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

**Murder Reference No.82 of 2019  
(The State      *versus*      Shazam Ali)**

**Crl. Appeal No.26723-J of 2019  
(Shazam Ali      *versus*      The State.)**

**JUDGMENT**

**Date of hearing: 09.01.2023.**

**Appellant by: Mrs. Nighat Saeed Mughal, Advocate.**

**State by: Rana Ahsan Aziz, Additional Prosecutor General.**

**Complainant by: Mr. Sajjad Ahmad, Advocate.**

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**AALIA NEELUM, J:-** The appellant-Shazam Ali, son of Asghar Ali, caste Malik, resident of Main Bazar, Rana Town, Shahdara, Lahore, has assailed his conviction and sentence recorded by the learned Addl. Sessions Judge, District Gujranwala vide judgment dated 29.03.2019 in a private complaint filed under sections 302, 392 PPC P.S. Aroop, District Gujranwala titled "Shahanshah Abdul Rehman Vs. Shazam Ali, etc." in case FIR No.241/2017, whereby the learned trial court convicted the appellant-Shazam Ali under Section 302 (b) PPC as Tazir and sentenced to Death for committing Qatl-e-Amd of Shafique-ur-Rehman (the deceased), with the direction to pay compensation of Rs.10,00,000/- to the legal heirs of the deceased as envisaged under section 544-A of Cr.P.C and in case of default thereof, to undergo 06-months S.I further. The appellant-Shazam Ali was also convicted under Section 392 PPC for the commission of robbery of the car of Shafique-ur-Rehman (the deceased) and sentenced to 10 years R.I. with the direction to pay compensation of Rs.1,00,000/- and in case of default thereof, to undergo 06-months S.I further. The benefit of section 382-B of Cr.P.C. was also extended in favor of the appellant.

2. Feeling aggrieved by the judgment of the learned trial court, Shazam Ali, the appellant, has assailed his conviction by filing the instant jail appeal bearing Criminal Appeal No.26723-J of 2019. The learned trial court also referred **M.R. No.82 of 2019 (The State. Vs. Shazam Ali)** for confirmation of the death sentence awarded to the appellant-Shazam Ali. Both the matters arising out of the same judgment of the learned trial court are being disposed of through a single judgment.

3. Briefly, the prosecution story as alleged in the private complaint (Ex. PB) of Shahanshah Abdul Rehman (PW-1)-the complainant is that on 30.03.2017, at about 09:00 A.M., complainant's brother, namely, Shafique-ur-Rehman along with passengers came at his workshop on his Car XLI bearing No.LEE-5777 black colour, situated at G.T Road, Barkat Town Shahdara, Lahore, asked the complainant to check the vehicle's oil and water, etc. and told him that he was going to Gujranwala along with passengers. The complainant (PW-1) saw the three passengers sitting in the car. After that, his brother left for Gujranwala. At about 01:00 P.M., Muhammad Zubair (PW-6) informed the complainant through telephone that some unknown persons, during the snatching of a car and dacoity, committed the murder of the complainant's brother near Vanianwala Gujranwala, whereas one accused was arrested in injured condition and was shifted to DHQ Hospital Gujranwala. The complainant reached DHQ Hospital, Gujranwala, and firstly, saw the dead body of his elder brother and then saw the accused in injured condition and immediately identified that the injured accused was one of the said three passengers who, in the morning while taking complainant's brother had come to Gujranwala, whose name was later on known as Shazam Ali son of Asghar Ali, caste Awan, resident of Main Bazaar, Rana Town and was arrested by the concerned police in injured condition. The accused, Shazam Ali, son of Asghar Ali, and two unknown accused persons murdered the complainant's brother through pistol fire while snatching a car and dacoity.

4. The complainant Shahanshah Abdul Rehman (PW-1), got recorded his statement (Ex. PA) to Raza Rehman T-A.S.I. (PW-7), who,

chalked out formal FIR (Ex.PA/1). After the registration of the case, the investigation of this case was conducted by Manzar Saeed S.I (CW-1), who found the accused/appellant guilty and prepared a report under section 173 of Cr.P.C. Being dissatisfied with the result of the investigation, as the investigating officer being in league with the accused did not investigate the matter properly, the complainant was constrained to file a private complaint (Ex. PB). After recording the cursory evidence of the complainant and having perused the record, all the accused persons were found connected with the commission of the offence, so they were summoned to face the charge. After that, the learned trial court formally charged the appellant and his co-accused on 05.11.2018, to which they pleaded not guilty and claimed trial. The complainant, in support of his version produced as many as nine (09) witnesses, whereas the investigating officer appeared as C.W-1.

