Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Criminal Appeal No.199-A/2024
with Murder Reference No.06-A/2024

Muhammad Shoaib … (Appellant)

versus

The State and another… (Respondents)

Present: M/S Shad Muhammad Khan and Usman Saleem Awan, Advocates for appellant.

Mr.Aamir Khan, Assistant Advocate General for State.

Mr. Atif Ali Jadoon, Advocate for respondent-complainant.

Date of hearing: **14.10.2025.**

JUDGMENT

SYED MUDASSER AMEER, J.- This single judgment is directed to decide this criminal appeal as well as **Murder Reference No.06-A/2024** titled "*The State v. Muhammad Shoaib*" and the connected **Criminal Appeal No.200-A/2024** titled "*Muhammad Shoaib v. The State*" being outcome of the orders/judgments of Additional Sessions Judge-V, Haripur dated 13.12.2024 whereby the appellant, tried in Case No.3/7 of 2021, in the wake of FIR No.94 dated 21.01.2021 under section 302

Pakistan Penal Code, 1860 ('PPC') registered at Police Station Kot Najibullah, District Haripur, was convicted and sentenced under section 302(b) PPC to death as *Taz'ir* for committing *qatl-e-amd* of Zohaib son of Sanaullah Shah and to pay One Million Rupees as compensation to the legal heirs of the deceased within the meaning of section 544-A Cr.PC or in default whereof, to undergo simple imprisonment for six months. The appellant was also tried in case No.2/3 of 2021 (in the aforesaid FIR but through separate challan under section 15 of The Khyber Pakhtunkhwa Arms Act, 2013) and has been convicted and sentenced under section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 for a period of three years and to pay a fine of Rs.50,000/- or in default thereof, to suffer further simple imprisonment for three months. Benefit of section 382 Cr.PC was also extended to the appellant/convict in both the cases. The learned trial Court also sent Murder Reference No.06-A/ 2024 under section 374 Cr.PC for confirmation of death sentence of the appellant.

2. Prosecution case as per contents of FIR, lodged on the basis of *Murasila* (*Ex.PW-4/1*) is that on 26.01.2021 at 14:30 hours, complainant namely

Sanaullah Shah (PW-5) alongwith dead body of his real son Zohaib Sanaullah lodged report on the spot with Sajid Nawaz ASI police post Panian (PW-4) to the effect that on the even day at quarter past 2 (02:15 p.m.), his son (deceased) was present on the spot, i.e. path leading to *Basu Mera* (راستہ روندا بسو میرا) near grave of Said Ghulam. Meanwhile Shoaib (appellant herein) came, started abusing his son (the deceased) then pulled out a pistol, fired at his son and decamped from the spot. His son fell down and succumbed to the injuries on the spot. The occurrence was shown to have been witnessed by Sardar Shah (neither produced nor abandoned by prosecution during trial, for the reason best known to it) and Atta Ullah Shah (PW-6), besides the complainant (PW-5). Motive for the occurrence was shown to be a quarrel/altercation during a cricket match, which took place a month prior to the occurrence. It is also the case of prosecution that on 06.02.2021, during interrogation, appellant led police party to a deserted jungle near Camp No.20 situated ahead of village *Basu Mera*, took out one 30 bore pistol (weapon of offence) from the bushes and produced the same to investigation officer.

Consequently, section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 was also inserted in the FIR, followed by separate challan.

3. After registration of the case, a full- fledged investigation was carried out and then challans against the appellant were put in Court where charge was framed and served upon him under section 302 PPC in Case No.3/7 of 2021, and under section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 in case No.2/3 of 2021, to which he pleaded not guilty and claimed trial. In support of its case, prosecution produced as many as fifteen witnesses in the former case, while seven witnesses in the latter. Thereafter statement of the appellant was recorded under section 342 Cr.PC in each case wherein he neither wished to be examined on oath nor desired to produce defence evidence. After hearing arguments from both sides, the learned trial court through the impugned orders and judgments dated 13.12.2024, convicted and sentenced the appellant as mentioned in Para No.1 of this judgment. The appellant has now challenged the aforesaid orders/judgments through this and the connected criminal appeal.

4. Arguments of learned counsel for the parties as well as learned Assistant Advocate General were heard in detail and record perused with their able assistance.

