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Judgment Sheet

IN THE LAHORE HIGH COURT,

BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Murder Reference No. 08 of 2022

(The State Vs. 1. Muhammad Ishaq
2.Muhammad Ilyas
3.Muhammad Abbas
4. Mansha
5. Usama)

Criminal Appeal No. 205 of 2022

(Muhammad Ishaq and four others Vs. The State and another)

J U D G M E N T

Date of hearing:	**26.01.2023.**
Appellants by:	Syed Asim Ali Bukhari, Advocate
State by:	Jam Muhammad Tariq, Deputy Prosecutor General.
Complainant by:	Mr. Muhammad Umair Mohsin, Advocate.

SADIQ MAHMUD KHURRAM, J. –Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin(convicts) were tried along with Zain Ali and Salah-ud-Din (both accused since acquitted by the learned trial court) by the learned Additional Sessions Judge, Haroonabad in the case instituted upon the private complaint titled

"Muhammad Sarwar Vs. Muhammad Ishaq and nine others" (relating to F.I.R. No. 89 of 2021 dated 16.02.2021 registered at Police Station Faqirwali, District Bahawalnagar) in respect of offences under sections 302, 148 and 149 P.P.C. for committing the *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased). The learned trial court vide judgment dated 29.03.2022, convicted Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin (convicts) and sentenced them as infra:

Muhammad Ishaq son of Muhammad Nawaz:

i) Death on *two counts* under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each of the deceased namely Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) ; in case of default thereof, the convict was directed to further undergo six months of simple imprisonment for each default .

ii) Rigorous Imprisonment for three years under section 148 P.P.C. and directed to pay fine of Rs.50,000/- and in default of payment of fine the convict was directed to further undergo simple imprisonment of six months.

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

Muhammad Ilyas son of Muhammad Nawaz :-

i) Death on *two counts* under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each of the deceased namely Muhammad Imran son of Muhammad Sarwar

(deceased) and Usman Haider son of Muhammad Sarwar (deceased) ; in case of default thereof, the convict was directed to further undergo six months of simple imprisonment for each default .

ii) Rigorous Imprisonment for three years under section 148 P.P.C. and directed to pay fine of Rs.50,000/- and in default of payment of fine the convict was directed to further undergo simple imprisonment of six months.

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

Muhammad Abbas son of Muhammad Nawaz :-

i) Death on *two counts* under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each of the deceased namely Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) ; in case of default thereof, the convict was directed to further undergo six months of simple imprisonment for each default .

ii) Rigorous Imprisonment for three years under section 148 P.P.C. and directed to pay fine of Rs.50,000/- and in default of payment of fine the convict was directed to further undergo simple imprisonment of six months.

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

Mansha son of Muhammad Nawaz :-

i) Death on *two counts* under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each of the deceased namely Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) ; in case of default thereof, the convict was

directed to further undergo six months of simple imprisonment for each default .

ii) Rigorous Imprisonment for three years under section 148 P.P.C. and directed to pay fine of Rs.50,000/- and in default of payment of fine the convict was directed to further undergo simple imprisonment of six months.

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

Usama son of Mohsin :-

i) Death on *two counts* under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each of the deceased namely Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased) ; in case of default thereof, the convict was directed to further undergo six months of simple imprisonment for each default .

ii) Rigorous Imprisonment for three years under section 148 P.P.C. and directed to pay fine of Rs.50,000/- and in default of payment of fine the convict was directed to further undergo simple imprisonment of six months.

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

Zain Ali and Salah-ud-Din , the co-accused of the convicts, were however acquitted by the learned trial court

2. Feeling aggrieved, Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz, Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin(convicts), lodged the Criminal Appeal No.205 of 2022, assailing their convictions and sentences. The learned trial court submitted Murder Reference No.08 of 2022 under section 374

Cr.P.C. seeking confirmation or otherwise of the sentences of death awarded to the appellants, namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz , Mansha son of Muhammad Nawaz and Usama son of Mohsin. We intend to dispose of the Criminal Appeal No. 205 of 2022 and the Murder Reference No.08 of 2022 through this single judgment.

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

> "Stated that I am resident of Chak No. 165/7-R Tehsil Fortabbas and cultivator by profession. My son Muhammad Imran army personnel had come to house on leaves whose leaves had to end on 16-02-2021 and he had to go back on duty. On 16-02-2021 at about 9:30 am. I alongwith Muhammad Imran, Usman Haider my sons, my brother Daryafat Ali, my nephew Gulzar Ahmad went to see my daughter who used to reside at Chak No. 105/6-R Tehsil Haroonabad. My both sons Muhammad Imran and Usman Haider were on one motor cycle and 1 alongwit (sic) my brother Daryafat Ali and Gulzar Anwar were on another motor cycle. My both sons Muhammad Imran and Usman Haider were going two acre ahead from us, when they Muhammad Imran and Usman Haider reached at a distance of 3/4 acre from chak No.140/6-R on "Kacha Path" suddenly Muhammad Ishaq, Muhammad Ilyas, Muhammad Abbas and Muhammad Mansha sons of Muhammad Nawaz armed with deadly fire arm weapons, Usama S/O Mohsin armed with fire armed weapon, Zain-Ali S/O Muhammad Mansha armed with fire armed weapon, Salaho-u-Din S/O Faqir Hussain armed with fire arm weapon, all Jutt by caste and R/O Chak No.165/7-R came in front of my sons. Muhammad Mansha accused raised Lalkara to teach a lesson to my sons Usman Haider etc for the murder of Aqib Haroon son of Muhammad Mansha and the accused persons tried to stop my both sons forcibly. My both sons Muhammad Imran and Usman Haider due to fear and to save their lives run towards the north-west side in the crop by leaving the motor cycle. At the same time accused Usama S/O Mohsin made two fires with his fire arm weapon on my son Muhammad Imran and Usman Haider which were not hit them. All the above said accused persons chased my both sons by brandishing their fire arm weapons. In the meanwhile, I, my brother Daryafat Ali and Ghulzar Anwar PW also followed the accused persons to save lives of my sons. On our hue and cry one Majid Mahmood S/O Mahmood Ali caste Jutt R/O Adda Rafiq Abad who was going to take the fodder for the cattle from Chak No. 140/6-R, also came there and joined us. At a distance of 8-acre accused persons Usama S/O Mohsin and Ishaq S/O Nawaz circled my son Muhammad Imran whereas accused Muhammad Ilyas, Muhammad Abbas, Zain Ali, Muhammad Mansha and Salah-u-Din

stopped my son Usman Haider at a distance of 1 ½ acre ahead from my son Imran. In our scene accused Usama S/O Mohsin made a fire with his fire arm weapon which hit on the left side of nose of Muhammad Imran (my son). Muhammad Ishaq accused made a fire which hit above the umbilical region of my son Imran. Ishaq accused made a second fire which hit on the umbilical region of my son Muhammad Imran. Accused Muhammad Ilyas made a fire with his fire arm weapon which hit on the upper side of left eye of my son Usman Haider. Accused Muhammad Abbas made a fire shot with his fire arm weapon which hit on the left side of neck of Usman Haider my son. Accused Muhammad Abbas accused again made a fire shot with his fire arm weapon which hit on the front of neck of my son Usman Haider. Accused Muhammad Mansha made a fire shot with his fire arm weapon which hit on the left shoulder of my son Usman Haider. Accused Zain Ali made a fire shot with his fire arm weapon which hit on the left palm of my son Usman Haider. Accused Salaho-u-Din S/O Faqir Hussain made a fire shot with his fire arm weapon which hit on the left wrist of my son Usman Haider. My both sons fell down on the ground. We tried to apprehend the accused persons but they by brandishing their weapons threatened us that if we came near to them they will done to death us and they succeeded to flee away. I alongwith PWS attended my sons Muhammad Imran and Usman Haider who succumbed to their injuries at the spot. The above said occurrence was committed on the abetment of Muhammad Waris, Muhammad Nawaz sons of Muhammad Sharif and Maqsood Ahmad S/O Asghar Ali all Jutt by caste and R/O Chak No. 165/7-R.

