

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

Murder Reference No.29 of 2020
(The State *versus* Abid Ali)

Crl. Appeal No.79031-J of 2019
(Abid Ali, etc *versus* The State etc.)

Crl. Appeal No.2384 of 2020
(Haji Akbar Ali *versus* The State, etc.)

Crl. Revision No.2385 of 2020
(Haji Akbar Ali *versus* The State, etc.)

JUDGMENT

Date of hearing: 20.11.2024.

Appellants by: M/s Usman Naseem, Rai Bashir Ahmad, Khawar Mahboob Malik, Bilal Farooq, and Attiq-ur-Rehman, Advocates.

State by: Mr. Munir Ahmad Sial, Addl. Prosecutor General.

Complainant by: M/s Rana Abdul Sattar Khan, Muhammad Ahsan Bhoon, and Syed Ali Zuhair Kirmani, Advocates.

AALIA NEELUM, C.J:- (1) Abid Ali, (2) Tariq Ali, sons of Pervaiz, and (3) Muhammad Arshad son of Bashir Ahmad, all Dogar by Caste, residents of Saidpur Tehsil & District Kasur, have assailed their convictions and sentences recorded by the learned Additional Sessions Judge, (MCTC), Kasur vide judgment dated 07.12.2019, in a private complaint filed under sections 302, 201, 109, 148, 149 PPC P.S. Khudian, District Kasur titled "**Haji Akbar Ali Vs. Abid Ali, etc.**" in a State case F.I.R No.63/2018, dated 10.02.2018, offences under Sections 302, 148, 149 PPC, registered at the police station, Khudian, District Kasur, whereby the learned trial court convicted the appellant No.1-Abid Ali under Sections 302 (b)/34 PPC as Tazir and sentenced to **death** with the direction to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased under Section 544-A of Cr.P.C, and in case of default in payment thereof, he would further undergo

06-months S.I. Whereas the appellants No.2 and 3, Tariq Ali and Muhammad Arshad were convicted under Sections 302(b)/34 PPC as Tazir and each of them was sentenced to undergo **rigorous imprisonment for life**, with the direction to pay Rs.3,00,000/- each as compensation to the legal heirs of deceased and in case of default in payment thereof, each of them would further undergo 06 months S.I The benefit of Section 382 (B) of Cr.P.C., was also extended in favor of the appellants.

2. Feeling aggrieved by the judgment of the learned trial court, the appellants-Abid Ali, Tariq Ali, and Muhammad Arshad, have assailed their conviction and sentence by filing an appeal bearing **Crl. Appeal No.79031-J of 2019**. The learned trial court also referred **M.R. No.29 of 2020 (The State Vs. Abid Ali)** to confirm the death sentence awarded to the appellant-Abid Ali, whereas the complainant filed **Crl. Appeal No.2384 of 2020** against the acquittal of respondents No.2 & 3, namely Muhammad Farooq and Muhammad Asif (On the request of learned counsel for the complainant, names of respondents No.4 to 6 have been deleted). The complainant, dissatisfied with the impugned judgment dated 07.12.2019, also preferred a **Criminal Revision No.2385 of 2020** to enhance the sentence of respondents No.2 & 3, namely, Tariq Ali and Muhammad Arshad. All the matters arising from the same judgment of the trial court are being disposed of through a single judgment.

3. Briefly, the prosecution story as alleged in the private complaint (Ex. PF) filed by Haji Akbar Ali (PW-1)-the complainant is that on 10.02.2018, at about 10:00 a.m, the complainant (PW-1) along with his sons namely, Muhammad Yaseen (since dead) and Muhammad Sajid (since dead) went to tube-well for irrigation of land. After returning from the tube well to their cattle shed, when they reached the graveyard on the eastern side of the way, the accused persons, while quipped with their respective weapons, were ambushed having common objects. On seeing the complainant party, the accused, Muhammad Asif, raised a lalkara that no one should have been spared, after which the accused, Abid, with his rifle, made a shot, which hit

the right side of the chest of Muhammad Yaseen (since dead), who fell. After that, the accused, Tariq Ali, with his rifle, made a shot at the person of Sajid (since dead), which landed on the left side of his chest. After that, the accused, Arshad, with his rifle, went near Sajid (since dead) and made a shot, which hit his left arm. After the alleged occurrence, the accused persons fled away from the place of occurrence, whereas Sajid (since dead) succumbed to the injuries at the spot. Muhammad Yaseen son of Zafer Ali and Muhammad Sadiq son of Ahmad Din were plowing the fields along with the complainant and his sons, i.e., Muhammad Sajid, whereas Muhammad Ilyas came there to lend agricultural tools. They witnessed the occurrence. Thereafter, the complainant (PW-1), while leaving Yaseen and Sadiq, prosecution witnesses at the spot, shifted his injured son, namely, Muhammad Yasin, in injured condition to the DHQ hospital, where the doctor verified his death. The motive behind the occurrence was that the accused persons had a dispute over the possession of the tube well.

4. After the occurrence, the complainant (PW-1) went to the police station, Khudian, and moved an application for registration of case (Ex. PA), upon which formal FIR (Ex.PA/1) was chalked out by Sher Muhammad, ASI (CW-7). After registration of the case, the investigation of this case was first entrusted to Tahir Sohail, Ex. S.I (CW-8). After that, the investigation of this case was entrusted to Qurban Shabbir, (Retired) S.I (CW-5), who found the accused persons/appellants guilty, prepared a report under Section 173, Cr.P.C. while placing the names of the accused in column No.3 of the Challan and sent the same to the court of competent jurisdiction. The learned trial court formally charge-sheeted the appellants on 11.09.2018, to which they pleaded not guilty and claimed trial. The complainant, in support of his version, produced as many as three (03) witnesses, whereas the rest of the witnesses were summoned as court witnesses, i.e., CW.1 to CW.10.

5. After the closure of prosecution evidence, the appellants were also examined in terms of Section 342 Cr.P.C., wherein they refused to appear as their own witnesses in terms of Section 340(2) Cr.P.C. However,

they opted to produce defence evidence. In response to a particular question of why this case was against them and why the PWs deposed against them, the appellants, No.1 & 2, Abid Ali and Tariq Ali, made the following deposition: -

“The factum has been came on record during cross examination that SHO had gone to the place of occurrence in response to the emergency call on 10.02.2018 at 10:02 a.m and on at 10:18 a.m on 15-rescue which was made by a person who impersonated himself as Sardar Sajid and Haji Akbar whereas complainant has vehemently denied that he has not made any, despite the fact that Afzal Moharrar CW-2 has stated that SHO had visited the place of occurrence along with Incharge of Homicide cell reached at the place of occurrence in response of call of rescue 15. It is stated that on 10.02.2018 at about 11:00 a.m, complainant Akbar Ali along with 2-3 persons came along with Yaseen deceased in the police station and they remained present for many hours and issued the docket for injuries. The above said facts were not brought on surface by the I.O in league with the complainant and the complainant was adamant to deny these hard facts and the FIR was not got registered by the complainant and after 07/08 hours a fabricated and false version was advanced on the legal advise to implicate our family. Actually, the real man Khalil son of Arif, son in law of Akbar complainant, who had the venom and grudge because he wants to wreak the vengeance against me, my brother Abid and my relative Arshad etc due to the reason, Arshad was married with sister of Khalil surreptitiously. When this marriage came into the knowledge of Khalil, he murdered her sister and Yaseen deceased informed Arshad that his wife has been murdered by Khalil etc in the house of Yaseen PW-2 in Tehsil Pattoki.”

While replying to a particular question of why this case was against him and why the PWs deposed against him, the appellant, No.3, Muhammad Arshad, made the following deposition: -

“The case is totally false. In fact I have contracted marriage with Aqsa Bibi daughter of Arif and sister of Khalil Ahmad son in law of complainant Haji Akbar at the time of Nikah, Tariq my co-accused was the witness in the said Nikah and the case registered by me for the murder of my wife Aqsa Bibi, I arrayed as accused. Haji Baqar S/o Khan Bahadur real brother of Muhammad Nawaz PW-3, along with Arif Father, Umar, Khalil sons of Arif s/o Jalal Din who are the father and brothers of Aqsa Bibi. Haji Muhammad the younger brother of Muhammad Yasin PW-2 was also inimical towards as the fictitious Nikah-Nama was prepared with Aqsa Bibi my wife without taking divorce from me and I filed petition u/s 22-A, 22-B Cr.P.C against Haji Muhammad And Zulfiqar Ali real brothers of Muhammad Yasin PW-2. We have cordial relation with Sajid and Yasin deceased. I and my brother can not think about the murder of the said persons who were closely related to us. In fact Khalil Ahmad son in law of complainant have suspicion that Yasin deceased gave our family information to me and above said Khalil Ahmad son in law of complainant who is generalist and influential personality in Islamabad and he managed the murder of his brother in laws Sajid and Yasin deceased through hired criminals. Sajid deceased made a telephone on rescue 15 at 10:02 AM on the alleged day of occurrence i.e. 10.02.2018 that two persons are quarrelling with me and on the same date at 10:17 am a telephonic call was made from the mobile phone of Yasin deceased by complainant Muhammad Akbar that three/four persons quarreled with his sons. At 10:45 a.m on 10-02-2018 Muhammad Yasin then injured was brought to the P.S, a docket was prepared and Muhammad Yasin injured was sent to RHC Khudian from where he was referred to DHQ hospital, Kasur, this fact was not ever brought by the complainant before the I.O, during the course of investigation. There is glaring contradictions between the statements application of the complainant Ex.PA and complaint Ex.PF of the complainant and PWs which are fatal to the prosecution case.”

6. After recording evidence and evaluating the evidence available on record, considering arguments advanced by both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction as well as awarding of sentence to them in the afore-stated terms.

