

Judgment Sheet

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Criminal Appeal No.66363-J/2019

Muhammad Tanveer and another **vs** The State

Murder Reference No.245/2019

The State **vs** Muhammad Tanveer

J U D G M E N T

Date of hearing:	<u>10.10.2023.</u>
Appellants by:	Sardar Muhammad Ramzan, Advocate for the appellants along with Muhammad Tahir Ramzan (appellant on bail). Ch. Abdul Rehman Sohi, Advocate/Defence Counsel at State expense on behalf of the appellants.
State by:	Mr. Munir Ahmad Sayal and Ms. Nuzhat Bashir, Deputy Prosecutors General.
Complainant by:	Malik Muhammad Younis, Advocate.

FAROOQ HAIDER, J.:- This single judgment shall dispose of **Crl. Appeal No. 66363-J/2019** filed by Muhammad Tanveer and Muhammad Tahir Ramzan (appellants) against their “convictions & sentences” and **Murder Reference No. 245/2019**, sent by trial court for confirmation of death sentence awarded to Muhammad Tanveer (appellant), as both the matters have arisen out of one and the same judgment dated: 15.07.2019 passed by Additional Sessions Judge, Khushab/trial court.

2. Muhammad Tanveer and Muhammad Tahir Ramzan (appellants) were tried in case arising out of F.I.R. No.181/2017 dated: 01.07.2017 registered under Sections: 302, 324, 34 PPC {subsequently offences under Sections: 337 F(i), 337 F(v) were added during investigation of the case} at Police Station: Saddar Jauharabad, District Khushab and trial court after conclusion of the trial has convicted and sentenced the appellants *vide* impugned judgment dated: 15.07.2019 as under: -

MUHAMMAD TANVEER

<u>Conviction</u>		<u>Sentence</u>
1	<u>Under Section:</u> 302 (b)/34 PPC	“ Death ” with payment of compensation of Rs.16,00,000/- to the legal heirs of Muhammad Hasnain (deceased) under Section: 544-A Cr.P.C. recoverable as an arrear of land revenue and in default of payment of compensation amount to undergo S.I. for six months.
2	<u>Under Section:</u> 324/34 PPC on two counts	“ Nine years’ Rigorous Imprisonment ” with fine of Rs.50,000/- on each count and in default thereof to further undergo S.I. for six months.
3	<u>Under Section:</u> 337 F(iii)/34 PPC	“ Two years’ Rigorous Imprisonment ” and to pay <i>DAMAN</i> amounting to Rs.80,000/- to Sher Muhammad (injured of the case).
4	<u>Under Section:</u> 337 F(v)/34 PPC	“ Four years’ Rigorous Imprisonment ” and to pay <i>DAMAN</i> amounting to Rs.1,50,000/- to Muhammad Ilyas (injured of the case). Appellant/convict was ordered to remain in jail till payment of <i>DAMAN</i> amounts. Sentences were ordered to run concurrently and benefit of Section: 382-B Cr.P.C. was also extended to the convict/appellant.

MUHAMMAD TAHIR RAMZAN

<u>Conviction</u>		<u>Sentence</u>
1	<u>Under Section:</u> 302 (b)/34 PPC	“ Imprisonment for Life ” with payment of compensation Rs.10,00,000/- to the legal heirs of Muhammad Hasnain (deceased) under Section: 544-A Cr.P.C. recoverable as an arrear of land revenue and in default of payment of compensation amount to further undergo S.I. for six months.
2	<u>Under Section:</u> 324/34 PPC on two counts	“ Eight years’ Rigorous Imprisonment ” with fine of Rs.40,000/- on each count and in default thereof to further undergo S.I. for six months.
3	<u>Under Section:</u> 337 F(iii)/34 PPC	“ Two years’ Rigorous Imprisonment ” and to pay <i>DAMAN</i> amounting to Rs.80,000/- to Sher Muhammad (injured of the case).
4	<u>Under Section:</u> 337 F(v)/34 PPC	“ Four years’ Rigorous Imprisonment ” and to pay <i>DAMAN</i> amounting to Rs.1,00,000/- to Muhammad Ilyas (injured of the case). Appellant/convict was ordered to remain in jail till payment of <i>DAMAN</i> amounts. Sentences were ordered to run concurrently and benefit of Section: 382-B Cr.P.C. was also extended to the convict/appellant.