5. Ocular account/last seen evidence, in this case, has come out from the statements of Shahanshah Abdul Rehman (PW-1)-the complainant, Malik Muhammad Raza (PW-2)-the eye witness, and Muhammad Imtiaz (PW-3)-the eye witness. Whereas, Dr. Hassan Ihsan CMO (PW-9), who conducted the postmortem examination of Shafique-ur-Rehman (the deceased), found the following injuries on his person: -

### **INJURIES**

- 1) An incised wound of 1.5 x 0.5 cm, scalp deep, was present on right parietal area of the head,
- 2) A firearm-lacerated glancing wound of 1.5 x 0.75 cm was present on the front middle right thigh,
- 3) A firearm-lacerated entry wound of 1.5 x 1.0 cm going deed, the inverted margin was present on the outer side middle part of the right thigh,
- 4) A firearm-lacerated exit wound 1.5 x 1.25 cm, everted, on the lower part of the back of the right thigh,
- 5) A firearm-lacerated entry wound of 1.0 x 0.75 cm on the right leg's frontal aspect, the middle part. It is going deep with inverted margins,

- 6) A firearm lacerated exist wound of 1.5 cm x 0.75 cm, everted, on the middle part back of the right leg,
- 7) A firearm-lacerated entry wound of 1.0 x 0.75 cm, going deep, inverted, with the presence of blackening and burning and abrasion collar, was present on the lateral part of the right clavicular area of the chest,
- 8) A firearm-lacerated exit wound of 1.25 x 0.75 cm, everted in the right axilla,
- 9) A firearm-lacerated entry wound of 1.5 x 0.75 cm, going deeper, inverted, was present on the left scapular area of the back of the chest,
- 10) A firearm-lacerated entry wound of 1.0 x 1.0 cm, going deep, inverted, was present on the lateral aspect of the lower part of the right forearm,
- 11) A firearm-lacerated exit wound of 1.5 x 1.0 cm, everted, on the middle part of the Inner side of the right forearm,
- 12) An abrasion of 3.0 x 2.0 cm on right cheek,
- 13) An abrasion of 4.0 x 3.0 cm on the outer side of the left elbow.

After conducting the postmortem examination, the doctor opined that death, in this case, had occurred due to cardiopulmonary arrest consequent to injury No.9, which had damaged the left lung, stomach, left kidney, and intestine. The left lung was a vital organ, and any injury to it was sufficient to cause death under the ordinary course of nature. All these injuries were ante-mortem in nature. The probable time between injuries and death was immediate, and between death and postmortem was approximately 12 to 24 hours.

The statements of the remaining prosecution witnesses are formal in nature.

6. The learned Deputy District Public Prosecutor gave up PW-Munawar Hussain as unnecessary and closed the prosecution evidence after tendering the reports of the Punjab Forensic Science Agency (Ex PJ, Ex. PK & Ex. PL).

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

**“The case is false one against me. In fact, the unknown accused stopped the car and attempted to snatch the car by the dint of the deadly weapons. The deceased Shafique-ur-Rehman resisted to the unknown accused and in such situation, the unknown accused injured me and committed murder of Shafique-ur-Rehman (deceased). The police could not find the unknown real culprits. The police after taking the bribe and in order to conceal inefficiency on their part and to end the investigation proceeding of the case, involved me falsely in this case on the basis of suspicion with the connivance of the complainant. I asked one passerby namely Rana Liaqat at the spot to make phone call to the rescue-1122. Said Rana Liaqat made phone call and in pursuance of the said phone call, 1122 force arrived at the spot and took me and Shafique-ur-Rehman (deceased) to the DHQ Hospital, Gujranwala. Except myself, no other person witnessed the occurrence. I am innocent in this case. PWs are close friends of the complainant and they have deposed falsely against me with the connivance of the complainant. The PWs have also taken the bribe from the complainant for depositing against me.”**

8. After recording the statement under section 342 Cr.P.C, learned counsel for the appellant filed an application for summoning Mubeen Ahmad, Ijaz, and Irfan members of rescue 1122 force as court witnesses by alleging that they brought the accused/appellant and the deceased to DHQ Hospital, Gujranwala from the place of occurrence and they were important witnesses. The learned trial court accepted the application, and the PWs above were summoned on 11.03.2019. After recording statements of Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4), again gist of the evidence was put to the appellant in his subsequent statement under section 342 of Cr.P.C., which was recorded on 14.03.2019 and while replying to the

question that why the CWs had deposed against him, the appellant made the following deposition:-

**“CW-2 Ijaz Ahmad, Emergency Medical Technician of 1122 Force, CW-3 Mubeen Emergency Medical Technician of 1122 Force and CW-4 Irfan Ali Driver of 1122 Force have deposed against me with the connivance of the complainant.”**

9. After evaluating the evidence available on record in light of arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction in the afore-stated terms.

