

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Crl. Appeal No. 26/2015**

Raja Muhammad Yaseen  
Vs.  
Muhammad Zeeshan and others.

Appellant	In person.
Respondents by:	Raja Faisal Younas, alongwith respondents No. 1 & 2.
State by:	Mr. Husnain Haider Thaheem, State Counsel. Muhammad Ishaq Khan, S.I.
Date of Hearing:	24.07.2020.

**MOHSIN AKHTAR KAYANI J.** Through this Criminal Appeal, the appellant has assailed the judgment dated 27.01.2015, passed by learned Judicial Magistrate, Section 30, Islamabad, whereby respondents No. 1 & 2 have been acquitted in criminal case FIR No. 28, dated 17.03.2012, U/s 335/324/341/34 PPC, P.S Nilore, Islamabad.

2. Brief facts referred in the instant appeal are that the appellant Raja Muhammad Yasin had lodged the complaint Exh.PA to the S.H.O, P.S Nilore, Islamabad with the allegation that on 16.03.2012, his son Raja Muhammad Safeer, who is police employee alongwith his son Ali and his wife Mst. Iram visited the doctor on their vehicle. At about 09:30 pm, when they reached on the main road of Village Mohri, the road was blocked by placing stones and bricks. Two persons were seen and identified by them as Zeshan alias Shani S/o Parvez, Village Mohra and Arshad S/o Musarat, Village Ara, who raised *Lalkara* and asked them to hand over everything. In the meanwhile three unknown persons were seen who were standing at some distance, however they could not be identified, that Raja Muhammad Safeer slightly reversed his vehicle, whereupon both the accused persons opened fire which landed on the front of the vehicle and when vehicle was turned, Zeshan and Arshad Mehmood fired on the back side of the vehicle, which landed on lower side of

his son in the back and neck, resultantly, he could not control the vehicle and the same hit the tree, whereupon, his wife and son were also injured. The complaint was converted into F.I.R Exh.PJ. The injured were taken to hospital and the appellant's son was treated for his injuries. The Investigation Officer took the fire empties from the place of occurrence. Prepared the site plan and also took the pictures of the vehicle bearing registration No. LXN-2973, Mehran white color driven by the victim/injured prosecution witness through Exh.P1 to Exh.P7. The respondents accused were arrested in the said criminal case and after thorough investigation, they were challaned in this case, whereby prosecution produced 11 witnesses, and after recording the statement U/s 342 Cr.P.C, the trial Court acquitted the accused/respondents from the abovementioned criminal case through the impugned judgment.

3. Appellant in person contends that learned Trial Court has not considered the testimony of injured PWs, who remained consistent and unshaken in the course of cross-examination; that all the pieces of evidence fully establish the guilt of the respondents accused; that ocular account furnished by the prosecution witnesses has been discarded due to the negligence and misconduct of the Investigation Officers, who have neither taken the vehicle in custody nor produced the same before the Court. Although the injured Raja Muhammad Safeer/PW-1 and Mst. Sofia Iram/PW-2 have been cross-examined at length and they have explained the entire incident and even identified the respondents accused persons, who are known to them. The injuries have been corroborated by Dr. Tanvir Afsar/PW-7 and the Investigation Officer has confirmed the involvement of respondents/ accused persons, but learned Trial Court has taken a different view on assumptions, hence the appeal may be allowed and respondents be convicted for the heinous crime of attempt to murder.

4. Conversely, learned Counsel for the respondents contends that no illegality has been observed in the trial, rather prosecution has failed to justify the identification of the accused persons and the alleged incident was not occasioned in a mode and manner referred by the appellant, rather it is an

attempt of dacoity, which has been converted into attempt of murder against the respondents accused persons, due to enmity between the parties. He further contends that eye-witness /PW-2 has taken a different view and version from Raja Muhammad Safeer/PW-1, which was made basis of the acquittal of the respondents, even motive has not been established through an independent means and as such the entire case is full of doubts, especially when the weapon i.e. pistol was not recovered in this case during the course of investigation.

5. Arguments heard and record perused.

6. Perusal of record reveals that the appellant had lodged the criminal case F.I.R No. 28, dated 17.03.2012, U/s 335/324/341/34 PPC, P.S Nilore, Islamabad Exh.PJ on the basis of his complaint Exh.PA on the date of occurrence i.e. 16.03.2012 with the contention that his son Raja Muhammad Safeer took his son for medical treatment alongwith his wife Mst. Sofia Iram. After visiting Doctor, they were on their way back to home in their vehicle. At about 09:30 p.m, the moment they reached on the main road of Village Mohri, they noticed that someone has blocked their way by placing stone and bricks on the road. Two persons were seen and identified by them as Zeshan alias Shani S/o Parvez, resident of village Mohra and Arshad S/o Musarat, resident of village Ara. Both the accused persons stopped them and demanded to handover the belongings. At some distance three other persons were also present, who were unknown to him. The complainant's son namely Raja Muhammad Safeer/PW-1 reversed his vehicle, on which both the accused opened the fire, which landed on the front side of the vehicle, and when he succeeded to turn the vehicle the accused persons started firing from back and the complainant's son Raja Muhammad Safeer sustained injury on his back and neck, as a result whereof the vehicle collided with a tree, whereby Raja Muhammad Safeer, his wife and minor son were injured. Partial investigation was conducted by Muhammad Akbar S.I/PW-8 recorded the statement of witnesses, prepared site plan (Exh.PN), recovered the empties of .30 bore and 9mm pistols vide recovery memo Exh.PD and also photographed motor car

damaged during the incident and took the photographs into possession vide recovery memo Exh.PE and same were extracted from Exh.P1 to Exh.P7, the injured prosecution witnesses was given treatment by Dr. Tanvir Afsar/PW-7, who appeared in witness box and stated that the victim Raja Muhammad Safeer was produced in injured condition by the local police, P.S Nilore, who was examined via MLC No. 549. He was firstly attended by Dr. Saima and Dr. Bilal. The following injuries have been recorded in the MLC Exh.PK.