5. At the very outset, it was noted that prosecution neither bothered to exhibit the Crime Report which made basis of the instant cases nor produced its scribe namely Raja Mumtaz ASHO before the Court during trial. Albeit, the same was statedly chalked on receipt of *Murasila* (*Ex.PW-4/1*), however, the fact remains that, on one hand, the official who brought the *Murasila* from the spot to the Police Station namely Rashid IHC was abandoned by the prosecution, while on the other, scribe of *Murasila* namely Sajid Nawaz ASHO when stepped in the witness-box as PW-4, he did not utter a single word in his examination-in-chief about how and when he received information of the occurrence, how and when he reached the spot and where exactly he jotted down report of the complainant in shape of *Murasila*. Though PW-4 tried to cover up this lacuna during cross-examination by stating that he received information of the occurrence at about **02:15 p.m.** from control room, the same only worsened the position for the

reason that **02:15 p.m.** is the exact time of occurrence. He further deposed in cross-examination that he has not seen any empty at the spot at the time of preparation of inquest-report. These shaky elements of the matter not only make *Murasila* and Crime Report, very foundations of the case highly doubtful but also suggest that the same were not prepared on the place, mode and manner as alleged therein. The Hon'ble Supreme Court of Pakistan in the case titled *Iftikhar Hussain and others v. The State* reported as 2004 SCMR 1185, while setting aside conviction and sentence of appellant, observed as under:

> "16. As far as F.I.R: under section 154, Cr.P.C. itself is concerned, it is always treated to be a corner stone of the prosecution case to establish guilt against culprits involved in the crime. Thus it has got a very significant role to play. If there is any doubt in lodging of F.I.R. and commencement of investigation, it gives rise to a doubt in benefit of which, of course, cannot be extended to anyone else except to the accused. However, an F.I.R. under section 154, Cr.P.C. which has been lodged after conducting an inquiry loses its evidentiary value as held in the cases of Muhammad Hanif v. State PLD 1977 Lah. 1253, Mst. Muhammadia v. Zari Bacha and another PLD 1982 Pesh. 85, Nazir

> Masih v. State 1997 MLD 48, Muhammad Javed v. S.S.P. Gujranwala and others PLD 1.998 Lah. 214 and Qazi Muhammad Javed v. S.S.P. Gujranwala and others 1999 PCr.LJ 1645. It is also to be borne in mind that merely for such reason that F.I.R. has been registered under section 154, Cr.P.C. before conducting a preliminary inquiry, the prosecution case cannot be disbelieved but such act on the part of the Investigating Officer puts the Court on guard and persuades it to conduct a close scrutiny of the prosecution case with a view to avoid false implication of accused nominated for the commission of offence."

6. In order to bring home charge against the appellant, prosecution produced ocular account through Sanaullah Shah, the complainant (PW-5), Attaullah Shah (PW-6) and Azhar Mehmood Shah (PW-7). As per stance of the complainant (PW-5), the occurrence took place at 14:15 hours, while report was made within a span of 15 minutes at 14:30 hours to PW-4 namely Sajid Nawaz ASHO who in cross-examination stated that he received information about the occurrence at 14:15 hours. Albeit, the complainant (PW-5) stated to have witnessed the occurrence, however, in initial part of the *Murasila*, he neither narrated that he was

present with the deceased at the time of occurrence nor he explained anywhere in the Crime Report (as admitted by him during cross-examination); what was he doing on the spot at that time. Though during cross-examination, the complainant (PW-5) volunteered that he was present at home when his son received a phone call on mobile and rushed outside without disclosing anything and that is why he followed his son. However, the complainant has neither given any mobile number on/from which the deceased received such call nor disclosed this fact to the police as admitted by him during cross-examination. He further admitted it correct during cross-examination that his house is not shown anywhere in site plan. Similarly, neither complainant nor scribe of *Murasila* told/explained how within fifteen minutes of the occurrence, they came to know about name of appellant/accused particularly when the appellant/accused is neither relative of the complainant nor belongs to the same village. The complainant (PW-5) further alleged in the Crime Report that the deceased was present on the spot when appellant came and committed his murder, whereas PW-6 namely Attaullah Shah during examination-in-chief stated that when they

reached on a path near grave of Said Ghulam, he saw the appellant/accused and on seeing them, he took out pistol and fired at Zohaib (deceased). Therefore, narrations of these eyewitnesses (PW-5 and PW-6) with respect to the order of arrival of the appellant are not in consonance with each other nor with the contents of *Murasila*/FIR. In foregoing facts and circumstances, presence of these eyewitnesses on the spot at the time of occurrence becomes doubtful, therefore, their testimonies are not safe for reliance.

