet, damaged the left lung vigorously and came out by fracturing the left scapula.
- 7) A lacerated wound ½ x ½ cm with inverted margins (entry wound) 10 cm above and lateral to right nipple.
- 8) A lacerated wound 2 cm x 1 cm on back of left chest 5 cm lateral to midline, the wound has everted margins (exit wound of injury No.7). On dissection, the bullet injured in its path damaged the right lung crossed the midline damaged the 4th vertebrae and came out by fracturing the 4th rib.
- 9) A lacerated wound 1 cm x ½ cm on back of left thigh 12 cm above the popliteal fossa with inverted margins (entry wound).
- 10) A lacerated wound 3 cm x 2 cm on medial side of left thigh 16 cm from the left inguinal region with everted margins. this was the exit wound of injury No.9. The bullet in its path damaged the muscles and blood vessels but bone intact.

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OPINION

In my opinion, injury No.1 was the cause of death which was injury to brain vital organ associated with all other injuries which accelerate death. these injuries were sufficient to cause death in ordinary course of life. All these injuries were ante mortem in nature and due to firearm. Probable time that elapsed between injuries and death instantaneously and between death and postmortem 6 to 7 hours.”

On the same day Dr. Liaquat Ali Ansari (PW-6) also conducted the post mortem examination of the dead body of Muhammad Asghar son of Muhammad Aslam. Dr. Liaquat Ali Ansari (PW-6) after conducting the post mortem examination of the dead body of Muhammad Asghar son of Muhammad Aslam (deceased) observed as under:-

“INJURIES

- 1) multiple lacerated wound right side of face with inverted margin and tattooing present (entry wound)
- 2) Lacerated wound 3 cm x 4 cm and left eye ball with inverted margins tattooing present with absent left eye (entry wound).
- 3) A lacerated wound 3 x 4 cm on forehead going deep.
- 4) Lacerated wound 3 x 4 cm on right side of mandible with inverted margin (entry wound). All above injuries on dissection seen, the skull broken into multiple pieces, brain matters spill out, disfigured the face and left side of the skull open having broken skull pieces with brain matter coming out. There were 2 to 3 exit wounds on the occipital area. Left eye was absent.
- 5) $\frac{1}{2}$ x $\frac{1}{2}$ cm lacerated wound in front of neck at the level of thyroid cartilage, on dissection, bullet in its path damaged thyroid cartilage and blood vessel damaged the right lung and comes out on back of chest right side.
- 6) A lacerated wound 4 x 3 cm on left side of upper area of chest just below the lateral end of clavical with inverted margin (entry wound). On dissection, bullet in its path damaged the lung (left) vigorously and then comes out on back of chest at the level of 8th rib (fractured).
- 7) A lacerated wound 3 x 5 cm on back of left side of chest with everted margin (exit wound of injury No.6) 6 cm lateral-to-midline.
- 8) A lacerated wound 3 x 4 cm on medial end of the right clavicle with inverted margin on its path, the bullet damaged the clavicle (fractured) and then damaged the right lung vigorously and came out on the back of right chest at level of 5th rib.
- 9) Two lacerated wounds side by side on back of right chest 4 cm lateral to midline with everted margin (exit wound of injury No.58)
- 10) A lacerated wound 4 x 12 cm on dorsal and inner side on left foot having abraded collar. meta dorsal bones fractured.

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OPINION

In my opinion, the cause of death was injuries No. 1 to 9 which were injury to vital organ, brain lungs. These injuries were sufficient to cause death in ordinary course of life. All the injuries were antemortem in nature and due to firearm. Probable time between injuries and death instantaneously and between death and postmortem was 8 to 9 hours.

7. On 22.11.2017, the learned Deputy District Public Prosecutor gave up the prosecution witnesses namely Saif ur Rehman, Ghulam Haider, Rana Muhammad Afzal and Mukhtiar as being won over by the accused and gave up the prosecution witnesses namely Asim Razzaq and Muhammad Shafique T/ASI as being unnecessary. On 13.03.2018, the learned Deputy District Public Prosecutor gave up the prosecution witness namely Muhammad Fayyaz 2039/C as being unnecessary. On 26.06.2018, the learned Assistant District Public Prosecutor gave up the prosecution witnesses namely Zulifqar Ali, Inspector, Muhammad Gulzar Inspector and Tahir Mahmood, SI as being unnecessary. On 08.01.2019, the learned Assistant District Public Prosecutor gave up the prosecution witnesses Mohsin Ali and Abdul Ghafoor as being unnecessary and closed the prosecution evidence after tendering the report of the Punjab Forensic Science Agency, Lahore (Exh.PV) regarding the analysis of the blood stained earth, the reports of the Punjab Forensic Science Agency, Lahore (Exh. PW and Exh. PX), the judgment of learned trial court in case F.I.R 324 of 2014 (Exh.PY), warrants of arrest (Exh. PZ) of the appellant namely Ejaz Ahmed and proclamation (Exh.PZ/1).

8. The learned trial court also recorded the statements of Tahir Masood, SI (CW-1) as a court witness who investigated the case from 01.06.2016 till

28.06.02016 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

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

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

11. The primary contention of the learned counsel for the appellant is that the whole case is fabricated and false. The learned counsel for the appellant argued that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence to prove the same. The learned counsel for the appellant further contended that the statements of the eye witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) were not worthy of any reliance. The learned counsel for the appellant also argued that the recovery of the *Kalashnikov* rifle (P-11) from the possession of the appellant could not be proved. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the appellant beyond the shadow of doubt.