The motive behind this occurrence is that one Aqib Haroon son of Muhammad Mansha (accused) caste Jutt was murdered by some unknown person in the year 2019. Muhammad Mansha accused got registered the case against my son Usman Haider etc at P.S. Khichi Wala. My son Usman Haider etc was acquitted by the learned court of ASJ, Fortabbas in the said case. Accused persons had nourished grudge of the acquittal of my son Usman Haider etc, due to this grudge, all the accused persons murdered my both sons with their common object. I submitted a written application Exh-PA to the police P.S. Faqir Wali on the same day on 16-02-2021 upon which case FIR No.89/2021 u/s 302/148/149/109 PPC P.S. Faqir Wali Exh-PB was registered. After post mortem examination of both the dead bodies I received the dead bodies of my both sons in lieu of receipts Exh-PC and Exh-PD. During the investigation I produced the solid evidence alongwith eye witnesses to the I.O. but the 1.0 of the case declared the accused persons Muhammad Ilyas, Zain Ali, Salaho-u-Din, Muhammad Waris, Muhammad Nawaz sons of Muhammad Sharif and Maqsood Ahmad as innocent being in league with the accused persons. 1.0. also wrote a fake supplementary statement by showing the date 17-02-2021 on my behalf and on behalf of the PWs in which I.O. mentioned that Muhammad Latif alias Changa S/O Muhammad Ali resident of Chak No.138/6-R Tehsil Haroonabad and accused Muhammad Mansha fired at my son Muhammad Imran (deceased) alongwith co-accused. I and PWs did not got recorded any supplementary statement before the 1.0. I.O. wrote our supplementary statement only to give the benefit to the accused persons in league with them. That is why I filed this private complaint Exh-PE bearing my signature. I submit attested

> copy of judgment dated 27.02.2020 passed by Mr. Khalid Mahmood Chaudhary, learned ASJ, Fortabbas as Exh- PF. Accused persons are my real culprits, they be summoned to face trial and they be punished in accordance with law."

4. The accused were summoned to face trial in the case instituted upon the private complaint titled *"Muhammad Sarwar Vs. Muhammad Ishaq and nine others"* (relating to F.I.R. No. 89 of 2021 dated 16.02.2021 registered at Police Station Faqirwali, District Bahawalnagar) in respect of offences under sections 302, 148 and 149 P.P.C. for committing the *Qatl-i-Amd* of Muhammad Imran son of Muhammad Sarwar (deceased) and Usman Haider son of Muhammad Sarwar (deceased). The learned trial court framed the charge against the accused on 08.12.2021, to which the accused pleaded not guilty and claimed trial.

5. The complainant of the case in order to prove his case got recorded statements of as many as **two** witnesses. The ocular account of the case was furnished by Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2).

6. The learned trial court also examined as many as **seven** witnesses as court witnesses. Mazhar Farid 1292/C (CW-1) stated that on 18.02.2021, a photographer produced photographs (P-1/1-5) of the dead body of the deceased which photographs (P-1/1-5), the Investigating Officer of the case took into his possession and on 01.03.2021, the Investigating Officer of the case took into possession Call Data Record comprising twenty five pages (P-2/1-25). Abdul Shakoor (CW-2) prepared the scaled site plan of the place of occurrence (Exh.CW-2/A). Waseem Afzal 466/C (CW-4) stated that on 16.02.2021, he escorted the dead bodies of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer

after the post mortem examinations of the dead bodies of the deceased. Muhammad Azhar 775/HC (CW-6) stated that on 16.02.2021, the Investigating Officer of the case handed over to him two sealed parcels said to contain blood stained earth, two sealed parcels said to contain empty shells , one motorcycle and other articles of the deceased recovered from the place of occurrence and on 22.02.2021, he handed over the sealed parcels to Shaukat Ali, ASI (CW-5) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 06.03.2021, the Investigating Officer of the case , handed over to him two sealed parcels said to contain weapons and on 07.03.2021, the Investigating Officer of the case handed over to him two other sealed parcels said to contain weapons which on 14.03.2021, he handed over all the said sealed parcels to the Investigating Officer of the case for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Ghulam Shabbir, Inspector (CW-7), investigated the case from 16.02.2021 till 30.03.2021, arrested the appellants namely Muhammad Ishaq son of Muhammad Nawaz, Mansha son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz and Usama son of Mohsin, on 25.02.2021 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

7. The learned trial court also examined Dr. Kashif Nazir (CW-3), who on 16.02.2021 was posted as Medical Officer at THQ hospital Haroonabad and on the same day conducted the post mortem examination of the dead body of Usman Haider son of Muhammad Sarwar (deceased). Dr. Kashif Nazir (CW-3), on examining the dead body of Usman Haider son of Muhammad Sarwar (deceased) observed as under:-

" **Description of injuries.**

1. Massive lacerated wound measuring 6cm x 3cm on left eye brow, brain matter was out, clotted blood, fractured skull, blackening present.
2. Lacerated wound measuring 4cm x 2.5 cm on right side of skull 4cm away from right eye brow, white brain matter out.
3. Multiple entry wound measuring 2cm x 1.8cm on left side of neck, blackening present, bullet recovered.
4. Entry wound measuring 3.2cm x 2.6cm on front of neck region. Bone exposed.
5. Multiple entry wound on left shoulder, blackening present measuring 1.9cm x 1.7cm on left shoulder, bullet recovered.
6. Lacerated wound 3.5cm x .9 cm on palmer surface on left hand.
7. Abrasion measuring 3cm x .8 cm on left wrist joint.

EXAMINATION OF NECK.

1. Lacerated wound measuring 2cm x 1cm on left side of neck multiple (entry wound).
2. Lacerated wound measuring 4.3cm x 3.1cm on front of the neck region, bone exposed.

……

FINAL OPINION:

In my opinion death occurred due to multiple fire arm injury leading to excessive blood loss and brain death secondary to cardiopulmonary arrest."

On the same day, Dr. Kashif Nazir (CW-3), also conducted the post mortem examination of the dead body of the deceased, namely Muhammad Imran son of Muhammad Sarwar. Dr. Kashif Nazir (CW-3), on examining the dead body of the deceased namely Muhammad Imran son of Muhammad Sarwar, observed as under:-

"DESCRIPTION OF INJURIES:

1. Entry wound measuring 2cm x 1.8cm on nasal bone, blackening present.

2. Exit wound measuring 3cm x 2.8 cm on the back of skull, blood oozing, fractured skull.

3. Exit wound measuring 2.8cm x 2.cm on back region.

4. Entry wound measuring 1.8cm x 1.8 cm on above umbilical region, blackening present.

5. Multiple blackening mark on below umbilical region.

……

OPINION:

In my opinion death occurred due to multiple gunshot injury leading to massive blood loss and leading to brain death and cardiopulmonary arrest. ”

8. On 12.01.2022, the learned counsel for the complainant gave up the witnesses namely Gulzar Anwar and Majid Mahmood as being unnecessary. On 08.02.2022, the learned counsel for the complainant gave up the witnesses namely Mudassir Rehman 1414/C, Muhammad Waqas CSIU and Mubashir Hussain as being unnecessary. On 24.02.2022, the learned Assistant District Public Prosecutor closed the prosecution evidence after submitting the report of the Punjab Forensic Science Agency, Lahore (Exh.PG) regarding the analysis of blood stained earth and the report of the Punjab Forensic Science Agency, Lahore (Exh.PH) regarding the comparison of empty shells of bullets and cartridges with the weapons recovered from the accused.

9. After the closure of prosecution evidence, the learned trial court examined the appellants namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin under section 342 Cr.P.C. and

in answer to the question why this case against you and why the P.W.s have deposed against you, the appellants replied that they had been involved in the case falsely and were innocent. The appellants, namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin, opted not to get themselves examined under section 340(2) Cr.P.C, and did not adduce any evidence in their defence.

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

11. The contention of the learned counsel for the appellants precisely is that the whole case is fabricated and false and that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence. The learned counsel for the appellants in support of this appeal, further contended that the story of the prosecution mentioned in the F.I.R., on the face of it, was highly improbable and the reason assigned by the complainant and the eye-witnesses for being present at the place of occurrence was without any justification. He further contended that the statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) were not worthy of any reliance. The learned counsel for the appellants further submitted that the recovery of the motorcycle (P-18) from the appellant namely Muhammad Abbas and the recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of

the gun (P-25) from the appellant Usama were full of procedural defects, of no legal worth and value and result of fake proceedings. He finally submitted that the prosecution has totally failed to prove the case against the accused beyond the shadow of doubt.

