

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

Murder Reference No.31 of 2020
(The State Vs. Moula Bakhsh)

Criminal Appeal No. 438 of 2020
(Moula Bakhsh Vs. The State and another.)

Petition for Special Leave to Appeal No.54 of 2020.
(Muhammad Ramzan Vs. The State and four others.)

Date of hearing:	15.11.2023.
Appellant by:	Mr. Sami ud Din Mazari, Advocate.
State by:	Mr. Shahid Aleem, District Public Prosecutor.
Complainant by:	Mr. Umar Hayat, Advocate.

J U D G M E N T

SADIQ MAHMUD KHURRAM, J.– Moula Bakhsh son of Rasool Bakhsh (convict) was tried alongwith Khair Bakhsh son of Rasool Bakhsh, Rahim Bakhsh son of Rasool Bakhsh, Elahi Bakhsh son of Rasool Bakhsh and Faiz Bakhsh son of Rasool Bakhsh(since acquitted), the co-accused of the convict by the learned Additional Sessions Judge, Rojhan in the case instituted upon the private complaint titled “*Muhammad Ramzan Vs. Khair Bakhsh and four others*” (relating to F.I.R. No. 08 of 2019 dated 08.01.2019 registered at Police Station Rojhan, District Rajanpur) in respect of offences under sections 302 ,324, 337 F(i),337 F(v), 337 A(i), 337 L(2), 148 and 149 P.P.C. for committing the *Qatl-i-Amd* of Muhammad Qasim son of Dariya Bakhsh (deceased). The learned trial

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court vide judgment dated 29.09.2020 convicted Moula Bakhsh son of Rasool Bakhsh (convict) and sentenced him as infra:

Moula Bakhsh son of Rasool Bakhsh:-

Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Muhammad Qasim son of Dariya Bakhsh (deceased) and directed to pay Rs.5,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.

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

Moula Bakhsh son of Rasool Bakhsh (convict) was however acquitted of the charges under sections 324, 337 F(i), 337 F(v), 337 A(i), 337 L(2), 148 and 149 P.P.C. by the learned trial court

Khair Bakhsh son of Rasool Bakhsh, Rahim Bakhsh son of Rasool Bakhsh, Elahi Bakhsh son of Rasool Bakhsh and Faiz Bakhsh son of Rasool Bakhsh, the co-accused of the convict, were all acquitted by the learned trial court.

2. Feeling aggrieved, Moula Bakhsh son of Rasool Bakhsh (convict) lodged the Criminal appeal No.438 of 2020, assailing his conviction and sentence. The learned trial court submitted Murder Reference No.31 of 2020 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Moula Bakhsh son of Rasool Bakhsh (convict). The complainant of the case namely Muhammad Ramzan filed Petition for Special Leave to Appeal No.54 of 2020 seeking permission to file an appeal against the acquittal of Khair Bakhsh son of Rasool Bakhsh, Rahim Bakhsh son of Rasool Bakhsh, Elahi Bakhsh son of Rasool Bakhsh and Faiz Bakhsh son of Rasool Bakhsh, the co-accused of the convict, all since acquitted. We intend to dispose of the Criminal Appeal No.438 of 2020, the Petition for Special Leave to Appeal No.54 of 2020 and the Murder Reference No.31 of 2020 through this single judgment.

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

“ On 01.07.2019 I alongwith Muhammad Qasim my brother went to our land alongwith peter engine for the purpose of operating the tube-well. Maula Bakhsh accused came there. He asked us not to operate the tube-well. Whereas myself and my brother Muhammad Qasim insisted that we would operate the tube-well on the ground that the tube-well is joint ownership including us. Meanwhile Ghulam Sarwar and Ghulam Hussain PWs came there and Maula Bakhsh went to his house. Thereafter we started the tube-well for the purpose of irrigating the land. At about 10:00 am Maula Bakhsh came there alongwith his brothers. Maula Bakhsh accused present in police custody facing the trial of this case was armed with hatchet, Khair Bakhsh accused was armed with hatchet, Ellahi Bakhsh accused armed with hatchet, Rahim Bakhsh accused armed with hatchet and Faiz Bakhsh accused armed with Sota present on bail facing the trial of this case. Maula Bakhsh accused made a Lalkara that they would teach a lesson to us for starting/operating the tube-well. Maula Bakhsh accused gave a wrong side of hatchet blow on the right side of head of Muhammad Qasim (since deceased). Maula Bakhsh accused repeated the wrong side of hatchet blow over the right ear of Muhammad Qasim. Muhammad Qasim receiving the above said injuries fell down on the ground. Khair Bakhsh accused gave a wrong side of hatchet blow which was landed on the right collar bone of Muhammad Qasim. Ellahi Bakhsh accused made a wrong side of hatchet blow on the right foot of Muhammad Qasim. Faiz Bakhsh accused gave a Sota blow on the right hand of Muhammad Qasim. Rahim Bakhsh accused made a wrong side of hatchet blow on the finger of right hand Ghulam Hussain. Faiz Bakhsh accused made Sota blow on the left forehead of Ghulam Hussain. Khair Bakhsh accused gave a wrong side of hatchet blow on my head. On our hue and cry the neighbors attracted and on the arrival of neighbors the accused persons went to their houses alongwith their respective weapons. Thereafter I alongwith Ghulam Sarwar, Ghulam Hussain and Muhammad Qasim went for police station for reporting the matter. When we were on our way Thanedar met us he prepared the necessary documents and sent us to the hospital with police constable he obtained my thumb impression.

Doctor referred Qasim to Rajanpur due to his precarious condition. The hospital of Rajanpur further referred Qasim to D.G Khan hospital. Qasim succumbed to the injuries in the hospital Dera Ghazi Khan, Thereafter his dead body was shifted to Rojhan hospital where Thanedar sent the dead body to hospital for the purpose of post mortem examination alongwith necessary documents which was escorted by Haq Nawaz constable. I asked the Thanedar that he had not correctly recorded my statement according to my version. Thanedar made a promise that he would correct my statement according to my version. I asked Thanedar to read out my statement to me but my statement was not read over to me by Thanedar. During the investigation of this case, police in league with the accused party illegally declared Faiz Bakhsh accused innocent in this case he is nominated accused of this case.

Motive behind this murder was Maula Bakhsh accused committed theft of goats of Muhammad Qasim and criminal case was registered gains (sic) him due to above said reason accused party committed murder of my brother Muhammad Qasim.

I engaged my advocate and filed my private complaint Exh.P.C. My private complaint Exh.P.C was read over to me I thumb marked the same as a token of its correctness.