12. On the other hand, the learned Additional Prosecutor General along with the learned counsel for the complainant contended that the prosecution had proved its case beyond shadow of doubt by producing independent witnesses. The learned Additional Prosecutor General along with the learned counsel for the complainant further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned Additional Prosecutor General along with the learned counsel for the complainant further contended that the medical evidence also corroborated the statements of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2). The learned Additional Prosecutor General and the learned counsel for the complainant contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. The learned Additional Prosecutor General and the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellant namely Ejaz Ahmed. The learned counsel for the complainant also argued that the Criminal Appeal No.588 of 2019, assailing the acquittal of Muhammad Khan, Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz by the learned trial court from the charges also merited acceptance.

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

14. The instant case relates to the *Qatl-i-Amd* of two deceased namely Ch. Muhammad Asghar son of Muhammad Ibrahim and Muhammad Asghar son of Muhammad Aslam.. A perusal of the prosecution evidence reveals that the whole

prosecution case as against the appellant namely Ejaz Ahmed is based on the statements of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2). The ocular account of the incident was narrated by the said prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2). The relationship of the said witnesses with the deceased namely Ch. Muhammad Asghar son of Muhammad Ibrahim is on record. Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) was the brother of the prosecution witness namely Abdul Razzaq (PW-1) and the paternal uncle of the prosecution witness namely Muhammad Rizwan (PW-2). The prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) were also admittedly not the residents of the place of occurrence. According to the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), both of them had their residence at a distance of about *as much as about 2 kilometres* from the place of occurrence. The prosecution witness namely Abdul Razzaq (PW-1), during cross-examination stated as under:-

“Place of occurrence is situated at about a distance of 2 km from my house.

.....

It is correct that the alleged occurrence took place in the area of 09-T Jahanian Road.”

The prosecution witness namely Muhammad Rizwan (PW-2) during cross-examination stated as under:-

“My house is at the distance of 2 KM from the place of occurrence ”

In this manner, both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (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 Abdul Razzaq (PW-1) and Muhammad Rizwan (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. Being conscious of the fact that the occurrence had taken place on a road which was at a distance of about two kilometres from their residence, both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) stated that the reason for their arrival at the place of occurrence was that they had proceeded to the area of *Badhla Sant* to offer *Juma* prayers and when they were returning to their house from the Mosque situated within the area of *Badhla Sant*, that they happened to arrive at the place of occurrence and saw the assailants attack both the deceased who were at that time travelling on a separate motorcycle. A wade through the statements of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) reveals that the reason given by them for having proceeded to the area of *Badhla Sant* to offer *Juma* prayers was sham. Both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) admitted that there were several Mosques within the area of their residence where *Juma* prayers were also offered, however, could not explain their choice of not offering the *Juma* prayers in the said Mosques on the day of occurrence and proceeding to the area of *Badhla Sant* to offer *Juma* prayers, which Mosque was at

a distance of as much as four kilometres from their house. The prosecution witness namely Abdul Razzaq (PW-1) , during cross-examination , admitted as under:-

“I am resident of Chak No. 1-T Shumali. Volunteered that my residence is not in the Abadi of Chak. I am residing at my own land. Abadi of Chak No. 1-T is comprised of about 1500/2000 houses. **Two mosques are situated in the said Chak. In both the mosques, Juma prayer is offered.** The Chak 1-T Shumali situated at the distance of 1/1 ½ Km from my residence. The Markazi Masjid Budla Santt where I went to say my Jumma prayer on the day of occurrence is situated at the distance of 4 Km from my residence.” (emphasis supplied)

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

“My house is situated in 1/T Shummali. Budhla Sant is situated towards North of our house **about 4 Km away**

.....

The Jumma prayers are offered in the mosques situated near our house” (emphasis supplied)

In this manner, it is abundantly clear that the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) had no reason to had proceeded to the area of *Badhla Sant* to offer Juma prayers and the said reason was invented to provide justification for their subsequent arrival at the place of occurrence. It is also an admitted fact of the prosecution case that not even a single person joined the investigation of the case to verify the fact that prior to the occurrence, the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) had indeed offered Juma prayers in a Mosque situated within the area of

Badhla Sant. As mentioned above, when there were as many as two Mosques present within the area of the residence of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) where Juma prayers were being offered then there did not exist any reason for the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to have proceeded to a Mosque as much as at a distance of four kilometres from their residence. The proven failure of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to prove the reason for them to have proceeded to the area of *Badhla Sant* to offer *Juma* prayers, from the return from which mosque the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) claimed that they happened to arrive at the place of occurrence and having seen the assailants attack both the deceased has repercussions, proves that the very inception of the prosecution case was founded in doubt and not proved claims.

15. We have also noted that though it was claimed by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) that they had gone to the place of occurrence on a motorcycle whereas the two deceased were riding a separate motorcycle, however, during the course of the investigation as well as before the learned trial court, the said motorcycle, allegedly used by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to arrive at the place of occurrence, was not produced. The prosecution witness namely Abdul Razzaq (PW-1) during cross-examination stated as under:-

“I alongwith Rizwan and Saif ur Rehman went to the mosque **on one motor cycle**.

.....

Police had not taken into possession the motor cycle upon which I was riding at the at the time of occurrence.

.....