7. Undeniably neither father (PW-5) nor uncle of the deceased (PW-6), despite being shown eyewitnesses of the occurrence, have accompanied the dead body of the deceased from the spot to the hospital nor their names figure either in inquest-report (*Ex.PW-4/3*) or in post mortem report (*Ex.PW-3/1*) rather do names of Imtiaz Shah and Afzal Shah in the former document. Besides that, PW-6 is also not shown seconder of report/*Murasila* (*Ex.PW-4/1*). He also stated in his cross-examination that he is not the verifier/rider of the FIR. Therefore, their presence on the spot at the relevant time is not free from doubts. In the case title *Abdul Jabbar and another vs. The State*

reported as 2019 SCMR 129, the Supreme Court of Pakistan while allowing appeal, acquitted some of the appellants and held as under:

> "…It is the settled principle of law that once a single loophole is observed in a case presented by the prosecution where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused. At the cost of reiteration, it has been observed by us that, in a case, where the learned appellate court, after reappraisal of entire evidence available on record, has reached the conclusion that there is unexplained delay in lodging the FIR; the presence of eye-witnesses is not established; there are irreparable dents in the case of the prosecution; the recovery is ineffective and is of no consequence; the ocular account is belied by the medical evidence; the motive behind the occurrence is far from being proved and almost non-existent, the said Court fell in gross error in maintaining the conviction of the appellants. In these circumstances and after an independent evaluation of evidence available on record, we have no manner of doubt in our minds that the prosecution has not been able to prove its case against the appellants beyond reasonable doubt."

In another case titled *Khalid @ Khalidi and two others vs. The State* reported as 2012 SCMR 327, the apex Court observed as follows:

> "…the ocular account is not of such a character which could be relied upon in order to convict a person on a capital charge when the same is not corroborated by any other independent evidence as the presence of both the eye-witnesses at the place and time of occurrence is not established as their statements have been disbelieved by the learned appellate court regarding Sultan Mehmood acquitted accused."

8. Another intriguing aspect of the case is the unnatural conduct of the complainant (PW-5) and Attaullah Shah (PW-6). Undeniably the former is real father while the latter is uncle (چچا) of the deceased. Despite that they did not intervene between the appellant and the deceased when altercation took place between them to avoid any untoward incident nor they tried to stop the bleeding of the deceased rather they remained silent spectators to see murder of their son/nephew, which does not appeal to reason. The complainant (PW-5) in his cross-examination stated, "*My son when received fire-shot he fell down and I proceeded toward him and I supposed that he died at the spot.*

I have not touched my deceased son for checking that whether he is alive or not. No one else from outside has checked whether he is alive or not at the spot. I met the police at about 02.30pm. We kept standing near the dead body at about 03 to 04 ft. but have not touched the dead body till the arrival of the police. …We even did not try to shift/move the dead body of my son in the shade to protect him from direct sun shine.". Such conduct of the complainant is not only unnatural but shockingly inhuman. Recently the apex Court in Criminal Appeal No.32-L of 2021 and Crl.P.L.A No.669-L/2017 titled "*Umer Draz and Muhammad Bakhsh v. The State*", of identical nature while acquitting the appellant, held as follows:

> "9. Apart from above, the conduct of the complainant himself raises serious doubts about his presence at the spot. He is the real father of the deceased and alleges that six armed accused entered his house, forcibly dragged his son outside, and inflicted fatal injuries to him. But throughout the occurrence, the complainant made no effort to intervene, confront the assailants or rescue his son. He did not sustain any injury, nor there is any evidence of struggle or resistance on his part. It is contrary to natural human conduct and beyond ordinary human experience that a father

> would silently watch the brutal murder of his son without making any attempt to protect him. A father's instinctive reaction would have been to intervene, even at the risk of his own life. His passivity and inaction, in the face of such a grave assault on his son, are wholly unnatural and inconsistent with human behaviour. This renders the presence of the complainant at the spot highly doubtful."