7. We have carefully considered both sides' rival submissions and minutely reviewed the evidence on record.

8. As per the prosecution version, in the instant case, the incident took place on 10.02.2018 at 10:00 a.m. in Saidpur, falling within the territorial jurisdiction of Police Station Khudian, District Kasur, wherein Muhammad Yasin and Sajid (sons of Haji Akbar Ali-the complainant) lost their lives. The inter-se distance between the place of occurrence and the police station was 10 kilometers. Haji Akbar Ali (PW-1)-the complainant reported the incident to the police on the same day at 05:00 p.m. through the written application (Ex. PA), based on which Sher Muhammad, A.S.I. (CW-7) chalked out the FIR (Ex. PA/1). There was an inordinate delay of 07 hours in reporting the matter. Haji Akbar Ali (PW-1)-the complainant deposed during examination-in-chief that soon after the incident, he took his son (Yasin) to the hospital for medical treatment to save his life. He (PW-1)-the complainant, deposed during his examination-in-chief that: -

“My son Sajjid Ali succumbed to the injury at the spot, whereas I alongwith other persons shifted Yasin in injured condition at District Headquarter Hospital, Kasur, while leaving Sadiq and Yasin at the guard of place of occurrence. When I shifted my son Yasin at Hospital, the Doctors available in emergency declared him as dead.”

Whereas, during cross-examination, Haji Akbar Ali (PW-1)-the complainant, deposed that: -

“I escorted my son Muhammad Yaseen to hospital according to my version in FIR accompanied with my son in law while boarding on a rented vehicle. I have not produced the driver of rented vehicle. I came to know about the death of my son at the

hospital where after checking in emergency doctor informed me about the death of my son Yaseen. I have no knowledge about any prescription/entry in the emergency of DHQ hospital, Kasur. I have no knowledge about any issuance of death certificate of my deceased son Yaseen. I took my son in emergency of DHQ hospital in between 03:30 pm to 04:00 p.m. ----- It is correct that we reached DHQ hospital via Deepalpur road. We adopted the passage for reaching DHQ hospital, Kasur through Bhagiana. If one adopts the road via Bhagiana which lead to Khudian and then Kasur. The P.S Khudian is situated at 5/7 acres from the main road.”

Haji Akbar Ali (PW-1)-the complainant further deposed during cross-examination that: -

“The constable took me and my injured son to RHC Khudian. The RHC Khudian referred the injured Yaseen due to his precarious condition to DHQ hospital, Kasur. I escorted my injured son alongwith my other companion at about 10:30/11:00 am from the place of occurrence. We remained at P.S Khudian 11:00 am to 12:00 noon. Yaseen injured remained outside the gate of the police station. It is correct that the detail regarding the escorting Yaseen the then injured to P.S Khudian and then to RHC Khudian are not mentioned in the FIR. It is correct that the details regarding escorting the Yaseen then inured to P.S Khudian, the factum of apprising the Moonchi, sending constable alongwith the injured and then taking the injured to RHC Khudian are not mentioned in private complaint. It is correct that Moonchi is also called Moharar. ----- After the occurrence the car driver of the rented car came alongwith the rented vehicle. Thereafter Khalil also came there after hearing about the occurrence alongwith other persons. It was not in my knowledge that till the occurrence that Khalil has arrived back from Islamabad. Prior to the occurrence Khalil did not come to my house. I escorted my injured son Yaseen to P.S Khudian and the person who learned about the occurrence followed me to P.S Khudian, perhaps 3/4 cars reached there. Khalil also came at the police

station when I shifted Yaseen in the police station at P.S Khudian. It is correct that Khalil my son in law is related with me with Yaseen injured and was also educated. ----- We escorted the injured Yaseen for the hospital around 10:30 to 11:00 am on a rented car. We were accompanied with Khalil who is also my son in law. We have choosen the road leading Bhagiana to Kasur through Khudian. We firstly went to P.S Khudian. It took half an hour to reach P.S. Khudian. We did not meet SHO there. We informed Moharar and made over him whole story of the occurrence, who had written or not my narrations is not known to me. Probably he would have written something but I cannot say anything about it. He after hearing the whole story sent a constable alongwith us for taking the injured to hospital. It is correct that we went to RHC Khudian. On seeing the critical condition doctor referred us to DHQ hospital, Kasur. He referred the patient in writing but did not give us any writing in this regard. Nobody else accompanied us in the car to take the injured to hospital. Volunteered that later on people joined us. ----- Some people followed us out of which some met us at police station to inquire about the occurrence from us, and some joined us at RHC Khudian. Half of the village almost came to inquire.”

Sher Muhammad A.S.I. (CW-7) deposed during cross-examination that: -

“It is correct that on dated 10.02.2018 at about 11:00 am complainant Akbar Ali alongwith 2/3 persons which are not known to me came alongwith Yaseen alleged deceased in the police station. Volunteer stated that they remained present in police station for many hours and I.O issued them docket for the injuries. I do not know if Yaseen had already died before reaching police station. Soon after the registration of the case, the FIR complainant and his companion left the police station.”

According to the deposition of Haji Akbar Ali (PW-1)-the complainant, he took his son Yasin (then injured) to the police station after the incident at about 10:30 or 11:00, and he remained in the police station from 11:00 to 12:00 noon. After that, he took Yasin (then injured) to the RHC

Khudian. At the RHC Khudian, the doctor referred Yasin to the DHQ Hospital, Kasur, due to his critical condition. He reached the emergency of DHQ hospital between 03:30 pm and 04:00 p.m. The doctor checked him in the emergency of the hospital and declared that his son had died. Dr. Ch. Arslan Ahmad PGR (CW-1), who conducted the postmortem examination on the dead body of Muhammad Yaseen (the deceased), deposed during examination-in-chief that the duration between injury and death was within 30 minutes. From the testimony of Sher Muhammad A.S.I. (CW-7), it reveals that Haji Akbar Ali (PW-1)-the complainant, remained in the police station for hours. As per the version of Haji Akbar Ali (PW-1)-complainant, keeping in view the critical condition of Yaseen (then injured), the doctor of RHC Khudian referred Yaseen (then injured) to DHQ, hospital Kasur and the complainant reached DHQ Hospital, Kasur at “Zohar time.” Haji Akbar Ali (PW-1)-the complainant further deposed during cross-examination that:

“We reached at DHQ hospital, Kasur after Zohar time.”

Zohar (Dhuhr) timing on 10.02.2018 was 11:52 a.m., whereas “Asr” timing was 04:06 p.m. At the cost of repetition, Haji Akbar Ali (PW-1)-the complainant, deposed during cross-examination that: -

“Yaseen injured remained outside the gate of the police station.”

Whereas Tahir Suhail Ex. S.I. (CW-8), after perusal of the Roznamacha deposed during the cross-examination conducted by the complainant's counsel that: -

“It is correct that Rapat No.8 dated 10.02.2018 recorded by Riasat Ali TASI at 10:45 am to the effect that Yasin s/o Akbar Ali Dogar r/o Said Pura in injured condition came at police station and after preparation of docket he was sent to RHC, Khudian in the company of Muhammad Yasin 378/C and he also recorded that after the receipt of MLC whatever will be the situation the proceeding will be conducted.”

Tahir Suhail Ex. S.I. (CW-8), deposed during the cross-examination conducted by the complainant's counsel that: -

"I have not received the docket of Yasin the then injured which was prepared as mentioned vide Rapat No.8 dated 10.02.2018. Regarding the said docket no information was provided to me as the FIR was silent about the above said fact, therefore I did not conduct any investigation regarding the above said fact."

The postmortem report (Ex. PR) of Muhammad Yaseen, deceased, has not been challenged by the prosecution, wherein it was mentioned that the duration between injury and death was half an hour. Dr. Ch. Arslan Ahmad (CW-1) deposed during examination-in-chief that: -

"On 10.02.2018 I was posted as Medical Officer at DHQ Hospital Kasur. On the same date at 9:00 p.m I conducted autopsy on the dead body of deceased Muhammad Yaseen, aged about 31/35 years, caste Dogar, r/o Saidpur District Kasur. ----- Duration between injury and death was within 30 minutes and between death and post mortem was within 12 hours."

Tahir Suhail Ex. S.I. (CW-8)-the investigating officer also deposed during the cross-examination that: -

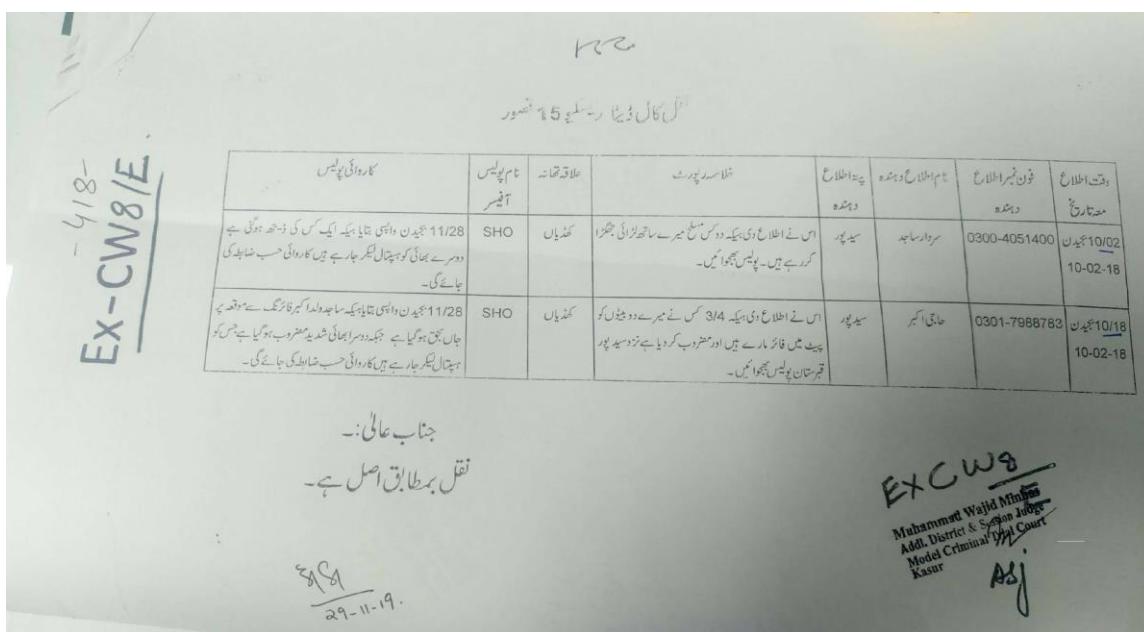
"I have not received the docket of Yasin the then injured which was prepared as mentioned vide Rapat No.8 dated 10.02.2018. Regarding the said docket no information was provided to me as the FIR was silent about the above said fact, therefore I did not conduct any investigation regarding the above said fact."

