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

**Crl. Appeal No.78000-J of 2019
(Sana Ullah *versus* The State etc.)**

**Crl. Revision No.69601 of 2019
(Muhammad Arshad *versus* Sana Ullah, etc.)**

JUDGMENT

Date of hearing: 19.02.2024.

Appellant by: Mr. Mehram Ali Bali, Advocate.

State by: Mr. Muhammad Akhlaq, DPG.

Complainant by: Mr. Asghar Ali Gill, Advocate.

Aalia Neelum, J: - Sana Ullah, son of Ghulam Shabbir, Caste Gawance, resident of Chak No.444/JB Gawance, Tehsil & District Jhang, the appellant was involved in case F.I.R. No.571 of 2016, registered on 17.10.2016, under Sections 302, 449, 34 PPC, at Police Station, Saddar Gojra, District Toba Tek Singh and was tried by the learned Additional Sessions Judge, Gojra. The trial court seized with the matter in terms of the judgment dated 18.09.2019, convicted the appellant-Sana Ullah, under Section 302 (b) PPC, and sentenced him to **imprisonment for life** as Tazeer with the direction to pay Rs.2,00,000/- as compensation to the legal heirs of the deceased and in case of default in payment thereof, the appellant would further undergo simple imprisonment for six months. The appellant was also convicted under section 449 PPC and sentenced to undergo **rigorous imprisonment for 07 years and also to pay Rs.25,000/- as a fine**, and in case of default in payment thereof, the appellant would further undergo simple imprisonment for one month. Both the sentences awarded to the appellant would run concurrently. The benefit of section 382-B Cr.P.C. was also extended in favour of the appellant.

2. Feeling aggrieved by the judgment of the trial court, Sana Ullah, the appellant, has assailed his conviction through the instant criminal appeal, i.e., Crl. Appeal No.78000 of 2019. The complainant, dissatisfied with the impugned judgment dated 18.09.2019, preferred a Criminal Revision No.69601 of 2019 for awarding a death sentence to respondent No.1/appellant. As both matters arise from the same judgment, they are being disposed of through a single judgment.

3. The prosecution story as alleged in the F.I.R (Ex.PA/1) lodged on the written application (Ex. PA) of Muhammad Arshad (PW-1)-the complainant is that he was a resident of Chak No.425/GB Tehsil Gojra. On 17.10.2016 at about 10:00 a.m., he (PW-1)-the complainant, along with Amjad Ali, brother of the complainant, and cousin Asadullah Khan (PW-7), was present in the house of his sister-in-law Nusrat Bibi (PW-2) and his paternal niece Aqsa Bibi (18/19 years) was also present there. They were in the house when they heard the sound of motorcycle 125-CC stopping outside the house. The door of the house was open when two unknown persons armed with pistols had the following features: (1.) Medium build, fair complexion, young age, round face, strong body, and (2.) "Labutara Chahra," young in age and strong in body, entered the house. The accused No.1, having medium height, fired with a pistol 30 bore, which hit below the left ear of Aqsa Bibi and went through and through. Then he made a second fire, which hit the left shoulder and went through and through. The second unknown accused was armed with a pistol 30 bore who said that if anyone came near, he would kill them. They escaped by sitting on a motorcycle while making threats. The complainant and witnesses could identify the unknown suspects when the accused would come forward. After escaping the accused, the witnesses took care of their niece and took her to the Civil Hospital, Gojra. After that, the WMO referred Aqsa Bibi to Allied Hospital Faisalabad due to her unsatisfactory condition. Aqsa Bibi succumbed to the injuries. Unknown accused, for unknown reasons, killed Aqsa Bibi.

4. Upon receiving the information of the occurrence, Asad Abbas S.I/H.I.U (PW-11) reached Eye-Cum-General Hospital, Gojra, where the

complainant (PW-1) presented a written application/complaint (Ex. PA) before him (PW-11), who after completion of police karawai sent the same to the Police Station through Sajjad Ahmad 242/C (not cited as a witness), after that formal F.I.R. (Exh.PA/1) was chalked out by Muhammad Afzal, 790/MHC (PW-5).