Similarly, in the case titled "*Muhammad Bilal v. The State*" reported as 2025 SCMR 1580, the apex Court observed as follows:

> "11. …The eye-witnesses' conduct is then manifestly unnatural and this failure to intervene raises serious doubts regarding both the veracity of their account as well as their presence at the scene. A similar situation was decisively dealt with by this Court in the case of Pathan v. The State (2015 SCMR 315) wherein it was held that:
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> > "The presence of witnesses on the crime spot due to their unnatural conduct has become highly doubtful, therefore, no explicit reliance can be placed on their testimony. They had only given photogenic/photographic narration of the occurrence but did nothing nor took a single step to rescue the deceased. The causing of that much of stab wounds on the deceased loudly speaks that if these three witnesses were present on the spot, being close blood relatives including the son, they Would have definitely intervened, preventing the accused from causing further damage to the deceased rather strong

> presumption operates that the deceased was done to death in a merciless manner by the culprit when he was at the mercy of the latter and no one was there for his rescue. In similar circumstances, the evidence of such eye-witnesses was disbelieved by this Court in the case of Masood Ahmed and Muhammad Ashraf v. The State (1994 SCMR 6)."
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> Reliance may also be placed upon the cases of Zafar v. The State (2018 SCMR 326) and Liaqat Ali v. The State (2009 SCMR 95) in this regard."

Further reliance can be placed on the cases of *Khizar Hayat v. State* (2025 SCMR 1339), *Imran alias Mani v. State* (2024 SCMR 1811), *Zafar Ali Abbasi v. State* (2024 SCMR 1773), *Abid Hussain v. State* (2024 SCMR 1608), *Riasat Ali v. State* (2024 SCMR 1224), *Muhammad Asif v. State* (2017 SCMR 486), *Mst.Rukhsana Begum and others v. Sajjad and others* (2017 SCMR 596) and *Muhammad Asif v. The State* (2017 SCMR 486).

9. In addition, the complainant (PW-5) and Atta Ullah Shah (PW-6) being close relatives (father and uncle) of the deceased, both are interested witnesses, and their evidence, by its nature, calls for independent corroboration. This was all the more necessary because, according to the defence, the deceased's family suspected that

the FIRs registered against them for possession and supply of narcotics had been lodged at the instance of the appellant's father, a retired army officer and a respected person of the area. In these circumstances, the possibility of enmity or bias against the appellant cannot be ruled out, further diminishing the reliability of their uncorroborated testimony. In the case titled *Javaid Iqbal and another vs. The State* reported as 1998 SCMR 32, the Supreme Court of Pakistan while acquitting the appellants observed:

> "Being closely related to the deceased and inimical towards the appellants…the rule of prudence required some independent corroboration of their testimony but the same is not available. No recovery of any incriminating article was made from any of the appellants. Motive by itself cannot be made a basis of other corroboratory material."

Further reliance is placed on the case of "*Hazoor Bakhsh vs. Waddon and 3 others"* reported as 1980 SCMR 979.

10. As for the other alleged eyewitness, Azhar Mehmood Shah (PW-7), it is undeniable that he figures neither in the *Crime Report*, nor in the *site plan (Ex.PW-8/2)*, nor in the statement of Attaullah

Shah recorded under Section 161, Cr.P.C., nor even in the examinations-in-chief of Sanaullah Shah (PW-5) and Attaullah Shah (PW-6). He claimed to be the driver of a Suzuki Carry used to transport students of Hazara Public School and stated that, at the relevant time, he had stopped the vehicle on the road to let the students alight, when on hearing voices of abuse, he approached the spot and witnessed the occurrence. However, during cross-examination, he admitted that he had not told the Investigating Officer the exact place where he had stopped his vehicle. He also failed to mention the colour of his Suzuki Carry, did not produce his driving license or registration book, and did not produce the vehicle itself for examination. Neither he nor his vehicle is mentioned in the *site plan*, which was prepared by the I.O. on the pointation of the complainant and the eye-witnesses. In these circumstances, the presence and testimony of PW-7 appear to be an afterthought, introduced only to improve the prosecution case. It is also surprising that the prosecution withheld the testimony of Sardar Shah, who was named as eye-witness in the Murasila, Site plan, statement of Attaullah Shah recorded under section 161 Cr.PC and the

examinations-in-chief of PWs-5 &6 but produced Azhar Mehmood Shah, who is otherwise alien to the whole investigation. His evidence, therefore, cannot be relied upon for conviction.