12. On the other hand, the learned Deputy Prosecutor General along with the learned counsel for the complainant, contended that the prosecution has proved its case beyond the shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General along with the learned counsel for the complainant further argued that the deceased died as a result of injuries suffered at the hands of the appellants namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin. The learned Deputy 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 Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) . The learned Deputy Prosecutor General along with the learned counsel for the complainant, further argued that the recovery of the motorcycle (P-18) from the appellant namely Muhammad Abbas and the recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of the gun (P-25) from the appellant Usama and the report of the Punjab Forensic Science Agency, Lahore (Exh. P.H.) also corroborated the ocular account. The learned Deputy Prosecutor General along with

the learned counsel for the complainant further contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. Lastly, the learned Deputy Prosecutor General along with the learned counsel for the complainant, prayed for the rejection of the appeal.

13. We have heard the learned counsel for the appellants, the learned Deputy Prosecutor General along with the learned counsel for the complainant and, with their assistance, perused the record and evidence recorded during the trial.

14. A perusal of the prosecution evidence reveals that it is an admitted aspect of the prosecution case that the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) were indeed not the residents of the place of occurrence or any place near the same. According to the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2), the occurrence took place in *Chak No.140/6-R*, whereas both the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) were residents of *Chak No.165/7-R* , which place was at a distance from the place of occurrence . the prosecution witness namely Muhammad Sarwar (PW-1), during cross-examination stated as under:-

> " **The distance between my house and the place of occurrence is about 2 ½ to 3 squares.** It is incorrect to suggest that my residence falls at a distance of about 2-km from place of occurrence. It is correct that my house falls in the area of police station Khichi Wala Tehsil Fort Abbas and the place of occurrence falls in the area of police station Faqirwali Tehsil Haroonabad towards south.
>
> ……..
>
> **Daryafat Ali PW is my real brother**, Gulzar PW is my nephew and permanent resident of Chak No.428/6-R. volunteered that he resides with me. Chak No.428/6-R is at the distance of 25/30 km away from my village." (emphasis supplied)

The above-referred portions of the cross-examination of the prosecution witness namely Muhammad Sarwar (PW-1) reflect that the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) can be validly termed as "*chance witnesses*" and therefore were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. We have noted with grave concern that the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place. According to the statement of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) , the reason for them going to the place of occurrence was that the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) along with the deceased were going towards *Chak No. 105/6-R* to visit the daughter of the prosecution witness namely Muhammad Sarwar (PW-1) and on their way, while passing through *Chak 140/6-R*, the occurrence took place. A dispassionate analysis of the prosecution evidence reveals that both the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) failed to prove the stated reason for them to have gone to the place of occurrence. Ghulam Shabbir, Inspector (CW-7) , the Investigating Officer of the case , during the course of investigation , even did not visit *Chak No. 105/6-R* so as to verify as to whether the stated reason of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) to visit the said *Chak No. 105/6-R* was correct or otherwise. Moreover, during the course of trial, the complainant of the case namely

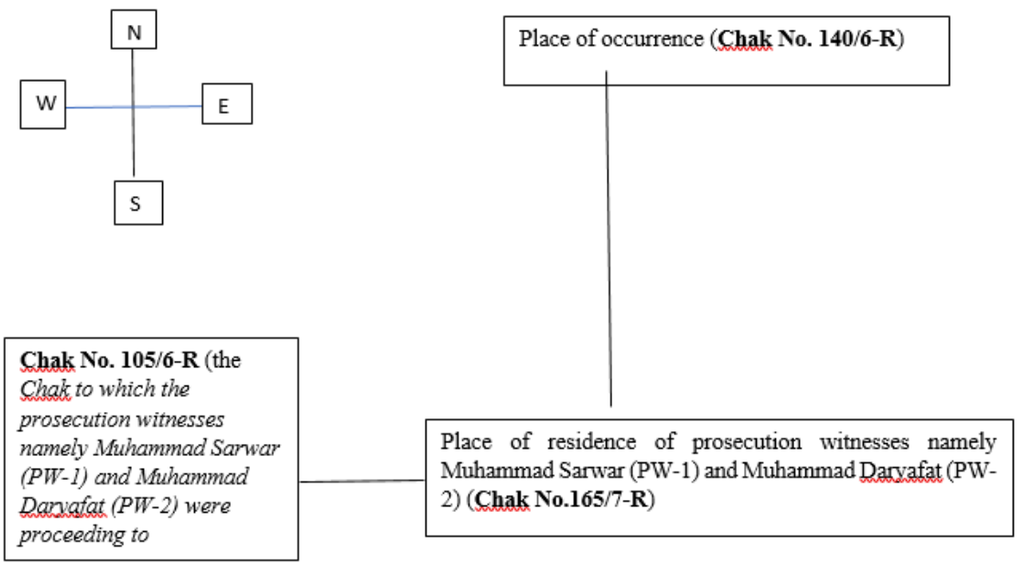
Muhammad Sarwar (PW-1) , made no effort to prove that he had a daughter living in *Chak No. 105/6-R* with whom he was proceeding to meet when the occurrence took place. Similarly, the complainant of the case namely Muhammad Sarwar (PW-1) did not even show the house of his daughter which was allegedly situated in *Chak No. 105/6-R* to Ghulam Shabbir, Inspector (CW-7) , the Investigating Officer of the case . So much so that the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) even did not name the said daughter of the prosecution witness namely Muhammad Sarwar (PW-1) who they were going to meet in *Chak No. 105/6-R.* More worrying are the admissions of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) that despite the fact that *Chak No. 105/6-R* was situated towards the **western side of** *Chak No. 165/7-R,* the *Chak* where the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) had started their journey from , and the *Chak No. 140/6-R* , the *Chak* where the occurrence took place, was situated on the **northern side** of *Chak No. 165/7-R,* how and why the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) and the deceased were found to be present in *Chak No. 140/6-R* at the time when the occurrence took place, as obviously *Chak No. 140/6-R* was on the northern side of *Chak No. 165/7-R,* whereas *Chak No. 105/6-R* was on the western side of *Chak No. 165/7-R.* The prosecution witness namely Muhammad Sarwar (PW-1) , during cross-examination , stated as under:-

" Chak No. 105/6-R is situated **towards west from my village**"

Abdul Shakoor, Patwari (CW-2) explained during cross-examination, as under:-

> " Chak No.165/7-R situated **towards southern side from the place of occurrence** mentioned in both scale site plan."

A perusal of the statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Abdul Shakoor, Patwari (CW-2) reveals the positioning of Chak No. 165/7-R, Chak No. 140/6-R and Chak No. 105/6-R as under:-



Despite realizing this flaw in their statements that while proceeding from the place of residence of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2), being *Chak No. 165/7-R* to *Chak No. 105/6-R*, the *Chak No. 140/6-R* **did not even fall on the same route**, still the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) could not explain their arrival at *Chak No. 140/6-R* while departing from *Chak No. 165/7-R* towards *Chak No. 105/6-R*. The prosecution witness namely Muhammad Sarwar (PW-1), admitted during cross-examination, as under:-

> " **It is correct that a way towards west from our village leads to Chak No.105/6-R** is available for **the direct approach of Chak No.105/6-R without entering into Chak No. 140/6-R.**" (emphasis supplied)

The prosecution witness namely Muhammad Daryafat (PW-2) , stated as under:-

> "It is correct that a **metal road leads towards Chak NO.105/6-R from our village** via Faqirwali. It is correct that **the way mentioned in my examination-in-chief through Chak No.140/6-R is a non-metallic thoroughfare** leading to Chak No. 105/6-R. Chak No.105/6-R might be at a distance of 5 to 10 km away from my village. " (emphasis supplied)

In this manner, it is conclusively proved that the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) made a false claim that on the day of occurrence, they had proceeded from their residence situated in Chak No. 165/7-R towards Chak No. 105/6-R when they arrived at Chak No. 140/6-R and witnessed the occurrence.