10. We have given our anxious and most thoughtful consideration to both sides' rival submissions. We have minutely gone through the evidence on record.

11. The prosecution's case in a narrow compass is that the accused, Shazam Ali (the appellant), tried to snatch the car bearing registration No.LEE-5777 and, while committing robbery, caused firearm injuries to Shafique-ur-Rehman, the deceased. The said incident was alleged to have been committed on 30.03.2017 in Vanianwala, which falls within the jurisdiction of police station Aroop, District Gujranwala. In the case of the prosecution, Shazam Ali (the appellant), his co-accused Ghulam Murtaza (since acquitted), and an unknown accused, in furtherance of their common intention, committed the occurrence and, while doing so, murdered Shafique-ur-Rehman. It is further the prosecution case that the accused, Shazam Ali, received an injury during the incident and was shifted to Civil Hospital, Gujranwala. There, the police took him into their custody. Shahanshah Abdul Rehman (PW-1)-the complainant stated that on 30.03.2017 at about 09:00 a.m, his elder brother, Shafique-ur-Rehman came to his workshop situated at Barkat Town, Shahadara, Lahore in the car XLI bearing No.LEE-5777 of black colour driven on a rental basis in the company of passengers before departure from Lahore to Gujranwala for checking the oil and water of the car. His brother, Shafique-ur-Rehman, went to Gujranwala along with the passengers. The defence has not disputed

this fact during the cross-examination. Shahanshah Abdul Rehman (PW-1)-the complainant, received information about the murder of his elder brother Shafique-ur-Rehman and the arrest of one person in an injured condition on 30.03.2017 at 01:00 p.m. The information was given to him by Zubair Butt. The statement made by Shahanshah Abdul Rehman (PW-1)-the complainant, gets corroboration from a statement that was brought on the record by the defence from the witness Muhammad Zubair (PW-6). Muhammad Zubair (PW-6) deposed during cross-examination that he provided information about the murder of Shafique-ur-Rehman, the deceased, to Shahanshah Abdul Rehman (PW-1)-the complainant. Muhammad Zubair (PW-6) deposed during cross-examination:

**"I was informed at about 01:00 p.m. about the murder of Shafique-ur-Rehman (deceased). I informed Shahanshah Abdul Rehman, complainant after seeking the information regarding the murder at 01:00 p.m."**

In this regard, this fact was got reaffirmed by the defence from Shahanshah Abdul Rehman (PW-1)-the complainant, who deposed as under:

**"PW Zubair informed me that he made the phone call from DHQ Hospital, Gujranwala, at about 01:00 p.m. I reached the DHQ Hospital, Gujranwala at, about 02:00/02:30 P.M. Zubair and other relatives met me in the hospital. -----When I heard the phone call, I was informed that one accused person was captured in an injured condition. -----No consultation was made by me with the police with reference to the registration of the case."**

Besides, Shahanshah Abdul Rehman (PW-1)-the complainant, deposed during examination-in-chief that:

**"One accused, who was in injured condition, was also in the hospital. I saw the injured accused and identified him. He was amongst the three passengers who were sitting in the car of my brother when he came at my workshop. The name of the said accused was known to me as Shazam Ali son of Asghar Ali."**

The witness was examined by the learned defence counsel, and the defence has not cross-examined these facts. Learned counsel for the appellant has not challenged the date, time, place of occurrence, presence of accused/appellant