I alongwith Rizwan and Saif ur Rehman were on one motor cycle while Asghar s/o Ibrahim and Muhammad Asghar s/o Muhammad Aslam were on the other motorcycle.” (emphasis supplied)

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

“ When police came at the spot the said motor bike which was in my use was present there I had informed the police about the said motor bike **but police had not taken it into possession.**” (emphasis supplied)

As mentioned above, Imran Arif, Inspector (PW-16), the Investigating Officer of the case, came to the place of occurrence after the occurrence and remained at the said place for a considerable time. During the course of his stay at the place of occurrence, Imran Arif ,Inspector (PW-16), the Investigating Officer of the case, did not take into possession the motorcycle allegedly used by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to arrive at the place of occurrence, along with the other recoveries, though there was no occasion for the said motorcycle 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 was available. Imran Arif ,Inspector (PW-16) during cross-examination, made it clear that no such motorcycle used by the prosecution witnesses namely Abdul Razzaq (PW-1) and

Muhammad Rizwan (PW-2) to arrive at the place of occurrence was even seen by him at the place of occurrence and stated as under:-

“I did not take into possession the motorcycle used by the witnesses **as the same was not available at the place of occurrence.**” (emphasis supplied)

The said motorcycle, which was allegedly used by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to arrive at the place of occurrence, was not even produced during the entire period of investigation nor was produced before the learned trial court. The non-production of the motorcycle used by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to arrive at the place of occurrence and the failure of Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) to produce the same before the learned trial court leads to only one conclusion and that being that no such motorcycle was available. Had a motorcycle been used by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (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 Imran Arif ,Inspector (PW-16), the Investigating Officer of the case then the same would necessarily have been taken into possession by Imran Arif ,Inspector (PW-16), the Investigating Officer of the case but it was not even seen by him and it proves that a false claim was made by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) that they had arrived at the place of occurrence on a motorcycle. In this manner, the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (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.”

In this manner, both the eye witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) failed miserably to establish the reason for their presence at the place of occurrence, at the time of occurrence and the mode through which they arrived at the place of occurrence. The prosecution was under a bounden duty to establish not only that the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) had a reason to proceed to the place of occurrence but also to prove the mode through which the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) arrived at the place of occurrence. The failure of the prosecution to prove the said fact has vitiated our trust in Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) as being truthful witnesses. In this respect, reliance is placed on the case of “*Muhammad Rafiq v. State*” (2014 SCMR 1698) wherein the august Supreme Court of Pakistan rejected the claim of witnesses who lived one kilometre away from the place of occurrence, but on the day of occurrence stated to be present near the spot as they were working as labourers, inasmuch as they failed to give any detail of the projects they were working on. Reliance is also placed on the case of “*Usman alias Kaloo v. State*” (2017 SCMR 622) wherein the august Supreme Court of Pakistan held that the ocular account of the incident had been furnished

by Zahoor Ahmad, Ghulam Farid and Manzoor Ahmed in the said case who were all residents of some other houses and they were not the inmates of the house wherein the occurrence had taken place and therefore the said eye-witnesses were, thus, declared as chance witnesses and not worthy of reliance. Reliance is also placed on the case of “*Nasrullah alias Nasro v. The State*” (2017 SCMR 724).

16. We have also noted that according to the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), the fact that Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) used to help the complainant party of the case F.I.R No.324 of 2014 registered at Police Station Badhla Sant District Multan with regard to the *Qatl-i-Amd* of Afzal Mahmood alias Kala, the brother of Saif ur Rehman (given up prosecution witness) and as the appellant namely Ejaz Ahmed was an accused in the said case, therefore, the incident took place. During the course of the trial, the fact which was admitted by both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) was that neither Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) was related to Afzal Mahmood alias Kala (deceased), the brother of Saif ur Rehman (given up prosecution witness) nor Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) was a witness in the case F.I.R No.324 of 2014 registered at Police Station Badhla Sant District Multan with regard to the *Qatl-i-Amd* of Afzal Mahmood alias Kala, the brother of Saif ur Rehman (given up prosecution witness). More importantly it was also admitted by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) that the other deceased namely Muhammad Asghar son of Muhammad Aslam also had no relationship with Afzal Mahmood alias Kala (deceased), the

brother of Saif ur Rehman (given up prosecution witness) . The prosecution witness namely Abdul Razzaq (PW-1) during cross-examination, stated as under:-

“ It is correct that Afzal was murdered and Fazal Mehmood his brother was the complainant of said murder case. Fazal Mehmood is yet alive. No murderous assault has been made against him. **Saif ur Rehman Pw of the present case was also eye witness of said case of Muhammad Afzal. Saif ur Rehman is brother of said Fazal Mehmood.** Asghar S/o Ibrahim was also the witness of said Afzal's murder case. **It is correct that said Saif ur Rehman pw was present at the spot with me in the occurrence of present case and it is also correct that he was not assaulted though he was present at the place of occurrence. Muhammad Asghar S/o Aslam deceased of present case was not relative of said deceased Muhammad Afzal volunteered that they had friendship.** I do not know whether Asghar S/o Aslam deceased of this case remained ever co-accused with Afzal in any case. **Asghar S/o Ibrahim had no concern with the said case of Afzal, He was neither complaint nor accused of the said case.**

.....

It is correct that said Saif Ur Rehman is also pw in the present case. It is correct that Saif ur Rehman is also witness of FIR NO. 324- 14 and his brother is complainant of the said case. **The deceased Asghar s/o Aslam had no blood relations with said Saif Ur Rehman, volunteered that they had relationship of friendship.** Fazul Mahmood, brother of Saif Ur Rehman was the complainant of the said FIR NO. 324-14.” (emphasis supplied)

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

“It is correct that in case FIR 324-14 dated 13.11.2014 u/s 302, 34 PPC, P.S Budhla Santt Multan, brother of Saif Ur Rehman, (Pw) Afzal Mahmood was

murdered. It is correct that Fazal Mahmood, brother of Saif Ur Rehman is complainant of the said case. **It is correct Saif Ur Rehman is also the witness of the said case.**”(emphasis supplied)

The prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) also admitted during cross-examination that it was Saif ur Rehman (given up prosecution witness) who had got another case F.I.R No. 375 of 2014 registered against the appellant namely Ejaz Ahmed and others. The prosecution witness namely Abdul Razzaq (PW-1) , during cross-examination stated as under:-

“It is correct that on the statement of Saif Ur Rehman, Pw case FIR NO. 375-14 dated 14.12.2014 u/s 324, 148, 149, 7-ATA PS Budhla Sntt was registered against shabbier s/o Hassan khan, Muhammad Ashfaq s/o Shabbier, Mudassar alias s/o Munir Ahmad, Muhammad Iqbal s/o Munir Ahmad, Muhammad Shafiq s/o shabbier khan, Muhammad Nadeem, Muhammad Riaz and Muhammad Ijaz s/o Nazar Hussain in which allegation was that above said accused person made straight firing upon Muhammad Asghar s/o Muhammad Aslam, deceased. It is correct that nobody was injured in the above said case. It is correct that above said case Ijaz, accused and his brother Riaz were not arrested ” (emphasis supplied)

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

“ It is correct that Saif Ur Rehman had got lodged a case FIR No. 375-14 at P.S Budhla Santt against Muhammad Shabbir s/o Hassan, Ashfaq s/o Bashir Khan, Mudassar alias Moni , Muhammad Iqbal alias Mona, Muhammad Shoaib, Nadeem, Riaz, Muhammad Ijaz, accused and his brother Muhammad Raiz”(emphasis supplied).

It was always the case of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) that out of the three witnesses present at the place of occurrence, it was only Saif ur Rehman (given up prosecution witness) with whom the appellant namely Ejaz Ahmed had enmity . According to the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) the motorcycle under the use of the deceased was also that of Saif ur Rehman (given up prosecution witness). The prosecution witness namely Muhammad Rizwan (PW-2) stated during cross-examination as under :-

“The said motor bike in use of deceased/victim was in the name of Afzal who is the brother of Saif ur Rehman/Pw, it was not registered in the name of any one of the deceased persons. **The said motor cycle remained was use of Saif ur Rehman.** It is correct that Saif ur Rehman was not sitting on the said bike at the time of occurrence as he was sitting on my motor cycle at the time of occurrence. **On my motor cycle we were three persons including Saif ur Rehman while on other motor bike in use of the deceased/ victims was not being driven by Saif ur Rehman himself.**” (emphasis supplied)

In these circumstances, the prosecution witness namely Saif ur Rehman (given up prosecution witness) should have been the prime target of the assailants. Furthermore, according to the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), the prosecution witness namely Saif ur Rehman (given up prosecution witness) was in clear view, at a meagre distance, from the assailants and unarmed whereas the accused were allegedly armed with various firearm and other weapons. Neither there was any dearth of ammunition nor that of intent and opportunity on the part of the appellant or his co-accused for not doing away with the prosecution witness namely Saif ur Rehman (given up prosecution

witness), who, according to the statements of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) , was the main and the only adversary of the accused and who, at the time of occurrence, was present at the place of occurrence and there did not exist any obstacle in the line of the sight of the accused and the place where the prosecution witness namely Saif ur Rehman (given up prosecution witness) was present. In this situation, it is hard to believe that the prosecution witness namely Saif ur Rehman (given up prosecution witness) would have been shown the courtesy of being not fired at all when Saif ur Rehman (given up prosecution witness) should have been the prime target of the assailants. In the midst of the firing by the accused persons, the prosecution witness namely Saif ur Rehman (given up prosecution witness) did not receive even a single scratch on his body during the whole occurrence nor was even targeted at all. The prosecution witness namely Abdul Razzaq (PW-1) admitted during cross-examination as under:-

“After distance of 400/500 feet of receiving the fire by Muhammad Asghar S/o Aslam the accused persons reached near us and then, due to that distance accused persons made constant firing and **on reaching near us** Iqbal alias Munna made fire shot on Asghar S/o Ibrahim, which landed on his right arm. He also fell down on receiving fire shot. **Accused did not make any firing upon us.**

.....

The accused had not made any firing on Saif ur rehman who was also present there despite of the fact that he was the witness of previous occurrence which was the grudge of the present occurrence.

....

When my brother left the spot of first place of occurrence to save his life and 4 accused persons started chasing on their bikes **we also went behind those accused persons. We were about 15/20 feet behind the bikes of said accused.”.**

(emphasis supplied)

The prosecution witness namely Muhammad Rizwan (PW-2) admitted during cross-examination as under:-

“ When accused persons made lalkara we were at the distance of about 15 feet from both the deceased persons”

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

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

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

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

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

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

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

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

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

17. We have also noted that according to the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), the place of occurrence was situated in a thickly populated area and was surrounded by many shops. The prosecution witness namely Abdul Razzaq (PW-1) during his statement recorded by the learned trial court stated as under:-

“So many people were present there due to fear of firing no one came near to us. They could be 15. 20 or 40 persons.

.....

Only my son is my witness of this case.

.....

It is correct that at the place of occurrence, there is a Chowk and so many people remained present at there and there were many shops.

.....