16. Additionally, it was claimed by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) that they had gone to the place of occurrence on one 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 Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) to arrive at the place of occurrence , was not produced. The prosecution witness namely Muhammad Sarwar (PW-1), during cross-examination, stated as under:-

> "My both sons Muhammad Imran and Usman Haider were on one motor cycle and **I alongwith my brother Daryafat Ali and Gulzar Anwar were on another motor cycle**. " (emphasis supplied)

Ghulam Shabbir, Inspector (CW-7) , the Investigating Officer of the case, visited the place of occurrence, after the occurrence and remained there for a considerable time. During the course of his stay at the place of occurrence, Ghulam Shabbir, Inspector (CW-7) , the Investigating Officer of the case did not take into possession the motorcycle allegedly used by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) to arrive at the place of occurrence alongwith 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. The said motorcycle which was used by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) 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 Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) to arrive at the place of occurrence and the failure of prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) as well as the Investigating Officer of the case to produce the same before the learned trial court, though the case was instituted upon a private complaint filed by Muhammad Sarwar (PW-1) and the said motorcycle could have always been produced before the learned trial court but was not, leads to only one conclusion and that being that no such motorcycle was available. Had a motorcycle been used by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (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 Ghulam Shabbir, Inspector (CW-7), the Investigating Officer of the case and the same would necessarily would have been

taken into possession by Ghulam Shabbir, Inspector (CW-7) , the Investigating Officer of the case but it was not and it proves that a false claim was made by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) that they had arrived at the place of occurrence on a motorcycle. The very inception of the prosecution case is, therefore, put in doubt. Reliance in this regard is placed on the case of *"Muhammad Ali Vs. The State"* **(2015 SCMR 137)** wherein the august Supreme Court of Pakistan has held as under:-

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

In this manner, the eye witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) not only failed miserably to establish the reason for their arrival and presence at the place of occurrence, at the time of occurrence but also the mode through which they came to arrive at the place of occurrence. The prosecution was under a bounden duty to establish that the occurrence had indeed taken place when the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) had proceeded to and arrived at the place of the occurrence and the failure to prove any reason for the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) to have proceeded to the place of occurrence and the failure to prove the mode through which they came to arrive at the place of occurrence, has vitiated our trust in prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) . 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 occurrence, but on the day of occurrence stated to be present near the spot as they 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 complainant Ghulam Farid and Manzoor Ahmed witnesses in the said case, who were all residents of some other houses and were not the inmates of the house wherein the occurrence had taken place and therefore the said eye-witnesses being, chance witnesses, were declared not worthy of reliance. Reliance is also placed on the case of "*Nasrullah alias Nasro v. The State"* **(2017 SCMR 724))** wherein the august Supreme Court of Pakistan observed as under:-

> *"In the case in hand the eye-witnesses produced by the prosecution lived eighty kilometers away from the scene of the crime, their stated reason for presence in the house of occurrence at the time of incident in issue had never been established through any independent evidence."*

17. We have noted with serious anxiety that the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) is inconsistent with the medical evidence as furnished by Dr. Kashif Nazir (CW-3) and flawed beyond mending , resulting in disfiguring the complexion of the whole prosecution case beyond reparation and recognition. Muhammad Sarwar (PW-1) , in his statement before the learned trial court, stated as under:-

> "Muhammad Ishaq accused made a fire which hit above the umbilical region of my son Imran. **Ishaq accused made a second fire which hit on the umbilical region of my son Muhammad Imran.**
>
> ……
>
> Accused Zain Ali made **a fire shot** with his fire arm weapon which **hit on the left palm of my son Usman Haider**. Accused Salaho-u-Din S/O Faqir Hussain made **a fire shot** with his fire arm weapon **which hit on left wrist of my son Usman Haider**" .emphasis supplied)

Muhammad Daryafat (PW-2) in his statement before the learned trial court stated as under:-

> "Muhammad Ishaq accused made a fire which hit above the umbilical region of Imran. **Ishaq accused made a second fire which hit on the umbilical region of Muhammad Imran.**
>
> …….
>
> Accused Zain Ali made a fire shot with his **fire arm weapon which hit on the left palm of Usman Haider**. Accused Salaho-u-Din S/O Faqir Hussain made a fire shot with his fire arm weapon **which hit on the left wrist of Usman Haider**." (emphasis supplied)

A perusal of the above referred statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) reveals that according to them the appellant namely Muhammad Ishaq fired with a firearm weapon, hitting Muhammad Imran (deceased), **twice on his umbilical area**, whereas Zain Ali (since acquitted),fired with his firearm weapon, hitting the **left hand of Usman Haider** (deceased) and Salah-ud-Din (since acquitted) fired with

his firearm weapon, hitting on the **left wrist of Usman Haider** (deceased). Contrary to the above-referred statements of the eyewitnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) , Dr. Kashif Nazir (CW-3), who conducted the post mortem examinations of the dead bodies of the deceased namely Usman Haider and Muhammad Imran, did not observe presence of any injury caused by use of a firearm weapon on the **left hand of Usman Haider** (deceased) and on the **left wrist of Usman Haider** (deceased) and also noted that Muhammad Imran (deceased) had suffered from only **one injury** on his umbilical area and not two, as was stated by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2). Dr. Kashif Nazir (CW-3) further explained during cross-examination as under:-

> " It is correct that injury No.6 mentioned above on the dead body of Usman Haider **was not a fire arm injury** since it was mere laceration on the **palmer surface of left hand**. It is correct that **injury No.7 on the dead body of Usman Haider was also not a fire arm injury**. It is correct that injuries No.6 & 7 on the dead body of Usman Haider can be caused with some collusion or striking with some blunt subject.
>
> ……
>
> It is correct that vide injury No.5 of the dead body of Imran there was neither inverted margins nor everted margins, volunteered that **it was just blackening mark of gun powder without any injury**.."(emphasis supplied)

The said opinion and observations of Dr. Kashif Nazir (CW-3), that he did not observe presence of any injury caused by use of a firearm weapon on the **left hand of Usman Haider** (deceased) and on the **left wrist of Usman Haider** (deceased) and also that Muhammad Imran (deceased) had suffered from only **one injury** on

his umbilical area and not two, as was stated by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2), was never challenged by the prosecution either during the investigation of the case or during the course of the trial. In this manner, the statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) are in direct contradiction and in conflict with the opinion and observations of Dr. Kashif Nazir (CW-3). The prosecution witnesses very well knew that the observations and opinion of Dr. Kashif Nazir (CW-3), were in themselves sufficient to shatter the very foundation upon which the prosecution case was built, however, even being in knowledge of this fact, no effort was made by the prosecution witnesses to challenge the observations and opinion of Dr. Kashif Nazir (CW-3) or if the same could not be challenged, then to explain the same. Despite our repeated queries, the learned Deputy Prosecutor General and the learned counsel for the complainant have failed to explain the said discrepancies in the prosecution evidence. In this manner, irreconcilable and harrowing contradictions have cropped up in the ocular account of the occurrence as narrated by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) and the medical evidence as furnished by Dr. Kashif Nazir (CW-3). The contradictions in the ocular account of the occurrence, as narrated by Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) and the medical evidence as furnished by Dr. Kashif Nazir (CW-3), clearly establish that the prosecution miserably failed to prove the charge against the appellants. The contradictions in the ocular account of the occurrence, as narrated by Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) and the medical evidence, as furnished by Dr. Kashif Nazir (CW-3), sound the death knell for the prosecution case and proves to be the cause of its sad demise. Had the witnesses

namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) seen the occurrence then there did not exist any possibility that they would fallen into such grave error. The august Supreme Court of Pakistan in the case of *"Muhammad Shafi alias Kuddoo vs. The State and others "* (**2019 S C M R 1045**) has held as under:-

> *"Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime."*

Reliance is also placed on the case of *"Muhammad Zaman vs. The State and others "* (**2014 S C M R 749**) wherein it has been held as under:-

> *"The more so, when the total number of injuries found on the deceased as well as the injured could be caused by one or two L.G. Cartridges. The number of assailants in the circumstances of the case appears to have been exaggerated"*

Reliance is placed on the cases of *"Muhammad Ali Vs. The State"* **(2015 SCMR 137)** "*Muhammad Ashraf Vs. The State"* (**2012 S C M R 419**) ,*USMAN alias KALOO Vs. The State* (**2017 S C M R 622**) ,*Muhammad Hussain Vs. The State* (**2008 S C M R 345**) and "*Ain Ali and another Vs. The State"* (**2011 SCMR 323**) where the august Supreme Court of Pakistan was pleased to reject the evidence of prosecution witnesses when the same was found to be in contrast with the medical evidence.