- Injury No.1 on left scapular region of 1x1 c.m.
- Injury No.2 near the back bone and hemotoma on the left side of chest 8x8 c.m.

7. After initial investigation, the matter was transferred to Muhammad Akbar S.I/I.O/PW-8, who has submitted the challan. The Trial Court after recording the evidence of the 11 prosecution witnesses acquitted the respondents accused from the abovementioned case through the impugned judgment dated 27.01.2015.

8. The appellant and the counsel for the respondents have been heard in detail. The following factors have been noted by the Trial Court, which were made basis of the judgment of acquittal of the respondents:-

*“The evidence of prosecution case is based on the information furnished to the local police by PW-3, through written report as Exh.PA, but as discussed above his narration before the local police could not find cross corroboration from prosecution evidence, this aspect of the case, if looked into in line with the stance of the defence that the accused had falsely been implicated in the instant case, due to enmity between the parties over the “Rishta” of the daughter of complainant Mst. Shumaila, which they have substantiated through testimony of PW-8, the investigating officer of the case as well as PW-2, then undoubtedly it would create a dent in the prosecution story and the stance of false implication of accused in the case could not be rule out altogether.*

*The investigating officer of the case been able to take the vehicle in question into possession during the course of his investigation but he did not do so. While appearing in the witness box as PW-8, Muhammad Akbar SI admits that during the course of his investigation, he had not taken the vehicle into possession. When questioned about the justification for his not doing, so he had not afforded any reason much less of plausible one.*

*Though few photographs had been exhibited during the course of evidence of the prosecution as PW-1 to PW-7 but in absence of features of the car being given in complaint as Exh.P/A coupled with the fact of its not seizure by the investigating officer during the*

course of investigation, it cannot be said with certainty that the photographs pertain to vehicle being used by victim during the course of occurrence.

Now, here there were two main question raised by learned defence counsel. No.1, if as per stance of the prosecution the victim Raja Muhammad Safeer reversed his car after being fired upon by the accused then how did he sustained injuries on his back and neck and no.2, if he had not reversed the vehicle and had turned that towards the house of Ijaz shown in the as Exh.P/N, then how it was possible for him to identify the accused from their car, while they were present at point no.2 & 3 in the site plan as Exh.P/N. These questions are to be examined in light of prosecution evidence.

To resolve the controversy, I would make a reference to the cross examination of the investigation officer, who had deposed before court as PW-8 and who is scribe of the site plan Exh.P/N. Who had admitted in his cross examination that in case of turning of vehicle by victim towards the house of the Ijaz, it was not possible for him/them to identify accused, standing at point no.2 and 3. Besides this, admission on the part of investigating officer, if even otherwise, the site plan is looked into the house of Ijaz and points no.2 and 3 are shown in opposite direction to each other and in case of turning of the vehicle by victim towards said house and colliding of vehicle with a tree at point no.4, the possibility of accurate identity of the accused seems to his count improbable.

The last aspect of the case is recovery of alleged empties from spot via recovery memo as Exh.P/D and as Exh.P/D/2. Admittedly the weapon of offence had not been recovered by the accused from possession of the accused or from any place at the pointation of the accused. The empties so recovered have not been sent to ballistic expert for determining the caliber of the weapon from which those were being fired. The stance of the prosecution is that after commission of offence, the accused throw away their pistols in Rawal Dam and later-on, during the course of investigation accuse pointed out the place to local police where the pistols were thrown by them and this fact recorded by local police by preparing memo as Exh.P/P. “

9. In order to resolve the controversy, it is necessary to go through the evidence of the prosecution, which includes the testimony of injured Raja Muhammad Safeer, who appeared as PW-1 and recorded the stance in the following manner:-

بیان کیا کہ میں مستقل رہائشی چراہ کا ہوں میں اسلام آباد پولیس میں بطور کانسٹیبل ڈیوٹی سرانجام دیتا ہوں۔ میں 16.03.2012 کو اپنی بیوی صوفیہ ارم کے ساتھ بوقت تقریباً 09:00 رات اپنے بیٹے علی کی دوائی کیلئے ڈاکٹر کے پاس لے کر گاؤں گیا۔ واپسی پر اپنی بیوی اور بیٹے کے ہمراہ اپنی گاڑی پر موری کے راستے تقریباً 0930 بجے کے قریب جب میں مین روڈ چراہ چکی کے پاس پہنچا۔ مین روڈ جام تھی جو کہ پتھروں سے بند کیا ہوئی تھی۔ میں نے گاڑی آہستہ کی دو نوجواں سائے آ گئے اور انہوں نے گاڑی پر فائرنگ پشٹل سے کی جو کہ گاڑی کے بھرپر لگے میں نے گاڑی کو reverse کیا موڑتے ہوئے ہیڈ لائٹس سے ان دونوں نوجوانوں کی شناخت کرلی۔ جن میں سے ایک کا نام ذیشان ولد پرویز جو کہ ہمارے محلے میں رہتا ہے دوسرا ارشد محمود ولد مسرت تھا۔ جو کہ اسکا دوست ہے۔ دونوں ملزمان درست طور پر شناخت کر لیا۔ میں نے گاڑی کو موڑتے ہوئے بھگانے کی کوشش کی جس پر ملزمان نے پیچھے سے فائر شروع کر دیئے دو فائر میری کمر پر (پیٹ) لگ گئے اور پیٹ پر

