

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

**Crl Appeal No 90 of 2011 And**  
**Murder Reference No 01 of 2011**

**Malik Mumtaz Qadri**  
**Vs**  
**The State**

Appellant by; M/s Khawaja Muhammad Sharif, Mian Nazir Akhtar, Malik Muhammad Rafique Khan, Ghulam Mustafa Ch., Muhammad Bilal Mughal, Ch. Khalid Mahmood, Ch. Abdul Aziz, Haroon-ur-Rashid, Riaz Hanif Rahi, Malik Jawad Khalid, Ch. Naseer Ahmed, Hafiz Ahmad Rasheed, Rao Abdul Raheem, Muhammad Tariq Dhamial, Raja Shujar ur Rehman, Haji Muhammad Aadil Naveed, Syed Habib-ul Haq Shah, Nazeer Ahmed Ghazi, Pirzada Mamoon-ur-Rasheed, Mian Khalid Habib Elahi, Muhammad Mubashir Khalid Hijveri, Mian Muhammad Saleem Aftab, Mehmood H. Mirza, Rao Abdul Jabbar Khan, Muhammad Hanif Khan, Shehbaz Ali, Muhammad Iqbal Zaki, M. Tahir Sultan Khokhar, Ch. Muhammad Qasim, Rao NasimHayder Khan, Muhammad Latif Khawaja, Muhammad Amir Latif, Ch. Asghar Ali, Raja Yasir Shakeel Janjua, Masnoor Khan Abbassi, Ms. Tahira Shaheen Mughal, Ch. Hafeez Ullah Yaqoob, Hafiz Khizar Hayat & Raja Naveed Arif, Advocates for Appellant

State by; Mian Abdul Rauf, learned Advocate General.  
Mr. Jehangir Khan Jadoon, Standing Counsel

Complainant by; Nemo

**Date of hearing; 3<sup>rd</sup> Feb. 4<sup>th</sup> Feb. 6<sup>th</sup> Feb. 10<sup>th</sup> Feb and 11<sup>th</sup> Feb.2015**

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**SHAUKAT AZIZ SIDDIQUI;** This appeal U/S 25 of Anti Terrorism Act 1997, read with Section 410 Cr.P.C is directed against the impugned judgment dated 01.10.2011 passed by the Learned Special Judge (Court No II) Anti Terrorism Court Rawalpindi Division and Islamabad Capital Territory, whereof the appellant awarded death sentence U/S 302 (b) PPC and ordered to pay Rs 1,00,000/- (One Lac)

as compensation to the legal heirs of the deceased U/S 544 A of Cr.P.C, in default whereof to undergo 06 months S.I. Appellant was further awarded death sentence U/S 7 of Anti Terrorism Act (ATA) and to pay fine Rs 1,00,000/- (one lac) and in default whereof to undergo 06 months S.I in case FIR No 06/2011 dated 04.01.2011 registered at P.S Kohsar Islamabad.

2. In terms of Section 374 Cr.PC, the Murder Reference No 1 of 2011 has also been sent to this court which is to be answered through instant judgment.

3. Brief Facts of the case are that law was set into motion through complaint Ex.PB of complainant Shaheryar Ali Taseer (PW-10) who narrated the murder ordeal of the then Governor of Punjab, Salman Taseer on 04.01.2011 at about 03.50 pm, when deceased was on his way back home from the restaurant at Kohsar Market; that appellant Malik Mumtaz Ahmed Qadri who along with others was deputed with the deceased as security Guard, resorted to firing with his official weapon, resultantly Salman Taseer who received serious injuries, was shifted to Poly Clinic Hospital by the police officials, where doctors confirmed his death. According to complainant his father had a particular view point on national issues, due to which different Religious and Political groups were propagating against him, and threats to murder him were being issued. His father has been killed by accused on the instigation, connivance and conspiracy hatched up by these religious and political groups. Appellant was overpowered by other personnel deputed with the deceased and arrested from the place of occurrence along with his official weapon. On the basis of this complaint formal FIR Ex PB/1 was chalked out.

4. After formal investigation, the prosecution submitted final report U/S 173 Cr.P.C and accused was put to charge U/S 302, 109 PPC read with Section 7(a) Anti Terrorism Act 1997, on 14.02.2011 by the learned trial court. In order to prove the charge against the appellant prosecution produced the following witnesses namely;-

**“PW1 Dr. Muhammad Arshad (Surgeon Emergency / MO Federal Government Poly Clinic Hospital Islamabad** who deposed that he alongwith Dr. Aslam Shah, Dr. Ashok Kumar and Dr. Muhammad Farrukh Kamal conducted post mortem examination of the dead body of deceased and found following injuries;-

1. Multiple bruises on the face/ nose / forehead/ upper lip. These bruises were irregular and of different sizes and shape.
2. A large irregular wound on the left lower mandibular region, the underlining fractured. Bone can be seen through the wound. The wound measuring of 7cm x 6 cm.
3. A wound of entry on the right shoulder front measuring 1 cm x 1.5 cm there was no burning, blackening and tattooing.
4. Wound of entry on the upper chest front measuring 3cm x 1 cm. There was no B/B/T.
5. Wound of entry on the left lower chest front measuring 3cm x 1cm. No B/B/T.
6. Wound of entry on the right lower chest, infrolateral to the right nipple measuring 1cm x 3 cm. No B/B/T
7. Wound of entry on the right Hypochondrium measuring 3 cm x 1.5 cm at the coastal margin. No B/B/T.
8. Wound of entry on the medial surface of left upper arm. No B/B/T
9. Wound of exit measuring 7cm x 2cm on the front of left axila.
10. An irregular wound measuring 3cm x 5cm on the interior aspect of the right axila.
11. Re-entry wound in the lower part of left axila measuring 1cm x 1.2 cm