18. The scrutiny of prosecution evidence also reflects the falsity of the claims of the eye-witnesses ,as the occurrence was completed within a few minutes and in that scenario it was humanly impossible to provide such minute details in such a photographic manner or to assign the specific roles and furnish detailed description of the same, while getting the written application (Exh.PA) for the registration of the F.I.R submitted to the Investigating Officer of the case, as has been done in this

case. The manner in which minute and complex details of the occurrence, including the individual roles of the assailants, have been mentioned in the written application (Exh.PA), would rather infer pre inquiry , exploration and detailed considerations, as such before the writing of the written application (Exh.PA) and rules out the possibility of truthfulness, spontaneity and extemporaneity in the narrative of the written application (Exh.PA) . Specific assignment of multiple fire shots in a crisis situation to the appellants and acquitted co-accused by the witnesses in their statements recorded by the learned trial court is extremely improbable for the simple reason that it was humanly impossible to capture such minute details in a photographic manner. Over anxious photographic account of the occurrence by the prosecution witnesses vis-a-vis, the weapon of offence, number and locale of injuries allegedly caused by the appellants to the deceased is not only proved to be maneuvered but also improbable and preposterous . As discussed above, despite the said details containing the written statement (Exh.PA) of Muhammad Sarwar (PW-1) , the ocular account was proved to be inconsistent with the medical evidence. Moreover, both the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) failed to observe the presence of *an injury of the dimension of 4 cm. x 2.5 cm, present on right side of the skull of the dead body of Usman Haider (deceased)* , 4cm away from right eye brow, with white brain matter out, caused by use of a firearm weapon, which injury was mentioned as injury No.2 in the Post-Mortem Examination Report (Exh.CW-3/A) as prepared by Dr. Kashif Nazir (CW-3). Furthermore, Dr. Kashif Nazir (CW-3) also opined that he only recovered bullets from the dead body of Usman Haider (deceased) and did not recover any pellets from the said dead body, contrary to the narrative of the occurrence as deposed by the prosecution witnesses namely Muhammad Sarwar

(PW-1) and Muhammad Daryafat (PW-2) . Dr. Kashif Nazir (CW-3) explained during cross-examination , as under:-

> "It is correct that I recovered three bullets from the dead body of Usman Haider and did not find any pellet projectile in the dead body of Usman Haider as I have mentioned above."

These apparent flaws in the statements of both the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2), who otherwise narrated all the complex and varied details of the occurrence, have led us to an irresistible conclusion that the statements of the witnesses are not worthy of any reliance and are to be rejected outright. Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of "*Irfan Ali Vs. The State"* (**2015 S C M R 840**) where the august Supreme Court of Pakistan was pleased to reject the evidence eye witnesses and held as under:-

> *"The most striking feature of the case is that in the FIR complete photographic narration of the entire tragedy has been given so much so, Muhammad Khan acquitted accused and the appellant were attributed causing specific injuries with the fire shots of 30-bore pistols at the deceased.* ***With such degree of accuracy each and every detail of the incident was given however, it was not due to mental disorientation that the dagger blows inflicted on the deceased found during the autopsy on the dead body, could not be noticed by the complainant.*** *This doubt of reasonable nature and substance would strongly suggest that the complainant and the other eye-witnesses were not present at the spot, otherwise, lodging the report after more than 3 hours and spending 1-1/2 hour at the spot with the dead body, no room was left for this glaring omission. This omission is very fatal to the prosecution case and it is established that crime was an un-witnessed one."(emphasis supplied)*

Reliance is placed on the case of "*Muhammad Ashraf Vs. The State"* (**2012 S C M R 419**) where the august Supreme Court of Pakistan was pleased to hold as under

> "*Both the eye-witnesses are not natural witnesses and they claimed that they had seen the incidence but had failed to explain two injuries caused with blunt weapon on the forehead and below the left eye of the deceased and had only attributed one injury to the appellant at the back of his ear."*

Reliance is also placed on the case of *USMAN alias KALOO Vs. The State* (**2017 S C M R 622**) where the august Supreme Court of Pakistan was pleased to hold as under:-

> *"Some of the above mentioned eye-witnesses had maintained that the deceased had received only one injury at the hands of the appellant but the Post-mortem Examination Report shows that the deceased had received as many as 8 injuries on different parts of his body."*

Reliance is also placed on the case of *Muhammad Hussain Vs. The State* (**2008 S C M R 345**) where the august Supreme Court of Pakistan was pleased to hold as under:-

> *"Only one fire-arm injury was attributed to Muhammad Hussain petitioner but according to the post-mortem report there was another injury on the person of deceased caused with blunt weapon*."

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

> *"11. All the three witnesses deposed that the deceased had received three injuries, but the Medical Officer found six injuries on the person of the deceased. One of them had blackening. None of the witnesses deposed that any of the appellants had caused the injuries from a close*

range but on the contrary in the site plan the place of firing has been shown 8 feet away from the deceased. Thus from such a distance injury with blackening cannot be caused as it can be caused from a distance of less than 3 feet as per Modi's Medical Jurisprudence. The Medical Officer did not show as to which of the injury was entry or exit wound on the person of the deceased. The medical officer stated that metalic projectile was recovered from wound No.1/B which was an exit wound. If it was an exit wound then the metalic projectile would have been out of the body. The presence of metalic projectile in the body clearly establishes the fact that it is not an exit wound but an entry wound. The medical officer has not shown that any of the injuries had inverted or averted margins so as to ascertain as to which of the injuries is entry or exit wound. Thus on this count there is a conflict between the medical and oral evidence. ***Furthermore, according to Medical Officer, the P.W.15 had four injuries out of them two were entry and two were exit wounds but the P.Ws. 13 and 14 deposed that the injured had received three injuries. Thus the P.Ws. have shown one exit wound as entry wound****. With regard to the injured Tanveer Hussain, the Medical Officer showed two injuries one entry wound on the chest and one exit wound on the back but all the three eye-witnesses deposed that P.W.14 had received two injuries on his chest. As regards injuries on the person of Mst. Maqbool Bibi. The Medical Officer found one entry wound on her back with blackening, whereas P.Ws. 13, 14 and 15 deposed that the fire shot was fired from the roof of the shop. Entry wound with blackening marks cannot be caused from such a long distance. From the above position it is manifest that the ocular testimony is in conflict with the medical evidence. Thus, the deceased and injured did not receive the injuries in the manner, as alleged by the prosecution.*

…….

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

19. Another aspect of the case raising doubt over the presence of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) at the place of occurrence, at the time of occurrence, is the fact the matter was reported to the police on **16.02.2021 at 03.30 p.m.**, when the prosecution witness namely Muhammad Sarwar (PW-1) submitted the written application (Exh.PA) to Ghulam Shabbir, Inspector (CW-7) , the Investigating Officer of the case, whereas the

occurrence had taken place on **16.02.2021 at 09.30 a.m**.. In this manner, the delay in reporting the matter to the police was of about **six hours,** for which delay no reason, much less plausible, was offered. No justification, much less credible, has been given by the prosecution at any stage for such deferral in reporting the matter to the police and the delay in submitting the written application (Exh. P.A.) by Muhammad Sarwar (PW-1) to Ghulam Shabbir, Inspector (CW-7). The reason for this inordinate delay in reporting the matter to the police by the prosecution witness namely Muhammad Sarwar (PW-1) is obvious, being that both the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) were not present at the place of occurrence, at the time of occurrence and the delay was used to procure their attendance. The prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) even admitted that the police arrived at the place of occurrence as early as at about 12.00/12.30 p.m, however, the written application (Exh.PA) was submitted at 03.30 p.m. The prosecution witness namely Muhammad Sarwar (PW-1), during cross-examination, stated as under:-

> " At about **12:00 or 12:30 pm, on that day, police arrived** at the spot and inspected the place of occurrence.
>
> ……
>
> **Police remained present at the spot till 03.30 p.m** on the day of occurrence."(emphasis supplied)

Ghulam Shabbir, Inspector (CW-7), the Investigating Officer of the case, during cross-examination, stated as under:-

> " It is correct that application Exh-PA was submitted before me by the complainant **as** (sic) **3:30 p.m. on 16.02.2021** and it was the first information about the occurrence. (emphasis supplied)

