Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Cr.Appeal No. 179-A/2024

JUDGMENT

Date of hearing……**18.11.2025……...**

Appellant (Ajmal) By Barrister Syed Ahmad Khan, Advocate, Mr. Sajjad Afzal Khan, Advocate and Mr. Naveed Ahmad Khan, Advocate.

Respondents. (State) By Mr. Shoaib Ali, Assistant A.G
and (Complainant) By Mr. Atif Ali Jadoon, Advocate.

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AURANGZEB, J.- Through this judgment we shall also decide Murder Reference No.04-A/2024, and Criminal Appeal No.189-A/20254 as all the three matters have emanated from same judgment dated 13.11.2024 of the learned Additional Sessions Judge, Balakot delivered in case FIR No.98 dated 19.03.2022 under Sections 302 / 109 / 34 PPC of Police Station Garhi Habibullah, whereby appellant Ajmal has been convicted under Section 302 (b) PPC and sentenced to death as Tazir on two counts. In addition to the aforesaid punishment, he has also been fined of Rs. 500,000/ each payable as compensation under section 544-A of Cr.P.C to the legal heirs of both the deceased and in default of payment thereof, he shall undergo six months as Simple Imprisonment.

2. Through same judgment, the learned trial Court recorded findings of acquittal in favour of accused Mir Afzal, Junaid Iqbal, Muhammad Iqbal, Anas Iqbal, Muhammad Naveed, Zartash, and Muhammad Yasir and their acquittal has been assailed by the complainant through connected Cr.A No. 189-A/2024.

3. The facts of the case, as narrated in the First Information Report (FIR), are that the complainant, Ashfaq Ahmed, accompanied by Waqas Ahmed, reported the matter at the Emergency Ward of Ayub Teaching Hospital, Abbottabad, while carrying the dead bodies of his brother Mushtaq and of one Rowaid Ali. He stated that on the fateful day, at about 13:45 hours, he along with Muhammad Ahsan had gone to the shop of one Muhammad Khushal for mechanical repair of their jeep. The complainant and Muhammad Ahsan were standing outside the shop whereas Mushtaq and Rowaid were sitting inside. It is further alleged that in the meantime, four persons riding on two motorcycles arrived there, out of whom three had their faces muffled. One motorcycle stopped directly in front of the shop while the other halted at

some distance. At that moment, accused Ajmal alighted from one of the motorcycles with a firearm (Asliha Aatisheen) in his hand. He stood in front of the shop, noticed Mushtaq and Rowaid, confronted them, and loudly proclaimed that he had been searching for them, asking them to recite the *Kalma* before suddenly opening indiscriminate fire. As a result, both Mushtaq and Rowaid sustained firearm injuries and collapsed on the ground. Thereafter, accused Ajmal, along with the two co-accused having muffled faces, fled the scene while continuing to fire. The incident was allegedly witnessed by Muhammad Ahsan and Nisar Ahmed. People from the surrounding area gathered, and with their assistance the injured, who later succumbed to their injuries, were shifted towards ATH Abbottabad but died on the way. The stated motive behind the occurrence is the existing criminal litigation between the parties. On these allegations, the complainant nominated Ajmal along with three unidentified co-accused, leading to the registration of the instant FIR.

4. After the arrest of the accused and completion of the investigation, a complete

challan was submitted before the Court. The accused were formally indicted for the offences charged; however, they pleaded not guilty and claimed trial. In order to discharge its burden, the prosecution produced ten (10) witnesses in support of its case. Upon conclusion of the prosecution evidence, the statements of the accused were recorded under section 342 Cr.P.C, wherein they professed innocence and denied the allegations. After evaluating the evidence adduced during the trial, the learned trial Court convicted the appellant Ajmal of the charged offences and sentenced him while acquitting the remaining co-accused named above.