3. Brief facts, as per statement/فہدیان (Ex.PO) got recorded by Muhammad Sarfraz (complainant of the case/PW-8) to Ijaz Ahmad, S.I. (PW-14) at the place of occurrence on 01.07.2017 at 8:30 p.m., are that complainant drives his personal truck and is residing with family members at *Sikandaray Kund Shumali* (سکندرے کنڈ شمالی) ; on 01.07.2017 at *Degar Wella* (دگار ولہ), complainant along with Muhammad Ilyas (brother), Muhammad Hasnain (son) and other women had come at *Dera Lakbaian Wala* (درے لکبائیان والہ) on death (وفی) of Mst. Ameer Khatun (mother-in-law of said Muhammad Ilyas) whereas Muhammad Riaz son of Muhammad Nawaz, caste Awan, resident of *Kathwai* (کھوائی), Ahmad Nawaz son of Muhammad Nawaz, caste Awan, resident of *Nooray Wala* (نورے والہ) were already present there; men were sitting in an open place on the northern side of the *dera* (درے) of Falak Sher whereas women were sitting in the courtyard of the *dera* (درے); at about 6:45 p.m., Muhammad Ilyas (brother), Muhammad Hasnain (son) and Sher Muhammad (maternal nephew) son of Muhammad Nawaz, caste Awan, resident of *Kund* (کنڈ) were coming towards the courtyard of the house in order to lift the cot for giving bath to the deceased lady and when reached on the western side of veranda, Muhammad Tahir Ramzan son of Dost Muhammad and Muhammad Tanveer son of Muhammad Tahir Ramzan, caste Awan, residents of *Dera Lakbaian Wala Dakhli Kund* (درے لکبائیان والہ داخلی کنڈ) who had already ambushed on the rooftop of their house with pre-planning, Muhammad Tanveer raised *lalkara* (لکڑا) to get ready (گھرے و جبائے) and made straight fire with his rifle with intention to kill, which landed at right side of upper lip of Muhammad Hasnain (son), upon which Muhammad Hasnain fell down; second fire was made by Muhammad Tahir Ramzan with pistol .30-bore with intention to kill which landed at right foot of Sher Muhammad; third fire was made by Muhammad Tanveer with his rifle with intention to kill, which landed at front side of right shoulder of Muhammad Ilyas (brother); Muhammad Ilyas and Sher Muhammad also fell down; the occurrence was witnessed by the complainant along with

Muhammad Riaz and Ahmad Nawaz, who were present nearby; Muhammad Tanveer, Muhammad Tahir Ramzan while making firing went downstairs and fled away towards western side; the complainant along with companions attended Muhammad Hasnain, Muhammad Ilyas, Sher Muhammad (injured persons), but Muhammad Hasnain (son) succumbed to the injuries at the spot.

Motive behind the occurrence as per statement/شہری بیان (Ex.PO) was that Muhammad Tanveer was having suspicion that Khan Muhammad (brother of injured Sher Muhammad) had illicit relations with his wife; due to that grudge, both the accused persons after consultation inter-se made firing with intention to kill, committed murder of Muhammad Hasnain (son), injured Muhammad Ilyas (brother) and Sher Muhammad. It was stated that Muhammad Tanveer had also made firing at Sher Muhammad etc. about 5/6 months ago.