11. Prosecution also produced medical evidence in support of its case. Dr.Farkhanda Gul who conducted autopsy on the dead body of the deceased appeared in the witness-box as PW-3. As per her Court statement and *post mortem report* (*Ex.PW-3/1*) consisting of pictorial, deceased received entry wound on left shoulder with its exit on the upper aspect of right arm, whereas according to ocular account portrayed in *Site plan* (*Ex.PW-8/2*) deceased and appellant are shown in front of each other. Given the alleged distance between the appellant and the deceased, this inconsistency is very significant and fatal to the prosecution's case. True that human body is not static (2021 SCMR 1373, 2024 YLR 916, 2023 PCrLJN 95, and 2017 YLRN 128) and at the time of firing or assault it is only natural for a person to move, take cover, or twist in self-protection. Thus, the angle of entry and exit of a firearm injury cannot, by itself, be treated as a decisive factor in every case. However, significance

of the angle depends on the distance. Where the distance between the assailant and the victim is considerable, the angle may lose its probative value. But where, as here, the distance is close and fixed, the trajectory becomes crucial. In the present case, the appellant is alleged to have fired from a distance of only four (4) feet, while the deceased was facing him. From such a short range, the entry wound ought logically to be on the front of the body, with exit towards the back. No sudden or defensive movement could reasonably place the deceased in a position to receive the injury in such a straight line, entering from left shoulder and exiting from the right arm. This inconsistency casts serious doubt on the prosecution's version of the occurrence.

12. Moreover, the post-mortem report as well as the testimony of Doctor (PW-3) lend further weight to this doubt. In her examination-in-chief, she observed: *"There is light bluish discolouration around the entry wound."* During cross-examination, she candidly stated: *"I cannot affirm or rebut the suggestion that the deceased received injuries while lying."* These statements, read

together with the angle of injury, the nature of the firearm (.30 bore pistol), and the proximity suggested by medical findings, indicate that the shot was likely fired from a distance of less than two (2) feet, and while the deceased was in a lying position. In the case of *Riasat Ali and another v. The State and another* [PLJ 2024 SC (Cr.C.) 208] the apex Court held as follows:

> "According to Modi's Medical Jurisprudence and Toxicology blackening is found, if a firearm like shotgun is discharged from a distance of not more than three feet and a revolver or pistol is discharged within about two feet. Reference in this regard is also made to the cases of 'Mir Muhammad v. the State' [1995 SCMR 610], 'Amin Ali v. the State' [2011 SCMR 323] and 'Muhammad Zaman v. the State' [2014 SCMR 749]."
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> (Underlining supplied)

13. Furthermore, according to the post-mortem report (*Ex.PW-3/1*) and the statement of Doctor (PW-3), the *probable time between injury and death* was about thirty (30) minutes. Meaning thereby the deceased would have been alive at the time of report i.e. 02:30 p.m. recorded by PW-5 in shape of Murasila where occurrence is shown to have taken place at 02:15 p.m. In contrast, the

FIR/*Murasila* records that the deceased died on the spot. This inconsistency between the medical and ocular evidence is material and cannot be ignored. The medical evidence, in this context, does not support the ocular account and therefore cannot safely be relied upon to sustain the conviction. It is well settled by now that when ocular account is contradicted by the medical evidence then such ocular account cannot be relied upon. Recently, in the case titled *Muhammad Nawaz v. The State* (2025 SCMR 1053), the apex Court observed as follows:

> "5. …The abovementioned conflict between the ocular account and the medical evidence shows that in-fact the prosecution eye-witnesses were not present at the spot at the relevant time because, had they been present at the time of occurrence then they should have given the correct number of injuries sustained by Mst. Azran Bibi (deceased). In the cases reported as "Muhammad Ali v. The State" (2015 SCMR 137) and "Usman alias Kaloo v. The State" (2017 SCMR 622), the evidence of eye-witnesses was disbelieved and the benefit of doubt was extended to the accused persons of the said cases, on the ground of conflict between ocular account and medical evidence regarding number of injuries sustained by the deceased."