5. Arguments heard and record gone through.

6. Perusal of the entire case record reveals that the occurrence in question took place on 19.03.2022 at about 13:45 hours inside the shop of one Khushal, situated in the main bazar, Boi. The FIR was lodged on the same day at 18:10 hours, reflecting a delay of approximately five hours. According to the prosecution, the deceased Muhammad Mushtaq and Rawiad were sitting inside the

shop, whereas PW-4 Ishfaq Ahmad (the complainant and real brother of the deceased Mushtaq), PW-5 Muhammad Ahsan, and PW-6 Nisar (a relative of both the complainant and the deceased) were present outside the shop for the purpose of jeep maintenance. The prosecution case is founded primarily on the ocular account, supported by medical evidence and certain circumstantial elements. A detailed examination of the record brings several important aspects to the forefront: the delay in setting the criminal law into motion; the presence of the eye-witnesses at the scene despite their being chance witnesses whose presence requires reliable corroboration; the close relationship of the witnesses with the deceased, making their statements interested testimony requiring strict scrutiny; the degree of consistency between the medical evidence and the ocular version; the impact of the prosecution's failure to produce Khushal and other independent witnesses, who were natural witnesses to the occurrence; and the prosecution's assertion regarding the motive behind the incident.

In view of the foregoing discussion and upon careful examination of the material

available on record, the following points for determination logically emerge for consideration:-

Points for Determination

I. ***Whether the delay of approximately five hours in lodging the FIR has been satisfactorily explained?***
II. ***Whether the presence of the alleged eye-witnesses stands established from the circumstances of the case, or they are chance witnesses requiring independent corroboration?***
III. ***Whether the eye-witnesses, being related or interested, have deposed truthfully and their testimony can safely be relied upon after careful scrutiny?***
IV. ***Whether the medical evidence supports the ocular account, and the non-production of Khushal and other independent witnesses creates doubt in the prosecution case?***
V. ***Whether the prosecution has successfully proved the motive behind the occurrence?***
VI. ***Whether the conviction and sentence awarded to the accused are sustainable in law?***

7. The record indicates that the incident occurred on 19-03-2022 at approximately 13:45 hours inside the shop of one Khushal, situated in the main bazar, Boi. The FIR, however, was lodged at 18:10 hours on the same day, reflecting a delay of about five hours. According to the prosecution, the deceased Muhammad Mushtaq and Rowiad

were inside the shop, whereas PW-4 Ishfaq Ahmad (the complainant and real brother of the deceased Mushtaq), PW-5 Muhammad Ahsan, and PW-6 Nisar (a relative of both the complainant and the deceased) were present outside, allegedly engaged in the maintenance of a jeep. The prosecution primarily relies upon the ocular account, supported by medical evidence and certain circumstantial elements. The statements of PW-4, PW-5, and PW-6, recorded before the learned trial Court, attempt to justify the delay in lodging the FIR. These witnesses, being closely related to the deceased, claim to have been outside Khushal's shop at the time of the incident. According to them, immediately after the occurrence, they, along with other persons who had gathered at the scene, transported the injured deceased to Boi D Hospital, located nearby. PW-4 stated that he is Class-IV employee in Boi D Hospital, while PW-6 Nisar was a medical technician. They further stated that first aid was administered at Boi D Hospital before the deceased was shifted to ATH Abbottabad, where he succumbed to his injuries en-route. Despite acknowledging that the police station Ghari

Habibullah was on the route, the witnesses admitted that they did not report the incident to the police. They further acknowledged that their hands, clothes, and the jeep were smeared with the blood of the deceased, yet none of these were produced to the police during investigation. No medical chit, treatment record, or any documentary evidence from Boi D Hospital was produced, nor was any medical officer from the hospital examined. The complainant also failed to provide a description of the weapon of offence in the FIR. The unexplained delay in lodging the FIR, combined with these omissions, contradictions, and the non-production of material evidence, seriously undermines the prosecution's case. It is a settled principle of criminal jurisprudence that a substantial and unexplained delay in lodging the FIR raises suspicion, as it allows opportunity for consultation, deliberation, and potential embellishment. In the present case, this delay gains further significance considering the complainant's own statement that the deceased had previous enmity with the appellant. In such circumstances, the delay in reporting the incident to the

authorities casts serious doubt on the credibility and reliability of the prosecution case, particularly on the allegation of a premeditated act of violence by the appellant. The Honourable Supreme Court of Pakistan in case titled **Amjad and another versus The State (2025 SCMR 1388)**, wherein it was held that:-

