

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT**

**Murder Reference No.103 of 2021
(The State *versus* Babar alias Jani)**

**Crl. Appeal No.43616-J of 2021
(Babar alias Jani *versus* The State)**

JUDGMENT

Date of hearing: 15.07.2024.

Appellant by: Ms. Shahzadi Parveen, Advocate (Defence counsel).

State by: Mr. Tariq Siddique, Additional Prosecutor General.

Complainant by: Mr. Muzammal Ahmad Baig, Advocate.

AALIA NEELUM, C.J:- The appellant-Babar alias Jani, son of Mukhtar Ahmad alias Mushtaq Ahmad, Caste Rehmani, resident of Street No.3, Lal Di Khurli, Farooq Ganj Jandiala Road, District Sheikhupura, has assailed his conviction and sentence recorded by the learned Additional Sessions Judge (MCTC), District Sheikhupura vide judgment dated 24.06.2021 in a private complaint filed under sections 302, 34, 506-B PPC P.S. City B-Division, District Sheikhupura titled "Amanat Masih Vs. Babar alias Jani." in case FIR No.547/2017, whereby the trial court convicted Babar alias Jani (the appellant) under Section 302 (b) PPC., and sentenced to Death for committing Qatl-e-Amd of Faisal Masih (the deceased), with the direction to pay compensation of Rs.10,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further.

2. Feeling aggrieved by the trial court's judgment, Babar alias Jani, the appellant, has assailed his conviction and sentence by filing the instant jail appeal bearing Criminal Appeal No.43616-J of 2021. The trial court also referred M.R. No.103 of 2021 (The State. Vs. Babar alias Jani)

to confirm the death sentence awarded to the appellant-Babar alias Jani. Both the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. The prosecution story as contained in the private complaint (Ex. PB) filed by Amanat Masih (PW-1)-the complainant is that on 10.07.2017, at about 11:00 a.m, he was standing in front of Shahid Sweets to purchase vegetables in the meantime, his brother, Faisal Masih (the deceased), who was a rickshaw driver, came there on his rickshaw and stopped there for waiting the riders. In the meanwhile, the accused, Basharat Ali, along with Babar alias Jani, armed with Churri, came there while riding on a motorcycle Honda CD-70 and stopped the motorcycle near the rickshaw and after alighting from the motorcycle; the accused, Basharat, took Faisal Masih (the deceased) in (Japha) whereas the accused, Babar alias Jani (the appellant) inflicted Churri blows at the neck and right arm of Faisal Masih (the deceased); when the complainant along with his companions tried to step forward, the accused Basharat took out a pistol from the fold of his shalwar and extended life threats. After that, Faisal Masih succumbed to the injuries, whereas the accused persons fled away from the place of occurrence. The motive behind the occurrence was that Faisal Masih (the deceased) used to restrain the accused, Babar alias Jani, from developing illicit relations with his sister.

4. After the incident, the complainant reported the matter to the police through his written application (Ex. PA). After that, formal F.I.R. (Ex. PF) was chalked out by Naveed Aslam, ASI (PW-4). After registering the case, the investigation was initially entrusted to Shabbir Hussain (retired S.I) (CW-1). After that, Ahmad Anees S.I (CW-5) and Baqar Raza, ASI (CW-6) conducted the investigation; they found the accused/appellant guilty and prepared a report under section 173 of Cr.P.C. Being dissatisfied with the result of the investigation, as the investigating officer being in league with the accused did not investigate the matter properly, the complainant was constrained to file a private complaint (Ex. PB). After recording the cursory evidence of the complainant and having perused the record, the accused was

found connected with the commission of the offence, so he was summoned to face the charge. After that, the learned trial court formally charged the appellant on 23.11.2020, to which he pleaded not guilty and claimed trial. The complainant, in support of his version, produced as many as nine (09) witnesses, whereas the rest of the witnesses were summoned as court witnesses, i.e., CW.1 to CW.6.