Similarly, in "*Khial Muhammad v. The State*" reported as 2024 SCMR 1490 the Supreme Court while acquitting the accused held as under:

> "Once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/ lacuna in the prosecution's case automatically goes in favour of an accused. The conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused. However, as discussed above, the prosecution has failed to prove its case beyond any reasonable doubt."

Further reliance is placed on *Tajamal Hussain Shah v The State and another* (2022 SCMR 1567), *Najaf Ali Shah v. The State* (2021 SCMR 736) and *Abdul Jabbar v. State* (2010 SCMR 129).

14. There comes another twist in the tale. The doctor (PW-3) stated that there was a blue colour balloon attached to the penile area. Learned counsel for the complainant attempted to explain that such balloons are sometimes worn due to a medical condition. However, no justification or medical record was produced to substantiate this claim. If

such were the case, the prosecution was under an obligation to explain the reason and context, which it failed to do. The deceased, as per record, was about 25–26 years of age and there is nothing to suggest that he was married. The matter becomes even more dubious when PW-2 Tanveer Ahmed ASI admitted it correct during cross-examination that balloon/condom was clearly visible in the phial. Likewise, PW-8 Investigation Officer namely Sardar Wajid also admitted it correct during cross-examination that the doctor after autopsy handed over to him phial containing condom, which was taken from the penis of the deceased and was sealed into parcel No.4. He further admitted it correct that he has personally observed/seen the condom. It defies reason that a young man, allegedly chased and under the watchful eye of his father, would be wearing a condom at the time of the incident. This unexplained circumstance wholly belies the ocular account presented by the prosecution.

15. It is also noted that the doctor (PW-3), after conducting post mortem examination, handed over the blue coloured balloon/condom attached to the

deceased's penis to the police for forensic and DNA analysis. However, the Investigation Officer has not conducted any investigation in this regard. This has left a material lacuna creating a fatal dent in the prosecution case.

16. Apart from above, other contradictions were also noted in the testimonies of prosecution witnesses. PW-4 Sajid Nawaz ASHO says during cross-examination that the dead body was shifted from the spot in his presence in private Suzuki pickup, whereas PW-6 Attaullah Shah deposed during cross-examination that he personally took the dead body of deceased from spot and transported in a Datsun. Likewise, as per PW-3 deceased was wearing light grey colour clothes, while on the other hand, according to marginal witness to recovery memo (*Ex.PW-2/1*) namely Tanveer Ahmed ASI (PW-2) and Investigation Officer namely Sardar Wajid (PW-8) the same were of light greenish colour. These contradictory statements of witnesses also create doubts in the prosecution case, benefit of which has to be given to the appellant/accused.

17. There is yet another discrepancy in the prosecution case regarding the place of occurrence. As per the *site plan (Ex.PW-8/2)*, the dead body was found lying on a *kacha rasta (pagdandi)*, whereas the *First Information Report* states that the incident occurred on the *path leading to Basu Mera*. Contradicting both, PW-1 Javed (FC No.375) deposed during cross-examination that the dead body was lying in a field which contained small, newly grown green crop. These material inconsistencies as to the exact place of occurrence, when read with the other infirmities noted earlier, clearly indicate that the incident did not occur in the mode and manner alleged by the prosecution. In the case titled "*Abid Hussain and another v. The State and others*" reported as 2024 SCMR 1608, the Hon'ble Supreme Court of Pakistan while acquitting the appellant in an identical case, has observed as under:

> "The manner in which the complainant and PW7 narrated the story does not appear to be trustworthy. In the facts and circumstances of the case, their presence at the place of the occurrence at the relevant time is not established, therefore, we have no

> doubt in our mind that the prosecution case against the appellant is doubtful. The Courts below have not appreciated the evidence and the material available on the record in its true perspective and have come to a wrong conclusion. Under such circumstances, the conviction and sentence awarded to the appellant Abid Hussain are unjustified, hence, the impugned judgment to his extent is not sustainable."