لگنے سے میرے نیچے والے حصے نے کام کرنا چھوڑ دیا گاڑی کے escalator پر میرا ہیر تھا جو دھا رہا اور گاڑی تیزی سے بھاگنا شروع ہو گئی اور کچھ فاصلے پر جا کر درخت سے ٹکرا گئی گاڑی کے درخت سے ٹکرانے سے تمام شیشے ٹوٹ گئے میرا بیوی اور بچہ دونوں زخمی ہو گئے۔

10. PW-1 acknowledged that his sister Shumaila was married to Habib ur Rehman in the year 2012 and his sister has filed the suit for jactitation of marriage against Zeshan, which was filed after the alleged incident, however, he denied the suggestion of accused side that Zeshan was married to Shumaila with consent through the Court marriage, he even denied the suggestion that Arshad Mehmood is witness of the said Nikah. The marriage came to his knowledge three months after the incident, he contended that the Nikahnama was fake. He admitted that Zeshan accused has filed an application against his family members including the parents that they are executing the Nikah of Shumaila, despite the fact that they were already married, but the said application was submitted after one year of the incident. PW-1 acknowledged that the vehicle, in which he was present on the day of occurrence belongs to his brother, but he has not informed the Investigation Officer regarding make, model and registration number of the vehicle. PW-1 has seen the stones and boulders lying on the road from 15 to 20 feet, when lights of the vehicle were on, and the only source of light was the car light as no street light was available in the area. He heard 7 to 8 fires and reversed his vehicle towards house of Ijaz. He has neither referred the clothes of the accused persons nor even explained the features of three unknown persons, who were not identified. PW-1 has not informed that which accused has made number of fires, however, he confirms that he was at the mercy of the accused persons if they intended to murder him easily, when the vehicle was stopped. PW-1 has confirmed that the vehicle was present in the house and he has not given any repair documents to Investigation Officer as the same were not demanded by Investigation Officer.

11. The star witness of this case Mst. Sofia Iram, the wife of PW-1 Raja Muhammad Safeer, appeared as PW-2 and while narrating the stance of PW-1 Raja Muhammad Safeer, categorically stated that:-

گاڑی کے ہیڈ لائٹس کی روشنی میں میں اور میرے شوہر نے دونوں نوجوانوں کو شناخت کر لیا ان میں سے ایک زیشان ولد پرویز جو کہ ہمارا ہمسایہ ہے دوسرا ارشد ولد مسرت جو اکثر ہمارے محلے میں آتا رہتا تھا، شناخت کر لیا۔ باقی تین نامعلوم شخص کو شناخت نہ کر سکتی ہوں۔ میرے شوہر کے گاڑی reverse کی توانہوں نے فائرنگ شروع کر دی جن میں سے دو فائر پچھلے حصے میں لگیں۔

PW-2 Mst. Sofia Iram acknowledged that she has seen the blockade of the road at least from 10 feet, the vehicle was reversed and turned towards the house of Ijaz, same was stopped after hitting the tree half kilometer away. PW-2 acknowledged that her husband's sister Shumaila had filed suit of jactitation of marriage against Zeshan in the Family Court, whereby she denied the marriage with accused Zeshan, who claims to be her husband. The Nikahnama which was challenged is pertaining to year 2009, whereas Shumaila was married to Habib ur Rehman in year 2011.

12. While considering the testimony of these two star witnesses including PW-1 Raja Muhammad Safeer, following factors have been acknowledged on record:-

1. Incident of firing took place in the night when the road was blocked through boulders and stones.
2. PW-1 and PW-2 were present in the vehicle on the alleged incident.
3. Accused Zeshan and Arshad Mehmood were identified by Raja Muhammad Safeer as well as by PW-2 Mst. Sofia Iram through Car headlight.
4. Accused Zeshan is neighbour of the prosecution witnesses, whereas the second accused Arshad Mehmood is friend of Zeshan, who usually visit the street where PW-1 and PW-2 live.
5. The parties are locked in a family dispute that sister of Raja Muhammad Safeer has filed a suit for jactitation of marriage against Zeshan and denied the marriage.
6. Vehicle was neither taken into possession by the I.Os of this case nor made part of the challan or produce in the Court.
7. Shumaila married with Habib Ur Rehman in the year 2011-12.

13. The prosecution has produced PW-3 Muhammad Yasin i.e. Complainant/appellant, who is not eye-witness of the incident, rather lodged the F.I.R and set the criminal machinery in motion for prosecution of the respondents, however, he has been cross-examined at length and he admitted factum of filing of suit of his daughter against accused Zeshan for jactitation of

marriage and during pendency of the same, his daughter was married to Habib ur Rehman.