5. The ocular account, in this case, has come out from the statements of Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2)-the eye witness, whereas Dr. Muhammad Ashfaq Ahmad (PW-8), who conducted the postmortem examination of Faisal Masih (the deceased) found the following injuries on his person:

INJURIES

1. An incised wound of 7x3.5 cm on the back of the neck., 8cm from the back of the ear, and 8cm from the midclavicular line; the wound was muscle-deep.
2. An incised wound of 7x3 cm on the left side of the upper neck and face, 2.5cm from the ear below, and 5cm from the lip margin. The wound was muscle-deep.
3. An incised wound on the back of chest 5x3cm starting from midline between two shoulders bone 17 cm below the tip of left shoulder on the left side. The wound was 3.5cm deep.
4. An incised wound 3x5 cm on the right side of the back of the chest, 4cm from the midline, and 5cm from the tip of the shoulder bone. The wound was 2cm deep.
5. An incised wound of 5x2 cm on the right side of the back of the chest, 5cm from the midline, and 6cm from the fourth injury. The wound was 0.5cm deep(superficial).
6. There is an abrasion on the right side of the upper arm, 6cm from the axilla and 6cm in length.

7. An incised wound of 8x2cm on the upper part of the right thigh on the outer side. The wound was superficial.

After conducting the postmortem examination, the doctor opined that injuries No.1 to 4 collectively, whereas injuries No.3 & 4 were partially sufficient to cause death in the ordinary course of nature. The death occurred due to severe hemorrhage and injury to vital organs that led to shock and cardiopulmonary arrest.

The statements of the remaining prosecution witnesses are formal.

6. The learned Deputy District Public Prosecutor gave up PWs Muhammad Salik, 389/C, being dead, and Nazir Ahmad, 1728/C, being unnecessary, and closed the prosecution evidence after tendering reports of Punjab Forensic Science Agency and Serology Analysis (Ex. PN and Ex. PO).

7. The appellant was also examined in terms of Section 342 Cr.P.C., wherein he neither opted to appear as his own witness in terms of Section 340(2) Cr.P.C. nor produced any evidence in his defence. In response to a particular question about why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“PWs have falsely deposed against me to blackmail me and to extort money from me and to strengthen the false case against me. I had not participated in the alleged occurrence. I have been falsely roped in this case. All the private PWs are inter-se related to deceased and each other. A false motive has been set up against me. False and fake recoveries have been planted against me just to strengthen the case. Actually no recovery has been effected from me and I have no links with the alleged fake recoveries. The witnesses mentioned in the FIR and complainant had not seen the occurrence and they do not know the actual culprit. Co-accused Basharat Ali has already been

acquitted from this case. I am innocent in this case and I may be acquitted from this case.”

8. After evaluating the evidence available on record in light of arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the afore-stated terms.
9. Despite repeated calls, no one has entered an appearance on behalf of the appellant. So, Ms. Shahzadi Parveen, Advocate, is appointed as Defence counsel on behalf of the appellant at state expense.
10. We have given our anxious and most thoughtful consideration to both sides' rival submissions. We have minutely gone through the evidence on record.
11. As per the prosecution case, the incident took place at 11:00 a.m. on 10.07.2017 in front of Shahid Sweet situated at Farooq Ganj, Jandiala Road, Sheikhupura falling within the jurisdiction of Police Station City B-Division, Factory Area, District Sheikhupura and Faisal Masih, brother of Amanat Masih (PW-1)-the complainant, succumbed to the injuries at the spot. After the incident, Amanat Masih (PW-1)-the complainant, alongwith others, shifted the dead body of his brother Faisal Masih, the deceased, to the hospital. After that, the complainant went to the police station and reported the incident through the written application (Ex. PA) to Naveed Aslam A.S.I (PW-4), and FIR (Ex. PF) was chalked out at 11:35 a.m. The inter-se distance between the place of occurrence and the police station is only one kilometer. Amanat Masih (PW-1)-the complainant deposed during cross-examination that: -

“It is correct that we did not make phone call to Rescue 1122. We made phone call to Rescue 15, but I cannot produce the record regarding the same. It is correct that during my cross examination against co-accused Basharat (since acquitted) I had deposed that we did not make phone call to Rescue 1122 and 15. Neither myself nor other cited witness sustained any injury during the occurrence. We took the deceased

Faisal to DHQ Hospital Sheikhupura after the occurrence which took about fifteen minutes during shifting. Police officials came to the hospital. After dropping the dead body at DHQ Hospital Sheikhupura I went to the police station just after five minutes. I alongwith my uncle Waris Masih went to the police station. It took about five minutes to submit application for registration of case. Application for registration of case was got written by my uncle Waris Masih. It is correct that previously during cross examination of co-accused Basharat (since acquitted) I deposed that I could not tell the name of scribe of application for registration of case. Application for registration of case was submitted with due consciousness. We did not make any consultation before submission of application for registration of case. It is correct that previously, during cross-examination of co-accused Basharat (since acquitted) I deposed that we submitted application for registration of case after due deliberation and the application was got written by one police official upon my direction.”