> “At the very outset, we note that there was a considerable delay of more than 31-1/2 hours in lodging of the FIR. It is also a matter of record, rather it is an admitted position on the part of the complainant, that the FIR was registered after due consultation with Ghulam Mustafa, Ali Gohar and the local police. From the deposition of Ali Hyder (PW-1), it is evident that the postmortem of the deceased was conducted before lodging of the FIR. He has admitted that after leaving the dead body at the spot he did not go to the Police Station for lodging of the FIR rather he went to the Nekmard Ghulam Mustafa and his uncle Ali Gohar to inform them about the incident. Even after picking the dead body from the spot he made no effort to lodge the FIR as again he went to the Hospital and had the postmortem conducted and, finally after completing the burial of the deceased, thereafter he went to the Police Station for lodging the FIR, causing a delay of 31-1/2 hours. The word FIR, stands for "First Information Report", which is to be lodged at the very initial stage of the incident so that the legal process may be put into motion. In the instant case however, the FIR

> was registered after the above-mentioned events i.e. informing Ghulam Mustafa and Ali Gohar so also the co-villagers, taking them to the spot, taking the deceased's body to the Hospital, getting postmortem and medical checkup done and finally the burial of the deceased. It was only after all these episodes that the FIR was lodged after due consultation and preliminary investigation/enquiry of the Police of the spot, which, in our opinion, has put a major dent on the case of the complainant as well as that of the prosecution."

Further reliance is placed another judgment of the apex court delivered in case titled **Khizar Hayat versus The State (2025 SCMR 1339)**, wherein it was held that:-

> "The occurrence in this case had taken place during the night and although the prosecution had mentioned availability of torch with the prosecution witnesses at the spot yet admittedly no torch had been secured during the investigation of this case. Thus, the claim of the above alleged eye-witnesses regarding identification of culprits with graphic details of the incident appears to be a claim which can be accepted only with a lump of salt. Similarly, the occurrence which became the foundation stone of the case took place on 30.11.2009 at about 9:00 p.m. According to the record, the police station Haveli Karanga is situated at a distance of approximately 9 miles from the crime scene. However, the matter was brought to the notice of local police through the statement of Muhammad Ramzan (PW-10) recorded on

> 01.12.2009 at about 1:05 p.m. after a delay of about 14 hours without any justifiable explanation, thus, a possibility regarding deliberations before lodging of the FIR could not safely be ruled out of consideration."

8. The principal reliance of the prosecution in this case is upon the statements of three closely related individuals, namely PW-4 Ishfaq Ahmad (the complainant), PW-5 Muhammad Ahsan, and PW-6 Nisar Ahmad, all of whom claimed to be eyewitnesses to the incident. According to PW-4, he and PW-5 were present at Khushal's shop for the maintenance of a jeep, and while they stood outside, the deceased Muhammad Mushtaq and Rowaid were seated inside the shop. PW-4 further narrated that two motorcycles, each carrying two persons, approached the shop, three of whom were muffled. One motorcycle stopped directly in front of the shop, while the other halted at some distance. He stated that the appellant Ajmal alighted from the motorcycle near the shop, armed with a firearm, shouted at the deceased to recite Kalma, and opened fire, causing the deceased to fall injured. PW-4 also asserted that the remaining three masked individuals fired shots as well, after

which all four assailants fled the scene. PW-5 and PW-6 furnished substantially similar accounts. Upon careful scrutiny, several aspects of their testimony raise serious doubts regarding their presence at the scene of the incident. These witnesses, being closely related to the deceased, cannot be treated as independent eyewitnesses, and their presence at the spot has not been established by the circumstances of the case. In criminal jurisprudence, evidence of chance or interested witnesses is always treated with caution. When such witnesses claim to have witnessed the incident, their presence must be independently corroborated by circumstances that render their testimony credible. In the present case, the prosecution has failed to place any material evidence on record to corroborate the claimed presence of PW-4, PW-5, and PW-6 at the relevant time. During cross-examination, PW-4 and PW-6 admitted that they were on duty at Boi D Hospital, with PW-6 serving as a medical technician and PW-4 employed as Class-IV staff. PW-5, who is a driver, was accompanying the complainant at the hospital. Their attendance was duly marked in