12. Two wounds of entries on the lateral surface of upper thigh (clutal region) measuring .5cm x .5cm. No B/B/T .
13. A wound of entry in the right lateral lumber region 5cm above the illiac crest measuring 3cm x 1cm. No B/B/T.
14. Wound of exit on the lateral surface of right buttock measuring 3 cm x 1.5 cm. Underlining tissues protruding out through the wound.
15. A gutter wound on the right forearm 9cm x 4 cm underline. Bone can be seen to the wound.
16. Wound of entry on the medial surface of right forearm measuring 1cm. No B/B/T.
17. A bullet fragment can be palpated on the medial side of the right elbow. The incision was made and the bullet fragment was recovered.
18. A Small abrasion on the front of left knee.
19. A wound of entry on the back over to dorsal spine 16cm below the nape on the back. No B/B/T.
20. Wound of entry on the left lower chest on the back measuring 0.5 cm in diameter.
21. Wound of entry just below the scapular region on the back measuring 5 cm x 0.8 cm. No B/B/T.
22. A group of wounds of entries, (six in numbers) on the left buttock each measuring .5 cm in diameter. No B/B/T.
23. Two wounds of exit on the right lateral side of chest at the back close to scapular region measuring 1.5cm in diameter.
24. A wound of exit on the lateral surface of upper lumber region on the back 1cm in diameter.
25. Two wounds of exit on the right buttock on the back measuring 3cm x 1.5 cm, underlying tissue protruding out.
26. Four wounds of exit on the right buttock at the back, irregular in shape and sizes 4cm x 1.5cm on average.

27. A large wound exit at the sacro-coccygal region measuring 7cm x 7 cm.

28. A graze wound of 11 cm in length and 1 cm in width at the sceral region on the back.

This PW further deposed that in the opinion of medical team, the cause of the death was extensive injuries to both lungs, liver, stomach, small and large gut and pelvic structures. That all the injuries were due to the firearms and ante mortem and such injuries were sufficient to cause death in ordinary course of nature. That X-Ray skull, chest, abdomen pelvic and limbs taken at FGPC before dissection started, the bullet fragments recovered were handed over to the police under seal and labeling. That the bullet fragment lodged at the chest could not be recovered after an extensive effort. He further deposed that the probable time between the injuries and death was immediate and probable time between death and post mortem examination was within 06 hours (Defence did not opt to cross-examine this witness).

PW2 Iftikhar Ali ASI/ Muharrar P.S Kohsar Islamabad stated that on 04.01.2011 he received complaint Ex.PB from the SHO through constable Abdul Raheem (PW-3) and he chalked out the FIR No 06 Ex.PB/1. He further deposed that on the same day he received three parcels containing blood stained cotton, empties and SMG Rifle respectively and he kept the parcels in Mall-Khana and on 07.01.2011 after obtaining road certificate he handed over the same to Safdar Ali ASI for its onwards transmission to the office of Chemical Examiner and Forensic Science Laboratory Lahore.

PW3 Abdul Raheem Constable / 6147 stated that on 04.01.2011 the SHO P.S Kohsar handed over to him complaint Ex.PB at the spot and he took the same to the police station and handed it over to the Moharrar for registration of the formal FIR and Moharrar handed over copy of the FIR to him after registration and he handed over the same to SHO at the spot.

PW4 Safdar Hussain ASI P.S Kohsar stated that in the night between 06/07.01.2011 the Moharrar of P.S Kohsar handed over to him one sealed parcel said to contain blood stained cotton, second parcel said to contain 28 empties and third parcel said to contain SMG Riffle. He deposited the first parcel in the office of Chemical Examiner and rest of two parcels in the office of Forensic Science Laboratory, Lahore.

PW5 Muhammad Gulfraz SI P.S Kohsar deposed that on 05.01.2011 he collected post mortem report of the deceased on the direction of SHO P.S Kohsar. Also collected 07 X-Rays, one sealed parcel said to contain led bullet, last worn clothes of the deceased from CMO PIMS Hospital and handed over the same to SHO who prepared recovery memo Ex.PC.

PW6 Khurram Shahzad draftsman, stated that on 05.01.2011 he alongwith IO and PWs went to the place of occurrence. On the direction of IO and pointation of witnesses he obtained rough notes of the place of occurrence and thereafter prepared a scaled site plan Ex.PD. On 09.01.2011 he handed over the same to the IO.

PW7 Umer Farooq Constable/ 4382 deposed that he was performing duties as Naib Moharrar at Elite Force, Rawalpindi. That on 03.01.2011 the visiting programme of deceased Governor Salman Taseer came to the security branch. That Governor arrived from Lahore at 12.00 noon through motorway. On 04.01.2011 he sent two police escorts to the residence of Governor at F-6/3 Islamabad. Appellant was on another duty and he deputed him with the Governor, as appellant had desired that he intended to visit Islamabad.

PW8 Salman Ghani stated that on 04.01.2011 he identified dead body of the deceased Salman Taseer in PIMS Hospital and also signed the receipt Ex.PE.



PW9 Ch. Muhammad Ali Assistant Commissioner Islamabad stated that he recorded the confessional statement of appellant U/S 164 Cr.P.C on 10.01.2011 on the directions of the District Magistrate.