5. After the registration of the case, the investigation of this case was entrusted to Asad Abbas, S.I. (PW-11)-the investigating officer, who being investigating officer, inspected the dead body of deceased through Uzma Naseem 1085/LC and prepared injury statement (Ex.PJ) and inquest report (Ex.PK) and deputed Uzma Naseem 1085/LC (PW-6) for autopsy of the deceased. After that, he (PW-11)-the investigating officer proceeded towards place of occurrence, inspected the place of occurrence and took into possession blood stained earth from the place of occurrence through recovery memo (Ex.PB) and also recovered two crime empties and secured the same into possession through recovery memo (Ex.PC). He (PW-11)-the investigating officer also prepared a rough site plan of the place of occurrence (Ex.PN) on the pointation of PWs. After that, the investigating officer (PW-11) searched for the accused but in vain and then, he (PW-11) proceeded towards Civil Hospital, Gojra, where Uzma Naseem 1085/LC (PW-6) produced blood stained last worn clothes of the deceased i.e. Qameez P-6, Shalwar P-7, Dopatta P-8, Brazier P-9 before the investigating officer (PW-11), who took the same into possession through recovery memo (Ex.PH). Uzma Naseem 1085/L.C (PW-6) also produced carbon copy of postmortem, X-ray report and other documents before the investigating officer. On 18.10.2016, the Investigating Officer (PW-11) summoned Shahzad Ashraf draftsman (PW-4), who prepared the scaled site plan of the place of occurrence (Ex.PG & Ex.PG/1) in the scale of one inch equal to 16-feet. On 14.11.2012, the investigating officer (PW-11) was present at Dhama Bangal, where he (PW-11) received spy information about the culprits, whereupon he (PW-11) apprehended Sana Ullah (the appellant) and Azhar Waqas (co-accused since P.O) under section 54 of Cr.P.C. and produced them before the Area

Magistrate with covered faces for sending them to judicial lockup for the purpose of identification parade by submitting application (Ex.PO), which was allowed. On 15.11.2016, the investigating officer (PW-11) submitted an application (Ex.PP) to the Area Magistrate, Toba Tek Singh for conducting and fixing the date for identification parade and the learned Area Magistrate fixed 18.11.2016 for identification parade. On 18.11.2016, he (PW-11)-the investigating officer reached District Jail Toba Tek Singh and handed over file to Naib Court. After completing the proceedings of identification parade, Naib Court handed over to him (PW-11) file of this case alongwith five pages of proceedings of identification parade, which he annexed with file. At the same time, PWs-Asad Ullah Khan, Mst. Nusrat Bibi, Amjad Ali joined investigation and got recorded their statements under section 161 of Cr.P.C. On 23.11.2016, the investigating officer (PW-11) produced application (Ex.PQ) for summoning of accused from District Jail Toba Tek Singh for investigation, which was allowed by Area Magistrate. On 24.11.2016, the investigating officer, got custody of Sana Ullah (the appellant) and Azhar Waqas (co-accused since P.O) from jail and arrested them in this case. During investigation on 27.11.2016 accused Sana Ullah (the appellant) made disclosure and got recovered weapon of offence i.e. pistol (P-1) alongwith 5-alive bullets (P-2/1-5), which was secured into possession by the investigating officer (PW-11) through recovery memo (Ex.PD). The accused Sana Ullah (the appellant) also got recovered motorcycle 125 (P-3), which was secured into possession by the investigating officer (PW-11) through recovery memo (Ex.PE). ON 28.11.2016, the accused Sana Ullah (the appellant) was sent to judicial lockup.

6. After investigation, Asad Abbas, S.I. (PW-11), prepared a challan and sent the same to the court of competent jurisdiction while placing the names of all accused persons in Column No.3 of the challan. On 09.09.2017, the trial court formally charge-sheeted the appellant, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as twelve (12) witnesses.

7. The ocular account in this case consists of the statements of Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7). Dr. Sobia Muneer W.M.O (PW-9) deposed that on 17.10.2016, she conducted postmortem examination on the body of the deceased, Aqsa Munawar, and found the following injuries on her person: -

INJURIES.

- 1-A A firearm wound of injury measuring 1 x 1.3 cm into DNP on left cheek just infront of left ear on T.M. joint left directed inwards and downwards with margins inverted, clotted blood was present.**
- 1-B A firearm wound of exit measuring 1.2 x 1.5 cm on right side of chin, 1 cm inner to the mandibular margins with margins everted, clotted blood was present. On dissection, shattered pieces on bone were present at the entry wound a foreign mattalic projectile injured muscles of mastication, maxilla, left side of upper jaw and floor of the mouth.**
- 2-A A firearm wound of entry 1 x 1 cm on left supraclavicular fossa just in front of mid of trapezius muscle prominence with margins inverted.**
- 2-B A firearm wound of exit measuring 1 x 1.2 cm on back of right chest, 18 cm below tip of shoulder and 15 cm away from midline with margins everted.**

After conducting the postmortem examination, the doctor rendered the following opinion: -

OPINION

“All injuries were ante-mortem in nature caused by firearms and cause of death in this case was hemorrhage and shock due to injuries No.1-A, 1-B, 2-A & 2-B. The probable time that elapsed between injuries and death was 1 to 2 hours, and the time that elapsed between death and postmortem was 06 to 10 hours.”