After two months and seven days of the occurrence I alongwith Ghulam Hussain went to police station Rojhan to know the progress of the case. On that day Maula Bakhsh, Ellahi Bakhsh and Rahim Bakhsh were arrested and they were in police lockup. Thanedar taken out Maula Bakhsh from the police lockup and started interrogation from him. During the interrogation Maula Bakhsh made a disclosure that hatchet used by him during the occurrence is lying at his house. He further offered that he could lead to recovery of that hatchet. Thereafter police taken out Ellahi Bakhsh accused for the purpose of interrogation and Maula Bakhsh accused was once again locked in the police lockup. Ellahi Bakhsh accused voluntarily offered that the hatchet used by him during the occurrence is lying at his house and he could lead to recovery of that Satchel. Thereafter Thanedar taken out Rahim Bakhsh from police lockup and started interrogation from him. Rahim Bakhsh voluntarily offered before me and Ghulam Hussain that the hatchet used by him during the occurrence was lying at his house and he could lead to recovery of hatchet.

Police taken Maula Bakhsh, Ellahi Bakhsh and Rahim Bakhsh accused in a police Dala to their respective houses alongwith myself and Ghulam Hussain for the purpose of recovery, the police Dala was parked in front of house of Maula Bakhsh accused. Maula Bakhsh accused led us and police party to his residential room and taken out blood stained hatchet P-5 and produced it before the police. That hatchet was taken into possession made into sealed parcel by police through recovery memo Exh.P.D. Myself and Ghulam Hussain attested the recovery memo. Maula Bakhsh accused was put in the police Dala and thereafter taken out the Ellahi Bakhsh accused.

Ellahi Bakhsh accused taken us and police party to his residential room and taken out bold stained hatchet P-6 and produced that hatchet before police. That hatchet was taken into possession by police made into sealed parcel through recovery memo Exh.P.E. Myself and Ghulam Hussain attested the recovery memo. Ellahi Bakhsh was put in police Dala and police taken out Rahim Bakhsh accused.

Rahim Bakhsh accused taken us and police party to his residential room and taken out hatchet P-7 under the cot that hatchet was taken into possession by police through recovery memo Exh.P.F. Myself and Ghulam Hussain attested the recovery memo.

After three months and seven days of the occurrence I alongwith Ghulam Hussain went to police station to know the progress of the case on that day Khair Bakhsh accused was arrested and in police lockup. Khair Bakhsh accused was taken out from the police lockup by Thanedar for the purpose of interrogation. Khair Bakhsh accused offered to police that he could lead to recovery of hatchet which was used by him during the occurrence. Khair Bakhsh accused led us and police party in a police Dala to his house and taken out hatchet P-8 under the cot of his residential room and produced before Thanedar, Thanedar had taken that hatchet into possession through recovery memo Exh.P.G. Myself and Ghulam Hussain attested the recovery memo. Thanedar recorded my statement and statement of Ghulam Hussain about the recovery of above mentioned hatchets.”

4. The accused were summoned to face trial in the case instituted upon the private complaint titled “*Muhammad Ramzan Vs. Khair Bakhsh and four others*” (relating to F.I.R. No. 08 of 2019 dated 08.01.2019 registered at Police Station Rojhan, District Rajanpur) in respect of offences under sections 302 ,324, 337 F(i),337 F(v), 337 A(i), 337 L(2), 148 and 149 P.P.C. for committing the *Qatl-i-Amd* of Muhammad Qasim son of Dariya Bakhsh (deceased). The learned trial court framed the charge against the accused on 14.10.2019, to which the accused pleaded not guilty and claimed trial.

5. The complainant of the case in order to prove its case got recorded statements of as many as **thirteen** witnesses. The ocular account of the case was furnished by Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4). Ghulam Mustafa, patwari (PW-1) prepared the scaled site plan of the place of occurrence (Exh.PA) . Mumtaz Hussain 1409/C (PW-2) stated that on 17.03.2019 in his presence, Ashiq Hussain received the Call Data Record (comprising four pages P-1,-P-2,P-3 and P-4) of the mobile phone device under the use of the accused Faiz Bakhsh (since acquitted). Pathan (PW-5) stated that on 08.01.2019 he identified the dead body of the deceased and the Medical Officer handed over the last worn clothes of the deceased to the Investigating Officer of the case in his presence. Haq Nawaz 150/C (PW-6) stated that on 08.01.2019, he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Iftikhar Ahmad 849/C (PW-7) stated that on 07.01.2019, he took the injured to the hospital. Falak Sher 736/HC (PW-9) stated that on 08.01.2019, Muhammad Nasrullah, SI (PW-12) handed over to him the sealed parcel said to

contain the blood stained cotton and the last worn clothes of the deceased and on 13.01.2019, he handed over the sealed parcel said to contain the blood stained cotton to Muhammad Nasrullah, SI (PW-12) for its onward transmission to the Punjab Forensic Science Agency, Lahore and on 14.03.2019, Ashiq Hussain, SI (PW-13) handed over to him three sealed parcels said to contain hatchets and on 26.03.2019, he handed over two sealed parcels said to contain hatchets to Ashiq Hussain, SI (PW-13) for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore. Wazir Ahmad, SI (PW-10) stated that on 07.01.2019, he recorded the oral statement (Exh.PQ) of Muhammad Ramzan (PW-3) and also prepared the injury statement of the injured on the said date. Muhammad Nasrullah, SI (PW-12) investigated the case from 08.01.2019 till 20.01.2019 and detailed the facts of the investigation in his statement before the learned trial court. Ashiq Hussain, SI (PW-13) investigated the case from 25.02.2019 till 12.01.2020, arrested the appellant namely Moula Bakhsh on 06.03.2019 and detailed the facts of the investigation conducted by him in his statement before the learned trial court.

6. The complainant also got Dr. Muhammad Sajid Jamil (PW-8) examined, who on 07.01.2019 was posted as Medical Officer at THQ hospital, Rojhan and on the same day medically examined Muhammad Qasim son of Dariya Bakhsh (then injured later deceased). Dr. Muhammad Sajid Jamil (PW-8), on medically examining Muhammad Qasim son of Dariya Bakhsh (then injured later deceased) observed as under :-

“INJURIES

1. Lacerated wound of about 2 x 0.6 cm in size over the right parietal bone region. This wound has distance of 1.5 cm from right forehead. This wound has irregular margins and fresh blood is oozing from the wound. Underlying skull bone was exposed/visible. Advice X-ray skull AP, lat view.

RESULT

Vide x-ray film No. 04,05/2019 dated 07.01.2019 after x-ray examination, there was fracture of right parietal bone of skull. So injury No.1 was declared as "Shujjah-i-Hashimah".

After the death of Muhammad Qasim, Dr. Muhammad Sajid Jamil (PW-8) also conducted the post-mortem examination of the dead body of the deceased, namely Muhammad Qasim son of Dariya Bakhsh on 08.01.2019. Dr. Muhammad Sajid Jamil (PW-8) on examining the dead body of the deceased namely Muhammad Qasim son of Dariya Bakhsh, observed as under:-

“ INJURIES:

1. Lacerated wound of about 2 x 0.6 cm in size over the right parietal bone region. This wound has distance of 1.5 cm from right forehead. This wound has irregular margins and fresh blood is oozing from the wound underlying skull bone was exposed/visible.
2. On examination fresh blood was running from the right ear.
3. Bruise of about 0.8 cm x 0.2 cm in size over posterior aspect of right hand underlying skin was slightly reddish
4. Abrasion of about 5 cm x 1 cm in size over the dorsal aspect of right foot just superficial skin was peeled off.
5. Scratch mark of about 2 cm x 0.5 cm in size over a right clavicle,

.....