the hospital records, indicating that it is highly improbable that they could have been present at Khushal's shop at the relevant time. Further contradictions emerged in their statements. PW-5 stated that PW-4 came to the spot only to deliver milk for his child, directly contradicting PW-4's statement in the FIR that they had jointly come for the purpose of vehicle repair. Such a fundamental discrepancy regarding the reason for their presence at the scene seriously undermines the prosecution's version. These factors demonstrate that the prosecution witnesses were chance witnesses whose presence at the scene of the occurrence remains unproved. Their testimony cannot, therefore, be relied upon without independent corroboration. The inconsistencies, contradictions, and failure to establish presence at the scene render the ocular account of PW-4, PW-5, and PW-6 inherently unreliable. Consequently, the prosecution has failed to establish the presence of its principal eyewitnesses, significantly weakening the foundation of its case. Reliance is placed on the judgment of apex court rendered in case titled **Abid Ali and 02 others versus The**

State (2011 SCMR 208), wherein it was held that:-

> "19. We have thoroughly discussed the statements of two eye-witnesses claiming to be present at the scene of crime but they on their own admissions were chance witnesses and have admitted their enmity with the appellants. Both these witnesses could not reasonably explain their presence with the deceased Muhammad Azam rather their conduct runs against the natural behaviour of normal human, therefore, their testimonies appears to be unbelievable in the circumstances of the case.
> They are also belied by the site plan wherein blood was taken up from the ground and neither any cot having stained with blood was found at the spot by the Investigation Officer nor the same was produced before him.
> 20. The two courts below have held that P.W. Muhammad Javed is not dishonest witness. We could not agree with such findings of two Courts below on this issue because it has been admitted by this P.Ws. in cross-examination that his brother Ijaz was charged along with deceased Muhammad Azam for the murder of Muhammad Asif, therefore, he will be on inimical terms with the accused/appellants. Another aspect as we have considered is that he is a partisan witness because of his involvement in number of criminal cases wherein he was co-accused with deceased Muhammad Azam.
> 21. To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be universal principle that in every case

> interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on the scene of crime and that he is making true statement. A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement which is illogical and unbelievable, no prudent man despite his nobility would accept such statement.
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> 22. As a rule of criminal jurisprudence, prosecution evidence is not tested on the basis of quantity but quality of the evidence. It is not that who is giving the evidence and making statement; what is relevant is what statement has been given. It is not the person but the statement of that person which is to be seen and adjudged.
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> 23. We for the above reasons are firmed to believe that the two eye-witnesses who claimed to be present at the scene of crime were not present there and their testimonies are not believable."

Further reliance is placed on the judgment of august court rendered in case titled **Nadeem alias Nanha alias Billa Sher versus The State (2010 SCMR 949)**, wherein it was held that:-

> "Complainant and other eyewitness were chance witnesses as they should not normally be present at the place of occurrence; it was difficult to rely upon statements of such witnesses being chance and interested witnesses---In order to convict accused for murder court must be satisfied first that

> the murder was committed then it must be satisfied that accused had committed murder--- Question of sentence demanded utmost care on the part of court dealing with life and liberties of accused person---Prosecution withheld evidence of an eyewitness and real son of deceased did not make any statement about motive--No independent witness of locality, which was a Bazar, where incident took place, joined and the same had made prosecution case doubtful---Any genuine doubt arising out of circumstances of the case should be extended to accused as of right and not as concession---Prosecution failed to prove case against accused beyond shadow of doubt."

9. A careful examination of the record reveals another factor that casts serious doubt on the prosecution case, namely the conduct of the witnesses. PW-4 did not accompany the investigation officer to the spot at the time of the site inspection, nor did he point out any place or mark of the occurrence. PW-10, the investigation officer, conceded during cross-examination that the complainant was not present at the time of the site inspection. It further appears from the prosecution evidence that material evidence, including the jeep allegedly involved and the blood-stained garments of the eyewitnesses smeared with the blood of the deceased, was