It is correct that there are 70/80 shops existing around the place of occurrence. ” (emphasis supplied)

We have also noted that according to the rough site plan of the place of occurrence (Exh. PP) as prepared by Imran Arif, Inspector (PW-16) , the Investigating Officer of the case, and the scaled site plan of the place of occurrence (Exh.PN) as prepared by Irfan Hayat, draftsman (PW-13) near and around the place of occurrence , there were many shops. None of those who had their shops around the place of occurrence joined the investigation of the case and also did not appear before the learned trial court to support the prosecution case. The prosecution was under a bounden duty to produce the witnesses who were the residents of the place of occurrence. Article 129 of the Qanun-e-Shahadat, 1984 provides that if any evidence available with the parties is not produced then it shall be presumed that had that evidence been produced the same would have been gone against the party producing the same. Illustration (g) of the said Article 129 of the Qanun-e-Shahadat Order, 1984 reads as under: -

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

The purpose of the trial is the discovery of truth. As long as men keep lying the only causality would be the reality. The prosecution case suffers from inherent defects which are irreconcilable as it is. The guidance is sought from the binding decisions of the august Supreme Court of Pakistan in case titled “Nadeem alias

Nanha alias Billa Sher Vs. The State” (2010 SCMR 949) wherein it has been observed as under: -

“.... further that no independent witness of the locality where the incident took place, a ‘Bazar’ joined, made case of the prosecution doubtful. It is cardinal principle of Criminal Jurisprudence that any genuine doubt arising out of the circumstances of the case should be extended to the accused as of the right and not as concession. It is difficult to say that prosecution has proved its case beyond shadow of doubt.”

18. We have also noted that both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) had stated that the accused were standing in front of a godown of wheat when they attacked the deceased. The prosecution witness namely Abdul Razzaq (PW-1), in his statement before the learned trial court, stated as under:-

“Stated that on 20.03.2015, I alongwith my sons Saif ur Rehman, Muhammad rizwan, while riding on motor cycle, My brother Muhammad Asghar S/o Muhammad Ibrahim, Muhammad Asghar S/o Muhammad Aslam, riding on other motor cycle bearing registration No.MNP-2919 going ahead of us were returning after saying Jumma Prayer, **when we reached near godown of wheat**, where 08 persons were already standing they were Muhammad Khan, Shabbir, Iqbal, Faraz, Mudassar, Azeem, Ijaz and Mujahid S/o Shabbir, accused persons, all present in the court. Shabbir and Muhammad Khan raised lalkara that the complainant party should not go from there safely. ” (emphasis supplied)

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

“ It was about 01:45 pm as we reached near **the godown of wheat**, where accused Muhammad Khan S/o Faiz Muhammad, Muhammad Shabbir S/o Hassan Khan were already present.....”(emphasis supplied)

Despite this claim of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) that the deceased were attacked when they were in front of a warehouse of storing wheat, it was admitted by the prosecution witnesses that the said warehouse was not shown in either the rough site plan of the place of occurrence (Exh. PP) as prepared by Imran Arif, Inspector (PW-16), the Investigating Officer of the case or in the scaled site plan of the place of occurrence (Exh.PN) as prepared by Irfan Hayat, draftsman (PW-13). The prosecution witness namely Muhammad Rizwan (PW-2) during cross-examination was confronted in this regard and the learned trial court observed as under:-

“The draftsman prepared the sketch of the crime scene according to my pointation. I had also informed about the Galla Godam. I have seen the sketch of the crime scene where Galla Godam was pointed out, (the sketch after crime scene is present in the police file **wherein Galla Godam is not pointed out**).”
(emphasis supplied)

Similarly, Imran Arif, Inspector (PW-16), the Investigating Officer of the case also admitted during cross-examination as under:-

“ It is mentioned in the FIR that occurrence took place near Ghala Godown, however **this fact is not mentioned in Ex-PP**. I summoned draftsman on 25.03.2015. I recorded his statement under Sec. 161 Cr.P.C. on 29.03.2015. **It is correct that draftsman had also not shown "Ghala Godown" in scaled site plans.**”(emphasis supplied)

In this manner, it was proved that the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) could not even give the description of the place of occurrence with any degree of certainty exposing their absence at the time of occurrence.

19. We have also noted that according to the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), the deceased namely Muhammad Asghar son of Muhammad Aslam had been fired at when he was riding the motorcycle, which motorcycle was being driven by the other deceased namely Ch. Muhammad Asghar son of Muhammad Ibrahim and after being hit by the bullets, Muhammad Asghar son of Muhammad Aslam (deceased) fell from the motorcycle on the road, whereas the other deceased namely Ch. Muhammad Asghar son of Muhammad Ibrahim kept on driving the motorcycle to as far as a distance of about 487 feet. The prosecution witness namely Abdul Razzaq (PW-1), during cross-examination, stated as under:-

“Both the fire shots made by the accused persons hit from the back side of the deceased Asghar s/o Muhammad Aslam. **The deceased Muhammad Asghar s/o Aslam fell on the side of metaled Road. Deceased Muhammad Asghar s/o Aslam might receive injuries by falling on the ground** ” (emphasis supplied)

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

“First fire was hit to Asghar S/o Aslam who fell down on the ground ”

Had the occurrence taken place in the manner as described by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), then ,

as stated by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2), the deceased namely Muhammad Asghar son of Muhammad Aslam must have suffered injuries due to his fall from the moving motorcycle, however, Dr. Liaquat Ali Ansari (PW-6) who conducted the post mortem examination of the dead body of Muhammad Asghar son of Muhammad Aslam (deceased) did not observe any injuries present on his dead body which had been caused due to the fall of Muhammad Asghar son of Muhammad Aslam (deceased) from the motorcycle. Dr. Liaquat Ali Ansari (PW-6) opined that all the nine injuries observed by him to be present on the dead body of Muhammad Asghar son of Muhammad Aslam (deceased) had been caused by the use of a firearm weapon. In this manner, the narrative of the incident as given by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) does not conform with the opinion and observations of Dr. Liaquat Ali Ansari (PW-6), denuding the flaw in the statements of prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2).