4. On the basis of abovementioned statement, case *vide* FIR No.181/2017 (Exh.PM) dated: 01.07.2017 was registered under Sections: 302, 324, 34 PPC {subsequently offences under Sections: 337 F(i), 337 F(v) PPC were added during investigation of the case} at Police Station: Saddar Jauhar Abad, District Khushab.

5. On 01.07.2017, Dr. Muhammad Arif Chohan (PW-1) conducted postmortem examination over the dead body of Muhammad Hasnain (deceased of the case) and observed following injuries on his body:-

- “1- A firearm injury ante-mortem entry wound measuring .5x.5 cm, margins were inverted, oval shaped, on right side of upper lip, 1.5 cm lateral to right nostril. Clotted blood was around the wound.
- 2- A firearm ante mortem wound of exit, 1 cm x 1 cm with everted margins, oval shape, lateral side of left side of neck, 8 cm below the left ear. Firearm projectile entered from injury No.1, broken the teeth and jaw, passed away through injury No.II, damaging left carotid artery and jugular vein and caused massive bleeding.

After conducting postmortem examination upon the dead body of the deceased, medical officer (PW-1) rendered following opinion:-

OPINION

“In my opinion all the injuries were ante-mortem. Injury No.1 and injury No.2 damaged left carotid artery and jugular vein. Massive bleeding leading to hemorrhagic shock and death. The injuries were sufficient to cause death in ordinary course of nature.”

On the same day, Dr. Muhammad Arif Chohan (PW-1) conducted medical examination of Muhammad Ilyas (injured of the case); relevant portion of his statement is as under:-

"1- A firearm entry wound 1 x 1 cm with inverted margins, oval shape, in right clavicular area, 4 cm medial to right shoulder joint. Fresh bleeding was present. No blackening or swelling was present. The injury was kept under observation for Orthopedic opinion.

I advised X-ray of chest right clavicle and sought opinion from Orthopedic Specialist and injury was kept under observation. There was no possibility of fabrication---."

"On 18.07.2017, I issued final opinion Ex.PF regarding the injury of Muhammad Ilyas which is in my hand and bears my signature, as under:-

"According to Orthopedic Surgeon, there is right clavicle fracture. So, injury No.1 is declared as Ghair Jaifa Hashma/337-F(v),"

On the same day, Dr. Muhammad Arif Chohan (PW-1) also conducted medical examination of Sher Muhammad (injured of the case); relevant portion of his statement reads as follows:-

"1- A firearm entry wound 1 x 1 cm with inverted margins, oval shaped on medial aspect of right foot, 3.5 cm anteroinferior from right ankle right joint area. Bleeding was present. No blackening was present. The injury was kept under observation for Orthopedic opinion.

2- A firearm exit wound 1 x 1 cm oval shaped with everted margins sole of right foot, fresh blood was present.

I advised x-ray of right foot AP & lateral views and opinion was sought from Orthopedic Surgeon. I kept injuries under observation. There was no possibility of fabrication----."

6. After completion of investigation, challan report under Section: 173 Cr.P.C. was submitted in the Court against both the appellants by placing their names in column No.3 of the same; appellants were formally charge sheeted, however, they pleaded not guilty and claimed trial whereupon prosecution evidence was summoned; prosecution during trial examined fourteen (14) witnesses, out of which, medical evidence was furnished by Dr. Muhammad Arif Chohan (PW-1); ocular account was furnished by Muhammad Sarfraz (complainant/PW-8), Sher Muhammad

(injured/PW-9), Muhammad Ilyas (injured/PW-10) and Ahmad Nawaz (PW-11) whereas detail of investigation of the case was deposed by Ijaz Ahmad, S.I./Investigating Officer (PW-14); Prosecution after giving up Muhammad Sajjad and Muhammad Riaz (PWs) as being unnecessary and tendering reports of Punjab Forensic Science Agency, Lahore (Exh.PZ and Exh.PAA) closed its evidence; after recording of prosecution evidence, accused persons were examined under Section: 342 Cr.P.C. but they refuted the allegations levelled against them; they did not opt to appear as their own witnesses under Section: 340(2) Cr.P.C., however, Muhammad Tahir Ramzan (appellant) produced some documentary evidence (Exh.DA to Exh.DH/1 and Mark "A") in his defence whereas Muhammad Tanveer (appellant) relied upon the documentary evidence produced by aforesaid Muhammad Tahir Ramzan.