Ex.PI is the correct carbon copy of the postmortem report, whereas Ex.PI/1 and Ex.PI/2 are pictorial diagrams of injuries.

The statements of the remaining prosecution witnesses are formal.

8. The learned Deputy District Public Prosecutor gave up PWs, Amjad Ali and Nauman Shafqat being unnecessary and closed the prosecution evidence on 29.04.2019 after tendering the report of Punjab Forensic Science Agency, Lahore (Ex.PT and Ex.PU).

9. After the closure of prosecution evidence, the appellant was examined under Section 342 of Cr.P.C., wherein he refused to appear as his own witnesses in terms of Section 340 (2) Cr.P.C., in proof of the allegations leveled against him, however, tendered Ex.DA, Ex.DB, Ex.DC and Mark-A in his defence evidence. In response to a particular question that why this case was against him and why the PWs had deposed against him, the appellant made the following depositions: -

“All the PWs are related inter se and they have deposed against me due to suspicion. In fact, the deceased was a woman of easy virtue and she was got murdered under unknown circumstances. Babar brother of deceased used to forbid her from illegal designs/immoral activities. Due to the aforesaid reasons Babar brother of the deceased left the country. I was best friend of Babar brother of deceased. Complainant party had suspicion that Babar brother of the deceased got the deceased killed through me and my co-accused. I am innocent. I had no reason at all to commit the occurrence. I am resident of district Jhang. My father Ghulam Shabbir was murdered prior to the present occurrence by Manzoor Hussain S.I. Manzoor Hussain S.I. had good relations with Fakhar Moharar of P.S. City, Gojra. The complainant party firstly tried their level best to trace out the actual culprit when remained failed, they involved me in the present occurrence due to my friendship with Babar aforesaid and on the instructions of Manzoor Hussain S.I. I was student during the days of occurrence and had taken examination of F.A was awaiting for my result. I could not even imagine to commit such occurrence.”

10. After recording evidence and evaluating the evidence available on record in the light of the arguments advanced by both sides, the 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.

11. I have heard the arguments advanced by the learned counsel for the parties and Deputy Prosecutor General and have minutely perused the record on the file.

12. In the instant case, the incident took place on 17.10.2016 at 10:00 a.m., and the same was reported at 02:20 p.m. by Muhammad Arshad (PW-1)-the complainant, paternal uncle of Aqsa Bibi-the deceased through the written application (Ex. PA) to Asad Abbas S.I/H.I.U. (PW-11) at Govt. Eye-Cum-General Hospital, Gojra. Asad Abbas S.I/H.I.U. (PW-11), sent the same through Sajjad Ahmad 242/C (not cited as a witness) to the police station Saddar Gojra, District Toba Tek Singh, for formal registration of FIR, based on which first information report (Ex.PA/1) was recorded at 02:30 p.m. Whereas, the inter-se distance between the place of occurrence and the police station is 11-miles. As per the complaint (Ex. PA), contents of FIR (Ex.PA/1) and depositions of Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2)-eye witness, mother of the deceased, and Asad Ullah Khan (PW-7)-the eye witness, it reveals that two unknown accused persons armed with pistols had the following features: (1.) Medium build, fair complexion, young age, round face, strong body, and (2.) "Labutara Chahra", young in age and strong in body, entered the house. The unknown accused No.1, having medium height, fired with his pistol 30-bore, which hit below the left ear of Aqsa Bibi and went through and through (بائیں کان کے نیچے لگا اور آر پار ہو گیا). Then, he (unknown accused No.1) made a second fire with his pistol, which hit the left shoulder of Aqsa Bibi and went through and through (بائیں کندھے پر لگا اور آر پار ہو گیا). The second unknown accused was also armed with a 30-bore pistol and raised a lalkara that, if anyone came near, he would be killed. After escaping the unknown accused persons, the witnesses took care of their niece, Aqsa Bibi, and took her to the civil hospital, Gojra.