The above deposition of Amanat Masih (PW-1), the complainant, reveals that he dishonestly improved his testimony. The scribe of the written complaint (Ex. PA), who was not known to the complainant in the earlier trial, was subsequently introduced by him as Waris Masih. The deposition of Amanat Masih (PW-1)-the complainant proves nothing substantial except he signed the information (Ex. PA), whereof FIR (Ex. PF) was registered. The FIR (Ex. PF) is the result of deliberation and consultation, which was also revealed from the inquest report (Ex. CW-1/B), wherein, in column No.3 relating to the date and time of receiving information about the death, the date 10.07.2017 was mentioned and after writing “بوقت” space was left blank. Shabbir Hussain (retired S.I) (CW-1)-the investigating officer has not mentioned the time of preparing the inquest report. Shabbir Hussain (retired S.I) (CW-1)-the investigating officer, deposed during the examination-in-chief, that the investigation was entrusted to him after the registration of the case and FIR (Ex. PF) was registered at 11:25 a.m. He (CW-1), alongwith Muhammad Ramzan/C, Muhammad Ashfaq/C (PW-9), and Muhammad Salik/C, went to the DHQ Hospital

Sheikhupura; the dead body of Faisal Masih was lying in the Trauma Centre, where he captured photographs of the deceased with his mobile phone; he (CW-1) inspected the dead body and prepared its injury statement (Exh.CW.1/A), inquest report (Exh.CW.1/B) and also prepared an application (Exh.CW.1/C) for getting postmortem examination of the dead body of Faisal Masih, the deceased; he (CW-1) handed over police papers alongwith dead body to Muhammad Ashfaq constable (PW-9) for getting its autopsy. Whereas, during cross-examination, Shabbir Hussain (retired S.I) (CW-1) deposed that: -

“I went to the place of occurrence from the police station. I interrogated the matter at the place of occurrence. Thereafter, I may be went to the hospital for postmortem. It is incorrect to suggest that firstly I visited the hospital and thereafter I went to the place of occurrence.”

Dr. Muhammad Ashfaq Ahmad (PW-8) deposed that on 10.07.2017, he was posted at DHQ Hospital Sheikhupura; on the same day, dead body of Faisal Masih was brought by Muhammad Ashfaq 1644/C (PW-9) at 12:15 PM and he conducted postmortem examination on the dead body of Faisal Masih at 06:20 p.m. Whereas, during cross-examination Dr. Muhammad Ashfaq Ahmad (PW-8) admitted that the dead body was received at 12:15 p.m, whereas police papers were received at 06:00 p.m. There was no delay on his part in conducting postmortem examination. The deposition of Dr. Muhammad Ashfaq Ahmad (PW-8) and perusal of contents of the postmortem report (Ex. PK) reveal that complete police papers were received at 06:00 p.m. on 10.07.2017, although Shabbir Hussain (Retired S.I) (CW-1), deposed that after registration of the case, he visited the hospital, prepared documents and referred the dead body alongwith documents to the hospital through Muhammad Ashfaq/C (PW-9). As per the postmortem report (Ex. PK), the time elapsed between death and postmortem was about 06 hours, whereas, from the time of occurrence, there is a delay of 07 hours and 20 minutes. Dr. Muhammad Ashfaq Ahmad (PW-8) stated that he issued postmortem report (Ex. PK) and also attested application for postmortem examination, injury statement, and inquest report

relating to Faisal Masih, the deceased prepared by the I.O. If FIR was registered within 25 minutes, there is no plausible explanation as to why the postmortem examination was conducted with the delay. The delay in conducting the postmortem examination reflects that the FIR was recorded with the delay and was not recorded at the time it was claimed to be recorded. It appears that till the completion of the postmortem report, the FIR was not registered, which leads to the irresistible conclusion that the FIR was recorded with the delay and that the same cannot be used against the appellant as a corroborative piece of evidence.