never produced. The complainant admitted that his brother and other relatives of the witnesses did not communicate with one another before the occurrence, did not exchange any words, and were not present with the doctor during the preparation of the post-mortem report. Such conduct is wholly unnatural for a real brother of one of the deceased, who claims to be a direct eyewitness. A natural eyewitness, in such circumstances, would have insisted on accompanying the investigation officer to guide him regarding the precise details of the incident. The place of occurrence is situated in a busy commercial market. The site plan shows that the shop is surrounded by several other shops, a hotel, and a bank. Yet, not a single independent witness, including shopkeepers, vendors, passers-by, or residents, was produced to corroborate the prosecution version. More significantly, the prosecution withheld the testimony of Khushal, the owner of the shop where the occurrence allegedly took place. Khushal was the most natural and independent witness, yet he was not produced at trial. During arguments, the counsel for the complainant

was asked why Khushal had not been produced as a witness. It was stated that a statement of Khushal under Section 161 Cr.P.C had been recorded. When this statement was read, it transpired that Khushal did not support the version advanced by the prosecution; on the contrary, his statement contradicted the prosecution narrative and revealed that PW-4 and PW-5 were not present at the spot at the relevant time. Furthermore, the record reveals that at the relevant time the witness namely Khushal was positioned underneath of the vehicle, a fact clearly reflected in his statement recorded under section 161 Cr.P.C, in that statement, he categorically stated that due to being under the vehicle he could neither see the surrounding situation nor observe who fired the shots. The withholding of such material evidence, which constitutes the best evidence capable of establishing the truth, together with the unnatural conduct of the eyewitnesses, casts grave doubt on the credibility and reliability of the prosecution case. The inconsistencies in the statements of PW-4, PW-5, and PW-6, and the non-production of independent and material witnesses

significantly undermine the foundation of the prosecution narrative. In the circumstances, reliance upon their ocular account would be unsafe, and the prosecution has failed to establish the presence and reliability of its principal eyewitnesses. Reliance is placed on the judgment of Honourable Supreme Court of Pakistan rendered in case titled **Imitiaz Hussain Shah alias Tajjay Shah and another versus The State and others (2025 SCMR 1110)**, wherein it was held that:-

> "We started from Sargodha by train at about 4.35 P.M. for Malikwal and reached there at about 06.30 p.m. We had not taken meal in Malikwal. We had only taken cold drinks which were provided by the deceased from the shop of Muhammad Razaq.
> It seems quite improbable that the appellants were waiting for the arrival of the alleged eye-witnesses to reach the spot and then to initiate the occurrence so that they stood eye-witnesses against them. The inordinate delay in postmortem examination of the deceased coupled with the fact that none of the eye-witnesses is the identifier of the dead body of the deceased as well as their unnatural conduct like silent spectators at the time of occurrence are the strong circumstances which make their presence at the spot highly doubtful. The alleged eye-witnesses have not established their presence through some strong and physical circumstances. Medical

> evidence is also in conflict with the ocular account. According to the alleged eye-witness the deceased sustained four firearm entrance wounds whereas according to medical Officer he noticed three firearm entrance wounds on the person of the deceased. The occurrence took place in front of the shop of Muhammad Razaq, therefore, he was the most material and impartial witness of the occurrence and he could have at least confirmed the presence of the alleged eye-witnesses at the spot at the time of occurrence. However he was abandoned by the prosecution for no apparent reason. Under Article 129(g) of the Qanun-e-Shahadat Order, 1984, an adverse inference can be drawn that if he had testified, his statement would not have supported the prosecution's case. Reliance is placed on the case of "Mst. Saima Noreen v. the State" (2004 SCMR 1310). Further reliance may also be placed on cases reported as (PLD 2011 SC 554, 2020 SCMR 1493, 2021 SCMR."