Admittedly, the prosecution witnesses failed to prove when and where Yaseen (then injured) took his last breath. The episode between 10:00 a.m. and 05:00 p.m. on 10.02.2018 is shrouded under mysterious circumstances that are not appealing to reason and logic. If the complainant, alongwith prosecution witnesses and Yaseen (then injured), reached DHQ Hospital, Kasur, at Zohar time and as per the opinion of the doctor, the

duration between the injury and death was 30 minutes, then how the doctor could refer Yasin (then injured) from RHC Khudian to DHQ hospital, Kasur. Haji Akbar Ali (PW-1)-the complainant, in his cross-examination, deposed that he has no knowledge of any prescription/entry in the emergency of DHQ hospital, Kasur, and about any issuance of the death certificate of his deceased son Yaseen. Medical evidence contradicts the ocular account. Medical evidence shows that Yasin (then injured) was alive for half an hour. If we consider the time of the incident in the light of the medical evidence and see when Yasin (then injured) took his last breath, it is at 10:30 a.m. because, according to the prosecution, the time of the incident is 10:00 in the morning. Haji Akbar Ali (PW-1)-the complainant stated that between 10:30 and 11:00 a.m., he escorted Yasin, to the hospital in the rented car. When the complainant took Yasin (then injured) to the hospital, as per the medical evidence, he was already dead. That is why the complainant did not produce the RHC doctor as a witness, nor did he present the doctor of DHQ Hospital Kasur as a witness. The prosecution has not produced a refer slip of RHC Khudian or a death certificate issued by DHQ Hospital, Kasur, during evidence. The non-submission of documents, i.e., the refer slip and the death certificate, creates doubt about the prosecution's case, as a man may lie, but the document cannot. The prosecution failed to prove what the complainant and his witnesses did for seven hours, which put a dent in the prosecution's story.

9. The prosecution put much emphasis on the evidence of the Haji Akbar Ali (PW-1)-the complainant, and Muhammad Yaseen (PW-2)-the eye witness, on the point the deceased Sajid Ali made that call on 15 before his death at 10:02 a.m. on 10.02.2018 and complainant made the call on 15 at 10:18 a.m. on 10.02.2018 and referred to a copy of call data rescue 15 Kasur to prove that incident against the appellants was reported by Sajid Ali deceased in his life is concerned, we have noted that as per prosecution case on receiving firearm injury Sajid Ali succumbed to the injuries at the spot. It is not the case of the prosecution that any attraction occurred between the

deceased and the accused before the incident. A scanned copy of call data rescue 15 Kasur is as follows: -



Ex-CW8/E

وقت الاتصال	موبايل رقم	فون نمبر الاتصال	نام و مرجع	العنوان	نام و مرجع	نام و مرجع	نام و مرجع	نام و مرجع
10/02/18	0300-4051400	سوار سايد	کشیان	کشیان	کشیان	کشیان	کشیان	کشیان
10/02/18	0301-7988783	حاجی اکبر	کشیان	کشیان	کشیان	کشیان	کشیان	کشیان

جناب عالی:-
نقل برقائی محل ہے:-

EX-CW8
Muhammad Wajid Minhas
Addl. District & Session Judge
Model Criminal Court
Kasur
ASJ

29-11-19.

Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“My son Yaseen in injured condition made a telephonic call on 15 at about 10:30 am where he was fallen at the place of occurrence near the graveyard. The police did not came at the place of occurrence after receiving the call from Yaseen the then injured.”

Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

“My cell number is 0321-7072603. The cell number of Yaseen deceased is 0301-7988783.”

Tahir Suhail Ex. S.I. (CW-8)-the investigating officer during cross-examination conducted by the complainant counsel deposed that: -

“It is correct that on 16.02.2018 I while mentioning sixteen mobile numbers I requested that the call detail of those sixteen numbers will be obtained and due to that affect the application was moved. The call details was not received by me during my posting and investigation. I have not explained in my

proceedings that who was the user of the mentioned mobile phone numbers. It is correct that at No.9 the cell number of Yasin deceased i.e. 0301-7988783 is mentioned. It was not brought into my notice that deceased Yasin made call from his mobile at 15 at 10.02.2018. It is correct that according to the Roznamcha there is no mention of receiving any call made at rescue 15 and there is also no mention that any police officer responded to the said call and went to the place of occurrence.”

Tahir Suhail Ex. S.I. (CW-8)-the investigating officer during cross-examination conducted by the defence counsel deposed that: -

“It is correct that complainant Akbar Ali and Sadiq, Ilyas, Yasin PWs and even Yasin did not apprise me about the call on rescue 15. It is also correct that complainant Akbar Ali in his application for registration of case and also in the FIR did not mention about the call made on rescue 15. ----- It is correct that as per PMR No.10/2018 of Yaseen deceased the duration between injury and death was within 30 minutes.”

The caller did not give the accused's name in the call on 15. It has also been argued that Sajid Ali (deceased) did not make a call. In support of their submission, the learned counsel for the appellants referred to the evidence of Haji Akbar Ali (PW-1)-the complainant, Muhammad Yaseen (PW-2)-the eye witness, Muhammad Amjad Ali 51/HC (CW-4), and Tahir Suhail Ex. S.I. (CW-8)-the investigating officer. Tahir Suhail Ex. S.I. (CW-8)-the investigating officer said that the dead body of Sajid Ali (deceased) lay at the place of occurrence till 05:00 p.m., and after that, the dead body was sent to the mortuary. Haji Akbar Ali (PW-1)-the complainant deposed during examination-in-chief that: -

“My son Sajjid Ali succumbed to the injury at the spot, whereas, I alongwith other persons shifted Yasin in injured condition at District Headquarter Hospital, Kasur, while leaving Sadiq and Yasin at the guard of place of occurrence. When I shifted my son Yasin at

Hospital, the Doctors available in emergency declared him as dead.”

In similar lines, Muhammad Yaseen (PW-2)-the eye witness deposed. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“My son Sajid when fell down on the ground his head was towards the north whereas his foot was towards south. I administered water to Yaseen and also lifted him whereas Sajid succumbed to the injuries at the spot. My clothes were not smeared with blood when I lifted injured Yaseen.”

Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

“The police arrived at the place of occurrence at about 05:00 pm. ----- The dead body was escorted on a Dala which was fetched by the police and shifted the dead body to the hospital.”

Haji Akbar Ali (PW-1)-the complainant, also deposed during cross-examination that: -

“It is correct that I and Khalil my son in law boarded Yaseen in injured condition in the car. Our clothes were not smeared with blood. It is correct that bloods was oozing out from the body of injured Yaseen which also caused his clothes smeared with blood. It is correct that seat of car where injured Yaseen was sitting also smeared with blood. Since I was sitting on front seat, therefore, my clothes were not smeared with blood. Might be clothes of Khalil smeared with blood as injured Yaseen was in the lap of Khalil.”

Contrary to the deposition of Haji Akbar Ali (PW-1)-the complainant, Muhammad Yaseen (PW-2)-the eye witness, deposed during cross-examination that: -

“Our hands severed with blood of injured but not the clothes. We showed our blood stained

hands to the IO when IO came at the spot.
When I Sadiq and Ilyas put the injured on the
rear seat of the car his head was in the lap of
Haji Akbar complainant.”

Muhammad Amjad Ali 51/HC (CW-4) deposed during cross-examination that: -

“It is correct that on 10.02.2018 I alongwith
Tahir Suhail S.I, Muhammad Serwar ASI and
Muhammad Imran HC reached at place of
occurrence at 5:00pm. ----- At place of
occurrence dead body of deceased Sajid was
lying there. ----- We reached at DHO,
Hospital, Kasur at 7:00pm. It is correct that at
that time dead body of deceased Yasin brother
of deceased Sajid was also in mortuary.”

Tahir Suhail Ex. S.I. (CW-8)-the investigating officer during examination-in-chief that: -

“On 10.02.2018 I was posted as Incharge
Homicide Investigation Unit P.S Khudian,
Kasur. On the same day investigation of this
case was entrusted to me. I alongwith
Muhammad Sarwar ASI, Ajmad Ali 51/HC,
Muhammad Imran 1293/HC and Muhammad
Asif constable reached at place of occurrence
where dead body of Sajid deceased was lying
and I inspected the dead body in the presence of
22 individuals.”

Tahir Suhail Ex. S.I. (CW-8)-the investigating officer deposed during cross-examination that: -

“The delay before the registration of the FIR
was caused due to complainant. It is correct
that FIR was registered with delay of seven
hours. FIR was handed over to me outside the
police station at about 05:10 p.m. I proceeded to
the place of occurrence on official vehicle.”

It is admitted fact that Haji Akbar Ali (PW-1)-the complainant, Muhammad Yaseen (PW-2)-the eye witness, Muhammad Amjad Ali 51/HC (CW-4), and Tahir Suhail Ex. S.I. (CW-8)-the investigating officer deposed that the investigating officer arrived at the place of occurrence after 05:00 p.m. and after that, the dead body of Sajid Ali (deceased) was sent to the mortuary after

about seven hours from the time of occurrence. A substantial period had lapsed between the incident and sending the dead body from the spot to the mortuary. Dr. Ch. Arslan Ahmad (CW-1), who conducted a postmortem examination upon the dead body of Yaseen, deposed during cross-examination conducted by the learned counsel for the complainant that: -

“It is correct that according to application for registration of the case, inquest report and the FIR which bear my signatures, the time of occurrence is 10:00 a.m on 10.02.2018. -----

----- Prior to conducting autopsy I have read the said documents. It is correct that according to inquest report, which was prepared when the dead body was in the dead house. Time of receiving the dead body in the dead house is recorded as 11:15 a.m whereas the relevant papers were received at 7:35 p.m and I conducted postmortem examination at 9:00 p.m on the same day i.e. 10.2.2018. I have mentioned the time of death as 10:00 a.m. in the PMR ExPR approximately.”