14. The prosecution has brought Dr. Tanvir Afsar/PW-7, who treated the injured prosecution witness i.e. PW-1 Raja Muhammad Safeer through MLC No. 549 and explained the injuries i.e.;

- ***Injury No.1 on left scapular region of 1x1 c.m., and***
- ***Injury No.2 near the backbone and hemotoma on the left side of chest 8x8 c.m.***

He admitted that due to the said injuries the legs of the injured PW-1 Raja Muhammad Safeer were not working and he remained in hospital till 17.03.2012 to 28.03.2012 and he was later on sent to Neuro Surgeon Surgical Department PIMS Hospital. He admitted that during X-Ray, Metallic body was seen and he has submitted his MLC as Exh.PK, which was signed by him. He acknowledged that the person, who brought the injured to hospital has to be mentioned in the relevant column Exh.PK, which is apparently blank, similarly, date of admission in column was also blank. PW-7 confirms that three injuries were referred in Exh.PK, however, injury No.1 has not been explained as to whether the same is exit or entry wound and injury No.3 is result of Injuries No.1 & 2, he also acknowledges that:-

یہ درست ہے کہ Seat of injury کو دیکھ کر کہا جاسکتا ہے کہ حملہ آور کی position کیا تھی یہ درست ہے Ex.P/K یہاں لگائے گئے زخم اس صورت میں آسکتے ہیں کہ حملہ آور زخمی کے پچھلی جانب ہو یا سائڈ پر ہو۔

However, PW-7 was later on confronted with the specific question as to whether injury referred in Exh.PK could be caused, when a victim is sitting in front side of the vehicle Dr. Tanvir Afsar/PW-7 has not answered the same and states that the same relates to circumstantial evidence. Dr. Tanvir Afsar/PW-7 was cross-examined in detail qua the nature of injuries with reference to Section 335 PPC for permanent disability, however, it was acknowledged by the witness that he has not referred *Itlaf e Uzw*, which is the result of injuries No.1 & 2.

15. While considering the abovementioned evidence of PW-7 Dr. Tanvir Afsar, MLO, Polyclinic Hospital, who has examined the injured witness has confirmed



the treatment of the injured, explained the injuries in detail and even admitted and justified the nature of injuries caused to the victim Raja Muhammad Safeer/PW-1 from the back, and the defence side has further clarified this aspect in cross-examination as such the testimony of Dr. Tanvir Afsar/PW-7 has fully established the crime, mode and manner of the same.

16. The prosecution has produced Dr. Ijaz Ahmed/PW-10, who conducted the surgery of PW-1 Raja Muhammad Safeer on 30.03.2012, who contends that he has seen the X-Ray of Raja Muhammad Safeer, in which two bullets were found near his spinal cord and during his inspection the lower portion of the body was completely paralyzed and even the Catheter was fixed for renal function of the victim. He has seen previous record of Raja Muhammad Safeer and during the course of operation two slugs of the bullets were extracted from the spinal cord, but he could not tell the exact bore of the said slugs. Both slugs (bullets) were handed over to the Investigation Officer.

17. The above referred stance of the Dr. Ijaz Ahmed/PW-10 clearly spells out that victim Raja Muhammad Safeer PW-1 remained in hospital for his treatment and he was operated for remaining bullets, which were stuck near his spinal cord and as such, his lower body part was paralyzed.

18. The last important piece of evidence is the investigation part, which was initially conducted by Muhammad Akbar S.I/PW-8, who reached Polyclinic Hospital alongwith other police officials and recorded the statement of Raja Muhammad Safeer/PW-1 and seen his wife Mst. Sofia Iram and son Muhammad Ali in injured condition. Recorded the complaint Exh.PA and registered the F.I.R Exh.PJ. He has taken blood stained clothes of Raja Muhammad Safeer through Exh.PC from the Doctor and recorded the stance of the witnesses and visited the site and prepared the site plan, whereupon he recovered 07 fire-arm empties of 9mm and 06 fire-arm empties of .30 bore pistol. Recovered the vehicle bearing registration No. LXN-2973, Mehran with broken windscreen, he has taken the photographs via recovery memo Exh.PE and later on, he was transferred from the said Police Station to P.S. Shahzad Town, Islamabad.

19. During the course of cross-examination, he acknowledged that he has not investigated the matter to the extent that who brought the injured to the hospital and how the complainant came to know about the incident. He recorded the statement of injured Raja Muhammad Safeer on 17.03.2012, who was in conscious condition at that time. Investigation Officer acknowledged that he has neither taken the vehicle into possession nor he has referred any reason for not taking the vehicle into custody. Even he has not investigated the matter regarding headlights of the vehicle as to whether what distance it covers in the night. Muhammad Akbar S.I/PW-8 admitted that there was no other light available at the place of occurrence and he admitted that if the vehicle was placed at Point No.1, its direction towards Village Chirah, then it was not possible to place a light on Points No. 2 & 3 and none can be identified. He confirms in his investigation that fire landed on the front and back side of the vehicle and no fire hit on the vehicle from any other side, whereas the injured received the fire arm injuries on its back side. The Investigation Officer has not taken any opinion from the doctor regarding the body paralysis of Raja Muhammad Safeer/victim as to whether it is permanent or of temporary nature.

20. The matter was also investigated by PW-9 Maqsood Ahmed Qasori, Inspector, CIA Wing, who admitted that when investigation was handed over to him, he prepared the memo of possession Exh.PH regarding recovery of copies of the passport of the accused, affidavit of Shumaila, I.D Card and Nikahnama. He also admitted that the accused persons disclosed that they had thrown the weapon of offence in Rawal Dam after the alleged incident, as such, the same was not recovered, but he has also confirmed that he has received two slugs through Dr. Tanvir Afsar and Ijaz Ahmed through Exh.PQ.