PW10 Shaheryar Taseer is complainant of the case who stated that on 04.01.2011 he moved written application Ex.PB for registration of the case.

PW11 Nadeem Asif ASI gunman to the Governor Punjab Pindi Region and PW12 Muhammad Ameer Khan Inspector, presently posted as SHO at P.S Makhdoom Rasheed Multan have provided the eye witness count by deposing that on 04.01.2011 at about 03.00 / 03.15 pm deceased left his house for Kohsar Market to have lunch. That after taking lunch deceased came out of the hotel for his house along with covering party / security guards. Appellant was one of the member of covering party and all of sudden he resorted to firing with his official weapon at deceased. They further deposed that this episode continued for seconds where-after appellant was overpowered, arrested and handed over to the local police. They further deposed that they had shifted deceased in injured condition in police vehicle to the Poly Clinic Hospital Islamabad. PW12 also witnessed the recovery of the riffle, Ex.P4, magazine Ex.P5/1-2 and 28 live bullets, Ex.P6/1 to 28 vide recovery memo Ex.Ph. He further witnessed the personal search of the appellant.

PW13 Tanveer Ahmed ASI P.S Secretariat Islamabad deposed that on 04.01.2011 he remained associated with the investigation of the case. SHO Hakem Khan collected the blood stained earth from the place of occurrence vide recovery memo Ex.PK, I.O further collected 20 empties of SMG from the place of occurrence vide memo of recovery Ex.PL, he also witnessed the recovery of gun, 28 live bullets and two magazine vide recovery memo Ex.PH.

PW14 Hakem Khan Inspector / Investigating Officer presently posted at P.S Secretariat Islamabad stated that on 04.1.2011

received information of occurrence and proceeded to the place of occurrence, he prepared visual site plan Ex.PP, received the written application Ex.PB from complainant and dispatched it to P.S Kohsar for the registration of the FIR, collected 28 crime empties from the place of occurrence beside collecting blood stained earth. That he took the custody of appellant from PW12 Muhammad Ameer Khan along with crime weapon, obtained his physical remand and that on the request of appellant he produced him before the Magistrate to record his statement U/S 164 of Cr.P.C. He dispatched the crime weapon, cartridges and crime empties to the concerned laboratories.

5. The learned trial court recorded the statement of appellant u/s 342 Cr.P.C, appellant opted not to make any statement u/s 340(2) Cr.P.C and to adduce any evidence in his defense, however, written statement u/s 265(F) 5 Cr.P.C was submitted, press clippings Mark "A to A" with Book "Stranger to History" attached thereto.

6. After conclusion of the trial appellant was found guilty of commission of the offence of Qatl-e-Amd of deceased and awarded death sentence U/S 302 (b) PPC and was also ordered to pay Rs 1,00,000/- (One Lac) as compensation to the legal heirs of the deceased U/S 544-A Cr.PC, in default whereof to undergo 06 months S.I. The learned trial court also found appellant guilty of the commission of offence U/S 7 (a) (ATA) and after convicting him awarded death sentence and was ordered to pay fine Rs 1,00,000/- (one lac) and in default whereof to undergo 06 months S.I. The appellant filed the instant criminal appeal. The trial court also sent Capital Punishment Reference for confirmation of the death sentence.

7. Learned counsel M/s Khawaja Muhammad Sharif & Mian Nazir Akhtar, Sr. ASC representing appellant argued that Section 6 of Anti Terrorism Act 1997, does not attract to the facts and circumstances of this case; that findings of the learned trial court, that act committed by the appellant falls in the category of terrorism is completely arbitrary and baseless; that the learned trial court wrongly



held that act of the appellant had terrified masses as there was not an iota of evidence on record to show that any panic or sense of insecurity was created in the general public and in-fact general public was relieved on the death of the deceased in view of the notoriety of his character and his messy utterance about the blasphemy laws. The act of appellant was highly appreciated by the lovers of Prophet (PBUH). They further argued that in the absence of evidence about elements of terrorism, panic or sense of insecurity amongst the general public the case ought to have been tried in the Sessions Court under the normal law and the proceedings of trial before the learned trial court was coram-non-judice. They further added that the ingredients to constitute the commission of offence U/S 6 of the Anti Terrorism Act 1997, are not established from the prosecution evidence, therefore, conviction of the appellant U/S 7 (a) of the supra Act is not sustainable. Learned counsel maintained that even otherwise no incriminating material was put to accused u/s 342 Cr.P.C, therefore, conviction on this count is not sustainable.

8. Learned counsel for appellant further contended that deceased had himself committed the serious offence by condemning the blasphemy laws and became “ **Shatim-e-Rasool** ” and “**Muba-ud-Damm**” i.e. one who could legitimately be killed with impunity; that the learned trial court failed to appreciate this aspect of the case as the utterance of the deceased caused grave and sudden provocation to the appellant in particular and public at large in general. Further argued that learned trial court held that individual cannot be allowed to execute punishment upon persons guilty of commission of offence of blasphemy, ignoring the Islamic Law and the judgments pronounced by the Holy Prophet (P.B.U.H) in a number of cases; that the Hon’ble Supreme Court has held in the case of “Zaheer ud Din Vs Federation of Pakistan” “1993 SCMR 1718) that the real and effective law in Pakistan is Islamic Law, therefore, the learned trial court was bound to follow this dictum of Apex Court of country and should have acquitted

appellant. Learned counsel added that learned trial court failed to appreciate and follow the provisions of Section 79 & 338 of PPC.