In this case, the ocular account furnished is suffering from legal and factual infirmities and does not appeal to a prudent mind, much less a legal one, because the witnesses never reported the matter to the police for as many as six hours. This inordinate delay in reporting the matter conclusively proves that the written application (Exh. P.A.) submitted by Muhammad Sarwar (PW-1) and the formal F.I.R (Exh.PB) were prepared after probe, consultation, planning, investigation and discussion and as the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) were not present at the place of occurrence, at the time of occurrence, the delay was used for procuring their arrival. As many as six hours were taken to invent a false and dishonest narrative of the written application (Exh. P.A.) of Muhammad Sarwar (PW-1) . The scrutiny of the statements of the prosecution witnesses reveals that the written application (Exh. P.A.) of Muhammad Sarwar (PW-1) was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence. Reliance is placed on the case of "*Ghulam Abbas and another v. The State and another"* **(2021 SCMR 23)** wherein the august Supreme Court of Pakistan observed as under:-

> *"As per contents of F.I.R., the occurrence in this case took place on 19.06.2008 at 01.40 a.m. and the matter was reported to the Police on the same morning at 07.00*

> *a.m. and as such there is a delay of more than five hours in reporting the crime to the Police whereas Police Station was situated at a distance of just six kilometers from the place of occurrence. No explanation whatsoever was furnished by the complainant for this delay in reporting the crime to the Police. Hameed Ullah Khan SI (PW.15) who investigated the case stated during his cross-examination that he reached at the place of occurrence at about 05.00 a.m. and he had completed the police proceedings by 06.30 p.m. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out*."

Reliance is also placed on the case of "*MUHAMMAD ASHRAF JAVEED and another vs. MUHAMMAD UMAR and others"* (**2017 SCMR 199**) wherein the august Supreme Court of Pakistan was pleased to hold as under:

> *"The hospital is closely situated to the Police Station but neither the complainant nor P.W.s took a little pain to report the matter, nor the staff of the hospital including the treating doctor took initiative*."

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of "*Zafar vs. The State and others"* (**2018 SCMR 326**) where the august Supreme Court of Pakistan was pleased to hold as under:-

> "*It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8.30 a.m. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The postmortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. after 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW5) and Umer Daraz (PW6) in the F.I.R. or while appearing before the learned trial Court qua the delay in lodging the F.I.R. or for that matter the belated postmortem of the deceased."*

Guidance is sought from the principles enunciated by the august Supreme Court of Pakistan in the cases of "*G. M. NIAZ Vs. The State"* (**2018 SCMR 506**), "*Abdul Jabbar and another Vs. The State"* (**2019 S C M R 129**) and "*Muhammad Shafi alias Kuddoo Vs. The State and others"* (**2019 S C M R 1045**).

20. We have also noted that the prosecution was not even able to prove the place of occurrence as being the same which was mentioned by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) for the fact

that according to the report of the Punjab Forensic Science Agency, Lahore (Exh.PG) , the earth which had allegedly been collected from the places where the dead bodies of the deceased were found to be present was not of human origin. The relevant portion of the report of the Punjab Forensic Science Agency, Lahore (Exh.PG) reads as under:-

> " **Description of Evidence as Provided by the Submitting Agency**
>
> 1.Soil taken from the place of occurrence of Muhammad Imran.
>
> 2.Soil taken from the place of occurrence of Usman Haider.
>
> ……..
>
> Results and Conclusion
>
> **No human blood was identified on item No. 1 and 2**." (emphasis supplied)

21. We have also noted with disquiet that despite the fact that the occurrence took place at about **09.30 a.m on 16.02.2021**, the post-mortem examinations of the dead bodies of the deceased were conducted after much delay. According to Dr. Kashif Nazir (CW-3), he conducted the post-mortem examinations of the dead bodies of the deceased at **10.30 p.m on 16.02.2021** i.e. after **thirteen hours** of the occurrence and after **seven hours** of the submission of the written application (Exh. P.A.) of Muhammad Sarwar (PW-1) to Ghulam Shabbir, Inspector (CW-7). Dr. Kashif Nazir (CW-3) , who conducted the post-mortem examinations of the dead bodies of the deceased, gave the time between death and post-mortem examinations of the dead bodies as being **twelve to fourteen hours**. The learned counsel for the complainant stated that the delay in the conducting of the post-mortem examinations of the dead

bodies of the deceased was due to the fact that earlier the dead bodies were taken to RHC Faqirwali, however, subsequently, due to the absence of the Medical Officer , were brought to the THQ, hospital Haroonabad, whereafter Dr. Kashif Nazir (CW-3) , conducted the post-mortem examinations of the dead bodies of the deceased. It was admitted by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) that the THQ hospital Haroonabad was at a distance of just two kilometres from the place of occurrence . Muhammad Daryafat (PW-2) , during cross-examination , stated as under:-

> " THQ hospital, Haroonabad is situated at a distance of **about 2-km away from the place of occurrence**." (emphasis supplied)

When according to the prosecution witness namely Muhammad Daryafat (PW-2) , the THQ hospital Haroonabad , where the post-mortem examinations of the dead bodies of the deceased were conducted , was at a distance of only two kilometres away from the place of occurrence , then there is no explanation that as to why there was such a huge delay in not only escorting the dead bodies of the deceased to the THQ hospital Haroonabad but also in the conducting of the post-mortem examinations of the dead bodies of the deceased. Dr. Kashif Nazir (CW-3) also stated that it was at 10.20 p.m on 16.02.2021, that he received the complete papers though the dead bodies have been brought to the hospital at about 08.00 p.m .Dr. Kashif Nazir (CW-3), in his statement before the learned trial court , stated as under:-

> "On the same day, at about 8:00 PM, the dead body of Usman Haider was brought by police for his post mortem examination.
>
> …….

> On the same day, at about **8:00 PM, the dead body of Muhammad Imran was brought** by police for his post mortem examination.
>
> …….
>
> It is correct that **I received police papers i.e. injury statement and inquest of report of Usman Haider deceased as well as of Muhammad Imran deceased at 10:20 p.m.** which I have mentioned on the injury statement and inquest report of Usman Haider as well as on the injury statement and inquest report of Muhammad Imran deceased persons." (emphasis supplied)

The reason which is apparent for the delayed conducting of the post-mortem examinations of the dead bodies of the deceased and the delayed submission of police papers to the Medical Officer is that by that time the details of the occurrence were not known and the said time was used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. No explanation was offered to justify the said delay in receiving the complete documents from the police and the delay in conducting the post-mortem examinations. These facts clearly establish that the witnesses claiming to have seen the occurrence were not present at the time of occurrence and the delay in the post-mortem examination was used to procure their attendance and formulate a dishonest account, after consultation and planning. 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, F.I.R. 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 F.I.R. 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 F.I.R. 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."*

22. We have already mentioned that along with the appellants their co-accused, namely Zain Ali and Salah-ud-Din, both since acquitted by the learned trial court, were also tried. The learned trial court acquitted the above mentioned co-accused of the charges. We have queried the learned Deputy Prosecutor General and the learned counsel for the complainant regarding the filing or otherwise of any appeal against the acquittal of the said co-accused, who have stated that the acquittal of Zain Ali and Salah-ud-Din, since acquitted by the learned trial court, had attained finality as the Petition for Special Leave to Appeal, bearing *PSLA No.31 of 2022* , assailing the acquittal of Zain Ali and Salah-ud-Din, as filed by the complainant of the case was dismissed as withdrawn vide order dated 19.10.2022, passed by this Court and the matter was not agitated any further. The question for determination before this Court now is that whether the evidence which has been disbelieved qua the acquitted co-accused of the appellants can be believed against the appellants. The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has repeatedly held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. We have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected."* If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is

enshrined in the maxim *falsus in uno falsus in omnibus*. The august Supreme Court of Pakistan in *Criminal Miscellaneous Application No. 200 of 2019 in Criminal Appeal No. 238-L of 2013* reported as **PLD 2019 Supreme Court 527** has enunciated the following binding principles: -