Dr. Ch. Arslan Ahmad (CW-1) deposed during cross-examination conducted by the defence counsel that: -

“It is correct that time of death of deceased Yaseen mentioned in ExPR as 10:00 a.m is my independent assessment. We mentioned the time of death by keeping in view the condition of the body regarding developing of rigor mortis and also while taking information from the police official. It is correct that in between the time of 11:15 a.m when dead body was received upto 7:35 p.m I did not receive the relevant police papers. After studying the documents, I started to conduct autopsy at 9:00 p.m. According to inquest report the inquest was held by the I.O in the hospital upon the dead body of Yaseen.”

Dr. Muhammad Waqas Umer (CW-9), who conducted postmortem examination upon the dead body of Sajid Ali, deposed during cross-examination conducted by the learned counsel for the complainant that: -

“According to the police information time and death of Sajid deceased was 10:00 am dated 10.02.2018. Time of dead body receiving in dead house was 07:00 pm dated 10.02.2018 and receiving complete documents form police at 07:00 pm on 10.02.2018 and conducting autopsy at 10:30 pm approximately.”

As deposed by Dr. Ch. Arslan Ahmad (CW-1) and Dr. Muhammad Waqas Umer (CW-9), Sajid Ali died at 10:00 a.m., the prosecution failed to prove who made the call on 15, and if the dead body of Yaseen was received in the dead house at 11:15 a.m., then the entire prosecution story becomes doubtful. Thus, the presence of these witnesses, i.e., Haji Akbar Ali (PW-1)-the complainant, Muhammad Yaseen (PW-2)-the eye witness at the time of occurrence, becomes doubtful.

10. As per the contents of the application for the registration of case (Ex. PA) and FIR (Ex. PA/1), there was a dispute over water between the parties. However, while filing the private complaint (Ex. PF) on 30.06.2018, after 04-months and 20 days, the motive was improved, and the complainant mentioned that there was a dispute over the tube well between the complainant and the accused party. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“The land was in my name. It is correct that while describing the motive of the occurrence I have not specifically named any accused regarding rift on the water. It is correct that the details of the motive is not mentioned in the FIR.”

The defence has brought on record the contradictions in the evidence of Haji Akbar Ali (PW-1)-the complainant. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“I might have got recorded in my application Ex.PA that the accused persons wanted to get possession of the water motor. Confronted with Ex.PA where it is not so recorded.”

Haji Akbar Ali (PW-1)-the complainant admitted during cross-examination that he had not pointed out the place where the motor was installed and the land was being irrigated by the tube well. The relevant portion of the cross-examination is as follows: -

“As the motor was situated at the distance of 3 acre from the place of occurrence, therefore, the same was not pointed out to the draftsman. I have not pointed out the specific land which was being irrigated by the tubewell according to our version. Volunteered that the site plan was prepared with regard to place of occurrence. I have pointed out the land which was being cultivation. I have pointed out the place where the tractor was present.”

Whereas Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

“As there was no previous enmity between the parties therefore I did not record any previous enmity between the parties in my statement before police.”

He (PW-2) also deposed during the cross-examination that: -

“The way leading to the tubewell of Haji Akbar complainant is a thorough-fare.”

The incident occurred on the thoroughfare. The deceased and the complainant were returning after irrigating the field and going towards their cattle shed. Meanwhile, Muhammad Yaseen (PW-2) was busy ploughing the land with the tractor. According to the prosecution case, the witnesses were returning from their tube well to their cattle shed. The incident occurred when they reached the graveyard on their way to the cattle shed. According to the appellants, the prosecution witnesses had a strained relationship between them. The appellants, Tariq and Abid, have admitted that their mother had filed a civil suit, and a copy of the plaint titled Hameedan Bibi versus Akbar Ali (Ex. PB) was filed on 04.05.2018 regarding that tube well. Haji Akbar Ali (PW-1)-the complainant stated that the connection of the Tube-well was

installed 20 years ago, and the connection was in the name of Bashir Ahmad. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“My father Rehmat Ali had two brothers one was Bashir and the other was Akbar Ali who was died in my childhood. It is correct that Pervaiz is son of my paternal uncle Bashir and the accused persons namely Tariq and Abid are sons of said Pervaiz. It is correct that accused persons namely Arshad, Farooq and Asif are sons of daughter of Bashir my paternal uncle. Pervaiz s/o Bashir died in the year 2009. ----- It is not in my knowledge that Tariq own how much land. Tubewell connection was in the name of Bashir initially. It is correct that land of accused persons namely Abid and Tariq is situated adjacent to my land. My land is also cultivated by kanal water. My turn of water start at 01:05 pm on each Tuesday.”

The deposition of Haji Akbar Ali (PW-1)-the complainant, reveals that tubewell connection, was initially installed in the name of “Bashir,” who was the paternal uncle of the complainant. Haji Akbar Ali (PW-1)-the complainant had mentioned in the written statement (Ex. PC) that he and his uncle Bashir both had been jointly using the tube well in equal shares since about 1995, and both have had it, for which Haji Bashir Ahmed executed a written agreement on 22.08.2007. Later, in early 2018, Haji Bashir Ahmed received the expenses of his 50 percent share from Akbar Ali and assigned its ownership entirely to Haji Akbar. Haji Akbar had not submitted any written agreement about the purchase of the remaining 50 percent share. He only submitted an affidavit of Haji Bashir Ahmed (Ex. PD), according to which his son Parvez died a long time ago, and his sons do not have any concern with the tube well. This affidavit was written on 10 May 2018, and based on the affidavit, the civil court declared the suit infructuous, vide order dated 07.06.2018, while Haji Bashir Ahmed did not appear and verify the contents of the affidavit (Ex. PD). Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“It is correct that land of Pervaiz and my land were irrigated from the electric tubewell before the occurrence which was in the name of Bashir at that time. Bashir my paternal was alive during the presence occurrence. Said Bashir died 2/3 months back from today. I do not remember the date when said Bashir died. I cannot assign any reason for not remembering the date of death of Bashir.”

Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“It is correct that in the civil suit filed by Mst. Hameedan Bibi the version of said Hameedan Bibi was that the tubewell connection was in the name of Bashir Ahmad his father in law. Witness volunteer said Bashir was my paternal uncle. Said Bashir was paternal grandfather of accused Tariq and Abid whereas he was maternal grandfather of accused Arshad, Farooq and Muhammad Asif.

The deposition of Haji Akbar Ali (PW-1)-the complainant, reveals that the land of Pervaiz and his land were irrigated from the tube well before the occurrence. Pervaiz was the father of the appellants Tariq and Abid. Haji Akbar Ali (PW-1)-the complainant deposed that the accused were the paternal and maternal grandchildren of Haji Bashir Ahmad. The incident occurred on 10.02.2018. Haji Akbar Ali (PW-1)-the complainant deposed that earlier in the year (2018), he purchased a 50% share in the tube well from Bashir but did not say when he purchased it, and the same is not mentioned in Bashir's affidavit. Both parties admitted that Bashir's son and daughter's children are accused in this case. In such circumstances, Bashir's appearance before the court was necessary to verify the affidavit's contents (Ex. PD). Keeping in view the deposition of the complainant (PW-1) it reveals that after the occurrence Haji Bashir Ahmad sold his share. The depositions of the prosecution witnesses, i.e., Haji Akbar Ali (PW-1)-the complainant, and Muhammad Yaseen (PW-2), revealed that the dispute was over the water for irrigation through tube-well water. Before the occurrence, both Pervaiz's (late father of appellants Abid and Tariq) and the complainant's lands were

irrigated by the same tubewell. Before the occurrence, both Pervaiz's (late father of appellants Abid and Tariq) and the complainant's lands were irrigated by the same tubewell. The tube well was installed on the way, a thoroughfare leading east to west.

This takes us to the oral evidence of eyewitnesses. The eyewitnesses were related to the deceased, and therefore, it was submitted that they were interested and chance witnesses. The term "interested" postulates that the witness must have some direct interest in having the accused convicted somehow or other due to some animus or other reason. An interested witness is interested in securing the conviction of a person out of vengeance or enmity. The origin of the incident was shrouded in mystery as the complainant admitted that the tubewell irrigated both lands before the occurrence. So, irrigating land with tubewell water was not a motive for the commission of the crime. In the present case, the only circumstances which, at best, could be said to have been proved by the prosecution and the defence are enmity between the parties on account of criminal litigation. Haji Akbar Ali (PW-1)-the complainant and Muhammad Yaseen (PW-2), admitted during cross-examination that Muhammad Arshad got registered a case vide FIR No. 126 (Ex. PV), dated 08.03.2017, under sections 302 and 34 PPC against the Khalil son of Arif, son-in-law of the complainant (PW-1). Haji Akbar Ali (PW-1)-the complainant admitted during cross-examination that:-

"Khalil s/o Arif who is my son in law. It is correct that Khalil and Sadiq PW are first cousin. ----- My son in law Khalil had studied at Islamabad for 10/12 years and now a days he doing job in the same city. ----- I do not know how many days prior to the occurrence Khalil my son in law came from Islamabad. After the occurrence the car driver of the rented car came alongwith the rented vehicle. Thereafter Khalil also came there after hearing about the occurrence alongwith other persons. It was not in my knowledge that till the occurrence that Khalil has arrived back from Islamabad. Prior to the occurrence Khalil did not come to my house. I escorted my injured

son Yaseen to P.S Khudian and the person who learnt about the occurrence followed me to P.S Khudian, perhaps ¾ cars reached there. Khalil also came at the police station when I shifted Yaseen in the police station at P.S Khudian. It is correct that Khalil my son in law is related with me with Yaseen injured and was also educated. It is correct that FIR No.126/2017 was got recorded at the instance of Muhammad Arshad accused on 08.03.2017 at P.S City Chunian. -----
----- According to the version of Arshad, he got married with Aqsa daughter of Muhammad Arif on 15.05.2016 against the wishes of the parents of Aqsa. According to the said FIR the version of Arshad was that on 01.03.2017 the accused persons took Mst. Aqsa and thereafter murdered her. According to said FIR the accused persons were Arif, Umer, Khalil s/o Arif and Haji Baqar. I do not know whether Tariq present accused was the witness of the Nikah between Arshad and Aqsa. The witness volunteered that Nikahnama is a fake document. I have not seen the Nikahnama. -----
----- It is not in my knowledge that Farooq and Arshad accused of this case took the stand in the present case that Yaseen (deceased) informed Arshad (accused) son of Bashir that Khalil etc. had murdered his wife Aqsa whereupon Arshad got registered an FIR against Khalil and three others on 08.03.2017.”