Shazam Ali in the car on the front seat in injured condition, and receiving of injuries by the deceased in the car and fall outside the vehicle. He has challenged the veracity and credibility of the prosecution witnesses, Muhammad Raza (PW-2) and Muhammad Imtiaz (PW-3). We examined the testimony of the prosecution witnesses, namely, Malik Muhammad Raza (PW-2) and Muhammad Imtiaz (PW-3). We found that both these witnesses are not related, and we were not considering their testimonies for deciding the instant appeal. However, Shahanshah Abdul Rehman (PW-1)-the complainant, has deposed that accused/appellant Shazam Ali, along with two others (as stated above), committed the incident, were sitting in the car as passengers, driven by his brother on a rental basis, and the defence did not deny this fact. The evidence of Shahanshah Abdul Rehman (PW-1)-the complainant to the extent of his last seen evidence and identification of accused Shazam Ali, could not be shaken by the defence. However, he was subjected to lengthy cross-examination. Manzar Saeed S.I. (CW-1)-the investigating officer also deposed during his examination-in-chief that, after the entrustment of investigation, he (CW-1), along with other police officials reached DHQ Hospital, Gujranwala, inspected the dead body of Shafique-ur-Rehman (deceased), prepared injury statement (Ex.CW-1/A) and inquest report (Ex.CW-1/C) of the deceased and also prepared the injury statement (Ex.CW-1/D) of Shazam Ali-the appellant, who was admitted in the Emergency Ward of DHQ Hospital. He arrested the appellant-Shazam Ali, on 18.05.2017. The defence put suggestions to Shahanshah Abdul Rehman (PW-1)-the complainant. During cross-examination, the witness (PW-1) denied the suggestions put by the defence and stated that:

**“It is incorrect that unknown persons had committed the murder of my brother Shafique-ur-Rehman and in the said occurrence accused Shazam was injured. It is incorrect that the real accused were not found and the accused Shazam was involved in this case falsely. It is incorrect that accused Shazm had not committed the murder of Shafique-ur-Rehman and nothing was recovered from him. It is incorrect that accused Shazam is innocent in this case.”**

This was the defence put to the prosecution witness i.e., Shahanshah Abdul Rehman (PW-1)-the complainant. Whereas, the accused/appellant took a specific plea while replying to the question of why this case was against you, put before him during his statement under section 342 of Cr.P.C., as under: -

**“The case is false one against me. In fact, the unknown accused stopped the car and attempted to snatch the car by the dint of the deadly weapons. The deceased Shafique-ur-Rehman resisted to the unknown accused and in such situation, the unknown accused injured me and committed murder of Shafique-ur-Rehman (deceased). The police could not find the unknown real culprits. The police after taking the bribe and in order to conceal inefficiency on their part and to end the investigation proceeding of the case, involved me falsely in this case on the basis of suspicion with the connivance of the complainant. I asked one passerby namely Rana Liaqat at the spot to make phone call to the rescue-1122. Said Rana Liaqat made phone call and in pursuance of the said phone call, 1122 force arrived at the spot and took me and Shafique-ur-Rehman (deceased) to the DHQ Hospital, Gujranwala. Except myself, no other person witnessed the occurrence. I am innocent in this case. PWs are close friends of the complainant and they have deposed falsely against me with the connivance of the complainant. The PWs have also taken the bribe from the complainant for deposing against me.”**

After recording the statement under section 342 of Cr.P.C., the accused, Shazam, moved the application for summoning of officials of rescue 1122 as court witnesses, as they reached the place of occurrence and they were important witnesses. On the application of the accused, Shazam Ali, on 11.03.2019, the learned trial court summoned Mubeen Ahmad, Ijaz, and Irfan, members of the rescue 1122 force, as court witnesses for a just decision of the case. Ijaz Ahmad, Emergency Medical Technician, appeared as CW-2 and deposed during his examination-in-chief, as follows: -

**“Stated that on 30<sup>th</sup> March, 2017 I was posted at Sialkot Bypass as EMT in Rescue-1122 and on the same day, after receiving the phone call as to the incident in the control room of 1122 Force, I alongwith Mubeen EMT and Irfan LTV left our office**

for Vanilan village Juma Bazar. We reached at the place of occurrence at 12:23 p.m. I alongwith Mubeen EMT and Irfan LTV saw the two victims at the spot. One victim was dead and the other victim Shazam was in injured condition. The person namely Shazam was in sitting position on the front seat of the car in injured condition. The dead victim was lying outside the car on the ground. Firstly, I and Mubeen EMT examined the dead person and thereafter, we checked person namely Shazam. We observed injury on the right arm of the dead person and we observed injury on the left thigh of person namely Shazam. Due to injury on the thigh of the person namely Shazam, he was not able to move. On our asking, the person namely Shazam stated that quarrel took place between him and the dead person lying there and due to the said quarrel, they made firing on each other. We made phone call to the control room for calling the police at the spot. We took the dead person and the injured Shazam to DHQ Hospital, Gujranwala. We provided first aid to the person namely Shazam. I saw that one pistol was lying on the front seat where the person namely Shazam was sitting. I authored the response forms and I produce the same in the court. (This court has perused the response forms and after perusal and placing the copy of the said documents on the record after comparing them with the original and after getting attested the same by Ijaz Ahmad CW-2/author who brought the same in the court, the original record is returned to the CW). Ex-CW-2/A is response form of Shazam whereas Ex-CW-2/B is response form of the dead person which are in my handwriting and bears my signatures.”