Injury No.2 of Muhammad Qasim deceased.

Bruise of about 0.8 x 0.2 cm in size over posterior aspect of right hand. Underlying skin was slightly reddish. Movement was normal So. Injury No.2 was declared as 337-L(ii).

Injury No.3 of Muhammad Qasim deceased.

On examination, fresh blood was running from the right ear
 Advised CT Scan brain.

Injury No.4 of Muhammad Qasim deceased.

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Abrasion of about 5 cm x 1 cm in size over dorsal aspect of right foot. Just superficial skin was peeled off. Movement was normal injury No 4 was declared as 337-L(ii).

.....

FINAL OPINION:

On the basis of above mentioned findings in my opinion, all the injuries are anti mortem and caused by blunt weapon. CT scan report received from DHQ Hospital Rajanpur as below:

"Fractures of right temporal and parietal bone with associated subcutaneous edema in bilateral (B/L) parietal regions and intra parenchymal petechial hemorrhages in left cerebellum and bilateral cerebral hemispheres without midline shift" On the basis of CT scan brain finding injury No.1 & 2 were declared as "Shujjah-i-Damighah". Injury No.3 was declared as "337-L(ii)". Injury No.4 & 5 were declared as "Jurrah-i-Damiyah". Injury No.1 & 2 were dangerous to life in nature as it cause injury to vital organ that is brain which is sufficient to cause death in ordinary course of nature."

Dr. Muhammad Sajid Jamil (PW-8), on 07.01.2019 also medically examined Muhammad Ramzan (PW-3) and observed as under :-

INJURIES

1. There was a laceration (superficial) of about 1 x 0.2 cm in size over right parietal region. This wound has irregular margins with mild blood stained. So, injury No.1 was declared as "Shujjah-i-Khafifah".

Injury was caused by blunt weapon. I issued MLC No. 06/19, Exh.P.L. I also signed the injury statement Exh.P.L/1"

Dr. Muhammad Sajid Jamil (PW-8), on 07.01.2019 also medically examined Ghulam Hussain (given up prosecution witness) and observed as under :-

INJURIES

1. There was a lacerated wound of about 0.8 x 0.2 cm in size over anterior aspect of index finger of right hand. This wound has irregular margins with mild blood stained. This wound was skin deep in nature. Advice, Xray, right hand AP Lat view.
2. An abrasion of about 0.5 x 0.3 cm in size over posterior aspect of left wrist joint. Underlying skin was slightly breeched. Movement of left wrist joint is normal. So, injury No.2 was declared as "Jurrah-i-Damiyah".

7. On 19.11.2019, the Assistant District Public Prosecutor gave up the witness namely Shahzad Sharif 5574/C as being unnecessary. On 08.09.2020, the learned Assistant District Public Prosecutor tendered in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PV and Exh. PW) and closed the prosecution evidence.

8. After the closure of prosecution evidence, the learned trial court examined the appellant namely Moula Bakhsh son of Rasool Bakhsh (convict) and under section 342 Cr.P.C. and in answer to the question *why this case against you and why the P.W.s have deposed against you*, he replied that he was innocent and had been falsely involved in the case. Moula Bakhsh son of Rasool Bakhsh (convict) further stated that he had not committed any offence and had rather himself suffered serious injuries during the occurrence. The appellant namely Moula Bakhsh son of Rasool Bakhsh opted not to get himself examined under section 340(2) Cr.P.C however, produced documents (Exh.DD, Exh.DE, Exh.DF, Exh.DF/1, Exh.DF/2, Exh.DF/3, Exh.DF/4, Exh.DF/5, Exh.DG and Exh.DH) as evidence in his defence.

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

10. The contention of the learned counsel for the appellant namely Moula Bakhsh son of Rasool Bakhsh precisely is that the whole case is fabricated and false and the prosecution remained unable to prove the facts in issue and did not

produce any unimpeachable, admissible, and relevant evidence. Learned counsel for the appellant further contended that the story of the prosecution mentioned in the statements of the witnesses, on the face of it, was highly improbable. Learned counsel for the appellant further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant also submitted that the recovery of the *hatchet* (P-5) from the appellant namely Moula Bakhsh was full of procedural defects, of no legal worth and value, and were result of fake proceedings. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

11. On the other hand, the learned District Public Prosecutor along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond the shadow of doubt by producing independent witnesses. The learned District Public Prosecutor along with the learned counsel for the complainant further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned District Public Prosecutor along with the learned counsel for the complainant further contended that the medical evidence also corroborated the statements of the eye witnesses. The learned District Public Prosecutor along with the learned counsel for the complainant, further argued that the recovery of the hatchet (P-5) from the appellant namely Moula Bakhsh son of Rasool Bakhsh also corroborated the ocular account. The learned District Public Prosecutor 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 offender with the innocent in this case. Lastly, the learned District Public Prosecutor along with the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellant namely Moula Bakhsh son of Rasool Bakhsh. The learned counsel for the complainant also argued that the Petition for Special Leave to Appeal No.54 of 2020, assailing the acquittal of Khair Bakhsh son of Rasool Bakhsh, Rahim Bakhsh son of Rasool Bakhsh, Elahi Bakhsh son of Rasool Bakhsh and Faiz Bakhsh son of Rasool Bakhsh by the learned trial court from the charges also merited acceptance.

12. We have heard the learned counsel for the appellant, the learned counsel for the complainant, the learned District Public Prosecutor and with their assistance carefully perused the record and evidence recorded during the trial.

13. The learned District Public Prosecutor has vehemently argued that as the prosecution witness namely Muhammad Ramzan was injured during the occurrence, therefore, his statement could not be doubted in any manner. The stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still, his evidence is to be scrutinized on the benchmark of principles laid down for the appraisal of evidence. It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not the simple

presence of a witness at the crime scene but his credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts that an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness regardless of him being injured or not. Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of Nazir Ahmad vs. Muhammad Iqbal and another (2011 SCMR 527) where at page 534 the august Supreme Court of Pakistan , was pleased to hold as under:

“It is settled law that injuries of P.W. are only indication of his presence at the spot but are not affirmative proof of his credibility and truth”.

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 hold that the presence of injuries does not stamp a witness to be a truthful one and observed as under :-.