Afterward, due to unsatisfactory conditions, W.M.O. referred Aqsa Bibi to Allied Hospital, Faisalabad. Aqsa Bibi succumbed to the injuries in Allied Hospital, Faisalabad. The prosecution failed to produce evidence oral as well as documentary revealing the exact time of death of Aqsa Bibi, the deceased. Dr. Bushra Ashraf (PW-10) stated during her examination in chief that: -

“Stated that on 17.10.2016, I was posted as WMO at Govt. Eye Cum General Hospital, Gojra and on the same day, I attended Aqsa (deceased in injured condition) d/o Munawar aged about 19 years, r/o Chak No.425/JB. She was produced for medical examination with the history of firearm injury. I attended her and observed her condition. ----- I called doctor Ajmal Consultant Surgeon. He came and examined the patient and advised to refer the patient to Allied Hospital, Faisalabad. The ambulance was arranged and referred the patient to Allied Hospital, Faisalabad. OPD Slip No.1335 dated 17.10.2016 Exh.PM is in my handwriting and bears my signatures.”

Dr. Bushra Ashraf (PW-10), who attended Aqsa Bibi (then injured), provided her medical treatment, arranged an ambulance, and referred her to Allied Hospital, Faisalabad, did not state a single word that who brought Aqsa Bibi, in injured condition, for medical treatment in Eye-Cum-General Hospital, Gojra. She (PW-10) deposed in her examination-in-chief that OPD Slip No.1335 dated 17.10.2016 (Exh. PM) is in her handwriting and bears her signature. On perusal of OPD Slip No.1335 dated 17.10.2016 (Exh. PM), it reveals that only contact No.0336-3453455 is mentioned therein, and neither the name of the person who brought her in injured condition nor the time of providing treatment has been mentioned therein. The other document placed on the record by the prosecution is the death certificate dated 17.10.2016 of Aqsa Bibi (Ex. PL) issued by Allied Hospital, Faisalabad, revealing that “Received Expired” and in the column for the name of the patient, is mentioned “Aqsa, as told by Fakhar” and mobile number on the death certificate (Ex. PL), is mentioned as “03363453465”. This document is also silent about the time when Aqsa Bibi was brought expired in the Allied Hospital, Faisalabad, and a death

certificate (Ex. PL) was issued. Muhammad Arshad (PW-1)-the complainant deposed during his examination in chief that: -

“We attended Aqsa Bibi and shifted her to Civil Hospital Gojra where she was medically examined and referred to Allied Hospital, Faisalabad due to her critical condition where she succumbed to the injuries. We brought back dead body of Aqsa Bibi to Civil Hospital Gojra.”

Nusrat Bibi (PW-2) deposed in similar lines during her examination-in-chief. Whereas, Asad Ullah Khan (PW-7) deposed during his examination in chief that: -

“We attended Aqsa Bibi deceased and shifted her to Civil Hospital Gojra on a car. She was referred to the Allied Hospital Faisalabad where she succumbed to the injuries.”

Contrary to the contents of complaint (Ex. PA), FIR (Ex. PA/1), and depositions of prosecution witnesses i.e. Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2) and Asad Ullah Khan (PW-7), Dr. Sobia Munir W.M.O (PW-9) deposed in her court statement that, “According to police papers time of death is 10:00 a.m on 17.10.2016.” Asad Abbas S.I (PW-11)-the investigating officer, also deposed in his court statement that: -

“Stated that on 17.10.2016, I was posted as Incharge at HIU Circle, Gojra. On the same day, I along with other police officials reached at Eye-cum-General Hospital, Gojra after receiving information about occurrence where complainant Muhammad Arshad appeared before me and produced an application Exh.PA. I incorporated my proceedings upon it and sent the same to P.S. Saddar, Gojra through Sajjad Ahmad 242/C for registration of FIR. ----- I got inspected dead body of deceased through Uzma Naseem 1085/LC and prepared injury statement Exh.PJ and inquest report Exh.PK.”

Asad Abbas S.I. (PW-11)-the investigating officer, admitted in his examination-in-chief that he prepared an inquest report (Ex. PK) on 17.10.2016 after receiving a complaint (Ex. PA) from Muhammad Arshad

(PW-1)-the complainant. On perusal of the inquest report (Ex. PK), it reveals that in column No.3, the time and date of receiving information was mentioned as “17.10.2016 at 10:00 a.m.”. It is the prosecution's version that the FIR was lodged at 2.30 p.m. If it was so, it was required to be explained by the investigating officer, by plausible evidence on record, as to how the inquest was undertaken at 10:00 a.m., a point in time when the FIR was not in existence. The first circumstance that raises doubt about the time of occurrence and death as claimed by the prosecution is that in the inquest report, in column No. 3 time and date of receiving information about death was mentioned as 10:00 a.m. by Asad Abbas S.I. (PW-11)-the investigating officer, whereas, as per prosecution version Aqsa Munawar received injuries at 10:00 a.m. whereas incident was reported after the death of Aqsa Munawar at 02:20 p.m. on 17.10.2016 in Allied Hospital, Faisalabad. Muhammad Arshad (PW-1)-the complainant deposed during cross-examination that: -

“The application for registration of case was addressed to the SHO. The application Exh.P-A was got prepared by me prior to arrival of the police. I had produced the aforesaid application to the SHO at Civil Hospital Gojra. The SHO had marked the aforesaid application to another police officer.”