10. The prosecution evidence regarding the occurrence suffers from serious omissions and inconsistencies, particularly concerning the motorcycles, the description of the assailants, and the investigation process. The eyewitnesses claimed that two motorcycles were involved in the incident, and that all the accused, except the appellant Ajmal, were masked. However, during cross-examination, the complainant admitted that he did not record the colour, make, model, registration

number, or any distinguishing features of the motorcycles in the FIR. The investigation officer also confirmed that neither the murasila nor any other investigation record contained such particulars. In the absence of these essential identifying details, any subsequent claim of recovery becomes inherently doubtful and artificial, as it cannot be reconciled with the omissions in the original report. The credibility of the ocular witnesses is further undermined by their inability to provide any description of the masked assailants. PW-4, PW-5, and PW-6 did not furnish any information regarding the assailants' approximate height, age, build, complexion, clothing, or mannerisms. The investigation officer also admitted that no such particulars were recorded in the FIR or the murasila. These omissions are highly significant, as it is difficult to accept that eyewitnesses who claim to have seen masked persons firing at them and their loved ones from close range would be unable to describe even basic features or clothing of the assailants. Further, the complainant, in a supplementary statement recorded on 12.04.2022, implicated six additional persons

for vicarious liability under Section 34 PPC and for abetment under Section 109 PPC, without disclosing the source of his information and without conducting any identification parade. At the time of the original report, the complainant had stated that, except for the appellant Ajmal, the other three accused were masked. The learned trial court subsequently acquitted all other accused, leaving only the present appellant under conviction. Another important aspect of the investigation concerns the CCTV footage. The investigation officer filed an application, Ex. PW8/8, for obtaining the CCTV footage installed in front of the National Bank, which is shown on the site plan. However, the investigation officer neither collected the CCTV footage nor produced it before the court. The non-production of such potentially material evidence further casts doubt on the thoroughness and reliability of the prosecution case.

11. These cumulative deficiencies, unexplained presence, contradictory reasons for presence, non-production of the Jeep, unnatural conduct, withholding of independent witnesses, and absence of identifying

particulars, cast a heavy shadow on the credibility of the ocular version. When the entire prosecution is based primarily on direct eyewitness account, and such account does not pass the test of reliability, it cannot safely be made the basis of conviction.

12. Turning to the medical evidence, it significantly contradicts the prosecution's narrative rather than supporting it. According to all three ocular witnesses, the firing was done with a 12-bore firearm. PW-5 specifically stated in cross-examination that two 12-bore cartridges were recovered from the scene , one from inside the shop and one from outside. This testimony suggests that the homicide was committed with a shotgun. However, the medical officer who conducted the postmortem stated that he retrieved two metallic bullets from the bodies of each deceased, one from the inguinal region and another from the medial thigh area. A 12-bore shotgun, being a smooth-bore weapon, does not discharge metallic bullets; it fires pellets or, at most, a slug, but not metallic jacketed bullets. This medical finding is, therefore, entirely inconsistent with the prosecution's claim that a 12-bore firearm was used. In a

case of murder, where the type of weapon is a crucial factor, contradictory medical evidence completely weakens the prosecution's stance. Moreover, the I.O. did not establish from where precisely the empty cartridges were recovered, nor did he prepare any sketch or measurement. There is no explanation for how metallic bullets were found in the bodies while only 12-bore empties were recovered. These omissions are not minor; they strike at the heart of the prosecution case and demonstrate that the story of the eyewitnesses does not align with scientific and medical realities. In criminal law, when medical evidence directly conflicts with the ocular account, and when the prosecution fails to resolve the inconsistency, the benefit must necessarily go to the accused. Here, the contradiction is not trivial; it is fundamental and structural, affecting the entire prosecution edifice. In the case of **Muhammad Nawaz versus the State (2025 SCMR 1053)**, the apex court held that:-

> "Reason mentioned by prosecution eye-witnesses for their presence at place of occurrence, which was situated in a different village could not be established---It was not safe to rely upon such evidence--- Conflict between ocular account

> and medical evidence showed that infact prosecution eye-witnesses were not present at the spot at the relevant time---If eye-witnesses had been present at the time of occurrence they should have given correct number of injuries sustained by deceased---Prosecution failed to prove its case against accused beyond shadow of doubt---Even a single circumstance, which creates doubt in prosecution case, is sufficient to acquit accused---Case against accused was repleted with number of circumstances, which had created serious doubts in prosecution story."