During cross-examination conducted by the learned ADPP for the State, Ijaz Ahmad (CW-2) deposed that,

“I have not ascertained at the time of receiving the call in the control room that who made the phone call. I observed many injuries on the body of the deceased/dead person lying at the spot. Except the accused Shazam no other person informed me about the facts of the occurrence of this case. I observed only one injury on the left thigh of the accused Shazam. Irfan driver observed one pistol lying on the seat where the injured Shazam was sitting. I and my other companions have not found and observed any other pistol at the spot except the above said pistol.”

Whereas, during cross-examination conducted by the learned defence counsel, Ijaz Ahmad (CW-2) deposed as under: -

**“I have not asked the control room about the name of the call maker. We reached at the spot within two minutes at about 12:23 p.m. we do not observe time which was consumed at the spot in our proceedings. --  
----- I authored response form while sitting in my own vehicle at the spot. I prepared the said form during shifting of the deceased and the injured while sitting in the vehicle. When we moved from the spot after providing the first aid, I started preparation of the response form while sitting in the vehicle. ----- I have not made phone call to the police; however, the driver, in my presence, contacted with the police and the control room for information of the incident.”**

Similarly, Mubeen, Emergency Medical Technician (CW-3), deposed during his examination in chief as under: -

**“Stated that on 30.03.2017, I was posted at Sialkot Bypass as EMT in Rescue-1122 and on the same day, after receiving the phone call as to the incident in the control room of 1122 force, I alongwith Ijaz and Irfan left our office for Vanianwala Village at Juma Bazar and when we reached there, I alongwith my companions observed that one car was standing there. We also saw that one person aged about 40 years, was lying on the ground with the direction of his mouth towards the ground. We checked him and found him expired. Thereafter, we saw that one person/boy was sitting in the car. We checked him and observed one firearm injury on thigh of the person. The said person in injured condition was not in position to move due to firearm injury on his thigh. We lifted hi and boarded him in our vehicle. We provided first aid to him and on our asking, he disclosed his name as Shazam. We asked detail of incident from him and he told that the dead person was causing sexual harassment to him and firstly the dead person made fire on him and thereafter he made fire on him. Thereafter, we brought the dead person and the injured person Shazam in the hospital.”**

During cross-examination conducted by the learned ADPP for the State, Mubeen (CW-3) deposed as under: -

**“Only the accused Shazam stated before me that his quarrel took place with the deceased and no other person was present at that time. I observed only one injury on left thigh of the accused Shazam and no other injury on his body was observed by me. I observed the pistol in the hand of the Driver Irfan. Except the pistol observed by me in the hand of the Driver, who informed that he lifted the same from the front seat where the accused Shazam was sitting, no other pistol was observed by me at the spot.”**

Whereas, during cross-examination conducted by the learned defence counsel, Mubeen (CW-3) deposed as under: -

**“From the spot, driver Irfan informed the police through phone call regarding the occurrence. ----- I asked the accused Shazam about the reason of the incident and he informed me that the deceased started sexual harassment to him. I myself asked the accused Shazam while sitting on our emergency vehicle regarding the reason of incident.”**

Irfan Ali, driver Rescue 1122 (CW-4), deposed during his examination in chief that,

**“I informed the control room through wireless and made phone call to the police regarding the occurrence. Thereafter, the police did not arrive at the spot in our presence and keeping in view the injured person, we boarded the other dead person in the vehicle and took the both to DHQ Hospital, Gujranwala.”**