12. There is another aspect of the case that leads to the conclusion that the incident was not witnessed by the prosecution witnesses, i.e., Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2)-the eyewitness. As per the prosecution case, Faisal Masih, the deceased, stopped his rickshaw in front of Shahid Sweets for the riders. In the meanwhile, Ijaz Masih (PW-2), the brother of the complainant, who was also a rickshaw driver, arrived with Chand Masih and Salamat Masih (given up PWs) and stopped their rickshaw in front of Shahid Sweet for riders. Meanwhile, Basharat (co-accused since acquitted) while riding on motorcycle C.D-70 came there, and the appellant (Babar alias Jani) pillion rider, having a knife in his hand; Basharat (since acquitted) stopped his motorcycle near the rickshaw of Faisal Masih (the deceased) and after getting off from motorcycle, Basharat (co-accused since acquitted) caught hold Faisal Masih and the appellant inflicted knife blows on the neck and the right arm of Faisal Masih. The complainant (PW-1), alongwith companions, stepped forward to rescue Faisal Masih, the deceased, then Basharat (co-accused since acquitted) took out a pistol from the fold of his Shalwar and threatened them not to step forward. Otherwise, they would be done to death. Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2)-the eyewitness, deposed in similar lines. Amanat Masih (PW-1)-the complainant deposed during cross-examination that: -

**“Accused Basharat caught hold of deceased
Faisal Masih whereas accused Babar present in**

the court gave churri blows upon right arms and neck of the deceased.”

Ijaz Masih (PW-2)-the eye witness also deposed during cross-examination that:-

“When accused Babar made churri blows upon neck and right arm of deceased Faisal till such period co-accused Basharat caught hold of deceased Faisal and thereafter, both of them fled away.”

Whereas Dr. Muhammad Ashfaq Ahmad (PW-8) observed four injuries, i.e., injuries No.1, 3, 4 & 5, on the back of Faisal Masih, the deceased. The doctor opined that injuries No.1, 2, 3 & 4 collectively and 3 & 4 partially were enough to cause the death of a person in the ordinary course of nature and injuries No.3 & 4 are on the back of the chest of Faisal Masih, the deceased. Dr. Muhammad Ashfaq Ahmad (PW-8) deposed during cross-examination that: -

“No injury was caused from the front side to the deceased.”

Ijaz Masih (PW-2) deposed during cross-examination that: -

“We did not catch hold of deceased Faisal but we shifted him to the hospital at Rickshaw.”

It is not possible that if Basharat (co-accused since acquitted) was holding Faisal Masih, the deceased, then the appellant could have inflicted the injuries on his back. Dr. Muhammad Ashfaq Ahmad (PW-8) stated explicitly that the injuries were not inflicted from the front; relatively the same were caused from the back. This also creates doubt about the genuineness of the version given by PWs, i.e., Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2)-the eyewitness. Thus, the prosecution version is contradicted by medical evidence, which affects the core of the prosecution’s case and renders the witness's testimony liable to be discredited.

13. Per the prosecution case, the complainant (PW-1) for fetching vegetables was standing in front of Shahid Sweet at 11:00 a.m.; Faisal Masih

(the deceased) reached in front of Shahid Sweets and also stopped in search of riders. Similarly, Ijaz Masih (PW-2), brother of the complainant, rickshaw driver, along with Chand Masih and Salamat Masih (given up PWs), also stopped in front of Shahid Sweet in search of riders. Meanwhile, Basharat (co-accused since acquitted) and the appellant arrived at the spot-on motorcycle C.D-70, and the occurrence occurred. The scaled site plan (Ex. PG) was prepared on the instructions of both the prosecution witnesses, i.e., Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2)-the eyewitness. Amanat Masih (PW-1)-the complainant deposed during cross-examination that: -

“It is correct that the owner of vegetable shop is not cited witness in the occurrence. It is correct that Shahid Sweet shop is lying across the road of vegetable shop. There might be distance of 60 feet between Shahid Sweet shop and vegetable shop. It is also correct that owner of Shahid Sweet shop is also not cited witness in the occurrence. ----- I was present in front of Shahid Sweet shop at 10:30 a.m. Thereafter, Ejaz Masih and Chand witnesses also reached there at 10.35/10.40 a.m. Ejaz Masih and Chand reached at the spot separately while riding upon Chingchi Rickshaws. Thereafter five minutes accused Babar (present in the court under police custody) and Basharat (since acquitted) reached at the place of occurrence.”