It has also been argued that prosecution withheld independent evidence and produced less number of witnesses, who were present at the scene of occurrence. Learned counsel further argued that impugned judgment of the learned trial court is result of surmises and conjectures, that no offence of Qatl-e-Amd U/S 302 (b) of PPC was made out from the facts and circumstances of the case; that at the most the case fell within ambit of Section 302 (c) of PPC and quantum of sentence awarded to the appellant is extremely harsh, uncalled for in the peculiar circumstances of this case; that learned trial court had fixed the case for arguments of the parties on 01.10.2011 but had illegally announced the judgment, without hearing arguments on behalf of the appellant and as such acted in unreasonable and unjustified haste to convict the appellant and pass the sentence. The learned counsel submitted that appellant is entitled to be acquitted keeping in view the principles of Islamic Law and the judgments rendered by the Holy Prophet (P.B.U.H) in a number of cases.

9. Learned counsel of appellant further submitted that act of appellant, taking life of deceased can be ascribed as “extra judicial” but not beside the law. While defining law learned counsel described the Holy Quran and Sunnah of Prophet (PBUH).

10. Learned counsel representing the appellant while stressing upon the plea of appellant made reference to the reported cases of “Haq Nawaz & other Vs Province of Punjab” “1997 MLD 299”, Yar Muhammad Vs The State” “PLD 1997 Quetta 31”, “Zaheer ud Din & others Vs The State” “ 1993 SCMR 1718” & “Fida Hussain Vs Mst. Najma” “PLD 2000 Quetta 46” and contended that act of the appellant committing the murder of deceased was / is absolutely no offence as under the Islamic Law which is supreme and fundamental law of the State of Islamic Republic of Pakistan and various judgments rendered by the Holy Prophet Muhammad (P.B.U.H) in the cases of

the murders of the contemnors of the Holy Prophet Muhammad (P.B.U.H). Learned counsels for the appellant have further argued that deceased had committed contempt of the Holy Prophet Muhammad (P.B.U.H) as he had criticized the blasphemy law and declared it as black law; that the State and its functionaries failed to convict him for the offence U/S 295-C of PPC; that after failure of the State it had become responsibility of all Muslims of the State to enforce Hadd for the crime committed by the deceased; that it was bestowed on the appellant from Allah Almighty to enforce Hadd by committing murder of the deceased who was Mubah-ud-Dum, therefore, the appellant having found the chance by chance discharged his lawful obligations caste upon him by the Islamic law and judgments of the Holy Prophet Muhammad (P.B.U.H) therefore, act of appellant is totally protected and his conviction is not sustainable as such he is entitled to be acquitted.

Learned counsel for the appellant argued that impugned judgment of the learned trial court is result of surmise and conjectures, and is liable to be set-aside. They have further argued that it is a case of two versions, one introduced by the prosecution and the second taken by the appellant and it is settled law that if both versions in the case being equally possible, the version favorable to the appellant is to be accepted. They further argued that there are number of instances that the individual Muslims had killed the contemnors in the lifetime of Holy Prophet Muhammad (P.B.U.H) without seeking his prior permission and subsequently their acts were ratified and that appellant is also placed in a similar situation. Reliance has been placed on the case law “Babar Ali Vs The State” “PLD 2007 Lahore 650”, “Muhammad Jhumman Vs The State” “2001 PC.rLJ 1312” “Hakam Din Vs The State” “PLD 2006 SC (AJ&K) 43”, “Javed Vs The State” “PLD 1994 SC 679”, & “Israr Ahmed Vs The State” “2008 P.Cr.LJ 1000”.



11. Conversely learned Advocate General and Standing Counsel for the State have rebutted the arguments of the learned counsel for the appellant by contending that judgment of the learned trial court did not warrant any interference as appellant had admitted the charge with the specific plea to the effect that;

“I have not committed the murder of an apostate like Salman Taseer (the then Governor of Punjab) contrary to dictums of Holy Quran and Sunnah”

Therefore, as per provision of Article 121 of Qanun-e-Shahadat Order, 1984 he was required to prove that he was justified in committing murder of the deceased and that his act did not attract any penal provision as it was not an offence but appellant miserably failed to prove his plea, the eye witness count furnished by the PW11 & PW12 is confidence inspiring which is duly supported by the corroborative piece of evidence in shape of medical evidence furnished by the PW1, recovery of crime weapon from the appellant, the blood stained earth from the place of occurrence and matching of the crime empties with the crime weapon. It is further argued that appellant was deputed to protect the deceased who was Governor of Punjab at that time but instead of discharging his duties, appellant committed murder of the deceased in a preplanned and brutal manner which is evident from the medical evidence furnished by PW1 as the deceased had received 28 injuries due to the firing of appellant with his official weapon. It is further argued that the plea of appellant, that he was justified in committing murder of the deceased and that it was not an offence, is absolutely ridiculous and against the settled principle of Islamic Law and it is also against the fundamental rights of every citizen of the Islamic Republic of Pakistan and that murder Reference should be answered in affirmative and appeal of appellant is liable to dismissed.

12. We are fully conscious of the fact that matter in hand is delicate in nature, sensitive in terms and serious in consequence. We are totally convinced that best guidance comes from Allah Almighty, WHO through commands enshrined in The Holy Quran, leads everyone to just decision, as directed in Surah Nisa (Verse 135).