Contrary to the deposition of Haji Akbar Ali (PW-1)-the complainant, Muhammad Yaseen (PW-2), deposed during cross-examination that: -

“Khalil did not arrive at the place of occurrence so long I remained present there. He came at the spot on the next day of occurrence. I do not remember the time when he went to the place of occurrence. The police did not arrive at the place of occurrence on the next day of the occurrence. My stance that Khalil went to the place of occurrence on the next day of the occurrence is correct. On the next day I myself met Khalil at the place of occurrence as our cattle shed is near to the place of occurrence and I was present there.”

Muhammad Nawaz (PW-3), the identifier of the dead bodies, and the complainant is his brother-in-law (Behnoe), deposed during cross-examination that: -

“Khalil was not seen by me on the spot as well as in the hospital but however, he met me in the morning at 06:00 am on 11.02.2018 in the village. I have not inquired from Khalil where he was. -----We also have not seen Khalil in hospital. Khalil met me on the next day early in the morning at 06:00am.”

Haji Akbar Ali (PW-1)-the complainant and Muhammad Yaseen (PW-2) admitted that the crime case was registered against Khalil and his family members for murdering Aqsa. Haji Akbar Ali (PW-1)-the complainant admitted during cross-examination that: -

“I have no knowledge whether sister of my son in law Khalil namely Aqsa contracted marriage Nikah on her own choice with the accused Arshad. I have no knowledge whether Khalil filed any application for registration of FIR against accused Arshad regarding abduction of his sister Aqsa. I have no knowledge about filing of writ petition u/s 491 Cr.P.C by Arshad contending that Khalil detained wife of Arshad in his house. ----- I have no knowledge whether same Aqsa was forcibly married with brother of witness Yasin without taking the divorce from Arshad accused. I have no knowledge about the marriage of Aqsa and Haji Muhammad brother of Yasin witness. I have no knowledge whether any writ petition was filed in the Hon’ble Lahore High court Lahore in which a bailiff was appointed to recover Aqsa Bibi wife of Arshad accused. I have no knowledge whether after such circumstances we concealed Aqsa Bibi in order to avoid any further complication. ----- I have no knowledge for filing of another writ petition in Hon’ble Lahore High Court Lahore subsequently. I had no knowledge whether my son Yasin deceased had good relations with the accused persons. I have no knowledge whether Khalil my son in law had doubts that my

deceased son Yasin used to inform and share the secrets of the family with the accused persons. ----- Arshad might have got registered a case FIR No.126/17 P.S City Chunian for the murder of Aqsa u/s 302/34 PPC against Khalil etc.”

The complainant replied to the questions about registering a criminal case by saying that he did not have “knowledge.” After that, the prosecution placed on the record a copy of FIR (Ex. PV) and judgment dated 21.02.2019 (Ex. PW) whereby Khalil Ahmad, etc., were acquitted by the trial court after accepting an application under Section 265-K Cr.P.C. Muhammad Yaseen (PW-2), deposed during cross-examination that: -

“I know Aqsa Bibi sister of Khalil son in law of complainant. She was married with younger brother of Haji Muhammad. ----- My brother haji Muhammad is resident of village Majra. Arshad accused was not living in village Majra. ----- It is correct that Arshad filed a writ petition in the Honourable Lahore High Court, Lahore from where a bailiff was deputed to recover Aqsa Bibi. ----- Arshad accused might have filed second writ petition in the Honourable Lahore High Court Lahore for recovery of Aqsa Bibi. ----- It is correct that Arshad accused got registered case FIR No.126/2017 dated 8.3.2017 u/s 302/34 PPC at PS City Chunian against Arif, Umar brother of Khalil mentioned above, alongwith Khalil and Haji Baqar. Volunteered that Arshad accused had no proof of any Nikah of Aqsa with him. ----- It is correct that the accused persons Arshad, Farooq and Asif were declared not involved in this occurrence by the I.O.”

Muhammad Arshad, accused/appellant No.3, produced attested copy of Criminal Misc. No. 3404-H-2017 for his wife's recovery, “Aqsa Bibi,” and the court proceedings along with the order dated 13.03.2017 (Ex. DB), which reveal the court was apprised that “Aqsa Bibi” was murdered. FIR No. 126 dated 08.03.2017 was registered under Section 302 and 34 PPC at Police Station City Chunian, District Kasur (Ex. DD). USB (Ex. DE) and copy of

Nikah-Nama (Mark-DA) show that “Aqsa Bibi” did not die a natural death. This fact was admitted by Muhammad Yaseen (PW-2). Muhammad Yaseen (PW-2) deposed during cross-examination that: -

“It is correct that FIR was got registered on behalf of Arshad accused regarding the alleged murder of Aqsa sister of Khalil at P.S City Chunian vide FIR No.126/2017 u/s 302/34 PPC on 08.03.2017 place of venue mentioned in the FIR in village Majra Tehsil Pattoki. The witness volunteered that Aqsa was not murdered, she was married with my younger brother and due to maternity problem she died and a false case vide FIR No.126/2017 P.S City Chunian was registered. The version of present accused Arshad, Farooq and Asif was given to the Investigating Officer that Yaseen s/o Akbar passed the information regarding the murder of Aqsa by the hand of Khalil etc. in the village Majra whereupon Arshad got registered the said case. The witness volunteered stated that according to the medical report of Aqsa she died due to electric shock.”

As is well known, enmity is a double-edged weapon that cuts both ways. If, on the one hand, it provided a motive for the accused to commit the occurrence in question, on the other hand, it equally provided an opportunity for the first informant to implicate his enemy. Proof of motive by itself may not be a ground to hold the accused guilty. In this background, the appellants' implication in the case is quite probable. Due to the involvement of the complainant's son-in-law in the murder case, it is quite probable for prosecution witnesses to implicate the accused in a criminal case. Motive is a double-edged weapon for the occurrence and also for false implication. Different motives always operate in the mind of the person making the false accusation. The accused, based on his motive to commit the crime, cannot by itself lead to a judgment of conviction.

11. The defense has also brought on the record how the prosecution witnesses and the deceased returned after irrigating their land. The defence has brought on the record contradictions between the contents of the

application for registration of the case (Ex. PA) and the court statement made by Haji Akbar Ali (PW-1)-the complainant. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

"I have got recorded that I alongwith my son were going to cattle shed while coming back after irrigation from our tubewell. Confronted with Ex.PA where it is not so recorded, however, it is recorded that I along with my sons had gone to the tubewell for irrigation the crops. I have got recorded in my application Ex.PA that when we reached near the graveyard situated near to our cattle shed. Confronted with Ex.PA where the word near to our cattle shed is not recorded. I have pointed out my cattle shed to the I.O as well as draftsman. ----- I have got recorded in application Ex.PA that accused persons were ambushed alongwith the wall of graveyard. Confronted with Ex.PA where the word ambushed and wall are not recorded. I have pointed out the specific place alongwith the wall of graveyard where the accused were ambushed to the I.O and to the draftsman. ----- I got recorded in application Ex.PA that after sustaining first fire my son Sajid fell down on the ground. Confronted with Ex.PA where the word fell down on the ground after sustaining the first fire is not recorded. It is recorded in Ex.PA by me that the second fire shot of Muhammad Arshad opened with rifle landed on the left arm of Sajid and also recorded that Muhammad Farooq s/o Bashir Ahmad opened his fire shot with rifle with landed on the left arm of Sajid and due to these fire shots Sajid had fallen on the ground and succumbed to the injuries and the same fact is recorded in my examination in chief. Confronted with examination in chief of the complainant where Muhammad Farooq s/o Bashir Ahmad opened the fire of rifle which hit the left arm of Sajid is not recorded."

Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

"On the same day I.O reached at the place of occurrence and had taken the articles into possession; I got recorded my statement u/s 161 Cr.P.C. I incorporated my signature on my

statement u/s 161 Cr.P.C with the pen which was provided to me by the I.O. I did not thumb mark my statement. I am studied upto 8th class. I owned 2 acres of land. -----I got recorded in my statement u/s 161 Cr.P.C that I was present in the fields near to the place of occurrence and was busy in ploughing the land through tractor. Confronted with Ex.DA where the word near to the place of occurrence is not recorded. I had recorded my statement u/s 161 Cr.P.C but have not seen the same. It is correct that statement Ex.DA does not bear my signature.
-----I got recorded in my statement u/s 161 Cr.P.C. that accused persons namely Abid, Tariq sons of Pervaiz, Muhammad Arshad, Muhammad Farooq and Muhammad Asif sons of Bashir where present near the graveyard on the way and were ambushed beside the graveyard. Confronted with Ex.DA where the word ambushed is not recorded. I got recorded in my statement Ex. DA that Arshad accused made fire on the left arm of Sajid in his lying condition while placing his rifle on his left arm. Confronted with Ex. DA where the word placing his rifle is not recorded but it is recorded that Arshad while coming near to Sajid when he was fallen on the ground fired on his left arm.”