20. We have also noted that both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) were not mentioned either in column No.4 of the inquest report (Exh.PQ) as being the witnesses who had identified the dead body of the deceased namely Muhammad Asghar son of Muhammad Aslam at the time of preparation of the inquest report (Exh.PQ) nor were mentioned at page 4 of the inquest report (Exh.PQ) as witnesses who were present at the place of occurrence at the time of preparation of the inquest report (Exh.PQ). The presence of Muhammad Aslam and Muhammad Akram has been mentioned in column No.4 of the inquest report (Exh.PQ) and the presence of

Muhammad Yousaf and Muhammad Sarfraz has been mentioned at page 4 of the inquest report (Exh.PQ) as witnesses who were present at the place of occurrence at the time of preparation of the inquest report (Exh.PQ). We have also noted that both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) were also not mentioned either in column No.4 of the inquest report (Exh.PR) as being the witnesses who had identified the dead body of the deceased namely Ch. Muhammad Asghar son of Muhammad Ibrahim at the time of preparation of the inquest report (Exh.PR) nor were mentioned at page 4 of the inquest report (Exh.PR) as witnesses who were present at the place of occurrence at the time of preparation of the inquest report (Exh.PR). The presence of Muhammad Farhan and Asim Razzaq has been mentioned in column No.4 of the inquest report (Exh.PR) and the presence of Tanzeem Akram and Muhammad Akram has been mentioned at page 4 of the inquest report (Exh.PR) as witnesses who were present at the place of occurrence at the time of preparation of the inquest report (Exh.PR). This fact also point towards the absence of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) at the place of occurrence, at the time of preparation of both the inquest reports (Exh.PQ and Exh.PR) by Imran Arif, Inspector (PW-16), the Investigating Officer of the case.

21. The learned Additional Prosecutor General and the learned counsels for the complainant placed much emphasis on the promptitude with which the written application (Exh.PA) of Abdul Razzaq (PW-1) was presented for the registration of the formal F.I.R (Exh.PA/1) and stated that this excluded the possibility of any pre-concert prior to the writing and submission of the written application (Exh.

PA). A perusal of the statements of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) reveals that they made contradictory statements with regard to the writing and the submission of written application (Exh.PA). According to the prosecution witness namely Abdul Razzaq (PW-1) he himself never even submitted the written application (Exh.PA) at the Police Station rather the said written application (Exh.PA) was taken to the Police Station by his nephew namely Muhammad Shahid who himself was a police officer. The prosecution witness namely Abdul Razzaq (PW-1) during cross-examination, stated as under:-

“ The FIR was chalked on my written application. The said application Ex P. A was drafted by nephew who is a police servant and I had signed the said application and **that was sent to the police Station through my said Nephew Muhammad Shahid S/o Rabnawaz.**

.....

I had remained at the spot and written the application Ex.P. and handed over it to my nephew Shahid. He took the application to the police.”
(emphasis supplied)

Contradicting the statement of Abdul Razzaq (PW-1) that he had sent the written application (Exh.PA) to the Police Station through his nephew namely Muhammad Shahid, the prosecution witness namely Muhammad Rizwan (PW-2) stated that Abdul Razzaq (PW-1) had submitted the written application (Exh.PA) at the Police Station himself . Muhammad Rizwan (PW-2) during cross-examination, stated as under:-

“My father had also submitted application in the PS. **After shifting of deadbodies to hospital, my father went to PS for submitting application.** That application was written by my father which was submitted in the Police Station. My father after submitting the application to the PS, came behind us to the Nishtar Hospital, Multan. ” (emphasis supplied)

The above referred reply of Muhammad Rizwan (PW-2) that the written application (Exh.PA) was submitted to the Police Station after the shifting of the dead bodies to the hospital also proves that the said written application (Exh.PA) was submitted after the Investigating Officer of the case had already visited the place of occurrence and had also conducted a detailed inquiry. It is also a fact that according to the prosecution witness namely Abdul Razzaq (PW-1) he had named as many as eight accused in his written application (Exh.PA) , however, all the said accused persons were found to had been falsely involved by him during the course of investigation. The prosecution witness namely Abdul Razzaq (PW-1) admitted during cross-examination , as under:-

“I had nominated 8 accused persons in my present FIR. **It is correct that all the said accused persons were declared innocent.** volunteered that I am not having any agreement with the police party. Mahr Bashir Ahmad SI remained investigator in my case. **It is correct that he declared all the nominated accused persons as innocent and incorporated another set of the accused persons as culprits** ” (emphasis supplied)

The scrutiny of the statements of the prosecution witnesses reveals that the written application (Exh. P.A.) as submitted by Abdul Razzaq (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 written application (Exh. PA) as submitted by Abdul Razzaq (PW-1).

22. We have also noted with disquiet that the postmortem examinations of the dead bodies of the deceased were conducted with much delay. According to the statement of Dr. Liaquat Ali Ansari (PW-6) , the post mortem examination of the dead body of the deceased namely Muhammad Asghar son of Muhammad Aslam was conducted by him on **20.03.2015 at 09.45 p.m.**, whereas the post mortem examination of the dead body of the deceased namely Ch.Muhammad Asghar son of Muhammad Ibrahim was conducted by him on **20.03.2015 at 08.30 p.m .** Furthermore, according to the Post Mortem Examination Reports (Exh.PC and Exh.PE) as well as the statement of Dr. Liaquat Ali Ansari (PW-6) , the police papers were received at **08.00 p.m on 20.03.2015** and thereafter the post mortem examinations of the dead bodies of the deceased were conducted. Dr. Liaquat Ali Ansari (PW-6) Further explained during cross-examination as under:-

“ I have given the probable time between **death and PM examination** of Muhammad Asghar S/O Ibrahim **as 6 hours** which may be counted as probable time as death at 2:30 p.m.