> *"The Pakistan Penal Code, 1860 (P.P.C.) contains many offences dealing with perjury and giving false testimony. The very fact that there is a whole chapter, numbered XI, dedicated to such offences amply testifies to the fact that matters relating to giving of testimony were taken very seriously by those who drafted the P.P.C. and their continued retention in the P.P.C. ever since reflects the will of the legislature, which is the chosen representative body of the people of Pakistan through which they exercise their authority within the limits prescribed by Almighty Allah. The following sections, listed under Chapter XI titled "Of False Evidence And Offences Against Public Justice", highlight the fact that giving false testimony has been treated to be a very serious matter entailing some serious punishments.*
>
> ……
>
> ***Holding that the rule falsus in uno, falsus in omnibus is inapplicable in this country practically encourages commission of perjury which is a serious offence in this country. A court of law cannot permit something which the law expressly forbids***.
>
> ……
>
> ……
>
> *21.* ***We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a***

> ***deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."***

Guided by the said judgment of the august Supreme Court of Pakistan, we have examined the prosecution evidence. We have scrutinized the statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2). The prosecution witness namely Muhammad Sarwar (PW-1) in his statement before the learned trial court, stated as under:-

> "**Accused Zain Ali made a fire shot with his fire** arm weapon which hit on the left palm of my son Usman Haider. **Accused Salaho-u-Din S/O Faqir Hussain** made a fire shot with his fire arm weapon which hit on left wrist of my son Usman Haider." (emphasis supplied)

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

> "**Accused Zain Ali made a fire shot** with his fire arm weapon which hit on the left palm of Usman Haider. **Accused Salaho-u-Din S/O Faqir Hussain made a fire shot** with his fire arm weapon **which hit on the left wrist of Usman Haider**." (emphasis supplied)

The perusal of the above-mentioned portions of the statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) clearly reveals that according to the said eye witnesses, Zain Ali and Salah-ud-Din, the acquitted co-accused of the appellants, caused injuries to the deceased. We are unable to find any independent corroboration of the prosecution case against the appellants and we are unable to distinguish the case of the appellants from the case of acquitted co-accused namely Zain Ali and Salah-ud-Din (since acquitted) as the prosecution evidence with regard to the appellants and regarding their co-accused namely Zain Ali and Salah-ud-Din (since acquitted), is similar, being based on the statements of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) . Prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) were adjudged to have deposed

falsely against Zain Ali and Salah-ud-Din (since acquitted). We find no reason to believe their statements with regard to the appellants in absence of any reason to do so. This lying on the part of the witnesses with regard to Zain Ali and Salah-ud-Din (since acquitted) has vitiated our trust in them. We are thus satisfied that the evidence of the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) has no worth and is to be rejected outright. Both the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) have been disbelieved with regard to their allegations against Zain Ali and Salah-ud-Din (since acquitted). Reliance in this regard is placed on the case of "*Tariq Vs. The State"* (**2017 S C M R 1672**) wherein the august Supreme Court of Pakistan has held as under:-

> *"So the conviction of the appellant can only be sustained if there is independent corroboration to the said witnesses who had been disbelieved to the extent of majority of the accused which presently is lacking because the motive asserted by the prosecution indicates that there was enmity of murder between the parties and the said enmity, being double edge, could be reason for false implication of the appellant."*

Reliance in this regard is also placed on the case of *MUNIR AHMED and others Vs. the State and others* (**2019 S C M R 2006**) wherein the august Supreme Court of Pakistan has held as under: -

> *"Loss of precious lives, within a family fold, though on rocks, confirmed by the witnesses including the one with a stamp of injury, notwithstanding, there are certain intriguing aspects, haunting the prosecution, in the totality of circumstances, a hugely large number of assailants, including the unknown, being the most prominent. In the face of indiscriminate firing, a case unambiguously put forth by the prosecution, receipt of single shot by each deceased as well as the injured belies the hypothesis of massive indiscriminate firing by each member of unlawful assembly comprising no less than 26, the unknown included; from amongst the volley of assailants, precision attribution, in an extreme crisis situation, is a feat, beyond human*

> *capacity, it sans forensic support as well; quite a few from amongst the array were let off at investigative stage, on the basis of an affidavit sworn by no other than the injured himself; prosecution's dilemma is further compounded by acquittal of four accused, framed through the same set of evidence by the Trial Court; a severer blow came from the High Court that acquitted all others except the petitioners. The petitioners, though distinctly assigned single shot qua the deceased and the injured, nonetheless, are identically placed with those by now, off the hook. Inclusion of the unknown, eight in numbers, if factually correct was certainly not without a purpose; if at all, they were there, the petitioners and other known members of the family had no occasion to carry out the assault without being out of mind. Notwithstanding the magnitude of loss of lives, the totality of circumstances, unambiguously suggest that the occurrence did not place in the manner as is alleged in the crime report; argument that number of assailants has been hugely exaggerated, as confirmed by the acquittals of the co-accused with somewhat identical roles, though without specific attributions, is not entirely beside the mark and in retrospect calls for caution. It would be unsafe to maintain the convictions. Consequently, Jail Petitions are converted into appeals and allowed; impugned judgment is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case."*

Reliance is also placed on the case of *SAFDAR ABBAS and others Versus The STATE and others* (**2020 S C M R 219**) wherein the august Supreme Court of Pakistan has held as under: -

> *"Petitioners' father, namely, Charagh co-accused is assigned multiple club blows to Muhammad Bukhsh deceased; same is charge against Muzaffar co-accused; remainder of the accused, though assigned no harm to the deceased, nonetheless, are ascribed effective roles to the PWs; they are closely related being members of the same clan and in the totality of circumstances given the accusation, their roles cannot be bifurcated without nullifying the entire case. Motive cited in the crime report is non-specific; investigative conclusions were inconsistent with the case set up by the complainant. Recoveries are inconsequential. Complainant abandoned his case against the acquitted co-accused after failure of his petition seeking leave to appeal in the High Court. In this backdrop, no intelligible or objective distinction can be drawn to hold the petitioners guilty of the charge in isolation with their co-accused. Prosecution evidence, substantially found flawed, it would be unsafe to maintain the conviction without potential risk of error. Criminal Petition No.955-L/2016 is converted into appeal and allowed, impugned judgment is set aside, the petitioners/appellants shall be released forthwith, if not required to be detained in any other case."*

23. The learned Deputy Prosecutor General along with the learned counsel for the complainant, have relied upon the recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of the gun (P-25) from the appellant Usama and the report of the Punjab Forensic Science Agency, Lahore (Exh. P.H.) and have submitted that they offered sufficient corroboration of the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2). The recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of the gun (P-25) from the appellant Usama cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of the gun (P-25) from the appellant Usama , which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of the gun (P-25) from the appellant Usama cannot be used as incriminating evidence against the appellants, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The provisions of section 103 Code of Criminal Procedure, 1898,

unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

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

The august Supreme Court of Pakistan in the case of "*Muhammad Ismail and others Vs. The State"* (**2017 SCMR 898**) at page 901 has held as under:-

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

We have also noted that the prosecution failed to establish the safe custody of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency, Lahore .According to the prosecution witness namely Muhammad Azhar 775/HC (CW-6) stated that on 16.02.2021, the Investigating Officer of the case , handed over to him one sealed parcel said to contain the empty shells of the bullets collected from the place of occurrence and one sealed parcel said to contain the empty shells of the cartridges collected from the place of occurrence and he handed over the said two sealed parcels to Shaukat Ali, ASI (CW-5) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Similarly, Shaukat Ali, ASI (CW-5) also stated that on 22.02.2021, Muhammad Azhar 775/HC (CW-6) one sealed parcel said to contain the empty shells of the bullets collected from the place of occurrence and one sealed parcel said to contain the empty shells of the cartridges collected from the place of occurrence for their onward transmission to