“12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of P.Ws. would not stamp them truthful witnesses. It has been held in the case of Said Ahmed supra as under:--

"It is correct that the two eye-witnesses are injured and the injuries on their persons do indicate that they were not self-suffered. But that by itself would not show that they had, in view of the aforementioned circumstances, told the truth in the Court about the occurrence; particularly, also the role of the deceased and the eye-witnesses. It cannot be ignored that these two witnesses are closely related to the deceased, while the two other eye-witnesses mentioned in the F.I.R. namely, Abdur Rashid and Riasat were not examined at the trial. This further shows that the injured eyewitnesses wanted to withhold the material aspects of the case from the Court and the prosecution was apprehensive that if independent witnesses are examined, their depositions might support the plea of the accused."

In the case of Mehmood Hayat supra at page 1417, it has been observed as under:--

"10. There is no cavil with the proposition laid down in the case of Zaab Din and another v. The State (PLD 1986 Peshawar 188) that merely because the P.Ws. had stamp of firearm injuries on their person was not per se tantamount to a stamp of credence on their testimony."

In the case of Mehmood Ahmed supra, this Court at page 7 observed as under:

"For an injured witness whose presence at the occurrence is not disputed it can safely be concluded that he had witnessed the incident. But the facts he narrates are not to be implicitly accepted merely because he is an injured witness. His testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution witness."

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."

With this principle of appreciation of evidence in our minds that an injured witness cannot be presumed to be also a truthful witness, we have proceeded to examine the statements of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4).

14. It is the case of the prosecution itself that Ghulam Hussain son of Darya Bakhsh, the brother of the deceased, was also injured during the occurrence, however, Ghulam Hussain son of Darya Bakhsh was never got examined as a prosecution witness by the complainant of the case during the course of the trial despite the complainant seeking several adjournments to produce the said Ghulam Hussain son of Darya Bakhsh as a prosecution witness. In this manner, the prosecution case was not supported by Ghulam Hussain son of Darya Bakhsh, the brother of the deceased and also an injured witness.

15. A perusal of the evidence got recorded by the complainant of the case during the trial reveals that it was admitted by the prosecution witnesses namely

Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) that the occurrence had taken place in the land owned by the appellant namely Moula Bakhsh. It was also admitted by the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) that their residence was at a distance of 20 acres from the place of occurrence, whereas their land was at a distance of 1 ½ acre from the place of the occurrence. The prosecution witness namely Muhammad Ramzan (PW-3) during cross-examination admitted as under:-

“ The acre in which bore was installed in that acre Maula Bakhsh accused cultivated wheat crop.

.....

My house is at the distance of about 20 acre from the disputed tubewell bore.
Myself and my brothers have 1½ acre of land where the disputed tubewell bore is situated”

The prosecution witness namely Ghulam Sarwar (PW-4) during cross-examination stated as under:-

“Our own bore is near our houses at the distance of 20 acre from the disputed bore. Our personal tubewell could not irrigate the disputed land ”

We have also noted that the reason as given by the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) for their presence at the place of occurrence was that the prosecution witness namely Muhammad Ramzan (PW-3) and the deceased had brought an engine to pump out water from the bore dug within the land of the appellant namely Moula Bakhsh in order for the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) to irrigate their lands and the prosecution witness namely Muhammad

Ramzan (PW-3) and the deceased had arrived at the place of occurrence at about 07/07.30 a.m and started to pump out the water and continued to pump out water from the bore dug at the place of occurrence , using the engine brought by them to the place of occurrence to work the pump, till the occurrence took place. The prosecution witness namely Muhammad Ramzan (PW-3) in his statement before the learned trial court , stated as under:-

“ Thereafter we started the tube-well for the purpose of irrigating the land.

.....

Myself and my deceased brother Qasim taken the peter with us and went to the disputed bore.

.....

Myself and Qasim reached at the place of occurrence at about 07/07:30 am alongwith peter engine. We started peter engine after our arrival over there whereas the occurrence was taken place at about 10:00 a.m

.....

We had peter engine, fan, belt/Patta and screw ranch for the purpose of tightening the nuts..”

The prosecution witness namely Ghulam Sarwar (PW-4) in his statement before the learned trial court , stated as under:-

“ Qasim and complainant went to place of occurrence alongwith peter engine, diggi, fan and delivery pipe. The above said articles transported to the place of occurrence on”

Despite this claim of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) that their reason for their arrival at the place of occurrence was that the prosecution witness namely Muhammad Ramzan (PW-3) and the deceased had brought an engine to pump out water from the bore dug within the land of the appellant namely Moula Bakhsh and while the said engine was running that the incident took place, both the Investigating Officers of the case namely Muhammad Nasrullah, SI (PW-12) and Ashiq Hussain, SI (PW-13) admitted during cross-examination that at the time of their visits to the place of occurrence and even during the course of investigation as conducted by them, neither such an engine was taken into possession by them from the place of occurrence nor any such engine was produced before them during the course of the investigation . Muhammad Nasrullah, SI (PW-12) during cross-examination , admitted as under:-

“ It is correct that peter engine is bone of contention between the party but I have not taken the peter engine into possession,however I took the photograph of peter engine.

.....

I had not taken into possess (sic) the accessories of peter engine on my first visit at place of occurrence nor complainant produced the above said accessories before me.”

With regard to the statement of Muhammad Nasrullah, SI (PW-12) that he had taken the photographs of the engine available at the place of occurrence, this claim was denied by the prosecution witness namely Ghulam Sarwar (PW-4) himself,

who during cross-examination stated that the police had not taken any photographs of the engine. Ghulam Sarwar (PW-4) during cross-examination, stated as under:-

“ Peter engine was already fixed over there when police came there. **Police had not taken any photograph of peter engine or of place of occurrence**”
(emphasis supplied)

Moreover, Ashiq Hussain, SI (PW-13), the other Investigating Officer of the case also admitted during cross-examination that no such engine as taken by the prosecution witness namely Muhammad Ramzan (PW-3) to the place of occurrence was produced before him during the course of investigation, and stated as under:-

“The bone of contention was operating of peter engine between both the parties but that peter engine was not produced by the complainant before me nor I taken the peter engine in possession. ”

The non-production of the engine which had been allegedly brought to the place of occurrence by the prosecution witness namely Muhammad Ramzan (PW-3) and the deceased to pump out water from the bore dug within the land of the appellant namely Moula Bakhsh and which engine was running when the incident took place and the failure of Muhammad Nasrullah, SI (PW-12) and Ashiq Hussain, SI (PW-13) the Investigating Officers of the case, to take into possession the said engine, leads to only one conclusion and that being that no such engine was available at the place of occurrence. Had such an engine been brought to the place of occurrence by the prosecution witness namely Muhammad Ramzan (PW-3) and the deceased to pump out the water from the bore dug within the land of the appellant and the said pumped out water was being used to irrigate the land of the

prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) , then the same must have been available at the place of occurrence, at the time of arrival of Muhammad Nasrullah, SI (PW-12) , the Investigating Officer of the case on the day of occurrence and the same would necessarily have been taken into possession by the Investigating Officers of the case but it was not and it proves that a false claim was made by the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) for their arrival at the place of occurrence and their continued presence at the place of occurrence, which place was admittedly the land of the appellant namely Moula Bakhsh. In this manner, the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening for the reason which was mentioned by them. In this manner, the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) failed miserably to establish the reason for their presence at the place of occurrence, at the time of occurrence. The prosecution was under a bounden duty to establish that the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) had a reason to proceed to the place of occurrence and the reason for their continued presence at the place of occurrence. The failure of the prosecution to prove the said fact has vitiated our trust in the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) as being truthful witnesses.