Trial Court after conclusion of trial has convicted and sentenced the appellants as mentioned above through the impugned judgment dated: 15.07.2019.

7. Learned counsel for the appellants have submitted that convictions recorded and sentences awarded to the appellants through impugned judgment are against the 'law and facts' of the case; ocular account is not trustworthy and prosecution has failed to prove its case against the appellants beyond shadow of doubt against the appellants; finally prayed for setting aside the impugned judgment and acquittal of the appellants.

8. Learned Deputy Prosecutors General assisted by learned counsel for the complainant while supporting impugned judgment submitted that prosecution has proved its case against the appellants upto the hilt and prayed for dismissal of the appeal.

9. Arguments heard. Record perused.

10. It has been noticed that occurrence in this case took place at about 6:45 p.m. on 01.07.2017, Muhammad Sarfraz (complainant/PW-8) got recorded his statement qua the occurrence at the spot on 01.07.2017 at 8:30 p.m. to Ijaz Ahmad, S.I. (PW-14), who after recording the statement sent the same to Police Station: Saddar Jauhar Abad where FIR (Exh.PM) was recorded by Muhammad Zaman, S.I. (PW-4) at 9:10 p.m. on 01.07.2017;

medicolegal examination of Sher Muhammad (injured witness/PW-9) and Muhammad Ilyas (injured witness/PW-10) was conducted at 8:30 p.m. on 01.07.2017 whereas postmortem examination over dead body of Muhammad Hasnain (deceased of the case/son of the complainant) was conducted at 11:15 p.m. on 01.07.2017, meaning thereby that case regarding the occurrence was promptly registered, medicolegal examination of both aforementioned injured PWs and postmortem examination over the dead body of deceased of the case were also conducted without delay which factors eliminate any chance of consultation, deliberation, concoction or procuring any witness.

Ocular account produced by prosecution in the case comprises of Muhammad Sarfraz (complainant/PW-8), Sher Muhammad (injured witness/PW-9), Muhammad Ilyas (injured witness/PW-10) and Ahmad Nawaz (PW-11); reason for presence of said witnesses at the place of occurrence in connection with death of Ameer Khatoon (mother-in-law of Muhammad Ilyas/injured witness) was quite natural; they deposed regarding detail of occurrence in straight forward manner, remained consistent on material points, inspite of searching cross-examination, credibility of their testimony could not be shaken; presence of Sher Muhammad (injured witness/PW-9) and Muhammad Ilyas (injured witness/PW-10) who were having stamp of receiving firearm injuries on their bodies at the “time and place” of occurrence, is beyond doubt; in this regard, guidance has been sought from cases of “**MUHAMMAD SADIQ versus THE STATE**” (2003 SCMR 736) and **ALLAH DAD and others versus MUHAMMAD NAWAZ and others**” (2001 SCMR 1111).

Occurrence in this case took place at 6:45 p.m. on 01.07.2017 within the premises of Jauhar Abbad (district Khushab), sunset time in that area on 01.07.2017 was 7:23 p.m. (see www.world-time.date.com), so occurrence took place in daylight, accused were already known to the witnesses, so there is no question of misidentification of the assailants; complainant is father of Muhammad Hasnain (deceased of the case) and there is no reason on record that why he will substitute real murderer of his son; similarly nothing could be brought on the record that why Sher Muhammad (injured witness/PW-9) and Muhammad Ilyas (injured witness/PW-10) will

substitute the accused who have caused firearm injuries to them. In such circumstances, substitution of the real culprit is rare phenomenon; in this regard, case of “**IRSHAD AHMAD and others versus The STATE and others**” (**PLD 1996 Supreme Court 138**) can be advantageously referred, relevant portion from page No.143 of the same is as under:-

“Undoubtedly, the substitution is a phenomenon of rare occurrence, because even the interested witnesses would not normally allow the real murderers of their relation to escape by involving innocent persons.”