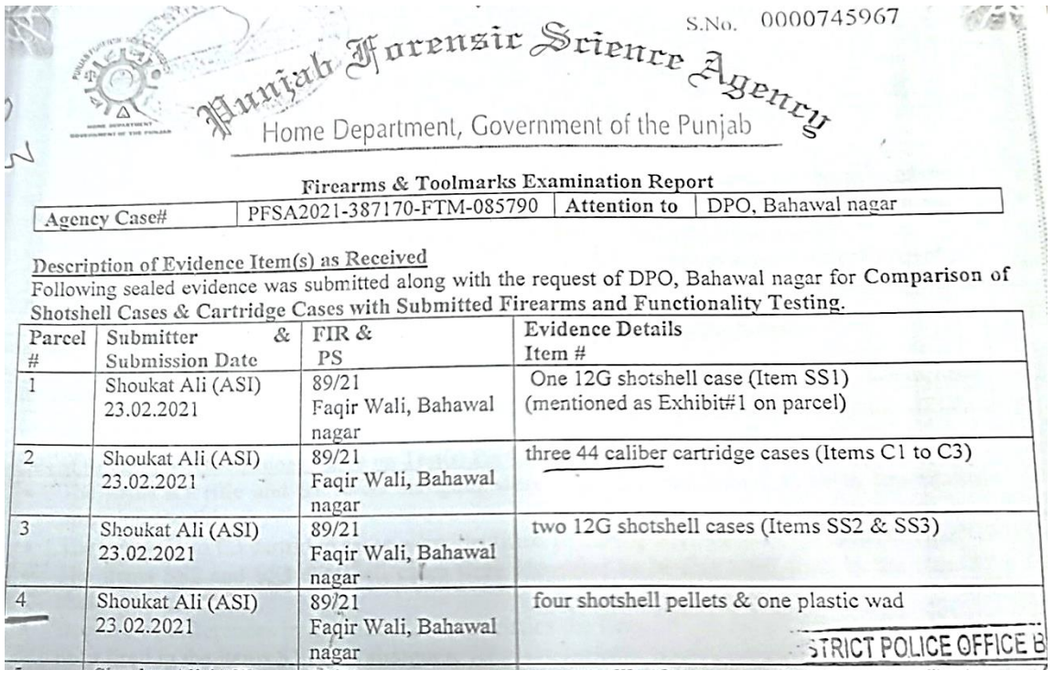
the office of the Punjab Forensic Science Agency, Lahore . Muhammad Azhar 775/HC (CW-6), in his statement before the learned trial court stated as under:-

> "Stated that on 16.02.2021 I was posted at police station Faqirwali as Moharrer. On the same day, I.O. handed over me two sealed parcels of blood stained earth of the deceased Imran and Usman Haider, **one sealed parcel containing 3-empties and one sealed parcel of cartridges**, ……." (emphasis supplied)

Shaukat Ali, ASI (CW-5) in his statement before the learned trial court stated as under:-

> "Stated that on 22.02.2021 I was posted at police station Faqirwali. On the same Moharrer handed over to me two sealed parcels of blood stained earth, **one sealed parcel of cartridges of 12. Bore gun and a parcel of empties 44-bore rifle** bearing seal SA,7-parcels of crime scene Unit, 4-envelopes of Khaki Colour sealed, 5-jars sealed by THQ hospital, Haroonabad for PFSA Lahore,…" (emphasis supplied)

Contrary to the statements of Muhammad Azhar 775/HC (CW-6) and Shaukat Ali, ASI (CW-5) that **one sealed parcel** said to contain the empty shells of the bullets collected from the place of occurrence and **one sealed parcel** said to contain the empty shells of the cartridges collected from the place of occurrence was transmitted to the office of the Punjab Forensic Science Agency, Lahore, according to the report of the Punjab Forensic Science Agency, Lahore (Exh.PH), **four sealed parcels** containing the said empties were deposited at the said agency. The relevant portion of the report of the Punjab Forensic Science Agency, Lahore (Exh.PH) reads as under:-



S.No. 0000745967

Punjab Forensic Science Agency

Home Department, Government of the Punjab

Firearms & Toolmarks Examination Report

Agency Case#	PFSA2021-387170-FTM-085790	Attention to	DPO, Bahawal nagar

Description of Evidence Item(s) as Received

Following sealed evidence was submitted along with the request of DPO, Bahawal nagar for Comparison of Shotshell Cases & Cartridge Cases with Submitted Firearms and Functionality Testing.

Parcel #	Submitter & Submission Date	FIR & PS	Evidence Details Item #
1	Shoukat Ali (ASI) 23.02.2021	89/21 Faqir Wali, Bahawal nagar	One 12G shotshell case (Item SS1) (mentioned as Exhibit#1 on parcel)
2	Shoukat Ali (ASI) 23.02.2021	89/21 Faqir Wali, Bahawal nagar	three 44 caliber cartridge cases (Items C1 to C3)
3	Shoukat Ali (ASI) 23.02.2021	89/21 Faqir Wali, Bahawal nagar	two 12G shotshell cases (Items SS2 & SS3)
4	Shoukat Ali (ASI) 23.02.2021	89/21 Faqir Wali, Bahawal nagar	four shotshell pellets & one plastic wad

STRICT POLICE OFFICE B

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Therefore, it is proved on record that the safe custody and safe transmission of the empty shells of the bullets and cartridges collected from the place of occurrence to the police station and from the Police Station to the Punjab Forensic Science Agency, Lahore could not be proved. In this manner, the recovery of the *Repeater* gun (P-19) from the appellant namely Muhammad Abbas, the recovery of the rifle (P-21) from the appellant namely Mansha, the recovery of the gun (P-23) from the appellant Muhammad Ishaq and the recovery of the gun (P-25) from the appellant Usama could not be proved and cannot be considered as a relevant fact for proving any fact in issue.

24. With regard to the recovery of the motorcycle (P-18) from the appellant namely Muhammad Abbas, it is observed that the witnesses neither during the investigation of the case and nor before the learned trial court mentioned the registration number, colour or any other detail of the motorcycle used by the appellants to arrive and flee away from the place of occurrence so as to relate the recovery of the motorcycle (P-18) from the appellant namely Muhammad Abbas

with the motorcycle used on the day of the occurrence. The prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) in their statements did not even state that the accused were having any motorcycle . Therefore, the recovery of the motorcycle (P-18) from the appellant namely Muhammad Abbas cannot be considered as a relevant fact for proving any fact in issue.

25. Learned Deputy Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) was that the deceased namely Usman Haider was named as an accused regarding the murder of Aqib Haroon, son of the appellant namely Mansha and as the deceased namely Usman Haider was acquitted by the learned trial court , therefore, he was murdered along with Muhammad Imran by the appellants. It was admitted by the prosecution witnesses namely Muhammad Sarwar (PW-1) and Muhammad Daryafat (PW-2) that it was not only Usman Haider (deceased) who was named as an accused in the case registered with regard to the murder of Aqib Haroon (deceased) but others namely Aurangzeb and Allah Ditta were also named as accused in the said case. The prosecution witness namely Muhammad Sarwar (PW-1) also admitted that Usman Haider (deceased) was acquitted by the learned trial court one year before the present occurrence, with no untoward incident taking place during the said period. The prosecution witness namely Muhammad Sarwar (PW-1) during cross-examination , admitted as under:-

> " It is correct that one year prior to this occurrence, the above-mentioned FIR of Mansha accused was decided and the accused persons of said FIR namely Usman Haider, Aurangzeb and Allah Ditta were acquitted from the charges volunteer that the son of accused Mansha was murdered by above named Allah Ditta."

The above referred portion of the statement of the prosecution witness namely Muhammad Sarwar (PW-1) , clearly proves that the prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged, and the fact that the said motive was so compelling that it could have led the appellants to have committed the *Qatl-i-Amd* of both the deceased. There is a haunting silence with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* **(2016 SCMR 2021)** as under:

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

Furthermore, it is settled law that motive is a double-edge weapon, which can cut either way; if it was the reason for the appellants to have murdered the deceased, it equally was a ground for the complainant to falsely implicate them in this case. The august Supreme Court of Pakistan has held in the case of *Muhammad Ashraf Alias Acchu v. The State* **(2019 S C M R 652)** as under:-

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

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

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

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

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

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

> *"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of We have 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."*

27. For what has been discussed above, the Criminal Appeal No.205 of 2022 lodged by the appellants namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin is **allowed.** The convictions and sentences of the appellants namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin awarded by the learned trial court through the impugned judgment dated 29.03.2022 are hereby set-aside. The appellants namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin are ordered to be acquitted by extending them the benefit of the doubt.

The appellants namely Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin are in custody and are directed to be released forthwith if not required in any other case.

28. **Murder Reference No.08 of 2022** is answered in **Negative** and the sentences of death awarded to Muhammad Ishaq son of Muhammad Nawaz, Muhammad Ilyas son of Muhammad Nawaz , Muhammad Abbas son of Muhammad Nawaz, Mansha son of Muhammad Nawaz and Usama son of Mohsin are **Not Confirmed**.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

APPROVED FOR REPORTING

JUDGE

JUDGE