The depositions of the court witnesses summoned on the request of the accused revealed that Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4) were informed about the incident by the control room and they reached the place of occurrence. Ijaz Ahmad (CW-2) and Mubeen (CW-3) deposed that the caller's name was unknown to them. Ijaz Ahmad (CW-2) stated explicitly during cross-examination that he did not know who made the phone call in the control room. The emergency response forms (Ex. CW-2/A & Ex. CW-2/B) were produced in original before the learned trial court, which was signed by Ijaz Ahmad (CW-2). After placing the copies of the emergency response form (Ex. CW-2/A & Ex. CW-2/B) after

comparing the same with the original and attested by Ijaz Ahmad (CW-2)/author, who brought the record to the court, the original documents were returned to the CW after retaining its certified copies. The emergency response forms (Ex. CW-2/A & Ex. CW-2/B) reveal that Ijaz Ahmad (CW-2) prepared the said documents about the information provided by the accused Shazam and services provided by them on the spot to the accused Shazam and took the dead body of Shafique-ur-Rehman (deceased). The emergency response forms (Ex. CW-2/A & Ex.CW-2/B) reveal that the statement of injured Shazam Ali-the appellant was recorded as under:-

”سواری کے مطابق نا معلوم وجہ سے جھگڑنے کی وجہ سے ایک دوسرے کو گولیاں ماری۔“

Therefore, the presence of Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4) was admitted by the accused, Shazam. Moreover, they were extensively cross-examined in all aspects. In fact, during the cross-examination, they stated the circumstances under which the deceased and injured Shazam were taken to the hospital, i.e., DHQ Hospital, Gujranwala. Ijaz Ahmad (CW-2) and Mubeen (CW-3)'s deposition, in the Court's opinion, has a ring of truth and cannot be discarded, as is urged on behalf of the appellant. At this stage, the defence has not tried requisitioning the caller's record to ascertain who made the call. Whether the said call was made by Rana Liaqat or someone else? The fact had come before the accused during the testimonies of Ijaz Ahmad (CW-2) and Mubeen (CW-3) that the informer's name was not known to them; instead, information was with the control room. We have noted that the appellant had not made effort for summoning of caller record from the Rescue 1122 force. Therefore, an adverse inference is to be drawn within the meaning of Article 129 (g) of Qanun-e-Shahadat Order, 1984, that had the record of caller was summoned from Rescue 1122 force, then the said report would have been unfavorable to the prosecution.

12. In the present case, Shahanshah Abdul Rehman (PW-1)-the complainant-identified the accused/appellant in the hospital in injured

condition as a person sitting in the car as a passenger driven by Shafique-ur-Rehman (the deceased). It is also admitted fact that the accused/appellant received injuries during the incident, and the defence plea put to the prosecution witness, Shahanshah Abdul Rehman (PW-1), during cross-examination in the shape of suggestions and made in his statement under section 342 of Cr.P.C. is against the entries made in the official record, i.e., Emergency Response Forms (Ex. CW-2/A & Ex.CW-2/B). The statement of accused/appellant-Shazam Ali soon after the incident made before Ijaz Ahmad (CW-2) and Mubeen (CW-3), who were not police officers, instead they were the members of rescue 1122, and the appellant did not deny their presence, is significant in the circumstances of the instant case. According to Article 19-A of the Qanoon-e-Shahadat Order, 1984, the statement of the accused made soon after the incident is relevant. Article 19-A of the Qanoon-e-Shahadat Order, 1984 is as follows: -

**19-Relevant of facts of forming part of the same transaction: - Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places. Illustrations**

- (a) **A is accused of the murder of B by beating him. Whatever was said or done by A or B or the bystanders at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.**

Article 19-A of the Qanoon-e-Shahadat Order, 1984 makes the evidence of the above witnesses, i.e., Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4) admissible because they have stated that on their asking accused Shazam said that quarrel took place between them and both of them fired at each other. In our view, the rationale for making certain statements on fact admissible under Article 19-A of the Qanoon-e-Shahadat Order, 1984 is on account of spontaneity and immediacy of such statement or fact in relation to the fact in issue. But such a fact or statement must be part of the same transaction. In other words, such a statement must have been made immediately thereafter. But if there was an interval that was sufficient for fabrication, then the statement is not relevant. What transpires from the