﴿يَا أَيُّهَا الَّذِينَ ءَامَنُوا كُونُوا قَوَّامِينَ بِالْقِسْطِ شُهَدَاءَ لِلّٰهِ وَلَوْ عَلَىٰ أَنفُسِكُمْ أَوِ الْوَالِدِينَ وَالْأَقْرَبِينَ إِن يَكُنْ غَنِيًّا أَوْ فَقِيرًا فَاللّٰهُ أَوْلَىٰ بِهِمَا فَلَا تَتَّبِعُوا الْهَوَىَٰ أَن تَعْدِلُوا وَإِن تَلَوْا أَوْ تَعْرَضُوا فَإِنَّ اللّٰهَ كَانَ بِمَا تَعْمَلُونَ خَبِيرًا﴾ (١٣٥)

*"O you who believe! stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, or your parents, or your kin, be rich or poor, Allah is a better Protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice; and if you distort your witness or refuse to give it, verily, Allah is Ever Well - Acquainted with what you do"*

13. The grace and honour of the Holy Prophet Muhammad (P.B.U.H) is not only well entrenched in various verses of Holy Quran but in other divinely testaments. It would be appropriate to quote a few examples about the greatness of the Holy Prophet (P.B.U.H) from Holy Quran;-

In Surah "Al-Najm" verse No 1 to 4 it is ordained that

وَالنَّجْمِ إِذَا هَوَىٰ ﴿١﴾  
مَا ضَلَّ صَاحِبُكُمْ وَمَا غَوَىٰ ﴿٢﴾  
وَمَا يَنْطِقُ عَنِ الْهَوَىٰ ﴿٣﴾  
إِنْ هُوَ إِلَّا وَحْيٌ يُوحَىٰ ﴿٤﴾

“By the Star. When it set, your companion is neither gone astray nor deluded. He does not speak of his own desire; it is but a Revelation which is sent down to him”

In Surah “Al-Inshirah” it is ordained that

أَلَمْ نَشْرَحْ لَكَ صَدْرَكَ ۝  
وَوَضَعْنَا عَنكَ وِزْرَكَ ۝  
الَّذِي أَنْقَضَ ظَهْرَكَ ۝  
وَرَفَعْنَا لَكَ ذِكْرَكَ ۝  
فَإِنَّ مَعَ الْعُسْرِ يُسْرًا ۝  
إِنْ مَعَ الْعُسْرِ يُسْرًا ۝  
فَإِذَا فَرَغْتَ فَانصَبْ ۝  
وَإِلَىٰ رَبِّكَ فَارْغَبْ ۝

(O Prophet!) have We not opened up your breast for you? And removed from you the heavy burden that was weighing down your back, and exalted your renown for you. So, the fact is that along with every hardship there is also ease. Indeed, with every hardship there is also ease! Hence, when you are free, devote yourself to the labor of worship, and turn all your attention to your Lord”

In Surah Al-Ahzab in Verse No 56 to 58 it is ordained that

إِنَّ اللَّهَ وَمَلَائِكَتَهُ يُصَلُّونَ عَلَى النَّبِيِّ يَا أَيُّهَا الَّذِينَ ءَامَنُوا  
صَلُّوا عَلَيْهِ وَسَلِّمُوا تَسْلِيمًا ۝  
إِنَّ الَّذِينَ يُؤْذُونَ اللَّهَ وَرَسُولَهُ لَعَنَهُمُ اللَّهُ فِي الدُّنْيَا وَالْآخِرَةِ وَأَعَدَّ  
لَهُمْ عَذَابًا مُّهِينًا ۝



وَالَّذِينَ يُؤْذُونَ الْمُؤْمِنِينَ وَالْمُؤْمِنَاتِ بَغَيْرِ مَا اكْتَسَبُوا

فَقَدْ أَحْطَمُوا بُهْتَانًا وَإِثْمًا مُّبِينًا ﴿٥٨﴾

“Indeed, Allah confers blessing upon the Prophet, and His angels [ask him to do so] O you who have believed, ask [Allah to confer] blessing upon Him and ask [Allah to grant him] peace.

Allah has cursed in this world and in the Hereafter those who cause trouble to Allah and His Messenger, and has prepared for them a disgraceful punishment.

And those who cause trouble to the believing men and women for no fault of theirs, have indeed born on their head the burden of a grave slander and a manifest sin”

In Surah “Al-Hujrat Verse No 1 to 3” it is ordained that

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَقْدِّمُوا بَيْنَ يَدَيِ اللَّهِ وَرَسُولِهِ ۖ وَاتَّقُوا اللَّهَ ۚ إِنَّ اللَّهَ

سَمِيعٌ عَلِيمٌ ﴿١﴾

يَا أَيُّهَا الَّذِينَ ءَامَنُوا لَا تَرْفَعُوا أَصْوَاتَكُمْ فَوْقَ صَوْتِ النَّبِيِّ وَلَا تَجْهَرُوا

لَهُ ۚ بِالْقَوْلِ كَجَهْرِ بَعْضِكُمْ لِبَعْضٍ أَن تَحْبَطَ أَعْمَالُكُمْ وَأَنتُمْ لَا

تَشْعُرُونَ ﴿٢﴾

إِنَّ الَّذِينَ يَغُضُّونَ أَصْوَاتَهُمْ عِنْدَ رَسُولِ اللَّهِ أُولَٰئِكَ الَّذِينَ امْتَحَنَ