I conducted PM examination on the dead body of Muhammad Asghar S/O Muhammad Aslam at 9:45 p.m. I mentioned probable time between **death and PM examination at 8 to 9 hours** which may be counted for the purpose of probable time of death as 1:00 to 2:00p.m.” (emphasis supplied)

The perusal of the Post Mortem Examination Reports (Exh.PC and Exh.PE) as well as the statement of Dr. Liaquat Ali Ansari (PW-6) clearly establishes the fact the post mortem examinations of the dead bodies of the deceased were delayed

and the delay was due to the late submission of police papers. No explanation was offered to justify the said delay in conducting the post mortem examinations. This clearly establishes that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post mortem examinations was used to procure their attendance and formulate a false narrative after consultation and concert. It has been repeatedly held by the august Supreme Court of Pakistan that such delay in the post mortem examination is reflective of the absence of witnesses and the sole purpose of causing such delay is to procure the presence of witnesses and to further advance a false narrative to involve any person. The august Supreme Court of Pakistan in the case of “Khalid alias Khalidi and two others vs. The State” (2012 SCMR 327) has held as under:

“The incident in the instant case took place at 2.00 a.m, FIR was recorded at 4/5 a.m, Doctor Muhammad Pervaiz medically examined the injured person at 4.00 a.m. but conducted the post mortem examination of the deceased at 3.00 p.m i.e. after about ten hours, which fact clearly shows that the FIR was not lodged at the given time”.

The august Supreme Court of Pakistan in the case of “Mian SOHAIL AHMED and others vs. The State and others” (2019 SCMR 956) has held as under:

“According to the Doctor (PW-10), who did the post-mortem examination, the dead-body of the deceased was brought to the mortuary at 11:15 a.m. on 01.9.2006 and the post-mortem examination took place at 12 noon after a delay of 15 hours. This delay in the post-mortem examination, when the occurrence was promptly reported at 8:45 p.m. and formal FIR was registered at 9.00 p.m. on 31.8.2006 gives rise to an inference that the incident was not reported as stated by the prosecution”

The august Supreme Court of Pakistan in the case of “MUHAMMAD RAFIQUE alias FEEQA vs. The State” (2019 SCMR 1068) has held as under:

“More importantly, the only person who can medically examine the dead body during the said police custody of the dead body is the medical officer, and that too, when the same is handed over to him by the police for its examination. For

the purposes of the present case, it is crucial to note that, at the time of handing over a dead body by the police to the medical officer, all reports prepared by the investigating officer are also to be handed over in order to assist in the examination of the dead body.

10. *Thus, once there is suspicion regarding the death of a person, the following essential steps follow: firstly, there is a complete chain of police custody of the dead body, right from the moment it is taken into custody until it is handed over to the relatives, or in case they are unknown, then till his burial; secondly, post mortem examination of a dead person cannot be carried out without the authorization of competent police officer or the magistrate; thirdly, post mortem of a deceased person can only be carried out by a notified government Medical Officer; and finally, at the time of handing over the dead body by the police to the Medical Officer, all reports prepared by the investigating officer are also to be handed over to the said medical officer to assist his examination of the dead body.*

11. *It is usually the delay in the preparation of these police reports, which are required to be handed over to the medical officer along with the dead body, that result in the consequential delay of the post mortem examination of the dead person. To repel any adverse inference for such a delay, the prosecution has to provide justifiable reasons therefor, which in the present case is strikingly wanting."*

23. The learned Additional Prosecutor General and the learned counsel for the complainant, have submitted that the recovery of the *Kalashnikov rifle (P-11)* from the appellant namely Ejaz Ahmed son of Nazar Hussain and the report of the Punjab Forensic Science Agency, Lahore (Exh.PX) offered sufficient corroboration of the statements of the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) . Regarding the recovery of the *Kalashnikov rifle (P-11)* from the appellant namely Ejaz Ahmed son of Nazar Hussain it is observed that the said recovery was made on **12.08.2015** at the time of arrest of the appellant namely Ejaz Ahmed during the investigation of the case F.I.R No.556 of 2015 registered at Police Station New Multan District Multan and the said *Kalashnikov rifle (P-11)* was obtained by Bashir Ahmad, SI (PW-15) from the *Malkhana* of Police Station New Multan District Multan on **11.09.2015** and was handed over to Riaz Ali 1774/HC (PW-4) for keeping it in safe custody. It was also stated by

Bashir Ahmad SI (PW-15), the Investigating Officer of the case , that he formally arrested the appellant namely Ejaz Ahmed in the present case on **31.08.2015**. The prosecution has not produced any witness in whose custody the said *Kalashnikov rifle (P-11)* remained from the date of its recovery on **12.08.2015** till its handing over to Bashir Ahmad, SI (PW-15) on **11.09.2015**. Therefore, it is proved on record that the safe custody and safe transmission of the recovered *Kalashnikov rifle (P-11)* from the place of its recovery to the police station New Multan , District Multan was not proved and the possibility of manipulating the said recovered *Kalashnikov rifle (P-11)* to procure a favourable report of the Punjab Forensic Science Agency, Lahore is obvious. Consequently, the recovery of the *Kalashnikov rifle (P-11)* from the appellant namely Ejaz Ahmed could not be proved and cannot be considered as a relevant fact for proving any fact in issue. It is an admitted rule of appreciation of evidence that recovery is only a supporting piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