18. Though alleged weapon of offence, i.e. a .30 bore pistol is also shown recovered for which appellant was separately tried by the trial court, admittedly the aforesaid pistol was neither recovered from the personal possession of the appellant nor he was arrested on the spot. It is the case of prosecution that the pistol was recovered on pointation of the appellant. However, it is part of the record as stated by PW-11 Saeed-ur-Rehman ASI, one of the marginal witnesses of recovery memo (*Ex.PW-8/10*) that the place of recovery is an open place accessible to anybody / public. Therefore, the said recovery is of no significance. Moreover, the occurrence is shown to have taken place on 26.01.2021 and the appellant was arrested on 05.02.2021 (as per card of arrest *Ex.PW-13/1*),

while the pistol was allegedly recovered on 06.02.2021 and sealed into parcel No.5. However, astonishingly as per Register No.19 (*Ex.PW-14/5*) the same was deposited in Malkhana on 26.01.2021, i.e. about 10/11 days prior to its recovery, which aspect of the case creates reasonable doubt with respect to recovery and safe custody of the case property. Hence, the same cannot be relied upon for the purpose of conviction.

19. Even otherwise, it is a settled that if prosecution fails to establish its case against an accused by producing unimpeachable, trustworthy, reliable and confidence inspiring eyewitnesses of the occurrence, mere recoveries of incriminating articles would be of no use to it. The Supreme Court of Pakistan in the case titled "*Muhammad Saleem v. Shabbir Ahmed and others*" reported as 2016 SCMR 1605 while dismissing an appeal against acquittal, observed as under:

> "…mere recovery of a weapon of offence matching with a crime-empty was not sufficient to provide corroboration to the other pieces of circumstantial evidence."

20. True that the FSL report (*Ex.PW-8/16*) shows that an empty of .30 bore allegedly recovered from the spot matched with the pistol allegedly recovered on the pointation of appellant. However, Javed FC No.375 (PW-1), who rushed to the spot alongwith PW-4/scribe of *Murasila* (*Ex.PW-4/1*) on receipt of information about the occurrence, stated during cross-examination that he has not seen any empty on the spot. Likewise, PW-4 Sajid Nawaz ASHO also stated during cross-examination that he has not seen any empty at the spot at the time of preparation of inquest report. Similarly, as discussed above the recovery of the pistol is also doubtful. Thus, when recovery of the empty from the spot is itself not free from doubt then the aforesaid FSL report becomes inconsequential.

21. Another important discrepancy in the case is that PW-4 did not bother to fill all the relevant columns of inquest-report including columns No.22 to 24, which also creates doubt in the prosecution case. The Supreme Court of Pakistan in the case titled "*Mst.Yasmeen v. Javed and another*" reported as 2020 SCMR 505, while dismissing an appeal against acquittal, observed as under:

> "3. …the relevant column of inquest report "brief history of crime",

> nothing is mentioned regarding facts of the case despite the claim of prosecution that matter was reported to police within three hours of the occurrence i.e. in the intervening night of 19/20.02.2005 at 1.00 a.m (night). This circumstance alone casts serious doubts about the veracity of prosecution case against the respondent and the claim of the eye-witnesses Mst. Yasmeen (PW5) and Mst. Kabalo (PW6) to have witnessed the occurrence."

22. Lastly, the motive. The *Crime Report* attributes the occurrence to a quarrel or altercation said to have taken place about one month prior between the deceased and the appellant. However, PW-6 (uncle of the deceased) stated nothing in his testimony regarding the alleged motive. During cross-examination, he admitted that he had not mentioned any motive either before the police or in Court. To establish motive, the prosecution produced PW-10 Zahid Nawaz, son of Ahmed Nawaz. He stated that he had participated in the funeral and *Dua* of the deceased and that he had met the police before recording his statement. Yet, he too said nothing about any prior quarrel

or motive when he first met them. His statement under Section 161, Cr.P.C. was recorded 10 to 12 days after the occurrence, which renders it of little evidentiary value. Even if believed, his version only refers to a cricket-match quarrel, which, according to him, had already been hushed up (**رفع دفع**). Such a trivial and stale matter could hardly provoke a sane adult of 28 years, serving as a government employee, to call a person out of his home and shoot him dead after a month. Accordingly, the prosecution has also failed to substantiate the motive alleged in the case. In the case titled "*Muhammad Asif v. The State*" reported as 2017 SCMR 486, the Supreme Court of Pakistan while acquitting the appellant in an identical case, has held as under:

> "15…There is a long line of authorities/precedents of this court and the High Courts that even one or two days unexplained delay in recording the statement of eye-witnesses would be fatal and testimony of such witnesses cannot be safely relied upon."

Further reliance in this regard is placed on the case titled "*Abdul Khaliq v. The State*" reported as 1996 SCMR 1553.