21. During the course of cross-examination, he admitted that the reason of dispute is Nikah of accused Zeshan and Shumaila, who married to each other in a concealed manner; he also admitted that the dispute between the accused and injured was due to the Volley Ball Match and quarrel took place year ago. He has not verified the bore or weapon of the slugs by sending them to

Forensic Science Laboratory. He has also admitted that he has visited the hospital on 24.04.2012 alongwith other police officials, but he has not taken over the vehicle into possession/custody, which was being driven by injured Raja Muhammad Safeer on the day of occurrence. He admitted that the vehicle was handed over to him on 18.04.2012 on the date of investigation and then took the stance that only pictures were handed over to him, however, he could not explain the reasons as nobody has restrained him from taking into possession the vehicle nor he has seen the vehicle from his own eyes neither he has verified the capacity and powers of the headlights of the vehicle to ascertain whether anything could be seen in its light at night.

22. While considering the above position stated by both the Investigation Officers, following facts have been admitted on record:-

1. *PW-8 Muhammad Akbar S.I has not taken the vehicle bearing registration No. LXN-2973 Mehran, into possession /custody after the incident, which was being driven by injured Raja Muhammad Safeer on the day of occurrence.*
2. *Only photographs were taken into possession through Exh.PE referred as Exh.P1 to Exh.P7 in this case.*
3. *No reasons has been put forward as to why the vehicle was not taken into custody by the I.O.*
4. *PW-9 Maqsood Ahmed Qasoori, Inspector, Second I.O confirms that weapon of offence was not recovered, despite his best effort from Rawal Dam, which was thrown by the accused persons after the incident.*
5. *The motive narrated by PW-9 /I.O is the concealed marriage of Shumaila with Zeshan and Volley Ball match quarrel between the accused and Raja Muhammad Safeer a year ago from the alleged incident.*
6. *Two slugs were recovered near the back bone of the injured Raja Muhammad Safeer by Dr. Ijaz Ahmed, which were taken into custody by PW-9, but were not sent to FSL.*
7. *PW-9 has neither took the vehicle into possession nor made any efforts to take over the vehicle for the purpose of investigation and even he has not seen the vehicle from his own eyes.*

23. The accumulative effect of the entire case gives rise to a situation that the matter was not investigated properly by both the Investigation Officers namely Muhammad Akbar, S.I/PW-8 and Maqsood Ahmed Qasoori, Inspector, CIA Wing/PW-9, who have not made any serious effort to investigate the matter

as they have not taken over the vehicle bearing Registration No.LXN-2973, Mehran, driven by the injured Raja Muhammad Safeer on the day of occurrence, despite the fact that firing was made on the said vehicle and it is an admitted position by the Investigation Officers that the fire was made on the vehicle and photographs thereof were taken as shown in Exh.P1 to Exh.P7 without any justified reason as to why the vehicle was not taken into custody. Such type of negligence and behavior of the Investigation Officers affects the prosecution case, although there is no fault on the part of injured Raja Muhammad Safeer/PW-1 in this regard. It is the duty of the Investigation Officer to take over the case property in a proper manner and in this case the vehicle in question was the main part of the prosecution case, which was intentionally not taken into custody by the I.Os and this factum persuaded the learned Trial Court to pass the order of acquittal of the accused persons as discussed in Para-20 of the impugned judgment. In my humble view, it is not the case of defence that Raja Muhammad Safeer was injured in the said vehicle or the incident had not taken place, even the Trial Court has made serious errors while discarding the evidence of Exh.P1 to Exh.P7, which are photographs of the vehicle, which clearly establish that the firing was made on the front and back side of the vehicle. The vehicle was damaged as highlighted in Exh.P1, which further confirms the entire story of injured Raja Muhammad Safeer/PW-1 and his wife PW-2 Mst. Sofia Iram. The firing marks were present on the back side of the vehicle, which has been seen in Exh.P6, but all these facts have been discarded by the learned Trial Court without rendering any plausible explanation.

24. The wisdom behind the collection of evidence is required in terms of Criminal Procedure Code and Police Rules are that the I.O has to investigate the matter and bring the evidence to connect the accused persons with the alleged crime, which is the primary role of the Investigation Officer, although such role was not performed in a proper manner, which affects the entire prosecution case, even then the evidence available on record i.e. the photographs falls within the concept of documentary evidence and same were

prepared, taken into possession during the course of investigation, which apparently discloses the mode and manner of the entire crime.

25. The view taken by the learned Trial Court regarding non-production of vehicle has to be considered in the light of duties extracted from the Police Rules, 1934, as such, the concept of custody of the case property has been highlighted in Police Rules 22.16, 22.18 and 22.49. For ready reference, Rule 22.16 is reproduced as under:

**22.16. Case property.** -- (1) *The police shall seize weapons, articles and property in connection with criminal cases and take charge of property which may be unclaimed.*

- (a) *under the implied authority of Section 170, Code of Criminal Procedure;*
- (b) *in the course of searches made in police investigations under Sections, 51, 165 and 166, Code of Criminal Procedure;*
- (c) *under Section 153, Code of Criminal Procedure, as regards weights, measures, or instruments for weighting that are false;*
- (d) *under Section 550, Code of Criminal Procedure, as regards property alleged or suspected to have been stolen : provided that if the property consists of an animal or animals belonging to Government or to persons of good status it may be made over to them or to a commissioned or a gazetted officer, under the orders of a Magistrate, who is empowered to make such an order under Section 523, Criminal Procedure Code.*
- (e) *under Section 550, Code of Criminal Procedure, as regards property found under circumstances which create suspicion of the commission of an offence; when an offence in respect of an animal is committed and such animal is not stolen property such animal shall be seized and send with the case to the Magistrate having jurisdiction;*
- (f) *under Section 25 of the Police Act, as regards unclaimed property;*