As per the prosecution version, Muhammad Yaseen (PW-2), alongwith Muhammad Sadiq, was ploughing the field of the complainant. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“I do not remember whether I got recorded in Ex.PA that Yaseen and Sajid were ploughing the fields but I have do not remember whether I got recorded the means of ploughing the fields. I have pointed out the tractor with which the Pws were ploughing the fields to the I.O. I have not provided the title document of the tractor to the I.O. I have not mentioned the number, make and ownership of the tractor to the I.O. I have apprised the draftsman the place of the tractor where the witnesses were ploughing the fields. I have also pointed out the field to the draftsman. I have not produced the tractor before the subsequent Investigating officer as none of them directed me

to produce the same. -----I have got no tractor of my own. The witness volunteered that the tractor was brought by Yaseen PW. -----Neither the I.O summoned the owner of the tractor nor we produced him before the I.O. I have not got recorded the name of the owner of the tractor in complaint. -----The site plan was prepared on my pointation and I met draftsman and I.O. at that time. -----Ilyas had come with tractor to fetch the cultivator which was present near my boundary wall of Havaili. I have pointed out the place of presence of Ilyas PW and have not pointed to him regarding the tractor he brought. I had not pointed out in the scaled site plan hew (Kassi) to the draftsman. I have pointed out to the I.O where the hew (Kassi) was fallen.

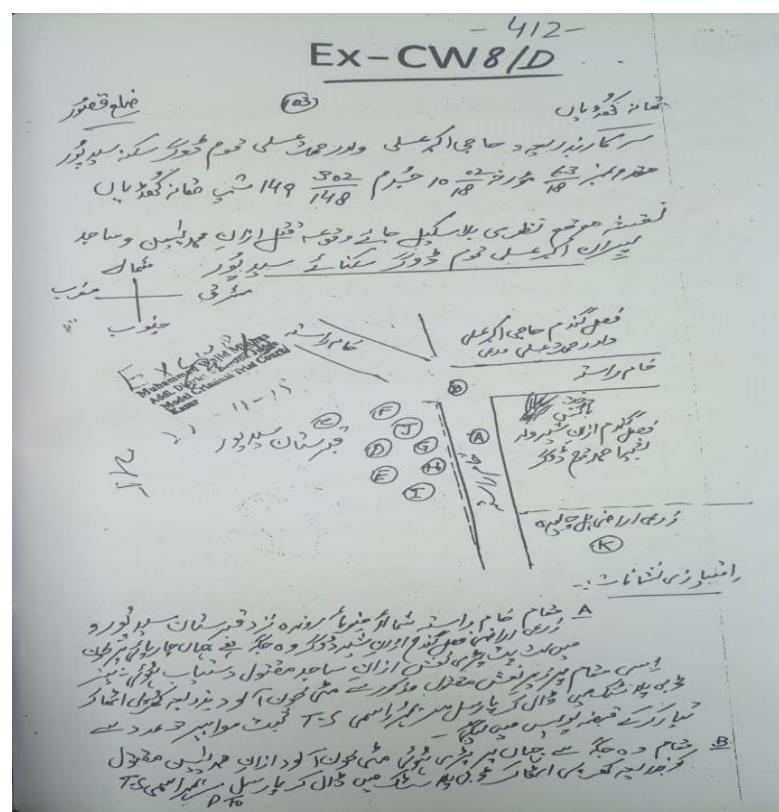
Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

"It is correct that I do not own any agricultural land in village Saidpur, however, they are my relatives who reside there. I have been apprising the Investigating officer during the investigation that I use to reside and has been cultivating the land in village Saidpur. It is correct that my residence is recorded in village Bhagiana because I am permanent resident of village Bhagiana. -----The intervening distance between place of occurrence and village Bhagiana is about 1-Kilometer. -----I have pointed out the place where I was cultivating the land with the tractor. I have not got recorded in my examination in chief that who was the driver of the tractor. Volunteered that I was driving the tractor. -----The tractor was present at the same place where it was present at the time of occurrence and I pointed out the presence of the tractor to the I.O when he came at the spot on the day of occurrence. I have shown the place where I was cultivating with tractor and that was the field towards the northern side of the field of one Sher s/o Bashir Ahmad. I have pointed out the same place to the draftsman."

Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

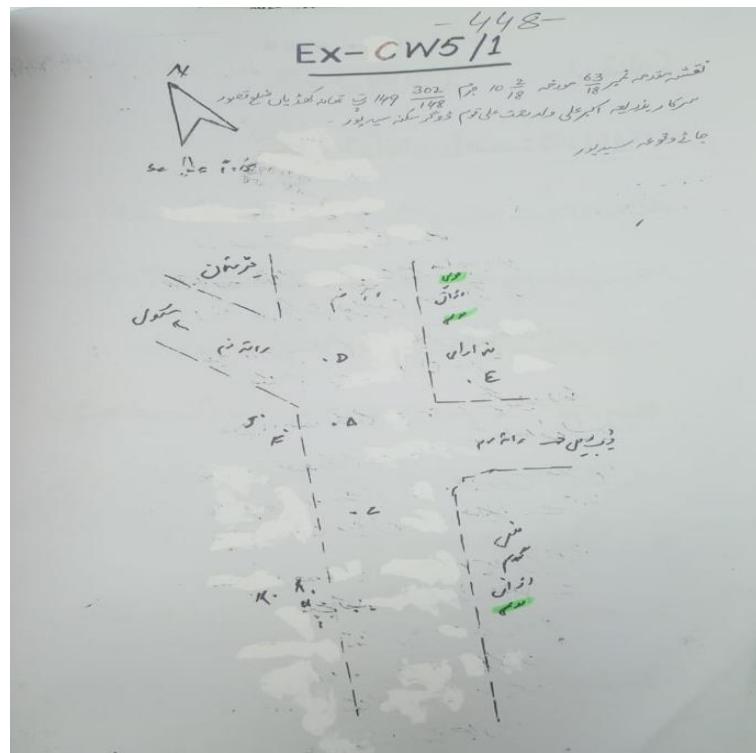
"In the investigation of Tahir Sohail I.O only once the site plan was prepared by the draftsman. We have not got prepared any site plan from Tahir Sohail. I.O"

Muhammad Yaseen (PW-2)-the eye witness stated that he was cultivating the land with a tractor, which was at the northern side of the fields of one Sher s/o Bashir Ahmad and he pointed out the same to the investigating officer as well as to the draftsman. On perusal of unscaled site plan (Ex. CW-8/D), it reveals that the land of Haji Akbar Ali (PW-1)-the complainant falls at the northern side of the agricultural land of Sher s/o Bashir Ahmad. Whereas the presence of the witnesses, i.e., Muhammad Yaseen (PW-2), Muhammad Sadiq, and Ilyas, was shown at point "K," and on the same point, the land was plowed, which is at the southern side of the land of Sher s/o Bashir Ahmad. Whereas the land of Haji Akbar Ali (PW-1)-the complainant, is shown in the site plan on the northern side and between the land of Haji Akbar Ali (PW-1)-the complainant and Sher s/o Bashir Ahmad, there was a passage. The scanned copy of the unscaled site plan (Ex. CW-8/D) is as follows: -

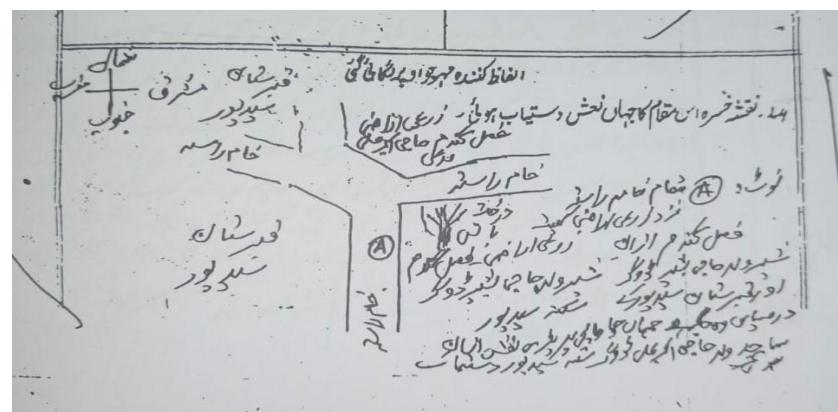


In the scaled site plan (Ex. CW-5/1), the passage between the land of Sher s/o Bashir Ahmad and the land of the complainant is shown, and on the passage,

the tubewell is shown. The scanned copy of the scaled site plan (Ex. CW-5/1) is as follows: -



In the scaled site plan (Ex. CW-5/1), the presence of eye witnesses is shown at point "E," which is on the northern side of the land of the complainant. The position of the witnesses has been changed in the scaled site plan (Ex. CW-5/1) from the southern side to the northern side. On the perusal of the inquest report (Ex. CW-8/A), in column No. 24, a map of the place of occurrence has been drawn, which reflects the same position shown in the un-scaled site plan. The scanned copy of the inquest report (Ex. CW-8/A) is as follows: -



Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“It is correct that a path leads towards east from the main passage which is 5/6 feet wide in between my land and the land of Sher. Wheat crop was present in the field of Sher. Yaseen was ahead of Sajid.”

Haji Akbar Ali (PW-1)-the complainant and Muhammad Yaseen (PW-2)-the eye witness, changed their stance and presence of the witnesses on the land, which was plowed before the occurrence by the witnesses to strengthen their case. It is the case of the prosecution that due to a dispute of water on irrigation, the incident took place. However, only the tube well is shown in the passage. However, the agricultural land belonging to the accused side has not been shown in the unscaled and scaled site plans. While replying to the questions put by the learned counsel for the complainant, Sadiq Ali Qamar (CW-6)-draftsman admitted that: -

“On 15.02.2018 I.O Tahir Sohail called me on telephone. I reached at police station in between 11:00 to 12:00 noon. We reached at the place of occurrence approximately at 01:30 pm. On the pointation of complainant and PWs and on the direction of I.O I took rough notes. Thereafter I retained the rough notes alongwith me. It is correct that on 25.04.2018 I after preparation I presented the site plan to the then I.O. I also recorded my statement to the I.O.”