24. The Learned Additional Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) was that Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) used to help the complainant party of the case F.I.R No.324 of 2014 registered at Police Station Badhla Sant District Multan with regard to the *Qatl-i-Amd* of Afzal Mahmood alias Kala, the brother of Saif ur Rehman (given up prosecution witness) and as the appellant namely Ejaz Ahmed was an accused in the said case,

therefore, the occurrence took place. Throughout the course of the trial, the fact which was admitted by both the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) was that neither Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) was related to Afzal Mahmood alias Kala (deceased), the brother of Saif ur Rehman (given up prosecution witness) nor Ch. Muhammad Asghar son of Muhammad Ibrahim (deceased) was a witness in the case F.I.R No.324 of 2014 registered at Police Station Badhla Sant District Multan with regard to the *Qatl-i-Amd* of Afzal Mahmood alias Kala, the brother of Saif ur Rehman (given up prosecution witness). More significantly, it was also admitted by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) that the other deceased namely Muhammad Asghar son of Muhammad Aslam also had no relationship with Afzal Mahmood alias Kala (deceased), the brother of Saif ur Rehman (given up prosecution witness). As has been already discussed by us, had the motive of occurrence been as was stated by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) then the prosecution witnesses namely Saif ur Rehman (given up prosecution witness) would have been the prime target, however, he was not targeted at all, clearly proving the fact that the motive as stated by the prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) was not the motivation of the assailants. The prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged. The prosecution witnesses failed to prove 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 haunting silence with regard to the minutiae of the motive alleged. No independent witness was produced by the prosecution to prove

the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. 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.”

Furthermore, it is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the appellant to murder the deceased, it equally was a ground for the complainant to falsely implicate them in this case.

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

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

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

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

25. The learned Additional Prosecutor General and the learned counsel for the complainant have also laid much premium on the abscondence of the appellant namely Ejaz Ahmed son of Nazar Hussain 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), Pir Badshah 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, a 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).

26. 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 bodies of the deceased by Dr. Liaquat Ali Ansari (PW-6) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by this Court, therefore, the appellant’s conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled “Hashim Qasim and another Vs. The State” (2017 SCMR 986) has enunciated the following principle of law:

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

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

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

occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.³² Therefore, the medical evidence is of little help to the prosecution for bringing home the guilt to the petitioners."

27. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of the appellant namely Ejaz Ahmed son of Nazar Hussain in the present case. It is a settled principle of law that for giving benefit of the doubt it is not necessary that there should be so many circumstances rather, if only a single circumstance creating reasonable doubt in the mind of a prudent person is available, then the such benefit is to be extended to an accused not as a matter of concession but as of right. The august Supreme Court of Pakistan in the case of "Muhammad Mansha Vs. The State" (2018 SCMR 772) has enunciated the following principle:

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

"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history,

went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the 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."

28. For what has been discussed above the Criminal Appeal No.788-J of 2019 lodged by the appellant namely Ejaz Ahmed son of Nazar Hussain is allowed and the conviction and sentence of the appellant namely Ejaz Ahmed son of Nazar Hussain awarded by the learned trial court through the impugned judgment dated 11.02.2019 are hereby **set-aside**. The appellant namely Ejaz Ahmed son of Nazar Hussain is ordered to be acquitted by extending him the benefit of doubt. The appellant namely Ejaz Ahmed son of Nazar Hussain is in custody and he is directed to be released forthwith if not required in any other case.

29. The complainant of the case namely Abdul Razzaq filed Criminal Appeal No.588 of 2019 against the acquittal of the accused namely Muhammad Khan, Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz (all since acquitted), the co-accused of the appellant by the learned trial court. We have observed that the learned trial court has rightly

acquitted the said accused. The prosecution witnesses namely Abdul Razzaq (PW-1) and Muhammad Rizwan (PW-2) failed miserably to prove their reason for presence at the place of occurrence, at the time of occurrence and made contradictory statements with regard to the various details of the incident which have been discussed above in detail. It is also a fact of the prosecution case that the Investigating Officers of the case declared all the accused namely Muhammad Khan ,Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz as having been wrongly involved in the case and nothing incriminating was recovered from the accused namely Muhammad Khan ,Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz. It is important to note that according to established principle of the criminal administration of justice, once an acquittal is recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse. The said principle has been enunciated by the august Supreme Court of Pakistan in the judgment reported as “Ghulam Sikandar and another Versus Mamaraz Khan and Others” (P L D 1985 Supreme Court 11) wherein it has been held as under:

“The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no

other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”

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

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

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

“On acquittal, an accused person earns twofold innocence particularly, in the case when there are concurrent findings to that effect by the trial Court and the Court of First Appeal (High Court), is the bedrock principle of justice. In a case of acquittal, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. Unless the concurrent findings of the two Courts below are found perverse, fanciful, arbitrary and are based on misreading and non-reading of material evidence causing miscarriage of justice, the Supreme Court would not lightly disturb the same because on reappraisal, another view might be possible therefore, sanctity is attached under the law to such concurrent findings in ordinary course.”

Pursuant to the discussion made and conclusions arrived at above, the Criminal Appeal No.588 of 2019, lodged by the complainant of the case namely Abdul Razzaq assailing the acquittal of Muhammad Khan ,Shabbir Ahmad, Muhammad Iqbal, Muhammad Azeem, Mujahid Hussain, Mudassar and Faraz by the learned trial court from the charges is hereby **dismissed**.

30. **Murder Reference No.22 of 2019** is answered in **Negative** and the sentence of death awarded to Ejaz Ahmed son of Nazar Hussain is **Not Confirmed**.

(MUHAMMAD TARIQ NADEEM)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

Approved for Reporting

JUDGE