*Ordinarily the police shall not take possession of moveable property as unclaimed when it is in the possession of an innocent finder, but in cities and in cantonments the police may, in compliance with an order issued under Section 26 or 27 of the Police Act, take possession and dispose of unclaimed property made over to them by innocent finders.*

*Such property shall be entered in the store-room register, unless a special register is prescribed for the purpose by the District Magistrate.*

- (g) *under the provisions of Local and Special Laws.*

(2) *Each weapon, or article of property not being cattle, seized under the above rule, shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station.*

*If articles are made up into a parcel, the parcel shall be secured with sealing wax bearing the seal impression of the responsible officer, and shall be similarly marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule.*

*Cattle shall be places in the pound and shall be carefully described in the case diary or other report regarding their seizure from the police station.*

*All expenses for feeding and watering cattle kept in the pound in connection with cases shall invariably be recovered from the District Magistrate and not from the complainant.*

*(3) The police shall sent to headquarters or to magisterial outposts---*

- (a) all weapons, articles and property connected with cases sent for trial;*
- (b) suspicious, in-claimed and other property, when ordered to do so by a competent Magistrate.*

*(4) Motor vehicles detained or seized by the police in connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan. The evidence relating to the identity or condition of the vehicle should be led and disposed of at an early date, and the Magistrate should then be invited to exercise the discretion vested in him by Section 516-A, Code of Criminal Procedure, to order that the vehicle be made over to the owner pending conclusion of the case on security to be produced whenever demanded by the Court.*

Besides the above referred concept of case property, the role of the Investigating Officer in such type of dealings at the investigation stage has to be considered in the light of Rules 25.1 and 25.2, even the property not required shall be returned. The relevant provision of Clause 25.49 is as under:

**25.49. Property not required to be returned.**—*On the conclusion of an investigation the investigating officer shall make over to the proper persons all property which he may have taken in to his charge in the course of the investigation and which is not further required in connection with case. A receipt for property to made over shall be taken on the inquest report.*

26. The Investigating Officer is expected to take steps to secure technical assistance and advice whenever it appears desirable during investigation for the purpose of evidence or for demonstration in the Court. Such technical assistance is from the experts notified in their fields, i.e. fingerprint bureau, photographs, handwriting experts, fire-arms expert, chemical examiners, serologist and inspector of explosives, who have been notified and appointed by the Provincial Government being experts in relevant fields, as such, the powers

available to the Investigating Officers are to be considered in the light of Rules 25.14 and 25.15. On the other hand, Sections 160 and 175 of the Cr.P.C. also empower the Investigating Officer to ensure attendance of witnesses or persons in the Police Station, who appear to be acquainted with circumstances of the case. Similarly, the case property may also be referred to the Magistrate concerned for execution of bond, whereafter the same will be released.

27. I have also gone through the powers referred in Sections 515 and 516A of the Cr.P.C., which deal with order for custody and disposal of property pending trial in certain cases, their procedure and concept of dealing with the affairs of properties taken into custody by the Investigating Officer during the course of inquiry, even the suspected properties, stolen or otherwise, have to be dealt with in terms of Section 550 Cr.P.C. All these provisions highlight the role of the Investigating Officer and if such functions and powers have not been carried out in a manner required under the law and Police Rules, the same should be declared as a defective investigation and is to be dealt with under Chapter XIV (Discipline and Conduct) of the Police Rules, 1934.

28. While considering this background, the role of the learned Trial Court as well as of the appellate court is more delicate while extracting the evidence justiciable on record under the principles of Qanun-e-Shahadat Order, 1984. The material and evidence placed on record when came before the Court, if was sufficient to connect the accused with commission of crime, the accused could still be convicted, notwithstanding minor omissions that had no bearing on outcome of the case. Reliance is placed upon **2017 SCMR 283 (The State/ANF vs. Muhammad Arshad)**. It is also settled law that complainant should not suffer for fault of prosecution or Investigating Officers, who remained negligent in discharging of their official duties and functions as held in case reported as **2011 SCMR 713 (Ansar Mehmood v. Abdul Khalig)**. Similarly, if the Investigating Officer has conducted defective investigation and has not secured incriminating material i.e. the bloodstained clothes or vehicle, it reflects the working of Investigating Officer and it could not cause harm to the prosecution case. Reliance is placed upon **2008 SCMR 1228 (Abdul Majeed**

**vs. The State**). The Hon'ble Peshawar High Court has also gone one step further while dealing with the case of defective investigation and declared that any defect, irregularity or even illegality in the investigation would not vitiate the trial unless it is shown to have prejudiced the accused in any manner and similarly no objection regarding any flaw in the investigation or trial can prevail at appellate or revisional stage unless it is proved to have brought about miscarriage of justice or occasioned failure of justice. Reliance is placed upon **1995 P.Cr.LJ 313 Peshawar (Muhammad Ashraf Khan Tareen vs. The State)**. The apex Court has also reiterated similar principles in case reported as **1995 SCMR 1365 (Sheraz Asghar vs. The State)**.

29. While considering the above legal position, when the duty has not properly been performed by the Investigation Officer, then the complainant or the prosecution should not suffer for the illegality, misconduct of the Investigation agency for want of recovery as held in **PLD 2020 SC 295 (Irfan Ali Sher vs. The State)**. The apex Court has taken a serious view while dealing with such kind of defective investigation where bloodstained articles inside the motorcar were not taken by the Investigating Officer, but the same was considered with reference to the injuries of the victim and judgment of acquittal was converted into conviction. Reliance is placed upon **PLD 2019 SC 261 (Khadija Siddiqui vs. Shah Hussain)**.