13. The prosecution case is further weakened when considered in the context of forensic and circumstantial evidence. Several key pieces of circumstantial evidence were either not produced or were withheld by the prosecution without any satisfactory explanation. The alleged recovery of a motorcycle and two empty 12-bore shells from the spot, as well as one pellet from a wooden box at the place of occurrence, were recorded; however, the appellant Ajmal was not arrested until 31.05.2022, more than two months after the incident. The purported recovery of a 12-bore and a 30-bore pistol from the house of the appellant, neither of which were in his personal possession and both unlicensed, raises further doubts

regarding the reliability of the prosecution version. From a forensic standpoint, no evidence was produced to establish that the recovered firearms or ammunition were actually used in the commission of the crime. Similarly, no independent forensic report, ballistic analysis, or fingerprint examination was made available to corroborate the recovery. The absence of such crucial forensic verification renders the evidentiary value of these items highly questionable. From a circumstantial perspective, the chain of events linking the appellant to the recovered items is weak and uncorroborated. The delay in the arrest, the lack of immediate recovery from the accused's personal possession, and the absence of independent witnesses or documentation to support the recovery, all weaken the prosecution narrative. In criminal jurisprudence, reliance on circumstantial evidence requires a complete chain of facts connecting the accused to the offence beyond reasonable doubt. In the present case, the missing links in the forensic and circumstantial evidence create serious doubt regarding the involvement of the appellant. In view of these

factors, the alleged recovery and related circumstantial material cannot be treated as reliable evidence to sustain a conviction, and without independent corroboration, reliance on such evidence would be unsafe and unjust.

14. Lastly, the motive alleged by the prosecution was the existence of previous criminal litigation between the parties. However, this assertion remained unsubstantiated. Not a single FIR, challan, judgment, rapat, or even a simple police roznamcha entry was brought on record to establish any hostility. Motive, therefore, remained completely unproved. Even otherwise, where the ocular account is unreliable and the circumstantial evidence is weak, failure to prove motive becomes an additional and serious setback for the prosecution. It is well-settled that if direct evidence is doubtful and motive is not established, the prosecution case cannot stand.

15. In view of the above analysis, including doubtful presence of eyewitnesses, contradictions in their testimony, unnatural conduct, withholding of natural witnesses,

inconsistency between medical and ocular evidence, absence of forensic corroboration, failure to produce hospital or CCTV records, doubtful recovery of motorcycles, and complete failure to establish motive, the prosecution case becomes riddled with reasonable doubt. Under settled principles of criminal law, such doubt must operate in favour of the accused. The apex court in recent judgment rendered in case titled **Imtiaz Hussain Shah alias Tajjay and another versus The State and others (2025 SCMR 1110)** has held that for giving benefit of 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 accused. The relevant paragraph is reproduced for ready reference:-

> “On reappraisal of the evidence on record we have arrived at an irresistible conclusion that the prosecution has miserably failed to prove guilt of the appellants through cogent and confidence inspiring direct and circumstantial evidence. The prosecution's evidence is riddled with doubts, benefit of which must be extended to the appellants not as a matter of grace or concession but as a matter of right. It is settled principle of law 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. Reliance is placed on the cases of "Muhammad Mansha v. The State" (2018 SCMR 772) and Najaf Ali Shah v. The State (2021 SCMR 736)."

16. It appears from the case record that the prosecution by suppressing material facts from the court has given a distorted picture of the occurrence which is not only far from the reality but has brought its case under heavy clouds. It is a cardinal principle of criminal law that in order to bring home guilt to an accused, the prosecution must prove its case beyond reasonable doubt and if any slightest doubt occurs, then its benefit must be given to the accused, which principle is fully applicable to the present case.

17. The learned trial court has not appreciated the case evidence in its true perspective and has fallen in error to record convictions of the appellants for which its judgment is not sustainable.

18. For what has been discussed above, this appeal is allowed and the appellant Ajmal is acquitted of the charges leveled against him while and connected Cr. A No. 189-

A/2024 filed by compliant is dismissed. The Murder Reference, sent by the learned trial court, for confirmation of death sentence of convict namely, Ajmal, is answered in the negative.

Above are the detailed reasons for our short orders of the even date.

Announced:
18.11.2025

J U D G E

J U D G E

Hon'ble Mr. Justice Sadiq Ali
Hon'ble Mr. Justice Aurangzeb

*Aftaf PS/**