Guidance on the subject has also been sought from the cases of “**MUHAMMAD AKHTAR versus THE STATE**” (**2007 SCMR 876**), “**SHERAZ KHAN versus THE STAE**” (**2010 SCMAR 1772**), “**NASIR AHMED versus The STATE**” (**2023 S C M R 478**), “**ALI ASGHAR alias AKSAR versus The STATE**” (**2023 S C M R 596**) and “**AMAN ULLAH and another versus The STATE and others**” (**2023 S C M R 723**).

So ocular account produced in this case by the prosecution is confidence inspiring and reliable.

11. As far as medical evidence is concerned, same was furnished by Dr. Muhammad Arif Chohan (PW-1), who conducted postmortem examination over dead body of Muhammad Hasnain (deceased of the case) and issued postmortem examination report (Exh.PA); he also conducted medicolegal examination of Muhammad Ilyas (injured witness/PW-10) through MLC No.251/2017 (Exh.PD), issued final opinion regarding his injury (Exh.PF) and medicolegal examination of Sher Muhammad (injured witness/PW-9) through MLC No.252/2017 (Exh.PG) and issued final opinion regarding his injury (Exh.PI). Medical evidence has supported/confirmed ocular account with respect to locale, nature as well as duration of injuries, kind of weapons used for causing injuries and other related aspects in this regard.

12. Four empties of pistol .30-bore (P.15/1-4) and three empties of .8-mm rifle (P.14/1-3) were secured from the place of occurrence on 01.07.2017 and same were sent to Punjab Forensic Science Agency, Lahore on 04.07.2017; Muhammad Tanveer and Muhammad Tahir Ramzan (appellants) were arrested in the case on 16.07.2017; on 21.07.2017, Muhammad Tanveer (appellant) got recovered .8-mm rifle

(P.5) whereas Muhammad Tahir Ramzan (appellant) got recovered .30-bore pistol (P.7) in presence of Zafar Iqbal, S.I. (PW-12) and Jaleel-ur-Rehman, 238/C (PW-13), their testimony in this regard remained unshaken and said weapons were sent to Punjab Forensic Science Agency, Lahore on 24.07.2017; according to report of Punjab Forensic Science Agency, Lahore (Exh.PAA), three empty cartridge cases of .30-bore pistol were found as having been fired from pistol recovered from Muhammad Tahir Ramzan (appellant) whereas 4th empty could not be identified with the observation that because of the absence of primer and lack of sufficient suitable corresponding microscopic markings, it was not possible to either identify or eliminate the same; similarly empty cartridge cases (C-5 to C-7) were identified as having been fired from .8-mm rifle recovered from Muhammad Tanveer (appellant); relevant portion of said report is hereby reproduced:-

“Conclusion:

- *The item C1 to C3 cartridge cases were identified as having been fired in the item P1 pistol.*
- *Because of the absence of primer and lack of sufficient suitable corresponding microscopic markings, it was not possible to either identify or eliminate the item C4 cartridge case as having been fired in the item P1 pistol.*
- *The items C5 to C7 cartridge cases were identified as having been fired in the item R1 rifle.”*

Said recovery has corroborated the ocular account.

Thus prosecution has proved that Muhammad Tanveer (appellant) caused firearm injury to Muhammad Hasnain (deceased of the case) and committed his murder; also proved that he with intention to kill caused firearm injury to Muhammad Ilyas (injured witness/PW-10) at his right shoulder; similarly prosecution has proved that Muhammad Tahir Ramzan (appellant) has caused firearm injury at right foot of Sher Muhammad (injured witness/PW-9).