30. In view of above, the findings qua the non-production of the vehicle is reflected from the record, which is the sole intentional/willful mistake of both the Investigation Officers, but the other evidence available on record i.e. Exh.P1 to Exh.P7 and admission by the Investigation Officer qua the vehicle does not persuade this Court to disbelieve the prosecution case.

31. It is the duty of this Court being an Appellate Court in terms of Section 423 Cr.P.C to exercise its powers in disposal of appeal on the basis of record subject to "*perusing such record*" and "*hearing*", the appellant or his pleader and it has been followed by this Court, however, in case of appeal against acquittal, the powers are specifically provided in terms of Section 423(a) Cr.P.C, the Appellate Court can reverse such order of an acquittal, direct that further



inquiry be made or if the Court comes to a conclusion or finds the accused guilty, pass the sentence on him according to law and as such there is no restriction upon the Appellate Court to convict the acquitted accused in any case subject to appreciation of evidence.

32. While considering the powers conferred under the said provision, the evidence recorded by the learned Trial Court has fully been scrutinized, whereby the primary factors which overwhelmed the learned Trial Court's mind to pass the judgment of acquittal is the ***non-production of vehicle bearing Registration No. LXN-2973***, which is the primary evidence, but it is not the duty of the injured PW-1 to conduct investigation by himself or to produce the vehicle, even no fault of the appellant or the injured prosecution witnesses, who remained in hospital for their medical treatment have been noted, however Investigation Officers have not performed their lawful duties in accordance with law. Perusal of judgment discloses the shortsightedness of the learned Trial Court, who has not considered the medical evidence, which is independent and also in line with the testimony of injured PW-1/Raja Muhammad Safeer and his wife Mst. Sofia Iram/PW-2, who remained consistent about the mode and manner of crime, even they were consistent upon the identification of both the accused respondents, who were identified in the vehicle headlights as both the accused were seen in front of the vehicle, and it does not appeal to a prudent mind that person could not be identified in the vehicle headlights, while sitting in the front seat of the vehicle, especially when one of the co-accused Zeshan is neighbour and another co-accused Arshad Mehmood, who is friend of Zeshan and usually visits the street of the complainant/injured prosecution witness.

33. There is no dispute qua the identification of respondents accused whose presence have been corroborated by both the eye-witnesses, even defence side had failed to create any doubt in the evidence of both the witnesses i.e. Raja Muhammad Safeer/PW-1 and Mst. Sofia Iram/PW-2, who were cross-examined at length, but nothing has been brought on record to establish that respondents were not present in the scene of occurrence or the evidence of PW-1 and PW-2 is contradictory or based upon hypothesis.

34. Eye-witnesses Raja Muhammad Safeer/PW-1 and Mst. Sofia Iram/PW-2 consistently supported their initial version of causing injuries by the respondents accused and the specific role attributed to Zeshan and his co-accused Arshad Mehmood, which has been substantiated by medical evidence of Dr. Tanvir Afsar/PW-7 and further confirmed by Dr. Ijaz Ahmed/PW-10, who has operated the injured Raja Muhammad Safeer/PW-1 and recovered two slugs from the backbone of the injured, who was paralyzed from his lower portion.

35. The learned Trial Court has also given much importance to the statement of Dr. Tanvir Afsar/PW-7 and I.O, who has given a different view qua the site plan, but at the same time Doctor Tanvir Afsar/PW-7 has confirmed the injuries of Raja Muhammad Safeer/PW-1 on the basis of Exh.PK that these injuries were caused due to firing from back side, which has further been substantiated through the photographs i.e. Exh. P1 to Exh.P7, especially in picture Exh.P6, which clearly refers the bullet mark in the lower portion of the vehicle boot (dickey), even back screen of the vehicle found missing, all these aspects clearly established the story of prosecution witnesses as correct and based upon truthful version.

36. The error committed by the learned Trial Court is mainly based upon the conduct of Investigation Officers, who have not investigated the matter in a proper manner, similarly, learned Trial Court has also placed heavy reliance upon non-disclosure of injuries of Mst. Sofia Iram/PW-2, which was the job of the doctor at that point of time, hence prosecution case could not suffer for such negligence of doctor.

37. I have given an anxious thought to the statement of respondents accused Zeshan recorded under Section 342 Cr.P.C, who has denied the entire incident in his statement, while answering the question No.13, he has narrated the version in the following manner:-

*"I am innocent. In fact (Zeeshan) contracted marriage with daughter of complainant (Shumaila) with our own free will and mutual understating which was not in the knowledge of our families. The above said marriage took place in Islamabad on 25.11.2019. That both of us kept on waiting for a suitable time to disclose the above*

*said marriage, however, in the year 2011 complainant party engaged Shumaila to Habib ur Rehman upon which I had to disclose our marriage. On hearing this, the complainant party turned inimical towards me. They contracted Nikah of Shumaila with Habib ur Rehman on 28.10.2011 which is infact zina.*

*So far as matter of the incident is concerned as per talk of the town it was pure dacoity /robbery. Such offences are rampant in our area due to which the complainant party got an opportunity to manipulate me and my friend Arshad who is unfortunately witness of my Nikah with Shumaila. It is important to mention that the second witness of Nikah is standing with the complainant party now and that is the reason he was not manipulated in the present case.*

*I am innocent, I have nothing to do with this case, manner of occurrence is maliciously false, due to pitch dark there is always a question of mistaken identity. Safeers vehicle has never been taken into possession.*