There is an admission on the part of Sadiq Ali Qamar (CW-6)-draftsman, that on the pointing of the complainant and PWs and at the direction of the investigating officer, he prepared scaled site plans (Ex. CW-5/1 & Ex. CW-5/2). Sadiq Ali Qamar (CW-6)-draftsman also deposed during cross-examination that: -

“The whole plan is silent regarding the place which was being cultivated with the tractor. It is correct that it was shown in the site plan that the land was cultivated with the tractor. Had any witness had pointed to me I would have shown the cultivated land with tractor in the site plan. Neither I had seen any cultivated land or vacant land nor the I.O had shown to me such land. The presence of cultivator of the tractor had not been shown or

stated by any PW to me. -----The witnesses had not pointed out/shown to me where the witnesses allegedly irrigating the field with the tubewell water. The I.O and PWs had not informed me from where they were coming and where they were going. I had not shown the place where the accused persons had ambushed. -----On patch, no crime empty is mentioned in the site plan. -----Delay caused due to two factors firstly I was sick and secondly I.O Tahir Sohail did not come to receive site plan from me. Thereafter Tahir Sohail was transferred and Qurban Shabbir received site plan. I did not mention number of crime empties and bore at point K due to the reason that I.O Tahir Sohail had told me that he would give the number and bore of crime empties, he has later on, not given the above said information to me. Had the witnesses and complainant told to me regarding the number and bore of the crime empties I would have been recorded the same.-----It is correct that point C mentioned in scaled site plan is totally different from point C mentioned in the unscaled site plan as the name of Akbar complainant is not mentioned at point C in unscaled site plan. It is also correct that point D shown the scaled site plan is entirely different from point D mentioned in the unscaled site plan. It is correct that in point D of unscaled site plan name of Ilyas PW is not mentioned. It is correct that point E in the scaled site plan is altogether is different from point E mentioned in unscaled site plan. It is correct that names of Yasin and Sadiq PWs are not mentioned at point E in unscaled site plan. It is correct that points F, G, H and I mentioned in both the site plans are similar. Point J mentioned in scaled site plan is different from point J mentioned in unscaled site plan. It is correct that point K mentioned in the scaled site plan is entirely different from point K mentioned in the unscaled site plan. After giving the rough notes and handed over to me rough site plan by the I.O and after taking rough notes by me after 3-4 days from 15.2.2018 Tahir Sohail SI dictated to me about the different points changing from unscaled site plan according to FIR.”

From the prosecution evidence, it reveals that the scaled site plan and unscaled site plan were prepared on the pointing of the prosecution witnesses, i.e., Haji Akbar Ali (PW-1)-the complainant, and Muhammad Yaseen (PW-2), and this fact also got reaffirmed by the learned counsel for the complainant while cross-examining Sadiq Ali Qamar (CW-6)-draftsman. In both site plans, a significant change was made about the land the witnesses ploughed. The substantial change made in the site plan is with purpose. If the presence of the witnesses is considered on the land of Haji Akbar Ali (PW-1)-the complainant on the southern side, then it was not possible for the witnesses to witness the occurrence with a specific role, which took place on the path, which leads from south to north, as in the unscaled site plan (Ex.CW-8/D), point "K" was shown at the south eastern side, away from the place of occurrence, where land was ploughed. The unscaled site plan also does not demonstrate the complainant's presence. In the scaled site plan (Ex. CW-5/1), at point "C," the complainant's presence has also been shown on the path from south to north. The main passage leads from south to north; at point "D," the presence of PW-Ilyas was shown, and at point "E," the presence of Yasin, Zafar and Sadiq PWs was shown, which is on the northeastern side. If witnesses are present at considerable distance from the place where deceased received injuries by the hands of assailant(s) and grown up crop is intervening the places then witnesses' deposition with specification of roles of assailants qua inflicting firearm injuries is not believable; though complainant annexed site plan with changed detail of place of occurrence with complaint, yet did not negate correctness of site plan annexed with state case as well as Naqsha Khasra detailed in Column No.24 of the inquest report during trial of the case, hence, changed site plan is of no help to the case of complainant. The change of the position of the witnesses is deliberate. As per the scaled site plan (Ex. CW-5/1) and the statement of Sadiq Ali Qamar (CW-6), a draftsman, there was a wheat crop adjacent to the main passage on the northeastern side, and if witnesses were present on the eastern side, then; in the presence of wheat crop, it was not possible to see the incident with the specification. Sadiq Ali Qamar (CW-6)-draftsman deposed during cross-examination that: -

All the points of site plan were pointed out to me by the complainant and witnesses and the same is written therein. Tahir Sohail SI got dictated me all the points on the pointation of complainant and PWs. At point K, number of crime empties and bore is not mentioned and about this, none of the PWs had pointed to me. It is correct that one main passage leads from north to south and one shortage links the same path and leads towards eastern side. The short passage is leading towards east and towards the southern side from it, wheat crop is shown which is also adjacent to the main passage. There was crops alongwith the main path towards eastern side of the path. There was no vacant field towards the eastern side of the main path.”

The prosecution has failed to establish which land was irrigated by the accused side. Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“I have got recorded regarding the rift of the water with the accused persons in the FIR. Perhaps I might have recorded in the contents of FIR the date of dispute over water issue.”

Haji Akbar Ali (PW-1)-the complainant also deposed during cross-examination that: -

“I have got recorded that I alongwith my son were going to cattle shed while coming back after irrigation from our tubewell. Confronted with Ex.PA where it is not so recorded, however, it is recorded that I alongwith my sons had gone to the tubewell for irrigation the crops. I have got recorded in my application Ex.PA that when we reached near the graveyard situated near to our cattle shed. Confronted with Ex.PA whether the word near to our cattle shed is not recorded. I have pointed out my cattle shed to the I.O as well as draftsman. ----- I have got recorded in application Ex.PA that accused persons were ambushed alongwith the wall of graveyard. Confronted with Ex.PA where the word ambushed and wall are not recorded. I have pointed out the specific place alongwith the wall of graveyard

where the accused were ambushed to the I.O and to the draftsman. ----- I have not pointed out the specific land which was being irrigated by the tubewell according to our version. Volunteered that the site plan was prepared with regard to place of occurrence. I have pointed out the land which was being cultivation. I have pointed out the place where the tractor was present. ----- Graveyard comprises of 15/16 acres of land and on which 4/5 tree are present. One bamboo plant is present on the corner of land of Sher.”

Haji Akbar Ali (PW-1)-the complainant filed a private complaint (Ex. PF) after four months and twenty days on the ground that his presence was not shown in the unscaled site plan. The complainant's counsel did not ask any questions from Tahir Suhail S.I. (CW-8)-the Investigating Officer, during the cross-examination about the unscaled site plan (Ex. CW-8/D) that he had made, nor did he ask any questions about the sketch made by him (the Investigating Officer) in column No. 24 of the inquest Report (Ex. CW8/A). The complainant claims that his presence was not mentioned in the unscaled site plan (Ex. CW-8/D), and Muhammad Yaseen (PW-2) deposed that he did not get prepared site plan from the Investigating Officer about the crime scene. One of the reasons for filing a private complaint was that the Investigating Officer did not show the presence of the complainant in the unscaled site plan (Ex. CW-8/D), but in this regard, he was not asked any questions, which indicates that the unscaled site plan (Ex. CW-8/D) was correct. The relevant portion of the cross-examination of Haji Akbar Ali (PW-1)-the complainant, is as under: -

“I have complained about the factum of non mentioning me as eye witness in the rough site plan before the S.P.”

But during cross-examination, Haji Akbar Ali (PW-1)-the complainant admitted that: -

“Graveyard comprised of 15/16 acres of land and on which 4/5 tree are present. One bamboo plant is present on the corner of land of Sher.”

By admitting the presence of a bamboo plant in the corner of the land of Sher, Haji Akbar Ali (PW-1)-the complainant admitted the unscaled site plan (Ex. CW-8/D). A bamboo plant was shown in the unscaled site plan (Ex. CW-8/D) but not in the scaled site plan (Ex. CW-5/1). All the above facts create doubt about the presence of the witnesses at the place of occurrence. The mode and way the appellants and co-accused caused the injuries mentioned in the written application for registration of a case (Ex. PA) and private complaint (Ex. PF) and in the depositions of the prosecution witnesses are changed to bring the ocular account in line with the medical evidence.

12. At the cost of repetition, Muhammad Yaseen (PW-2), the eyewitness, deposed during cross-examination, where he resided at Saidpur. For CNIC, his address has been mentioned as "Bhagiana." Whereas Haji Akbar Ali (PW-1)-the complainant, deposed during cross-examination that: -

"Yasin PW was not a cultivator he had come there for plowing my fields at the time of occurrence. I myself called Yasin for plowing the fields from Bhagiana. I had no knowledge about any Khasra Gardawri of the cultivation of Yasin in his village Bhagiana. Volunteer that he is owner of one/two acres in that village. It is correct that he is resident of village Bhagiana. Volunteer that his brought up was done in this village Bhagiana."

Admittedly, Muhammad Yaseen (PW-2) is a chance witness, and conflict between the statements of Haji Akbar Ali (PW-1)-the complainant, and Muhammad Yaseen (PW-2)-the eye witness, creates doubt about the presence of Muhammad Yaseen (PW-2) at the place of occurrence at the time of occurrence.

13. There is another aspect of the case that also makes the prosecution's case doubtful. Haji Akbar Ali (PW-1)-the complainant deposed during examination in chief that: -

"While leaving dead body at DHQ, Hospital, Kasur, I went to Police station Khudian where I

submitted application for registration of FIR
Ex.PA duly thumb marked by me.”