13. Now coming to the defence version, Muhammad Tanveer (appellant) during recording of his statement under Section 342 Cr.P.C. in reply to Question No. 14, *Why this case against you and why the PWs deposed against you?*, stated as under: -

"All the PWs are closely related inter-se and are inimical towards me. Complainant was misled by one Falak Sher who is real "mamoo" of my father Muhammad Tahir Ramzan co-accused in present case. Prior to the present case my father had demanded share of his mother from above said Falak Sher. One Khan Muhammad, the real brother of Sher Muhammad PW had some money dispute with real brother of one Ghulam Muhammad my father-in-law. Hence, I have been falsely implicated in this case."

Whereas Muhammad Tahir Ramzan (appellant) during recording of his statement under Section 342 Cr.P.C. in reply to Question No. 14, *Why this case against you and why the PWs deposed against you?*, stated as under: -

"All the PWs are closely related inter-se and are inimical towards me. Complainant was misled by one Falak Sher who is my real "mamoo". Prior to the present case my father had demanded share of my mother which was being usurped by above said Falak Sher. One Khan Muhammad, the real brother of Sher Muhammad PW had some money dispute with real brother of one Ghulam Muhammad the father-in-law of my son. Hence, I have been falsely implicated in this case."

The aforementioned version of the appellants is mere a bald denial, both of them neither have produced any witness in support of their version nor themselves appeared under Section: 340 (2) Cr.P.C. in disproof of the allegations levelled against them; furthermore, documents (Exh.DA to Exh.DH/1 and Mark "A") produced by Muhammad Tahir Ramzan (appellant) in defence and relied upon by Muhammad Tanveer (appellant) neither could cause any dent in the case of prosecution nor prove innocence of the appellants. Therefore, defence version is of no avail and when prosecution case is kept in juxtaposition with defence version, then it has been observed by us that defence version stands nowhere, however, prosecution version which comprises of ocular account confirmed by medical evidence corroborated by recoveries of weapons used during the occurrence, has been found as plausible and reliable, therefore, we have come to the conclusion that prosecution has proved its case against the appellants to the extent mentioned above in paragraph No.12 beyond any shadow of doubt.

14. So far as motive behind the occurrence is concerned, it was alleged that Muhammad Tanveer (appellant) was having suspicion that Khan Muhammad brother of Sher Muhammad (injured of the case) had illicit relations with his wife, meaning thereby that there was no direct motive

against the deceased as well as both the injured witnesses; furthermore, Muhammad Sarfraz (complainant/PW-8) clearly stated before the court that he, his son Hasnain and Ilyas (PW) had no any previous enmity with Muhammad Tanveer and Muhammad Tahir Ramzan (appellants); relevant portion of his statement in this regard is hereby reproduced:-

"It is correct that I, my son Hasnain and Ilyas PW had no enmity with the accused Tanvir and Tahir Ramzan."

Even otherwise, any independent evidence was not produced by the prosecution during trial of the case in order to prove said motive.

Now coming to the vital aspect of the occurrence, it is trite law that for proving common intention, there should be evidence to prove pre-concert/consultation between accused persons for committing the offence and in absence of the same, attending circumstances can also be taken into consideration for deciding existence of common intention e.g. if accused persons having joint motive/grudge i.e. reason for committing occurrence against the victim, after consultation and preparation come from their residence or some place to the place of occurrence and commit the occurrence, then existence of common intention can be gathered while examining the entire facts but at the same time it is also relevant to mention here that in case of presence of accused at the place of occurrence where his presence is otherwise natural or at least not unusual/awkward e.g. at his home, question of sharing common intention has to be examined carefully. In this case, no evidence has been produced to prove any pre-concert/consultation for committing the occurrence between both the accused/appellants prior to the occurrence; furthermore, both the accused have not come from their house to a distinct place situated at considerable distance and committed the occurrence rather according to own case of prosecution, they were present at the rooftop of their house at the time of occurrence and it goes without saying that in afternoon/evening of summer i.e. in the month of July, in villages, it is quite common and not unusual that people sit at rooftops of their houses; as per case of prosecution, Muhammad Tanveer (appellant) raised *lalkara* and then fired at face of Muhammad Hasnain (deceased of the case), also fired at front side of right shoulder of Muhammad Ilyas (one of the injured) but did not attempt to