23. Whereas the prosecution failed to establish its motive against the appellant for commission of the offence, from the record, it transpires that the complainant party had sufficient motive to falsely implicate the present appellant for the commission of said offence. Record reveals as admitted by the complainant (PW-5) during his cross-examination that his father was charged in a case under section 302 PPC. He further stated that he cannot deny the FIR No.292/2019 lodged against him and FIR No.190 as well in Police Station Kot Najibullah. He further admitted it correct that FIR No.290 under section 9-C CNSA was registered against him in Station Kot Najibullah. He further admitted it correct that FIRs No.271 under section 9-D/2022 and No.394/2020 were registered at Police Station Kot Najibullah against his nephew Samiullah. Similarly, he admitted it correct that he has disputes in respect of possession of property with one Alamzeb and that during pendency of these cases, different FIRs were also registered against them. In

this regard, appellant's reply to question No.18 of his statement recorded under section 342 Cr. PC is also quite significant. He stated that since the dead body of the deceased was found abandoned with a condom attached to its penis it shows that he was done to death in a compromising situation by unknown assailant and since deceased's family suspected that all FIRs against them were lodged at the instance of appellant's father, the falsely implicated him. This offers a reasonable explanation, as opposed to the silence of prosecution, about the crucial aspects of the case shrouded in mystery. From the record, it transpires that the complainant party had sufficient motive to falsely implicate the present appellant for the commission of said offence.

24. Thus, the absence of FIR and its scribe from evidence, the doubts surrounding the drafting of *Murasila*, the doubtful presence of eye-witnesses (PW-5 and PW-6) at the spot, their unnatural conduct, the timing of report (15mins) *vis-à-vis* the time between injury and death (30mins), the unexplained disclosure of accused's identity and

motive at the time of reporting, the absence of the eye-witnesses from the hospital, the attempt to improve prosecution's case by introduction of Azhar Mehmood Shah (PW-7) while withholding Sardar Shah, the inconsistent medical evidence, the doubtful recoveries, the angle of the injury belying the ocular account, the non-establishment of motive, and, above all, the unexplained condom/ balloon recovered from the penis of deceased are all circumstances creating substantial doubts about mode and manner of death of deceased and the veracity of prosecution version. The benefit of each such doubt, the law requires, must go to the appellant. There is a plethora of judgments of the apex Court that for giving the benefit of the doubt it is not necessary that there should be multiple circumstances rather a single circumstance creating reasonable doubt in a prudent mind is sufficient for extending its benefit to an accused. In the case titled "*Obaidullah and 2 others v. The State and others*" reported as 2025 SCMR 1058, Hon'ble Supreme Court of Pakistan in an identical case, while acquitting the appellants, held as under:

> "It is by now well settled that if there is a single circumstance, which creates doubt in the prosecution case then the same is sufficient to acquit the accused, whereas the instant case is replete with number of circumstances, which have created serious doubts in the prosecution story."

Further reliance in this case is placed on the case titled "*Imtiaz Hussain Shah v. The State and others*" reported as 2025 SCMR 1110 and "*Muhammad Ashraf v. The State*" reported as 2025 SCMR 1082.

25. In view of foregoing facts and circumstances of the case, it is held that prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt, therefore, impugned orders/ judgments of the learned trial Court dated 13.12.2024 delivered in Case No.3/7 of 2021 and in case No.2/3 of 2021 being result of misreading and non-reading of entire evidence, are not sustainable in law. As such, this and the connected appeal No.200-A/2024 are allowed and the impugned convictions and sentence awarded by the learned trial court vide orders and judgments dated 13.12.2024 to appellant namely Muhammad Shoaib son of Muhammad Daud, in case FIR No.94 dated

21.01.2021 under sections 302 PPC read with section 15 of The Khyber Pakhtunkhwa Arms Act, 2013 Police Station Kot Najibullah Haripur are set aside and he is acquitted of the charges levelled against him. He be released from jail forthwith if not required to be detained in any other case.

26. Since appellant has been acquitted on acceptance of his appeals, therefore, his sentence of death referred through Murder Reference No.06-A/2024 by the learned trial court to this Court is **NOT CONFIRMED** and the same is replied **IN NEGATIVE**.

The above are the detailed reasons of our short orders of even date.

ANNOUNCED
14.10.2025.

(Jamil)

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