It creates doubt about the time of the incident and the time of death of Aqsa Munawar, the deceased. A man may tell a lie, but the document cannot. The inquest report (Ex. PK) reveals that Asad Abbas S.I. (PW-11)-the investigating officer, received information about the death of Aqsa Munawar-the deceased, on 17.10.2016 at 10:00 a.m., which threw a cloud of doubt on the deposition of prosecution witnesses i.e. Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2) and Asad Ullah Khan (PW-7).

13. There is another significant circumstance which goes to prove that the prosecution witnesses did not witness the occurrence. Dr. Sobia Muneer W.M.O (PW-9), who conducted a postmortem examination of Aqsa Munawar, the deceased, opined that the duration between the injuries and

death was 1 to 2 hours and between death and postmortem was 6 to 10 hours. She (PW-9) further stated in her court statement that the dead body was received in the dead house at 03:00 p.m. on 17.10.2016 and complete documents were produced before her at 07:00 p.m. and she conducted the autopsy at 07:30 p.m. on 17.10.2016, which also reveals from the postmortem report (Ex. PI). There is no plausible explanation as to why the postmortem of the dead body was delayed for five (05) hours from the time of registration of the case and four (04) hours thirty (30) minutes from the time of receiving the dead body in the mortuary for post mortem examination at 03:00 p.m. on 17.10.2016. No doubt, delay in postmortem alone is not fatal to the prosecution case, but when this court considered it with the other evidence available on the record along with post mortem report (Ex. PI), they do influence the mind of the Court and leave the impression that there had been some wrangling about the time of registration of criminal case. Muhammad Arshad (PW-1)-the complainant admitted during cross-examination that,

“A person with the name of Fakhar is a police official, and he is our relative.”

Nusrat Bibi (PW-2) deposed during cross-examination that: -

“I had accompanied my daughter to Allied Hospital and had also accompanied her dead body to civil hospital Gojra. I left the hospital at the time of autopsy of my daughter and came to my house.-----I had not seen Fakhar at civil hospital Gojra. I had also not seen Fakhar at allied hospital Faisalabad. PW volunteer that we only the witnesses were present there.-----I had cell number of Fakhar because he is my nephew and is serving in police department. I do not remember his cell number. I am primary pass. I cannot rebut or affirm that cell number 0336-3453465 is cell number of my nephew Fakhar. ----- I do not know the aforesaid cell number is mentioned on the refer slip of civil hospital, Gojra and also on the death certificate by Allied Hospital, Faisalabad. ----

The prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7), deliberately concealed the facts during their depositions. On the death certificate dated 17.10.2016 issued by Allied Hospital, Faisalabad, in the column for the name of the patient, it was specifically mentioned “Aqsa as told by Fakhar” and the cell number on the death certificate (Ex. PL) was mentioned as “03363453465”. The same is the position on the refer slip (Ex. PM) issued by Eye-cum-General Hospital, wherein same cell number was mentioned. It reveals that Fakhar remained throughout with Aqsa Munawar, then injured during her treatment, but the prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2) and Asad Ullah Khan (PW-7), deliberately concealed these facts. In clear words, the prosecution witnesses have not denied that Sana Ullah (the appellant) is a friend of Babar, who is the brother of Aqsa Munawar, the deceased. Instead, the defense brought on the record that the parents of Babar deserted him from their house, and this fact has been admitted by Nusrat Bibi (PW-2). All these facts lead to the undeniable conclusion that the prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7), failed to establish the incident happened similarly as deposed by the prosecution witnesses.

It is also observed by Dr. Sobia Muneer W.M.O (PW-9), that “eyes semi opened.” In the inquest report (Ex. PK), in column No.8, it is mentioned: “eyes opened.” The prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7), deposed in their court statements that they took Aqsa Munawar (then injured) to Allied Hospital, Faisalabad where she succumbed to the injuries. If they attended to the deceased and she took her last breath in the hospital, then there was no reason for the eyes to be open. These facts create doubt in the prosecution case as well as on the credibility and truthfulness of the statements of prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7). This also creates doubt about the genuineness of the version given by prosecution

witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7). By now, it is well-settled law that medical evidence can only indicate that the deceased had lost his life due to specific injuries, but it does not lead to the culprits. Reliance is placed on the judgment of the August Supreme Court of Pakistan in the case of **“Mursal Kazmi alias Qamar Shah and another v. The State”** (2009 SCMR 1410), wherein it was held as under: -

“As far as medical evidence is concerned, it only supports the prosecution case to the extent that the deceased lost his life due to fire-arm injury but it does not lead to the culprits.”