Whereas, during cross-examination, Haji Akbar Ali (PW-1)-the complainant, deposed that: -

“I myself got drafted application for registration of FIR from the computer which was available at the police station. It is not in my knowledge that whether the said application was drafted any Hawaldar or operator, however, he was in uniform in the police station. The application for registration of FIR was drafted on computer at about 05:00 pm. I did not sustain any injury. I have not learnt by heart the FIR. -----
One Moonchi was sitting in the police station at that time. It is correct that I informed him that my son has been murdered. At that time I did not submit any application or thumb mark the application. I did not apprised him the details of the occurrence as we were rushing towards the hospital for the treatment of injured Yaseen. The Moonchi sent a constable alongwith the injured, the Moonchi might have jotted down some paper. The name of the constable who accompanied the injured is not remember to me. -----
I got written application Ex.PA in P.S. Khudian which was computer generated. Same was composed by a police official. I cannot tell the designation of that police official. I cannot distinguish between the ranks of ASI, S.I, Inspector and constable. It was 05:00 pm when Ex.PA was got composed. It is correct that there is a delay of duration of seven hours in preparation of Ex.PA. Volunteer since my son was injured as the delay was caused.”

The prosecution failed to explain the delay in reporting the incident and what the complainant did for 07 hours. This aspect of the matter is sufficient to cast doubt about the authenticity of the F.I.R. This creates serious doubt about the genuineness of the prosecution story, including the complainant's presence at the scene of the occurrence. Delays in lodging the FIR often result in embellishment, a creature of an afterthought.

14. As far as recovery of the weapon of offence, i.e., rifle 223-bore (P-9) alongwith three live bullets (P-10/1-3) on the pointing of Abid Ali (the

appellant No.1), on 30.03.2018 and rifle 7-mm (P-11) on the pointing of Tariq Ali (the appellant No.2), on 04.04.2018 and positive report of Punjab Forensic Science Agency (Ex. PT/1-2) is concerned, as per the prosecution case, on 20.03.2018, the appellants, Abid Ali and Tariq Ali were arrested. Upon the disclosure of the appellant-Abid Ali, on 30.03.2018, rifle 223-bore (P-9) along with three live bullets (P-10/1-3) were recovered by Tahir Sohail, Ex-S.I. (CW-8)-the investigating officer who secured the same into possession through a recovery memo (Ex. PM). On 04.04.2018, Tariq Ali (appellant No.2) got recovered a 7-mm rifle (P-11), which Tahir Sohail, Ex-SI, (CW-8)-the investigating officer secured through recovery memo (Ex. PO). Both the recovery memos were attested by Muhammad Nawaz (PW-3) and Muhammad Sadiq. Tahir Sohail Ex-S.I. (CW-8)-the investigating officer deposed during examination in chief that: -

“On 20.03.2018 I arrested accused Abid and Tariq and recorded their versions. -----On 30.03.2018 I interrogated accused Tariq and Abid and accused Abid made disclosure that he could recover weapon of offence. I alongwith other police officials and accused Abid reached at village Saidpur near the house of accused Abid where Sadiq and Muhammad Nawaz met us and joined me in their presence the accused repeated the disclosure about the recovery of weapon of offence. After that accused Abid led us to his house and entered in his residence room and got recovered rifle P9 alongwith three live bullets P10/1-3 from the iron box which was lying with eastern wall of the room and made it into a sealed parcel and took the same into possession vide recovery memo Ex.PN attested by PWs. -----On return to police station I handed over case property to the Moharrar and locked the accused in police lockup.”

As per prosecution evidence, Tahir Sohail Ex-S.I. (CW-8)-the investigating officer handed the recovered weapons to Muhammad Afzal 1027/C (CW-2) on 30.03.2018. Whereas Muhammad Afzal 1027/C (CW-2)-Moharrar deposed during examination in chief that: -

“On 04.04.2018 Tahir Suhail S.I handed over to me two parcels of Rifle. On 12.04.2018, I handed over the said parcel to Muhammad Serwar ASI for depositing the same in the office of PFSA, Lahore.”

As per the Firearms & Toolmarks Examination Report (Ex. PT/1-2), the weapon recovered from the appellant-Abid Ali, matched the crime empties concerned; the prosecution was bound to prove safe custody of the sealed parcels of the recovered rifle 223-bore (P-9) along with three live bullets (P-10/1-3) from the appellant-Abid Ali, on 30.03.2018. After scrutinizing the material on the record, we concluded that the prosecution had not established safe custody of the recovered rifle 223-bore (P-9), along with three live bullets (P-10/1-3). There are contradictions in the case of the prosecution as to the safe custody of the parcels of the recovered rifle 223-bore (P-9), along with three live bullets (P-10/1-3). Muhammad Afzal 1027/C (CW-2)-moharrar has deposed that the rifle 223-bore (P-9), along with three live bullets (P-10/1-3), were handed over to him on 30.03.2018 rather than handed over to him on 04.04.2018. The testimony of Muhammad Afzal 1027/C (CW-2)-moharrar is crucial. Tahir Sohail Ex-S.I. (CW-8)-the investigating officer deposed during cross-examination that: -

“On return to police station I handed over case property to the Moharar and locked the accused in police lockup.”

Muhammad Afzal 1027/C (CW-2)-moharrar, deposed during cross-examination that: -

“On 04.04.2018 Tahir Suhail S.I handed over to me two parcels of Rifle. On 12.04.2018 I handed over the said parcel to Muhammad Serwar ASI for depositing the same in the office of PFSA, Lahore.”

It is not merely a minor lapse, but there is a very strong suspicion about the entire prosecution story. The Firearms & Toolmarks Examination Report (Ex. PT/1-2) reveals that the rifle 223-bore (P-9) submitted on 12.04.2018 matched the crime empties submitted on 23.02.2018. In the facts and circumstances mentioned above, the possibility of tempering the

recovered rifle 223-bore (P-9) cannot be ruled out. The prosecution must prove its case beyond a reasonable doubt, and suspicion cannot replace proof. There are too many shortcomings in the prosecution's evidence. The court must examine the evidence from the starting point and reach a reasoned conclusion, considering the legal principles. The prosecution failed to establish that the rifle 223-bore (P-9), along with three live bullets (P-10/1-3), was kept in safe custody. We believe the inconsistencies and contradictions, considered cumulatively, lead to irresistible influence, and the prosecution has not been able to prove safe custody of the recovered rifle 223-bore (P-9) through material and cogent evidence. This lapse on the prosecution's part went to the case's root. Besides, Haji Akbar Ali (PW-1)-the complainant deposed during cross-examination that: -

“Tariq and Abid were arrested after the 5/7 days of the occurrence. Again said perhaps they had been arrested after 10 days of the occurrence.”

Muhammad Yaseen (PW-2)-the eye witness deposed during cross-examination that: -

“After about 15 days I had seen the accused persons in the police lock up.”

As per the prosecution version, the occurrence took place on 10.02.2018, and if both the appellants were taken into custody by the investigating officer after 10/15 days of the occurrence, it becomes 20/25.02.2018, which creates doubt about the entire proceedings of the recoveries of weapons of offence. So, the positive report of the Punjab Forensic Science Agency (Ex. PT/1-2) is of no consequence to the prosecution.

15. From the above-detailed discussion, we are convinced that the prosecution has failed to establish its case. The truth was seen buried under the debris, and a different story was structured perhaps to lug the appellants into trial under the serious offense. It is often said “that Fouler the crime higher the decree of proof.” We have gone through the process of keen examination of the entire material and found compelling reasons, as stated

above, to disagree with the conclusion recorded by the learned Additional Sessions Judge also found that the prosecution had miserably failed to prove the guilt of the accused/appellants beyond reasonable doubt. Per the dictates of the law, the benefit of every doubt is to be extended in favor of the accused. In the case of **"Muhammad Akram v. The State"** (2009 SCMR 230), it is held as under: -

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

16. We, therefore, accept in toto **Criminal Appeal No.79031-J of 2019** filed by the appellants, **Abid Ali, Tariq Ali, and Muhammad Arshad**; as a result, whereof conviction and sentence recorded by the trial court vide judgment dated 07.12.2019 is set aside and the appellants-Abid Ali, Tariq Ali and Muhammad Arshad are acquitted of the charge in a private complaint filed under sections 302, 201, 109, 148, 149 PPC P.S. Khudian, District Kasur titled "**Haji Akbar Ali Vs. Abid Ali, etc.**". The appellants-Abid Ali, Tariq Ali and Muhammad Arshad, are ordered to be released forthwith, if not required in any other case. **Murder Reference No.29 of 2020**, forwarded by the trial court for confirmation of the death sentence inflicted upon the convict Abid Ali, fails, which is answered in **NEGATIVE**.

17. So far as **Criminal Revision No.2385 of 2020** filed by the complainant, Haji Akbar Ali, for enhancement of conviction and sentence of the respondent Nos.2 & 3 awarded by the trial court is concerned, for the reasons aforesated, the same is devoid of any legal force, which is accordingly dismissed.

18. So far as **CRIMINAL APPEAL No.2384 of 2020** seeking the conviction of respondents Nos.2 & 3, namely Muhammad Farooq and Muhammad Asif, is concerned, for what has been discussed above in the light of prosecution, medical, and documentary evidence, the acquittal of respondents Nos.2 & 3 does not suffer from any illegality to call for our interference with the impugned judgment to their extent. We have also taken note of the settled principle of criminal jurisprudence, which states that unless it can be shown that the lower court's judgment is perverse or that it is entirely illegal, No other conclusion can be drawn except the guilt of the accused or misreading or non-reading of evidence resulting in a miscarriage of justice. Even otherwise, when a court of competent jurisdiction acquits the accused, the double presumption of innocence is attached to their case. The acquittal order cannot be interfered with, whereby a charge earns double presumption of innocence as held in **Muhammad Mansha Kausar v. Muhammad Ashgar and others (2003 SCMR 477)**. In this case, the prosecution has not been able to bring on record adequate incriminating evidence against respondents Nos.2 & 3, which connects them with the alleged crime. The learned trial Judge has advanced valid and plausible reasons for recording acquittal in favor of respondents Nos.2 & 3. The judgment of acquittal does not call for any interference. Consequently, we find no merit in this **Criminal Appeal bearing No.2384 of 2020**, which is, as a result of this, **dismissed** as being without prices.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Chief Justice

Approved for reporting

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Chief Justice

*This judgment has been dictated,
pronounced on 20.11.2024, and signed
after its completion on 17.12.2024.*

*Ikram**