evidence in the present case is that Ijaz Ahmad (CW-2) deposed that on his asking the person namely Shazam stated that quarrel took place between him and a dead person lying there and due to the said quarrel, they made firing on each other. So, the receiving of injury by the accused Shazam, receiving of injuries by the deceased, assembling of the Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4) at the spot and after providing medical aid shifting of accused Shazam in injured condition and dead to the hospital, making of the statement by Shazam before the Ijaz Ahmad (CW-2) are parts of the same transaction. The unchallenged evidence of these witnesses shows that they came to the spot. The words of accused Shazam recorded in Emergency Response Forms (Ex.CW-2/A & Ex.CW-2/B) are almost immediately so that there was hardly any time gap sufficient to enable Ijaz Ahmad (CW-2) to fabricate any such story, with the collusion of Shahanshah Abdul Rehman (PW-1), whereas Emergency Response Forms (Ex.CW-2/A & Ex.CW-2/B) were submitted, soon after shifting of injured and dead to the hospital, with the office of 1122 Rescue force. Therefore, we are of the firm view that this is a fit case where the doctrine of res gestae would be attracted and the testimony of Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4) being treated as part of the same transaction in which the occurrence took place would be relevant and admissible and acceptable in aid of the prosecution. The defence failed to shatter the testimonies of Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4). During cross-examination, Irfan Ali (CW-4)-the driver, categorically stated that for lifting the injured in the vehicle, he provided his help to CW-2 & CW-3. The appellant has not offered a satisfactory explanation as to why he was accompanying Shafique-ur-Rehman (the deceased) in the car and for what reasons he traveled from Lahore to Gujranwala on a fateful day along with Shafique-ur-Rehman, the deceased. Explanation in this regard was necessary because he (the appellant) admitted his presence in the car and received injuries while sitting in the car. The defence takes the specific defence, and the onus lies on the defence to prove it, but the defence failed to adduce an iota of evidence. The prosecution evidence in the shape of testimonies of Shahanshah Abdul Rehman (PW-1)-the complainant, and

court witnesses, i.e., Ijaz Ahmad (CW-2), Mubeen (CW-3), and Irfan Ali (CW-4), established the guilt of the accused/appellant-Shazam Ali.

13. The medical evidence was furnished by Dr. Hassan Ihsan (PW-9), who observed six firearm injuries, one incised wound, and two abrasions on the dead body of Shafique-ur-Rehman (the deceased). From the testimony of Dr. Hassan Ihsan (PW-9) and perusal of the postmortem report (Ex. PH), it reveals that Shafique-ur-Rehman, received injuries from a very close range and the position shown in the scaled site plan and un-scaled site plan (Ex. PF & Ex.CW-1/E) reveals that Shafique-ur-Rehman was sitting at driver side, which was on right side of the accused/appellant-Shazam Ali, who was sitting on the front seat at the left side of the driver, i.e., Shafique-ur-Rehman. Shafique-ur-Rehman received firearm injuries on the inner side of his right leg, and their exit was on the outer side of his right leg. This indicates that during the grappling, the deceased and injured Shazam received injuries. It all indicates that the contents of the Emergency Response Form (Ex. CW-2/A & Ex. CW-2/B) are correct, as per the statement made by the accused/appellant-Shazam Ali.

14. In the cases where the ocular account is not available and circumstantial evidence is produced, it is not mathematically expected in the deposition of the witness's every explanation. There may be some ups and downs about the information of time and the facts, but the fact remains that the evidence to the extent of the significant event should apply to the prudent mind. It is settled law that the court has to see the quality of the evidence and not the quantity of the same. Similarly, when the witnesses of the prosecution are examined in court after a long gap, minor discrepancies, contradictions, and omissions are open in the testimonies of the witnesses. Hardly one comes across a witness whose evidence does not contain a grain of untruth or embellishments. Merely because the testimony of Malik Muhammad Raza (PW-2) and Muhammad Imtiaz (PW-3) cannot rely upon, it is not necessary to follow as a matter of law that must be discarded in all other respects. We have noted that the injured Shazam Ali has not produced his medico-legal certificate in his defence, nor Dr. Hassan Ihsan (PW-9),

while appearing in the court, deposed in this regard in his examination-in-chief. However, during cross-examination, he (PW-9) admitted that he medically examined Shazam Ali-injured (the appellant) on the same day.

15. Given the above circumstances, we have concluded that the prosecution has proven its case against the appellant beyond any shadow of doubt. We have observed the factor which has persuaded us not to uphold the capital sentence of the appellant. There are discrepancies regarding the recovery of pistol 30-bore (P-1) in respect of the commission of the offence. In the instant case, the evidence produced by the prosecution about securing the pistol 30-bore (P-1) and taking it into possession vide recovery memo (Ex. PD) is concerned same is not trustworthy, given the deposition of Irfan Ali (CW-4), which was also affirmed by Ijaz Ahmad (CW-2) and Mubeen (CW-3). Irfan Ali (CW-4) specifically said in his examination-in-chief that:

**“Injured person was having one pistol, which was lying on the seat on which he was sitting. I lifted the said pistol, and on our arrival in the DHQ, I handed over the said pistol to the police.”**

During cross-examination conducted by the learned ADPP for the State, Irfan Ali (CW-4) deposed as under: -

**“At the time of help and lifting the injured Shazam, I observed and found one pistol lying at the place of feet of the driving seat where the accused Shazam was sitting. Only one pistol was found from inside the car and no other pistol was found. No pistol was found at the place where the dead person was lying.”**

Whereas, during cross-examination conducted by the learned defence counsel, Irfan Ali (CW-4) deposed as under: -

**“I handed over the pistol to the police in the DHQ Hospital, Gujranwala and I cannot state the rank or the name of the said police officer to whom I handed over the pistol..... I locked the car standing at the spot and handed-over the key of the said vehicle to the police in DHQ Hospital, Gujranwala as the police did not arrive at the spot in our presence.”**

Whereas Manzar Saeed S.I. (CW-1)-the investigating officer, deposed during cross-examination as under:

**"Incharge Crime Scene Unit of the office of PFSA collected one crime empty (P-5) from the place of occurrence and handed over the same to me which I took into possession vide recovery memo Ex-PE, which was attested by Malik Muhammad Raza and Imtiaz Ahmad PWs.-----I collected one pistol (P-1) from inside the car, parceled it and took the same into possession vide recovery memo Ex-PD, which was attested by Malik Muhammad Raza and Imtiaz Ahmad PWs."**

The mode of recovery of one pistol (P-1) and crime empty (P-5) from inside the car creates doubt. So, to the extent of the pistol and the crime empty recovered from the place of occurrence by Manzar Saeed S.I. (CW-1)-the investigating officer, a favorable report of PFSA is of no consequence.

16. Given the above circumstances, we have concluded that the prosecution has proven its case against the appellant-Shazam Ali, beyond any shadow of a doubt. However, the factors which have persuaded us not to uphold the capital sentence of the appellant are the mode and manner of recovery of the pistol 30-bore (P-1) and crime empty (P-5), which we have already disbelieved. As the appellant has been convicted and sentenced to death for the murder of Shafique-ur-Rehman, the deceased, in such an eventuality, the same can be considered a mitigating circumstance. Based on the grounds discussed hereinabove, we believe that mitigating circumstances exist about the quantum of the appellant's sentence. Therefore, in our view death sentence awarded to the appellant is quite harsh. The well-recognized principle is that the accused is entitled to the benefit of the doubt as an extenuating circumstance while deciding his question sentence. The Hon'ble Supreme Court of Pakistan holds it in the case titled "**Dilawar Hussain v. The State**" (2013 SCMR 1582) in which the Hon'ble Supreme Court of Pakistan has observed on page 1590 as under: -

**"---It has neither been the mandate of law nor the dictates of this court as to what quantum of mitigation is required for awarding imprisonment for life rather**

**even an iota towards the mitigation is sufficient to justify the lesser sentence. According to our estimation, even a single stance providing mitigation or extenuating circumstance would be sufficient to award lesser punishment as an abundant caution. In such circumstances, if the court is satisfied that there are certain reasons due to which the death sentence is not warranted, the court has no other option but to improve second sentence of imprisonment for life while extending benefit of the extenuating circumstances to the convict in a just and fair manner---”**

17. In these circumstances, the appeal bearing No.**26723-J of 2019**, filed by the appellant, Shazam Ali, son of Asghar Ali, in the private complaint filed under sections 302, 392 PPC P.S. Aoop, District Gujranwala titled “***Shahanshah Abdul Rehman Vs. Shazam Ali, etc.***”, filed in case FIR No.241/2017, under section 302/392 P.P.C, Police Station Aoop, District Gujranwala is **dismissed**. However, his (the appellant’s) death sentence is converted into **imprisonment for life**. The benefit of Section 382(b) of Cr.P.C is also extended to the appellant. The compensation amount and sentence qua non-payment of the compensation amount imposed by the learned trial court shall remain intact upon the appellant (convict).

18. **Murder Reference No.82 of 2019**, forwarded by the learned trial court for confirmation of the sentence of death inflicted upon the convicts fails, which is answered in **Negative**.

**(Farooq Haider)**  
**Judge**

**Approved for Reporting**

**(Aalia Neelum)**  
**Judge**

**Judge**

**Judge**

*This order has been  
dictated, pronounced,  
prepared and signed  
on \_\_\_\_\_*

*Ikram\**