It also reveals from the police proceedings mentioned at the bottom of the application for registration of case (Ex. PA) that complainant (PW-1) handed over the application for registration of case at Eye-cum-General Hospital, Gojra at 02:20 p.m. on 17.10.2016 to Asad Abbas S.I. (PW-11)-the investigating officer and from the deposition of Asad Abbas S.I (PW-11)-the investigating officer, it reveals that after sending the application (Ex. PA) to police station through Sajjad Ahmad 242/C (not cited as witness) for registration of formal FIR (Ex. PA/1), he (PW-11) prepared the inquest report (Ex. PK). There is no reason why the police could not mention the names of the prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7) in the column No.4 and at the bottom of the last page of inquest report (Ex. PK). The inquest report (Ex. PK), if prepared actually after the registration of FIR and the investigating officer (PW-11) met with the complainant (PW-1), there is no reason why the names of the prosecution witnesses, i.e., Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7) are missing from the inquest report. The absence of those details indicates that the prosecution story was still in the embryo and had not been given any shape and that the FIR was then ante-timed.

14. As per the prosecution version, prosecution witnesses, i.e. Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7) had identified the appellant-Sana Ullah and his co-accused Azhar Waqas (since P.O) during the identification parade held on 18.11.2016 under the supervision of Shahid Moazam Magistrate Section-30, Lahore (PW-12), then posted as Judicial Magistrate, Toba Tek Singh. The deposition of Shahid Moazam Magistrate Section-30 (PW-12) and the proceedings of the test identification parade (Ex. PS) reveal that prosecution witnesses i.e. Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2) and Asad Ullah Khan (PW-7) had identified the appellant-Sana Ullah and his co-accused Azhar Waqas (since P.O) together in identification parade jointly held. The deposition of Shahid Moazam Magistrate Section-30 (PW-12) suggests that he held a joint test identification parade wherein Muhammad Arshad (PW-1)-the complainant, Nusrat Bibi (PW-2), and Asad Ullah Khan (PW-7) identified the appellant. Shahid Moazam Magistrate Section-30 (PW-12) deposed during examination-in-chief that: -

“First of all complainant namely M. Arshad s/o Ihsan Ahmad caste Jatt, r/o Chak No.425/JB was called to identify the accused persons. The said witness identified accused Sana Ullah s/o Ghulam Shabbir at Sr. No.4 in row No.1 and Azhar Waqas s/o M. Riaz at Sr. No.5 in row No.2 one by one by placing his hand on the head of the present suspects. The witness described the role of the accused and same were written by me “accused Azhar Waqas was armed with pistol, accused Sana Ullah made firing both were armed.”

Nusrat Bibi (PW-2) and Asad Ullah Khan (PW-7) also identified in the same manner as mentioned above. Muhammad Arshad (PW-1)-the complainant, deposed during cross-examination that: -

“Both the accused were aged about 23/24 years. The accused who were seen by me at the place of occurrence were also aged about 23/24 years.”

Nusrat Bibi (PW-2) deposed during cross-examination that: -

“ ---- I do not know if the accused are friends of my son Babar. I do not know if Babar my son had come to Pakistan after knowing the death of his sister Mst. Aqsa. I do not know if he was abroad during the days of occurrence. I had deserted Babar from my house (AAQ).”

Asad Ullah Khan (PW-7)-the eye witness deposed during cross-examination that: -

“We had made statement before magistrate at the time of identity parade. We had not given the statements before the magistrate with the names of the accused. PW volunteered we had identified the accused.”

Asad Ullah Khan (PW-7)-the eye witness, has specifically deposed that they had not identified the accused with their names. However, on perusal of identification parade proceedings (Ex.PS), it was stated by all the PWs that:-

"ملزم اظہر و قاص کے پاس پہل تھا۔ جبکہ فائزگ شنا، اللہ نے کی تھی۔ دونوں مسلح تھے۔"