اللَّهُ قُلُوبَهُمْ ۖ لِلنَّفَقَىٰ ۚ لَهُمْ مَغْفِرَةٌ وَأَجْرٌ عَظِيمٌ ﴿٣﴾

“O you who have believed, do not go in advance of Allah and His Messenger,<sup>1</sup> and fear Allah: Allah is All-Hearing, All-Knowing”

“O you who have believed, do not raise your voices above the Prophet's voice, nor speak to him loud as you speak loud to one another lest all your works be rendered void, while you do not know. Those who lower their voices in the presence of the Messenger of God, are, in fact, those whose hearts Allah has disposed to piety. For them is forgiveness and a great reward”

In Verses No 12 & 13 of Surah-e-Anfal it is ordained that;-

إِذْ يُوحَىٰ رَبُّكَ إِلَى الْمَلَائِكَةِ أَنِّي مَعَكُمْ فَثَبِّتُوا الَّذِينَ ءَامَنُوا  
سَأَلْقَىٰ فِي قُلُوبِ الَّذِينَ كَفَرُوا الرُّعْبَ فَأَضْرِبُوا فَوْقَ  
الْأَعْنَاقِ وَأَضْرِبُوا مِنْهُمْ كُلَّ بَنَانٍ ﴿١٢﴾  
ذَٰلِكَ بِأَنَّهُمْ شَاقُّوا اللَّهَ وَرَسُولَهُ ۚ وَمَن يُشَاقِقِ اللَّهَ وَرَسُولَهُ  
فَأَنَّ اللَّهَ شَدِيدُ الْعِقَابِ ﴿١٣﴾

And remember when your Lord was inspiring the angels with this: "I am with you: so keep the Believers steadfast. I am now going to fill the hearts of the disbelievers with awe: so smite their necks and beat every joint of their bodies. This is because they have opposed Allah and His Messenger; whoso opposes Allah and His Messenger, surely Allah is very severe for him in retribution".

(Translation By Zafar Iqbal Ansari)

"Allah's Messenger (ﷺ) said

Narrated Abu Huraira:

" قَوْلَ الَّذِي نَفْسِي بِيَدِهِ لَا وَالِدَ مِنْ إِلَيْهِ أَحَبُّ أَكُونَ حَتَّى أَحَدُكُمْ يُؤْمِنُ وَوَلَدِهِ "

, "By Him in Whose Hands my life is, none of you will have faith till he loves me more than his father and his children

( Sahih Al-Bukhari. Volume 1, Book No.2, Hadith No. 13)

Great Allama Iqbal pays tribute to Prophet Muhammad (PBUH) in the following words. The status on which a believer cannot compromise.

وہ دامن سے سب نچھڑا، مولا کے کل جس نے  
غبارِ راہ کو بخشنا، مرغِ واوی سین

نگاہِ عشقِ ہستی میں وہی اول وہی آخر  
وہی شران وہی شرفان، وہی یسین وہی طہ

14. The above mentioned verses of the Holy Quran and sayings of Prophet (P.B.U.H) reveals that it is the verdict of the Allah Almighty that in no case, the case of the person who gives any sort of complaint to the Holy Prophet Muhammad (P.B.U.H) is to be condoned. The prophet hood of Holy Prophet Muhammad (P.B.U.H) was entrenched in the Heavens and all the other great prophets aspired to have been included in the group of followers of the Holy Prophet Muhammad (P.B.U.H). To respect and love Him more than any person(s) on the global face is the requirement of Faith. In the old testaments revealed to the prophet of Bani Israel, there is mention of the Holy Prophet Muhammad (P.B.U.H) with grace, respect and honour. Similarly, in new testament (version Bible Barnabas) the name of the Holy Prophet Muhammad (P.B.U.H) is specifically mentioned in the words that the ultimate messenger of the God would come to rescue the human being and humanity. In the old books (Purans) of subcontinent the reference is there to the Holy Prophet (P.B.U.H) with love & respect. Gautam Budh who also told his followers that one day the ultimate cause of the universe would arrive and he would lead his forces. Even the strongest opponents of the Holy Prophet Muhammad (P.B.U.H) had admitted the greatness of the personality. The famous historian Gibbon in his book “Rise and Fall of the Roman Empire” narrated the incident in the court of Constantine when after Sulah-e-Hudaibia the prophet had sent the ambassador to various kings & kingdom invited them to accept the message of God and Abu Sufyan was there in the court in connection with his trade and dialogue between the Constantine and Abu Sufyan is mentioned in the book. Despite the fact that Abu Sufyan was most dangerous enemy of Holy Prophet (P.B.U.H) having waged many wars against the Islam was constrained to admit the greatness, truthfulness and fairness of Holy Prophet (P.B.U.H). Thomas Carlyle in his book “Hero and Heros-worship” has written that “a light emerged and it emerged from such a barren land about which it used to be said that there was no chance of growth of human independence there but the Holy Prophet (P.B.U.H) made the atom of sand the rising sun which ultimately not only illuminated and enlightened East and west but also filled the heaven. The writer further says that he loves the Holy Prophet (P.B.U.H) and he believes that there is not any iota of proudness and



snobbery in the personality of the Holy Prophet (P.B.U.H). The greatness of the Holy Prophet (P.B.U.H) is narrated by the Napoleon Bonaparte King of France, Jean Jacques Rousseau in his famous book “Social Contract”, H.G. Wales in his book “Outline of History”, Leon Tolstoy the famous Russian Scholar and Novelist. Michael H. Heart a famous writer of “The 100, Most Influential Persons in History” has respectfully declared the Holy Prophet (P.B.U.H) as the greatest person in human history though the writer himself was follower of Jesus Christ but he kept the Jesus Christ at serial No 3. The Holy Quran has itself declared that all the messenger of God are equal having the similar status but with the exception that Allah Almighty has given some priority to some messengers over the other without lowering the status of those others in any sense of the word.