cause injury to Sher Muhammad (other injured of the case) whereas Muhammad Tahir Ramzan neither caused any injury to deceased of the case nor to Muhammad Ilyas (one of the injured of the case) rather caused single injury at foot of Sher Muhammad (injured mentioned above) without repetition. It is relevant to mention here that there was no direct motive against the deceased as well as both injured persons and even any other immediate cause of occurrence could not be brought on the record by the prosecution; these factors entertain reasonable doubt regarding existence of common intention between accused persons for committing murder or attempt to commit murder. Therefore, for safe administration of justice, while taking into consideration all these factors in totality and extending benefit of doubt, it is held that though occurrence has been committed yet not in furtherance of common intention between the appellants. Thus Section: 34 PPC is not applicable in this case and each appellant would be responsible for his own act; in this regard, guidance has been sought from the case of "**NUR MUHAMMAD versus THE CROWN**" (1969 SCMR 724).

15. In view of what has been discussed above, prosecution has proved its case against Muhammad Tanveer (appellant) regarding committing *Qatl-e-Amd* of Muhammad Hasnain (deceased of the case) by causing firearm injury at his face, therefore, he is convicted under Section: 302 (b) PPC. So far as quantum of sentence is concerned, we have observed that any direct cause of murder of deceased of the case i.e. motive against the deceased as well as immediate cause of occurrence for committing murder of the deceased of the case (as discussed supra) could not be established by the prosecution. Therefore, we are convinced that real/actual cause of occurrence in the case has remained shrouded in mystery. The law is well settled by now that if prosecution fails to prove alleged motive and immediate cause of occurrence then said failure reacts against the sentence of death awarded to convict on the charge of murder; in this regard, guidance has been sought from the cases of "**NAVEED alias NEEDU and others versus The STATE and others**" (2014 SCMR 1464), "**HAQ NAWAZ versus The STATE**" (2018 SCMR 21), "**NADEEM RAMZAN versus The STATE**" (2018 SCMR 149), "**ALI BUX and others versus The STATE**" (2018 SCMR 354), "**Mst. NAZIA ANWAR**

versus The STATE and others” (2018 SCMR 911), “NAWAB ALI versus The STATE” (2019 SCMR 2009), “AKBAR ALI and others versus The STATE and others” (2021 SCMR 104), “GHULAM MURTAZA versus The STATE” (2021 SCMR 149), “MUHAMMAD SHOBAN versus The STATE” (2022 SCMR 1608) and “SAJID MEHMOOD versus The STATE” (2022 SCMR 1882); relevant portion of latter case law is reproduced:

“So far as the quantum of punishment is concerned, the learned High Court while taking into consideration the fact that the motive part of the prosecution story is not proved; there was no blood feud between the parties; what actually preceded just before the occurrence remained shrouded in mystery; appellant only fired single shot and co-accused of the appellant have been acquitted by the learned Trial Court, has rightly taken a lenient view and converted the sentence of death into imprisonment for life. (emphasis added)