Moreover, he also admitted that the accused person raised the objection that witnesses came to the police station and their pictures were taken; the witness's son/proclaim offender Baber used to meet them. The complainant and eyewitnesses did not rebut the objection. Moreover, Asad Abbas S.I. (PW-11)-investigating officer, narrated in his examination-in-chief that on 14.11.2016, he received spy information about the culprits of the occurrence and apprehended appellant Sana Ullah and Azhar Waqas (since P.O.) from Adda Pull Chak No. 423/JB on the pointing of the informer. After that, he recorded their version and arrested them under section 54, Cr.P.C.; on the same day, he produced them in the court of the Area Magistrate. Said accused persons were sent to judicial lock-up on 14.11.2016 for the purpose of identification parade through the application (Ex. PO). On 15.11.2016, Asad Abbas S.I. (PW-11)-investigating officer, submitted an application (Ex. PP) before Shahid Moazam Magistrate Section-30, Lahore (PW-12), then posted as Judicial Magistrate, Toba Tek Singh for conducting and fixing a date for an identification parade. The applications (Ex. PO and Ex. PP) reveal that the

investigating officer mentioned the parentage and addresses of both suspects. Asad Abbas S.I. (PW-11)-investigating officer admitted during cross-examination that,

"I have recorded in the file of this case the age of Sana Ullah accused as 18/19 years while that of Azhar Waqas (co-accused) 15/16 years (P.S. at the time of their arrest). I had annexed a copy of identification parade with the file of this case. I have gone through the objection raised by the accused that they were shown to the witnesses at the police station and their snaps were also prepared by the complainant party."

In the eventuality of the above-mentioned facts, it is crystal clear that the identification parade was not held by law for reasons that were not helpful to the prosecution. The august Supreme Court of Pakistan, in the case of Kamal Din alias Kamala v. The State (2018 SCMR 577) on page 580, while enunciating the principles of law relating to the identification parade, has observed as under: -

"Apart from that the test identification parade held in this case was a joint parade wherein two accused persons had been made to stand with dummies in two lines and their identification had taken place simultaneously in one go. This Court has also clarified in the cases of Lal Pasand v. The State (PLD 1981 SC 142), Ziaullah alias Jaji v. The State (2008 SCMR 1210), Bacha Zab v. The State (2010 SCMR 1189), Sahfqat Mahmud and others v. The State (2011 SCMR 537) and Gulfam and another v. The State (2017 SCMR 1189) that the identification of many accused in one go is not proper besides being unsafe."

15. As regards the recovery of the 30-bore pistol P-1 and five live bullets (P2/1-5), the only incriminating evidence on the disclosure and pointing of the appellant-Sana Ullah and positive report of Punjab Forensic Science Agency, Lahore (Exh. PT) is concerned, it is a prosecution case that on 17.10.2016, Asad Abbas S.I. (PW-11)-the investigating officer, collected two crime empties from the place of occurrence. The same were handed over

to the Moharrar malkhana on the same day. Muhammad Afzal 790/MHC (PW-5)-Moharrar malkhana deposed during examination-in-chief that on 20.10.2016, he handed over parcels (sealed parcels of blood-stained earth, crime empties, and parcels sent by WMO) to Asad Abbas S.I. (PW-11)-investigating officer for their onward transmission to Punjab Forensic Science Agency, Lahore. But Asad Abbas S.I. (PW-11)-investigating officer, did not state a single word that he received sealed parcels of blood-stained earth, crime empties, and parcel sent by WMO from Muhammad Afzal 790/MHC (PW-5)-the Moharrar malkhana on 20.10.2016 for their onward transmission to Punjab Forensic Science Agency, Lahore and deposited the same with Punjab Forensic Science Agency, Lahore on the same day. Besides, Asad Abbas S.I. (PW-11)-investigating officer arrested the appellant-Sana Ullah on 14.11.2016 under section 54 C.P.C. Asad Abbas S.I. (PW-11)-investigating officer deposed during examination-in-chief that:

“On 14.11.2016 I along with other police officials was present at Dhama Bangal where I received spy information about culprits of this occurrence. Acting on a tip off, I along with police officials reached at Adda Pull Chak No.423/JB and apprehended accused Sana Ullah present in the court and Azhar Waqas (since P.O) on the pointation of informer. I recorded their versions and arrested them u/s 54 Cr.P.C. On the same day, I produced both accused persons in the court of learned Area Magistrate with covered faces for sending them to judicial lock up for the purpose of identification parade by submitting application Exh.P.O which was allowed accordingly. On 15.11.2016 I submitted an application Exh.PP to Shahid Moazam, learned Area Magistrate Toba Tek Singh for conducting and fixing date of identification parade. Learned Area Magistrate fixed date 18.11.2016 for identification parade. On 18.11.2016 I reached at District Jail Toba Tek Singh and handed over file to Naib Court. After completing the proceedings of identification parade, Naib Court handed over to me file of this case alongwith five pages of proceedings of identification parade which I annexed with file.”