15. The Hon’ble Federal Shariat Court in case titled as Muhammad Ismail Qureshi Vs. Pakistan, reported as “PLD 1991 Federal Shariat Court 10” which is binding upon this Court in terms of Article 203-GG of the Constitution of Islamic Republic of Pakistan, 1973, observed;-

“The Holy Qur’an, as a glorification of the Holy Prophet (P.B.U.H) prohibited even the slightest cause of annoyance and declared that marriage with the wives of the Prophet after his death is prohibited for the believers so as to avoid not being means of the contempt of the Prophet. Holy Quran says:--

“O ye who believe! Enter not the dwellings of the Prophet for a meal without waiting for the proper time, unless permission be granted you. But if ye are invited enter and when your meal is ended, then disperse. Linger not for conversation. Lo! that would cause annoyance to the Prophet, and he would be shy of (asking) you (to go); but Allah is not shy of the truth. And when ye ask of them (the wives of the Prophet) anything, ask it of them from behind a curtain. That is purer of your hearts and for their hearts. And it is not for you to cause

annoyance to the messenger of Allah, nor that ye should, ever marry his wives after him. Lo! that in Allah's sight would be an enormity. (33:53)."

The Holy Prophet (P.B.U.H) is the best interpreter of the above-noted verses of the Holy Qur'an and it is also proved by his Sunnah that his contemner is liable to the penalty of death. Reference may be made to the following Ahadith:-

- (i) It has been related on the authority of Hazrat Ali that Holy Prophet (P.B.U.H) said: "Kill the person who abuses a Prophet and whip by stripes the one who abuses my companions." (Al-Shifa, Qazi, Ayaz Vol.11, page 194).
- (ii) It has been related on the authority of Ibn Abbas that a blind person in the period of Holy Prophet (P.B.U.H) had a female slave who used to abuse the Holy Prophet (P.B.U.H). This blind person bade her to abstain from it and warned her not to do so but she didn't care. One night when she was as usual abusing the Holy Prophet (P.B.U.H), this blind person took a knife and attacked her belly and killed her. Next morning when the case of murder of this woman was referred to the Holy Prophet (P.B.U.H), he collected the people and said, "who has done this job. Stand and confess because of my right on him for what he has done." On this the blind person stood and came rolling the people before the Holy Prophet (P.B.U.H) and said, "O Prophet, I have killed this slave woman because she abused you. I have constantly forbade her but she didn't care for that. I have two beautiful sons from her and she was my very good companion, but yesterday when she started abusing you, I took my knife and attacked on her belly and killed her." The Holy Prophet (P.B.U.H) said, "O people! be witnesses that the blood of this woman is vain. (Abu Daud, Vol.II, pages 355-357).
- (iii) It has been related on the authority of Hazrat Ali that a Jew woman used to abuse the Holy Prophet (P.B.U.H) and thus a

person killed her. The Holy Prophet (P.B.U.H) declared her blood as vain (ibid).

- (iv) It has been related on the authority of Abu Barzah who said, “I was sitting with Abu Bakar when he became furious at a person.” I said to him, “O! Caliph of the Prophet of Allah. “Order me to kill him”. On this he became normal and stood up and went inside and called me and said, “What did you say? I said, “Order me to kill him.” He said, “Had I ordered you, would you have killed him?” I said, “Yes.” He said, “No,” I swear by Allah that no one other than the Holy Prophet (P.B.U.H) is in the position that his contemner be killed.” (ibid).
- (v) It has been related on the authority of Jabir Ibn Abdullah that Holy Prophet (P.B.U.H) said, “who will help me against Kaab bin Ashraf. He has indeed teased Allah and His Prophet.” On this Muhammad Ibn Maslamah stood and said, “O Prophet of Allah! Do you want me to kill him.” Prophet said, “Yes”. Then he went alongwith Abbas Ibn Hiber and Ibad Ibn Bishar and killed him. (Bukhari, Vol.II, page 88).
- (vi) It has been related on the authority of Bara Ibn Azib who said that Holy Prophet sent some persons of Ansar under the headship of Abdullah Ibn Atik to a jew named Abu Rafia who used to tease the Holy Prophet (P.B.U.H) and they killed him. (Assarimul Maslul by Ibn Taimiyyah, page 152).
- (vii) It has been related on the authority of Umair Ibn Umayyah that he had a ‘mushrikah’ sister who teased him when he met the Holy Prophet (P.B.U.H) and used to abuse the Holy Prophet (P.B.U.H). At last one day he killed her with his sword. Her sons cried and said, “We know her murderers who killed our mother and the parents of these people are ‘mushrik’, (infidels).” When Umair thought that her sons may not murder wrong persons, he came to the Holy Prophet (P.B.U.H) and informed him of the whole situation. The Prophet said to him, “Have you killed your sister?” He said,



“Yes.” Prophet said, “Why” He said that she was harming me in your relation. The Prophet called her sons and asked about the murderers. They showed other persons as murderers. Then Prophet informed them and declared her death as vain. (Majmauz Zawaid wa Manbaul Fawaid, Vol.V, page 260).