Ijaz Masih (PW-2)-the eye witness deposed during cross-examination that:-

“Distance between Shahid Sweet and vegetable shop is about 20 spaces. I alongwith Amanat and Chand were present in front of Shahid Sweet. It is correct that Shahid Sweet shop is lying towards western side of alleged place of occurrence. Witness Amanat masih was present prior to presence of other witnesses at Shahid Sweet shop. Deceased Faisal came about two minutes after my presence at Shahid Sweet shop. Thereafter accused Babar present in the court in custody and co-accused Basharat (since acquitted) came within period of one minutes after reaching of deceased Faisal at the place of occurrence. We

did not manage to escape from place of occurrence after seeing the accused party.”

Whereas, in the scaled site plan (Ex. PG & Ex.PG/1), the presence of the deceased was shown at point “B,” while the complainant (PW-1) was shown at point “D,” and PWs Ijaz Masih and Chand Masih were present at point “E” and from point “F,” accused Babar (the appellant) and Basharat reached and after the incident, fled away. In the scaled site plans (Ex. PG & Ex.PG/1), the place of occurrence was shown in front of the vegetable shop of Malik Khalid Mehmood, and the deceased, prosecution witnesses and the accused were not present in front of Shahid Sweet. Muhammad Riaz (PW-5)-draftsman deposed during cross-examination that:-

“When I visited the place of occurrence complainant and witnesses were present there. Shahid sweet is situated on the Western Side of main road known as Jandiala Road leading from city Sheikhupura to Jandiala Sher Khan.--
-----Place of occurrence is situated in front of vegetable shop owned by Malik Khalid Mehmood. There is a road on North East Side of place of occurrence whereas shops are situated in Northern Side. The distance between point A to Shahid Sweet is about 82 feet. I have shown point D in my scaled site plan from where complainant had seen the occurrence.”

The evidence of both the prosecution witnesses, i.e., Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2), is unreliable and not trustworthy regarding their presence at the place of occurrence. Although, the site plan is not a substantive piece of evidence according to Article 22 of the Qanun-e-Shahadat Order, 1984, as held in the case of **Mst. Shamim Akhtar v. Fiaz Akhtar and two others** (PLD 1992 SC 211), yet it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses. So, the prosecution witnesses could not justify their presence at the spot. Thus, all the evidence about the presence of Amanat Masih (PW-1)-the complainant, and Ijaz Masih (PW-2) at the spot appears unreliable. With this background, the presence of the alleged eyewitnesses on the spot seems doubtful. This grave infirmity destroys the credibility of

the evidence of witnesses. If the evidence of these witnesses is rejected as untrustworthy, nothing survives the prosecution case. These are the material contradictions in the ocular evidence and documentary evidence.

14. So far as the motive set up by the prosecution in the application (Exh. PA), FIR (Exh. PF), and private complaint (Exh. PB) and deposed about it by Amanat Masih (PW-1), the complainant and Ijaz Masih (PW-2)-the eyewitness, we have found it to have remained un-proved. The prosecution case in this regard was vague and could hardly inspire confidence. Amanat Masih (PW-1)-the complainant had deposed during cross-examination that: -

“It is correct that the name of my sister, with whom motive of illicit relations with accused Babar was attached, is not mentioned either in the FIR or in the private complaint and she also did not join the investigation.”

Ijaz Masih (PW-2)-the eyewitness, had deposed during cross-examination that: -

“My sister with whom motive was attached that Babar was trying to have illicit relations with her did not appear during investigation.”

Shabbir Hussain (retired S.I) (CW-1)-the investigating officer had deposed during cross-examination that: -

“The woman relating to motive part of the occurrence mentioned in the FIR was not produced before me by the complainant and her whereabouts and particulars were also not provided to me during investigation. I myself could not trace out her particulars as the complainant did not intent to disclose about her.”