Only single firearm injury was caused by Muhammad Tanveer (appellant) at the deceased without repetition, therefore, in view of accumulative effect of aforementioned factors, we are exercising caution in the matter of sentence of “death” awarded to Muhammad Tanveer (appellant) by the trial court under Section: 302 (b)/34 PPC for committing *Qatl-e-amd* of Muhammad Hasnain and converting the same to “Imprisonment for Life” under Section: 302 (b) PPC, however, order passed by trial court regarding payment of compensation Rs.1600,000/- under Section: 544-A Cr.P.C. by Muhammad Tanveer (appellant) to the legal heirs of the deceased and recovery of compensation as arrear of land revenue as well as in default thereof, to undergo S.I. for six months recorded through impugned judgment is maintained/upheld; prosecution has also proved its case against him qua attempt to commit murder of Muhammad Ilyas (injured witness/PW-10) by causing firearm injury at his right shoulder, therefore, he is also convicted under Section: 324 PPC read with Section: 337-F(v) PPC and as a consequence whereof, under Section: 324 PPC he is sentenced to nine years rigorous imprisonment along with fine of Rs.50,000/- and in case of default in payment of the same, to further undergo simple imprisonment for six months whereas under Section: 337 F(v) PPC, he is sentenced to rigorous imprisonment for four years with direction to pay Daman amounting to Rs.150,000/- to Muhammad Ilyas

(injured of the case). He will remain in jail till payment of amount of Daman (mentioned above). However, his sentences of imprisonment shall run concurrently and benefit of Section: 382-B Cr.P.C. is also extended in his favour. Undoubtedly, Muhammad Tanveer (appellant) has not caused any injury to Sher Muhammad (injured witness), therefore, convictions recorded and sentences awarded to him under Section: 324, 337 F(iii) PPC with respect to Sher Muhammad in perspective of Section: 34 PPC *vide* impugned judgment dated: 15.07.2019 are hereby set aside and he is acquitted of the charge to the said extent only.

So far as Muhammad Tahir Ramzan (appellant) is concerned, as per own case of prosecution, he has only caused single injury at non-vital part of the body i.e. foot of Sher Muhammad (injured witness/PW-9), which has been proved by the prosecution by leading cogent and confidence inspiring evidence, therefore, he is convicted under Section: 337 F(iii) PPC and sentenced to two years rigorous imprisonment with direction to pay Daman amounting to Rs.80,000/- to Sher Muhammad (injured of the case), benefit of Section: 382-B Cr.P.C. is extended to him, however, he is acquitted of the charge under Section: 324/34 PPC to the extent of Sher Muhammad (injured). Since, he has neither caused any injury to Muhammad Hasnain (deceased of the case) nor caused any injury to Muhammad Ilyas (injured witness, mentioned above), therefore, convictions recorded and sentences awarded to him under Sections: 302 (b) PPC with respect to deceased of the case as well as under Sections: 324 and 337 F(v) PPC with respect to Muhammad Ilyas (injured mentioned above) in perspective of Section: 34 PPC *vide* impugned judgment dated: 15.07.2019 are hereby set aside and he is acquitted of the charges in said regard.

16. Learned Deputy Prosecutors General have submitted written report (received through Fax) prepared by Superintendent, Central Jail, Mianwali bearing No.20488 dated: 10.10.2023, which reflects that Muhammad Tahir Ramzan (appellant) has already served out the period of sentence more than the imprisonment awarded to him by this Court under Section: 337 F(iii) PPC, however, he will deposit amount of *Daman* (mentioned above) within one month in the trial court for onward payment to Sher Muhammad (injured, mentioned above) and in case of non-payment of the same, he will

be taken into custody by the trial court and dealt with strictly in accordance with law for the recovery of aforesaid amount. Sentence of Muhammad Tahir Ramzan (appellant) was suspended during pendency of this appeal and he is present on bail, his surety stands discharged.

17. Resultantly, instant criminal appeal is partially allowed in the terms mentioned above. **Murder Reference No. 245 of 2019** is answered in **negative** and death sentence awarded to Muhammad Tanveer, is **not confirmed**.

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Malik Shahzad Ahmad Khan)
Judge

(Farooq Haider)
Judge

This judgment has been dictated and pronounced on 10.10.2023 whereas after preparation/completion, signed on 12.10.2023.

Asif