15. We have noted with serious anxiety that the ocular account of the occurrence as furnished by the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) is inconsistent with the medical evidence as furnished by

Dr. Muhammad Sajid Jamil (PW-8) and flawed beyond mending , resulting in disfiguring the complexion of the whole prosecution case beyond reparation and recognition. According to the statements of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) they had seen the appellant namely Moula Bakhsh inflicted **two injuries** on the head of Muhammad Qasim (deceased) with the use of a hatchet. Muhammad Ramzan (PW-3), in his statement before the learned trial court, stated as under:-

“Maula Bakhsh. accused gave a wrong side of hatchet blow on the right side of head of Muhammad Qasim (since deceased). **Maula Bakhsh accused repeated the wrong side of hatchet blow over the right ear of Muhammad Qasim.** Muhammad Qasim receiving the above said injuries fell down on the ground.

.....

I had stated in my statement before the police that Maula Bakhsh accused gave a wrong side of hatchet blow which was landed toward right side of head of my brother Qasim confronted with Exh.D.A where it is recorded as under

مولا بخش نے کلہاڑی کا وار کیا جو غلام قاسم کو سر پر لگا

Volunteered my statement was not correctly recorded by police. I had stated in my statement before the police that Maula Bakhsh accused repeated wrong side of hatchet blow which was landed at the right ear of my brother Muhammad Qasim confronted with Exh.D.A where it is recorded

مولا بخش نے کلہاڑی کا وار کیا جو قاسم کو دائیں کان پر لگا۔

.....

Qasim my brother remained standing position after receiving **first injury at his head, however he fell down after receiving the second injury** on his right ear.”(emphasis supplied)

The prosecution witness namely Ghulam Sarwar (PW-4) , in his statement before the learned trial court stated as under:-

“Maula Bakhsh accused gave a wrong side of his hatchet blow at the right side of head of Muhammad Qasim. Maula Bakhsh accused repeated the wrong side blow of hatchet which was landed on the right ear of Muhammad Qasim. Muhammad Qasim after receiving the above **said injuries fell** down on the ground.

.....

Again said Qasim fell down on the ground after receiving **the second blow on the right side of ear.**” (emphasis supplied)

A perusal of the above referred statements of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) reveals that according to them the appellant had hit Muhammad Qasim (deceased) **twice** with the hatchet, one blow landing on the right side of the head of Muhammad Qasim (deceased) and the other blow landing on the right ear Muhammad Qasim (deceased) . Contrary to the above-referred statements of the eyewitnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) , Dr. Muhammad Sajid Jamil (PW-8), who conducted the medical examination and later the post mortem examination of the dead body of the deceased namely Muhammad Qasim, observed only **one injury**, present on the head area of the dead body of Muhammad Qasim (deceased). Dr. Muhammad Sajid Jamil (PW-8), on medically examining Muhammad Qasim son of Dariya Bakhsh (then injured later deceased) on **07.01.2019** had observed as under :-

“INJURIES

1. Lacerated wound of about 2 x 0.6 cm in size over the right parietal bone region.

This wound has distance of 1.5 cm from right forehead. This wound has irregular margins and fresh blood is oozing from the wound.(emphasis supplied) .

Subsequently, on 08.01.2019. Dr. Muhammad Sajid Jamil (PW-8) on examining the dead body of the deceased namely Muhammad Qasim son of Dariya Bakhsh, observed as under:-

“ INJURIES:

1. Lacerated wound of about 2 x 0.6 cm in size over the right parietal bone region. This wound has distance of 1.5 cm from right forehead. This wound has irregular margins and fresh blood is oozing from the wound underlying skull bone was exposed/visible.
2. On examination fresh blood was running from the right ear.
3. Bruise of about 0.8 cm x 0.2 cm in size over posterior aspect of right hand underlying skin was slightly reddish
4. Abrasion of about 5 cm x 1 cm in size over the dorsal aspect of right foot just superficial skin was peeled off.
5. Scratch mark of about 2 cm x 0.5 cm in size over a right clavicle,

Dr. Muhammad Sajid Jamil (PW-8) , during cross-examination explained that he had observed only **one injury on the head region** of Muhammad Qasim (deceased) and the said injury had been caused by use of a single blow and stated as under:-

“In injury No 1 of Muhammad Qasim deceases through CT Scan report, I have mentioned fracture of temporal and parietal bone which is **with single blow** but two fractures”

Dr. Muhammad Sajid Jamil (PW-8) explained that only blood was coming out of the ear and it was not as a result of any independent injury suffered by the deceased on his right ear rather the flow of blood was due to the fracture of the

skull bone. The said opinion and observations of Dr. Muhammad Sajid Jamil (PW-8) , that he observed only **one injury**, present on the head region of the dead body of Muhammad Qasim (deceased) , 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 Ramzan (PW-3) and Ghulam Sarwar (PW-4) are in direct contradiction and in conflict with the opinion and observations of Dr. Muhammad Sajid Jamil (PW-8) . The prosecution witnesses very well knew that the observations and opinion of Dr. Muhammad Sajid Jamil (PW-8) , 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. Muhammad Sajid Jamil (PW-8) or if the same could not be challenged, then to explain the same. Despite our repeated queries, the learned District Public Prosecutor and the learned counsel for the complainant have failed to explain the said discrepancy 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 Ramzan (PW-3) and Ghulam Sarwar (PW-4) and the medical evidence as furnished by Dr. Muhammad Sajid Jamil (PW-8) . The contradictions in the ocular account of the occurrence, as narrated by Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) and the medical evidence as furnished by Dr. Muhammad Sajid Jamil (PW-8) , clearly establish that the prosecution miserably failed to prove the charge against the appellant. The contradictions in the ocular account of the occurrence, as narrated by Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) and the medical evidence, as furnished by Dr. Muhammad Sajid Jamil (PW-8),

sound the death knell for the prosecution case and prove to be the cause of its sad demise. Had the witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) deposed truthfully then there did not exist any possibility that they would have fallen into 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.

16. Another aspect drawing our grave concern is the fact that the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) made blatant improvements to their previous statements in order to bring the ocular account as narrated by them, in line with the opinion and observations of Dr.