Ahmad Anees SI (CW-5)-the investigating officer deposed during cross-examination that: -

“Woman relating to motive part mentioned in the FIR was not produced before me by the complainant.”

In the circumstances, we cannot avoid the conclusion that the motive, as alleged, was an afterthought and has not been proved by any credible evidence. Even, the trial court has already disbelieved the motive set up by the prosecution.

15. As far as recovery of weapon of offence, i.e., churri (P-6) on the pointing of Babar alias Jani-the appellant, on 15.08.2020 and positive report of Punjab Forensic Science Agency (Ex. PO) regarding the presence of human blood on the blade of churri, are concerned, as per the prosecution case, on 06.08.2020, the accused was arrested. Upon the disclosure of the appellant on 15.08.2020, a churri (P-6) was recovered from the opposite railway station near Tower Railway, Sheikhupura. The statements of Syed Waqas Ali Naqvi 1393/C (CW-2) and Ahmad Anees S.I. (CW-5) and on perusal of the recovery memo (Exh.CW-2/A) reveal that after the recovery of Churri (P-6) which was wrapped in shopper, same was taken into custody through sealed parcel. However, it is not mentioned in the Forensic DNA and Serology Analysis Report (Ex. P.O) that the sealed parcel was submitted. Besides, the Punjab Forensic Science Agency Report (Ex. PO) reveals that: -

“Property in this case was released to Ahmed Anees (SI) on August 19, 2020.”

The swabs taken from the blade of Churri (P-6) were examined on October 29, 2020. If the property of the instant case was released to Ahmad Anees S.I. (CW-5) on 19.08.2020, then which case property was analyzed by the Analyst on October 29, 2020, creates doubt on the report of Punjab Forensic Science Agency, Lahore (Ex. PO). Ahmad Anees S.I. (CW-5)-investigating officer deposed during examination-in-chief that: -

“On 19.08.2020, Moharrar Muhammad Anwar handed me a parcel of churri for its onward transmission to the office of PFSA which I submitted in the concerned office, intact, on the same day. On returning to the police station, I recorded statement of Muhammad Anwar Moharrar u/s 161 Cr.P.C. in this regard.”

The entire prosecution evidence is silent on this aspect of the case. Thus, there was no link evidence to prove that the Churri (P-6) recovered from the accused was again received back from Ahmad Anees S.I. (CW-5)-the investigating officer by the moharrar and the same was re-deposited in the Malkhana or handed over to the Moharrar. It is necessary that as and when case property is taken out from Malkhana, necessary entry is made in the Malkhana Register and at the time when case property is re-deposited in Malkhana. Case property in murder cases must be kept in safe custody from the date of seizure till its production in the Court. It is also necessary that when case property is re-deposited in the Malkhana, an entry in the Malkhana Register must be made. A dire necessity has been cast upon the prosecution to produce in Court the abstract of the Malkhana Register for ensuring, dispelling, of any aura of skepticism seeping into the prosecution case, especially vis-a-vis safe custody of the case property, "being," re-deposited in the Malkhana. Thus, it casts doubt on whether it is the same case property that was recovered from the accused and sent to Forensic Science Laboratory or it was the case property of some other case. The prosecution has failed to prove the case against the accused. Pointing out the above deposition of witnesses reveals that the prosecution did not prove that case property (P-6) was kept in safe custody. Due to the lack of this evidence, it cannot be held that the alleged recovered "Churri" (P-6) was re-deposited in Malkhana, and its benefit will go to the accused. Therefore, there is an absolute glaring contradiction in the testimony of the prosecution witnesses, and this vital contradiction remains unexplained. The case property produced in the court could not be related to the case property seized from the appellant's possession. There is, thus, no evidence to connect the Punjab Forensic Science Agency, Lahore (Ex. PO), with the Churri (P-6). All these circumstances taken together only deepen the shadows of doubt cast upon the case of prosecution.

16. Now, coming to the abscondance of the appellant till 06.08.2020, we have noticed that warrant of arrest (Ex. PL) was issued on 19.12.2017 and proclamation under Section 87 Cr.P.C. against the appellant

was issued while mentioning address of the appellant in the same and Shabbir Hussain (retired S.I) (CW-1)-the investigating officer admitted during cross-examination about the address of the appellant that: -

I did not visit the house of Babar accused.
Volunteered that no such house of Babar could
be traced out.”