38. While considering the above mentioned stance of the respondents accused as well as co-accused, the motive part was explained by the accused side with the reasons that Zeshan contracted the marriage with Shumaila, the daughter of the complainant in a concealed manner, which was not known to the families of the complainant side and they had married Shumaila with Habib ur Rehman, which resulted into the disputed position and as such, this aspect gives a conclusion that Zeshan is well known to the complainant side and it is not the case of substitution of accused which a rare phenomena. The respondents accused have been clearly identified and seen in the incident for causing a specific role of firing from front and back side of the vehicle, even the motive is double edge weapon and in this regard, the motive for causing injuries to the Raja Muhammad Safeer, who is a police official fully attracts the situation and the respondents accused tried to eliminate him or to teach him a lesson for his actions against Zeshan, even it has not been denied that the Shumaila, real sister of the injured Raja Muhammad Safeer has filed a suit for jactitation of marriage after the Nikah referred by the accused Zeshan, but all these aspects were not given fruitful thought by the learned Trial Court.

39. In this case the recovery of weapon of offence was not made out from the accused side, though it is not essential in every case that weapon of offence could be recovered as the reason narrated by the Investigation Officer/PW-9 fully explained the circumstances, in which the weapon of offence were thrown

in the Rawal Dam by the accused persons and same was not traceable, therefore, only piece of evidence is the medical evidence, even in this matter the second Investigation Officer has not transmitted the recovered slugs from the body of Raja Muhammad Safeer which were handed over by Doctor Ijaz Ahmed, to the Forensic Science Laboratory for determination of its origin, similarly, the first Investigation Officer has not submitted the fire empties to the FSL and as such, this is the classic example for the abuse of powers of the Investigation Officer, who are not equipped with the concept of investigation and they lack their basic abilities to investigate such type of simple crime under the police rules, however, the accused could not be spared for the negligence of the I.Os.

40. The entire case and discussion referred above gives rise to a situation that both the respondents accused persons resorted to firing and caused serious injuries to the Raja Muhammad Safeer/PW-1, which has been corroborated through medical evidence and he remained under treatment for considerable period and even medically examined by Doctor Ijaz Ahmed/PW-10 as his lower portion of the body was paralyzed at that time, although later on, it has been recovered and found fit, but the fact remains that the injuries caused to the Raja Muhammad Safeer/PW-1 are of fatal nature and are considered as attempt to commit murder. The intention and knowledge of respondents are apparent from the record, and their actions, mode and manner, in which the entire crime was committed, the motive is fully established, it affects both the sides, but in this case it leans in favour of the prosecution against the respondents. Although, the Investigating Officer has not produced the vehicle which was being driven by injured Raja Muhammad Safeer, but such defective investigation could not be burdened on the victim Raja Muhammad Safeer as it is the Investigating Officer who has not performed his lawful duties, therefore, in such type of situation the Court has to see whether the crime has been committed. While considering this aspect, the record of investigation fully satisfied this Court that the mode and manner in which crime was committed is directly linked with the present respondents and the allegations leveled by the prosecution and the injured PWs fully attract the

involvement of respondents in the said heinous crime, therefore, no premium could be given to them. Reliance is placed upon **PLD 2019 SC 595 (Muhammad Azhar Hussain vs. The State)**. The judgment of acquittal will not justify in this regard, which seems to be perverse, arbitrary and not passed with judicial approach. The overwhelming incriminating evidence was not considered by the learned Trial Court, therefore, while relying upon the approach adopted by the apex Court in case reported as **PLD 2019 SC 261 (Khadija Siddiqui vs. Shah Hussain)**, this Court considers it appropriate to pass the judgment of conviction.

41. For what has been discussed above, instant appeal is **ALLOWED**. The judgment dated 27.01.2015, passed by learned Judicial Magistrate, Section 30, Islamabad is hereby **SET-ASIDE**. Respondents Zeshan and Arshad Mehmood are hereby **CONVICTED** under Section 324/34 PPC and sentenced to seven (07) years rigorous imprisonment with fine of Rs. 100,000/- each to be paid to the victim Raja Muhammad Safeer as they have shared the common intention in terms of Section 34 PPC. The charge under Section 341 PPC has also been proved and Respondents Zeshan and Arshad Mehmood are hereby **CONVICTED** under Section 341 PPC and sentenced to two (02) years R.I with fine of Rs. 30,000/- each to be paid to the victim. The offence under Section 335 PPC is neither proved at this stage nor any permanent disability of Raja Safeer came on record or proved. Both the respondents be taken into custody and transmitted to jail for completion of their sentence. The sentences so awarded shall run concurrently with benefit of Section 382-B Cr.P.C.

42. Before parting with the judgment, the conduct of the Investigation Officers namely Muhammad Akbar S.I/PW-8 and Maqsood Ahmed Qasoori/PW-9 discloses their inefficiency, criminal misconduct and unprofessional attitude towards the investigation, which has been conducted in violation of the Police Rules, 1934 and the settled principles of investigation, therefore, they are held guilty of criminal misconduct and are liable to be prosecuted under the relevant provisions of law. Reliance is placed upon **2019 P.Cr.LJ 640 Peshawar (Inspector Syed Rahim vs. The State), 2016 SCMR**

**2057 (Imdad Ali Khawaja vs. The State)** and **2020 P.Cr.LJ 524 Lahore (Allah Rakha vs. The State)**. Copy of this judgment be transmitted to the Inspector General of Police, Islamabad to take legal action against them, who shall submit the compliance report to this Court as to what action has been taken against them.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

Announced in open Court on: 20th Aug 2020.

**JUDGE**

RAMZAN