Muhammad Sajid Jamil (PW-8), who had conducted the post mortem examination of the dead body . The prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) went on to claim that Khair Bakhsh, Elahi Bakhsh and Faiz Bakhsh (all since acquitted), the co-accused of the appellant , had also inflicted injuries upon Muhammad Qasim (deceased) after realizing that Dr. Muhammad Sajid Jamil (PW-8) had observed the presence of bruise, abrasion and scratch mark on the right hand, right foot and right clavicle of the dead body of the deceased respectively, though the infliction of the said injuries by Khair Bakhsh, Elahi Bakhsh and Faiz Bakhsh , all since acquitted, to the deceased was not mentioned by them in their previous statements. The prosecution witness namely Muhammad Ramzan (PW-3) was cross-examined in this regard and the learned trial court observed as under:-

I had stated in my statement before the police that Khair Bakhsh accused gave a wrong side of hatchet blow which was landed on the right collar, bone of Muhammad Qasim **confronted with Exh.D.A where no such blow is mentioned.**

.....

I had stated in my statement before the police that Faiz Bakhsh accused gave sota blow at the right hand of my brother Muhammad Qasim **confronted with Exh.D.A where it is not so recorded** volunteered my statement was not correctly recorded by police.

.....

I had stated in my statement before the police that Faiz Bakhsh accused made sota blow on the left forehead of Ghulam Hussain **confronted with Exh.D.A where it**

is not so recorded volunteered my statement was not correctly recorded by police. (emphasis supplied)

The prosecution witness namely Ghulam Sarwar (PW-4) was also cross-examined in this regard and the learned trial court observed as under:-

“I had stated in my statement Exh.D.C that Faiz Bakhsh accused gave a sota blow which hit Ghulam Hussain on his left forearm **confronted with Exh.D.C where it is not so recorded.** I had stated before the police that Faiz Bakhsh accused gave a sota blow on the right hand of Muhammad Qasim **confronted with Exh.D.C where it is not so recorded.**” (emphasis supplied)

17. We have also noted with grave concern that the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) also went on to claim that the accused, though armed with hatchets, had used the *blunt sides of the said hatchets* to inflict the injuries upon the deceased though in their previous statements they had not made any such claim that the accused had used the blunt sides of the hatchets to inflict the injuries to the deceased. The prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) made a deliberate and dishonest departure from their earlier narrations of the occurrence while deposing before the learned trial court. The prosecution witness namely Muhammad Ramzan (PW-3) was cross-examined in this regard and the learned trial court observed as under:-

“I had stated in my statement before the police that Ellahi Bakhsh accused gave wrong side of hatchet blow on the right foot of my brother Muhammad Qasim **confronted with Exh.D.A where wrong side of hatchet is not mentioned.**

.....

I had stated in my statement before the police that Rahim Bakhsh accused made a wrong side of hatchet blow on the finger of right hand of Ghulam Hussain **conformed with Exh.D.A where wrong side of hatchet is not mentioned.**

.....

I had stated in my statement before the police that Khair Bakhsh accused gave a wrong side of hatchet blow on my head **confronted with Exh.D.A where wrong side of hatchet is not mentioned** (emphasis supplied)

The prosecution witness namely Ghulam Sarwar (PW-4) was also cross-examined in this regard and the learned trial court observed as under:-

“ I had stated in my statement before the police Exh.D.C that Khair Bakhsh accused gave **a wrong side of hatchet** blow at the right collar bone of my brother Muhammad Qasim deceased **confronted with Exh.D.C where it is not so recorded.**” (emphasis supplied)

By improving their previous statements, the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) impeached their own credit. Article 151 of the Qanun-e-Shahadat Order 1984 provides as under: -

“151. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:

- (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;
- (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;
- (3) **by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;”**

As the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) introduced dishonest, blatant and substantial improvements to their previous statements and were duly confronted with their former statements, hence their credit stands impeached and the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) cannot be relied upon, being proved to have deposed with a slight, intended to mislead the court. The august Supreme Court of Pakistan in the case of “Muhammad Ashraf Vs. State” (2012 SCMR 419) took serious notice of the improvements introduced by witnesses and rejected their evidence. We, thus, are satisfied that the evidence of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) has no intrinsic worth and is to be rejected outrightly. The august Supreme Court of Pakistan in a recent case reported as “Muhammad Mansha Vs. The State” (2018 SCMR 772) has enunciated the following principle:

“Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence”.

The august Supreme Court of Pakistan in the case reported as Muhammad Arif Vs. The State (2019 SCMR 631) has enunciated the following principle:

“It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge.”

Guidance is 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 metallic projectile was recovered from wound No.1/B which was an exit wound. If it was an exit wound then the metallic projectile would have been out of the body. The presence of metallic 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.”

18. The case of the eye witness namely Ghulam Sarwar (PW-4) as produced by the complainant before the learned trial court is in itself very unique. It was proved through cross-examination upon the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) that the prosecution witness namely Ghulam Sarwar (PW-4) was not mentioned as a witness of the occurrence in the oral statement (Exh. PQ) of Muhammad Ramzan (PW-3) upon the basis of which

the formal F.I.R (Exh. PR) was registered. This fact that Ghulam Sarwar (PW-4) was not named as a witness in the oral statement (Exh.PQ) is apparent from the perusal of the said oral statement (Exh.PQ). The prosecution witness namely Muhammad Ramzan (PW-3) was cross-examined in this regard and the learned trial court observed as under:-

“ I had stated in my statement before the police that Ghulam Sarwar and Ghulam Hussain PWS came at the place of occurrence prior to the occurrence and Maula Bakhsh accused after giving warning to us went back to his house confronted with Exh.D.A where it is written during the occurrence as under:

شورو واويله پر غلام حسين برادر موقوع پر آگيا۔

Muhammad Nasrullah, SI (PW-12) , the Investigating Officer of the case who also admitted during cross-examination that the prosecution witness namely Ghulam Sarwar (PW-4) was not named as a witness by the complainant in the oral statement (Exh. PQ) and the name of Ghulam Sarwar (PW-4) as a witness was got added by Muhammad Ramzan (PW-3) by way of getting his supplementary statement recorded. Muhammad Nasrullah, SI (PW-12), during cross-examination, stated as under:-

“On very first day I recorded the supplementary statement of the complainant in which he added the name of other witness Ghulam Sarwar and the complainant further explained that all the accused persons which were armed with hatchets used the wrong side of hatchets. ” (emphasis supplied)

In this manner, there remains no doubt that the prosecution witness namely Ghulam Sarwar (PW-4) had not witnessed the occurrence and his name was added subsequently only to prop up the failing prosecution case.

19. The learned District Public Prosecutor and the learned counsel for the complainant placed much emphasis on the promptitude with which the oral statement (Exh. PQ) of Muhammad Ramzan (PW-3) was recorded by Wazir Ahmad, SI (PW-10), and stated that this excluded the possibility of any pre-concert prior to the recording of the oral statement (Exh. PQ). Despite the insistence of the learned District Public Prosecutor and the learned counsel for the complainant that for the fact that oral statement (Exh.PQ) of Muhammad Ramzan (PW-3) was recorded with remarkable promptitude therefore it offered sufficient corroboration of the prosecution case, both the learned District Public Prosecutor and the learned counsel for the complainant are unable to explain that when the oral statement (Exh.PQ) of Muhammad Ramzan (PW-3) was declared to be a fake document by the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) themselves then how any reliance can be placed upon the same. During the course of the trial, it remained a consistent theme with the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) that the oral statement (Exh.PQ) of Muhammad Ramzan (PW-3) was a sham document. The prosecution witness namely Muhammad Ramzan (PW-3) himself in his statement before the learned trial court , stated as under:-

“ I asked the Thanedar that he had not correctly recorded my statement according to my version. Thanedar made a promise that he would correct my statement according to my version. I asked Thanedar to read out my statement to me but my statement was not read over to me by Thanedar.”