So, the crime empties were sent to Punjab Forensic Science Agency, Lahore, after the arrest and identification parade of the appellant-Sana Ullah, held on 20.10.2016, but the report of Punjab Forensic Science Agency, Lahore (Exh. PT) reveals that the parcel of crime empties was submitted on 21.11.2016 by Asad Abbas S.I. (PW-11)-investigating officer. The prosecution failed to link the parcel of crime empties submitted on 21.11.2016 by Asad Abbas S.I. (PW-11)-investigating officer with Punjab Forensic Science Agency, Lahore, with the parcel Punjab Forensic Science Agency, Lahore, handed over to Asad Abbas S.I. (PW-11)-investigating officer on 20.10.2016 by Muhammad Afzal 790/MHC (PW-5)-the Moharrar malkhana. This creates serious doubt about the safe custody of the parcel. The chances of tampering with the prosecution evidence cannot be ruled out as the case property was not deposited in the safe custody of Malkhana. It remained with the investigating officer (PW-11). I have noted that the 30-bore pistol P-1 and five live bullets (P2/1-5) were recovered on 27-11-2016 from his rented house situated at Chak No. 426 J.B. and the same were secured through recovery memo Ex-PD were deposited with Muhammad Afzal 790/MHC (PW-5)-the Moharrar malkhana of Police Station for their safe custody in the Malkhana on 27-11-2016. Even no evidence on record was available to show that the recovered 30-bore pistol P-1 and five live bullets (P2/1-5) on 27-11-2016 from the appellant-Sana Ullah were handed over to Muhammad Afzal 790/MHC (PW-5)-the Moharrar malkhana on 27-11-2016 by Asad Abbas S.I. (PW-11)-investigating officer. There is no link evidence adduced in this case to find that the 30-bore pistol P-1 and five live bullets (P2/1-5) were handed over by the investigating officer (PW-11) for safe custody to Muhammad Afzal 790/MHC (PW-5)-the Moharrar malkhana on 27.11.2016. Muhammad Afzal 790/MHC (PW-5)- Moharrar malkhana deposed during cross-examination that: -

“The parcels of 07.10.2016 were handed over to me by the I.O. at about 05:00/06:00 p.m. My statement was not recorded by the I.O. on 17.10.2016 regarding entrustment of parcels to me.-----My statement was not recorded by the I.O. on 20.11.2016 or on 27.11.2016. My

**statement was also not recorded by the I.O on
05.12.2016.”**

This further creates doubt, and the prosecution story weakens. I am, therefore, of the view that the recovery of 30-bore pistol P-1 and five live bullets (P2/1-5) and the positive report of Punjab Forensic Science Agency, Lahore (Exh. PT) are of no avail to the prosecution.

16. From the facts and circumstances narrated above, I am persuaded that the prosecution could not prove its case against the accused beyond the shadow of a doubt, as there were many dents in the prosecution story. The accused persons are not expected to prove their innocence to the hilt. If the prosecution story is doubtful, the benefit of the doubt must go to the accused-appellant. Against this backdrop, it can safely be held that the prosecution has badly failed to bring home the guilt of the accused/appellant, and the conviction passed by the trial court in the circumstances is against all canons of law recognized for the dispensation of criminal justice. Per the dictates of the law, the benefit of every doubt will be extended in favor of the accused/appellant. The conviction and sentence the trial court recorded cannot be sustained. Reliance has been placed on the case reported as **Muhammad Akram v. The State** (2009 SCMR 230), wherein the Hon’ble Supreme Court of Pakistan had held that even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.

17. Resultantly, **Criminal Appeal No.78000-J of 2019 is accepted in toto. Conviction and sentence** recorded by the trial court vide judgment dated 18.09.2019 is **set aside** as a consequence of which, **Sana Ullah, son of Ghulam Shabbir-the appellant, is ordered to be acquitted of the charge** in case FIR No.571/2016 dated 17.10.2016 registered under sections 302, 449, 34 PPC at P.S. Saddar Gojra, District Toba Tek Singh. The appellant, Sana Ullah, son of Ghulam Shabbir, is in jail. He (the appellant) is directed **to be released forthwith** if not required in any other case.

18. So far as Crl.Rev.No.69601 of 2019 seeking enhancement in the sentence of respondent No.1 inflicted by the trial court is concerned, for the afore-stated reasons, the same has no weight, which is accordingly dismissed.

(AALIA NEELUM)
JUDGE

*This judgment was dictated,
pronounced on 19.02.2024,
and signed after completion
on 22.02.2024.*

*Ikram**

Approved for reporting.

Judge