The deposition of Shabbir Hussain (retired S.I) (CW-1)-the investigating officer, creates doubts about the proceedings for declaring the appellant absconder by Shabbir Hussain (retired S.I) (CW-1)-the investigating officer. Moreover, considering our findings regarding the ocular account furnished by the prosecution, the medical evidence, and the evidence of motive, we believe that the absconding cannot be taken as proof of guilt if sufficient connecting evidence against the appellant is unavailable. In this respect, reference can be made to the “**Barkat Ali v. Muhammad Asif and others**” (**2007 SCMR 1812**). Even otherwise, by now, it is an established proposition of law that the absconding creates merely a suspicion in mind, but the same is not conclusive proof of guilt. Reliance in this respect is placed on the case of “**Rasool Muhammad v. Asal Muhammad and another**” (**PLJ 1995 SC 477**). However, mere absconsion of the accused is no ground to convict him if the prosecution has failed to prove its case against the accused.

17. All the above-narrated facts and circumstances lead this Court to only one conclusion: the whole prosecution case seems to be hinging upon conjectures and surmises and has severely failed to show incriminating, corroborative/independent evidence to bring home guilt of the accused in the case of capital charge. The learned trial court was unjustified in convicting the appellant while relying on untrustworthy, unsubstantiated evidence. The conviction passed by the learned trial court in the circumstances is against all cannons of law recognized for dispensing criminal justice. Per the dictates of the law, the benefit of every doubt will be extended in favor of the accused. In the case of “**Muhammad Akram v. The State**” (**2009 SCMR 230**), it has been held as under: -

“The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favor of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

The golden principle of law is that the Court should let off a hundred guilty but not convict one innocent person. In the case of **Ayub Masih v. The State** (PLD 2002 SC 1048), it has been held by the Hon’ble Supreme Court of Pakistan that: -

“----It is hardly necessary to reiterate that the prosecution is obliged to prove its case against the accused beyond any reasonable doubt and if it fails to do so the accused is entitled to the benefit of doubt as of right. It is also firmly settled that if there is an element of doubt as to the guilt of the accused the benefit of that doubt must be extended to him. The doubt of course must be reasonable and not imaginary or artificial. The rule of benefit of doubt, which is described as the golden rule, is essentially a rule of prudence which can not be ignored while dispensing justice in accordance with law. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”.

*In simple words it means that utmost care should be taken by the Court in convicting an accused. It has further been held in “The State v. Mushtaq Ahmed” (PLD 1973 SC 418) that this rule is antithesis of haphazard approach or reaching a fitful decision in a case. It will not be out of place to mention here that this rule occupies a pivotal place in the Islamic law and is enforced rigorously in view of the saying of the **Holy Prophet (P.B.U.H)** that the “mistake of Qazi (Judge) in*

releasing a criminal is better than his mistake in punishing an innocent”.

18. The upshot of the above discussion is that the prosecution had severely failed to bring home a charge against the appellant beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Crl. Appeal No.43616-J of 2021 filed by Babar alias Jani, the appellant, is accepted in toto. The sentence awarded by the learned Additional Sessions Judge (MCTC), District Sheikhupura, vide judgment dated 24.06.2021, is set aside, and the appellant is acquitted of the charge in a private complaint filed under sections 302/34, 506(B) PPC P.S. City B-Division, District Sheikhupura titled “Amanat Masih Vs. Babar alias Jani, etc.”. The appellant-Babar alias Jani, son of Mukhtar Ahmad alias Mushtaq Ahmad, is ordered to be released forthwith, if not required in any other case. Murder Reference No.103 of 2021 is answered in the negative, and the sentence of death awarded to Babar alias Jani, son of Mukhtar Ahmad alias Mushtaq Ahmad, caste Rehmani, resident of Street No.3, Lal Di Khurli, Farooq Ganj Jandiala Road, District Sheikhupura (convict), is Not Confirmed.

(Farooq Haider)
Judge

(Aalia Neelum)
Chief Justice

Approved for reporting

(Farooq Haider)
Judge

(Aalia Neelum)
Chief Justice

*This judgment was dictated,
pronounced on 15.07.2024,
and signed after its
completion on 31.07.2024.*

*Ikram**