Similarly, the prosecution witness namely Ghulam Sarwar (PW-4) in his statement before the learned trial court , claimed that signatures of Muhammad Ramzan

(PW-3) were obtained on blank papers on 07.01.2019 and subsequently a false document (Exh.PQ) was prepared. Ghulam Sarwar (PW-4) in his statement before the learned trial court, stated as under:-

“After the occurrence we were going to the police station for reporting the matter and Thanedar met us. **Police obtained thumb impression of Muhammad Ramzan complainant on blank paper** and sent us to Rojhan hospital alongwith the constable.

.....

FIR of this case was not read over to us by Thanedar” (emphasis supplied)

The scrutiny of the statements of the prosecution witnesses reveals that the oral statement (Exh. P.Q.) of Muhammad Ramzan (PW-3) was declared as a contrived, manufactured and a compromised document by the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) themselves. No corroboration of the prosecution evidence can be had from the said oral statement (Exh. PQ) of Muhammad Ramzan (PW-3).

20. The learned District Public Prosecutor and the learned counsel for the complainant, have submitted that the recovery of the Hatchet (P-5) from the appellant namely Moula Bakhsh offered sufficient corroboration of the statements of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4). Regarding the recovery of the Hatchet (P-5) from the appellant namely Moula Bakhsh, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the *Hatchet (P-5)* from the appellant namely Moula Bakhsh which was in clear violation of section 103 Code of Criminal Procedure, 1898. The provisions of

section 103 Code of Criminal Procedure, 1898, unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

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

Therefore, the evidence of the recovery of the *Hatchet (P-5)* from the appellant namely Moula Bakhsh, being evidence that was obtained through illegal means and hence hit by the exclusionary rule of evidence The august Supreme Court of Pakistan in the case of *Muhammad Ismail and others Vs. The State* (**2017 SCMR 898**) at page 901 has held as under:-

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

Moreover Ashiq Hussain, SI (PW-13) ,Investigating Officer of the case ,admitted that the *Hatchet (P-5)* was recovered from a house which was inhabited by other persons and from a room which was open to access. Ashiq Hussain, SI (PW-13) ,Investigating Officer of the case , during cross examination ,admitted as under :-

"When I went for recovery of weapons of offence, at that time the families of accused persons were there. The rooms from where the recovery of weapons were effected were opened and that were not bolted nor locked"

In this manner,the prosecution could not prove that the *Hatchet (P-5)* was recovered from a place which was under the exclusive possession of the the

appellant. Another aspect regarding the recovery of the *Hatchet (P-5)* from the appellant is that the occurrence took place on **07.01.2019**, whereas the *Hatchet (P-5)* was received in the office of Punjab Forensic Science Agency, Lahore, on **27.03.2019** and was analyzed on **08.11.2019**. During such a long period the blood available on the *Hatchet (P-5)*, if any, would have disintegrated. It is not possible to believe that the blood available on the *Hatchet (P-5)* had not disintegrated by the time the same was analyzed by the Punjab Forensic Science Agency, Lahore and it was, therefore scientifically impossible to detect the origin of the blood. The august Supreme Court of Pakistan in the case of “Faisal Mehmood Vs. The State” (2016 SCMR 2138) has held as under:-

“The report of the Chemical Examiner showing the recovered hatchet to be stained with blood is dated 20.12.2002 whereas the report of the Serologist showing the origin of the blood available on the recovered hatchet to be human blood is dated 25.05.2004. It was scientifically impossible to detect the origin of the blood after about two years of the occurrence because human blood disintegrates in a period of about three weeks.”

Therefore, the recovery of the *Hatchet (P-5)* from the appellant does not further the case of prosecution in any manner. In view of the above mentioned facts, the alleged recovery of the *Hatchet (P-5)* is not proved and the same cannot be used as a circumstance against the appellant. Even otherwise as we have disbelieved the ocular account in this case, hence the evidence of recovery would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a supporttive piece of evidence and if the ocular account is found to be unreliable then the recovery has no evidentiary value.

21. The learned District Public Prosecutor 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 Ramzan (PW-3) and Ghulam Sarwar (PW-4) was that the appellant namely Moula Bakhsh was named as accused by the deceased in a case got registered by the deceased regarding the theft of his goats and the appellant namely Moula Bakhsh committed the *Qatl-i-Amd* of the deceased due to the said grudge. A perusal of the statements of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) reveals that they failed to prove the motive of the occurrence as narrated by them in their statements before the learned trial court. The prosecution witness namely Muhammad Ramzan (PW-3) admitted during cross-examination that the case got registered by the deceased regarding the theft of his goats has already been settled for the fact that the deceased had withdrawn from the prosecution of the said case. The prosecution witness namely Muhammad Ramzan (PW-3) during cross-examination, admitted as under:-

“ My brother Qasim deceased of this case got registered FIR No.190/18 u/s 379 PPC at P.S Rojhan I was PW in that case. The accused persons returned our stolen property thereafter we entered into compromise with them. My brother Qasim tendered his compromising affidavit in favour of accused persons. Due to above said grudge, the accused persons committed the murder of my brother.”

The other prosecution witness namely Ghulam Sarwar (PW-4) stated that he had no knowledge regarding the details of the case got registered by the deceased against the appellant namely Moula Bakhsh as he was not witness of the said case. Ghulam Sarwar (PW-4) during cross-examination, admitted as under:-

“I was not witness in theft case which was got registered by Qasim deceased ”

The above referred portions of the statements of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) clearly prove that the prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged. The prosecution witnesses failed to prove the fact that the said motive was so compelling that it could have led the appellant to have committed the *Qatl-i-Amd* of the deceased. There is a haunting silence with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only supportive piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made basis of conviction. Even otherwise a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of Muhammad Javed v. The State (2016 SCMR 2021) as under:

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

22. The learned District Public Prosecutor and learned counsel for the complainant have also laid much stress upon the stance taken by the learned counsel representing the appellant namely Moula Bakhsh son of Rasool Bakhsh at the time of cross-examination of the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) and while getting the statement of the appellant namely Moula Bakhsh recorded under section 342 of the Code of Criminal Procedure, 1898. It was suggested by the learned counsel representing the

appellant namely Moula Bakhsh son of Rasool Bakhsh to the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) that when the appellant was himself injured during the occurrence. Suffice is to observe that the onus to prove the facts in issue never shifts and always lies on the prosecution. That the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. Furthermore, though it has been argued by the learned District Public Prosecutor and the learned counsel for the complainant that the appellant had claimed to have received injuries in the incident, however, both the learned District Public Prosecutor and the learned counsel for the complainant have admitted that no evidence was got recorded by the appellant namely Moula Bakhsh so as to prove this claim and even the prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) did not admit that the appellant namely Moula Bakhsh was injured during the incident. In absence of any evidence available on the record of the instant case, no presumption can be drawn that the appellant namely Moula Bakhsh must have been injured during the occurrence. The suggestions as put by the learned counsel representing the accused and the documents (Exh.DD, Exh.DE, Exh.DF, Exh.DF/1, Exh.DF/2, Exh.DF/3, Exh.DF/4, Exh.DF/5, Exh.DG and Exh.DH) hardly provide any substantiation to the prosecution case. Reliance is placed on the case of Azhar Iqbal Vs. The State (2013 SCMR 383) wherein the august Supreme Court of Pakistan has held as under:-

“It had not been appreciated by the learned courts below that the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had

taken a plea and had thereby admitted killing the deceased. A reference in this respect may be made to the case of Waqar Ahmed v. Shaukat Ali and others (2006 SCMR 1139). The law is equally settled that the statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety and where the prosecution's evidence is found to be reliable and the exculpatory part of the accused person's statement is established to be false and is to be excluded from consideration then the inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution. This legal position stands amply demonstrated in the cases of Sultan Khan v. Sher Khan and others (PLD 1991 SC 520), Muhammad Tashfeen and others v. The State and others (2006 SCMR 577) and Faqir Muhammad and another v. The State (PLD 2011 SC 796). It is unfortunate that the Lahore High Court, Lahore had failed to apply the said settled law to the facts of the case in hand."

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

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

Reliance is also placed on the judgment of the august Supreme Court of Pakistan

"Najaf Ali Shah Vs. the State" (2021 S C M R 736) in which it has been held as

infra:

"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."

24. For what has been discussed above, Criminal Appeal No.438 of 2020 lodged by Moula Bakhsh son of Rasool Bakhsh (appellant) is **allowed**. The conviction and sentence of Moula Bakhsh son of Rasool Bakhsh (appellant) awarded by the learned trial court through the impugned judgment dated 29.09.2020 are hereby set-aside. Moula Bakhsh son of Rasool Bakhsh (appellant) is ordered to be acquitted by extending him the benefit of doubt. The appellant namely Moula Bakhsh son of Rasool Bakhsh is in custody and he is directed to be released forthwith if not required in any other case.

25. The complainant of the case filed Petition for Special Leave to Appeal No.54 of 2020 seeking permission to file an appeal against the acquittal of Khair Bakhsh son of Rasool Bakhsh, Rahim Bakhsh son of Rasool Bakhsh, Elahi Bakhsh son of Rasool Bakhsh and Faiz Bakhsh son of Rasool Bakhsh(all since acquitted). We have observed that the learned trial court has rightly acquitted the said accused. We have scrutinized the statements of the prosecution witnesses and have come to the irresistible conclusion that the prosecution witnesses could not prove the facts in issue. The prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) went on to claim that Khair Bakhsh, Elahi Bakhsh and Faiz Bakhsh , all since acquitted, had also inflicted injuries upon Muhammad Qasim (deceased) after realizing that Dr. Muhammad Sajid Jamil (PW-8) had observed the presence of bruise, abrasion and scratch mark on the right hand , right foot and right clavicle of the dead body of the deceased respectively, though the infliction of the said injuries by Khair Bakhsh, Elahi Bakhsh and Faiz Bakhsh , all since acquitted, was not mentioned by them in their previous statements. The prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) also went on to state that the accused, though armed with hatchets, had used the *blunt sides of the said hatchets* to inflict the injuries upon the deceased though in their previous statements they had not made any such claim that the accused had used the blunt sides of the hatchets to inflict the injuries to the deceased. The prosecution witnesses namely Muhammad Ramzan (PW-3) and Ghulam Sarwar (PW-4) made a deliberate and deceitful departure from their earlier narrations of the occurrence while deposing before the learned trial court, impeaching their credit. It is important to note that according to the established principle of the criminal administration of justice once an acquittal is

recorded in favour of accused facing criminal charge he enjoys double presumption of innocence, therefore, the courts competent to interfere in the acquittal order should be slow in converting the same into conviction, unless and until the said order is patently illegal, shocking, based on misreading and non-reading of the record or perverse. The said principle has been enunciated by the august Supreme Court of Pakistan in the judgment reported as “Ghulam Sikandar and another Versus Mamaraz Khan and Others” (P L D 1985 Supreme Court 11) wherein it has been held as under:

“The Court would not interfere with acquittal merely because on re-appraisal of the evidence it comes to the conclusion different from that of the Court acquitting the accused provided both the conclusions are reasonably possible. If however, the conclusion reached by that Court was such that no reasonable person would conceivably reach the same and was impossible then this Court would interfere in exceptional cases on overwhelming proof resulting in conclusion and irresistible conclusion; and that too with a view only to avoid grave miscarriage of justice and for no other purpose. The important test visualised in these cases, in this behalf was that the finding sought to be interfered with, after scrutiny under the foregoing searching light, should be found wholly as artificial, shocking and ridiculous.”

Reliance is also placed on the judgment reported as Muhammad Inayat Versus The State (1998 SCMR 1854) wherein it has been held as under:

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

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

“On acquittal, an accused person earns twofold innocence particularly, in the case when there are concurrent findings to that effect by the trial Court and the Court of First Appeal (High Court), is the bedrock principle of justice. In a

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case of acquittal, the standard and principle of appreciation of evidence is entirely different from that in a case of conviction. Unless the concurrent findings of the two Courts below are found perverse, fanciful, arbitrary and are based on misreading and non-reading of material evidence causing miscarriage of justice, the Supreme Court would not lightly disturb the same because on reappraisal, another view might be possible therefore, sanctity is attached under the law to such concurrent findings in ordinary course.”

Pursuant to the discussion made and conclusions arrived at above, the Petition for Special Leave to Appeal No.54 of 2020 as filed by the complainant, seeking permission to file an appeal against the acquittal of Khair Bakhsh son of Rasool Bakhsh, Rahim Bakhsh son of Rasool Bakhsh, Elahi Bakhsh son of Rasool Bakhsh and Faiz Bakhsh son of Rasool Bakhsh (all since acquitted), is hereby **dismissed**.

26. Consequently, the **Murder Reference No. 31 of 2020** is answered in **Negative** and the sentence of death awarded to Moula Bakhsh son of Rasool Bakhsh, is **Not Confirmed**.

(MUHAMMAD TARIQ NADEEM) (SADIQ MAHMUD KHURRAM)
JUDGE JUDGE

Raheel

Approved for reporting

Judge