- (viii) It has been narrated that after the conquest of Makka, the Holy Prophet, after giving general pardon, ordered killing of Ibn Khatal and his slaves who used to compose defamatory poems about the Holy Prophet. (Al-Shifa by Qazi Ayaz, Vol. II, page 284 Urdu Translation).
- (ix) It has been narrated by Qazi Ayaz in Shifa that a person abused the Holy Prophet (P.B.U.H). The Prophet said to Sahaba “Who will kill this person.” On this Khalid Ibn Walid said, “I will kill him.” The Prophet ordered him and he killed him (ibid).
- (x) It has been narrated that a person came to the Holy Prophet and said, “Oh Prophet! My father abused you and I couldn’t bear it thus killed him.” The Holy Prophet (P.B.U.H) confirmed his action.”(ibid), page 285).
- (xi) It has also been related that a woman who belonged to Bani Khatmah tribe used to abuse the Holy Prophet (P.B.U.H). The Holy Prophet (P.B.U.H) said to his companions, “who will take revenge from this, abusive woman.” A person of her tribe took the responsibility and killed her. He then came to the Holy Prophet who said “In this tribe the two goats will not quarrel and the people will live in unity and integrity.” (ibid), page 286).

Abdur Razaq in his Musannaf has related the following Traditions about the contempt of the Holy Prophet (P.B.U.H) and its punishment:

- (i) Hadith No.9704: It has been related on the authority of Ikrimah that a person abused the Holy Prophet (P.B.U.H). The Holy Prophet (P.B.U.H) said, “who will help me against my (this) enemy.” Zubair said, “I”. Then he (Zubair) fought

with him and killed him. The Holy Prophet (P.B.U.H) gave him this goods.

(ii) Hadith No.9705: It has been related on the authority of Urwah Ibn Muhammad (who relates from a companion of the Prophet) that a woman used to abuse the Holy Prophet (P.B.U.H). The Holy Prophet (P.B.U.H) said, “who will help me against my (this) enemy.” On this Khalid Ibn Walid went after her and killed her.

(iii) Hadith No.9706: It has been related on the authority of Abdur Razaq who relates from his father that when Ayub Ibn Yahya went to Adnan, a man was referred to him who had abused the Holy Prophet (P.B.U.H). He consulted (the Ulama) in this matter. Abdur Rahman Ibn Yazid Sanani advised him to kill him and he killed him. Abdur Rahman had related to him a hadith in this regard that he had met Umar and had got a great knowledge from him. Ayub also referred this action to Abdul Malik (or Walid Ibn Abdul Malik). He replied him appreciating his action.

(iv) Hadith No.9707: It has been related on the authority of Saeed Ibn Jubair that a person falsified the Holy Prophet (P.B.U.H). The Prophet sent Ali and Zubair and said to them, “kill him when you find him.”

(v) Hadith No.9708: It has been related on the authority of Ibn Taimi who relates from his father that Hazrat Ali ordered the person who blamed (abused) the Holy Prophet (P.B.U.H) be killed. (Musannaf Abdur Razaq, Vol.V, pages 377-378).

It is pertinent to mention here that Holy Prophet (P.B.U.H) had pardoned some of his contemners but the Jurists concur that Prophet himself had the right to pardon his contemners but the Ummah has no right to pardon his contemners. (Assarumal Maslul, Ibn Taimiyyah, pages 222- 223).

Ibn Taimiyyah writes, “Abu Sulaiman Khattabi said, “When the contemner of the Holy Prophet (P.B.U.H) is a Muslim then his punishment is death and there is no difference of the

opinion among the Muslims about this matter in my knowledge.” (Assarimul Maslul, page 4). Qazi Ayaz writes, “Ummah is unanimous on the point that the Punishment of a Muslim who abuses the Holy Prophet (P.B.U.H) or degrades him is death. (Al-Shifa, Vol.II, page 211). Qazi Ayaz further writes, “Every one who abuses Holy Prophet (P.B.U.H), points out any defect in him, his lineage, his religion or in any of his qualities, or makes allusion with him or resembles him with another thing as his insult, disrespect, degradation, disregard or his defect, he is contemner and he will be killed, and there is consensus of the ulema and Jurists on this point from the period of Sahaba till this time. (Al-Shifa By Qazi Ayaz, Vol.II, page 214).

Abu Bakar Jassas Hanafi writes, “There is no difference of opinion among the Muslims that a Muslim who maligns or insults the Holy Prophet (P.B.U.H) intentionally becomes apostate liable for death. (Ahkamul Quran Vol.III, page 106). It will be useful to note one Hadith here:-

“It has been related on the authority of Abdullah Ibn Abbas that Prophet (P.B.U.H) said, “Kill the person who changes his religion (Islam).” (Bukhari, Vol.II, page 123).

It has been related by Qazi Ayaz that Haroonur Rashid asked Imam Malik about the punishment of the contemner of the Prophet and told him that some Jurists of Iraq had suggested the punishment of whipping him stripes. Imam Malik became furious on that and said, “O Amir ul Muainin! how the Ummah has the right to exist when her Prophet is abused. So kill the person who abuses the Prophet and whip stripes to one who abuses the companions of the Prophet.” (Al-Shifa, Vol.II, page 215).

Ibn Taimiyyah, while relating the opinions of the Jurists in this connection, writes, “Abu Bakar Farsi Shafie has related that there is consensus of opinion among the Muslims that the punishment of contemner of the Prophet is death, if he is



Muslim.” (Assarimul Maslul, page 3). The above discussion leaves no manner of doubt that according to Holy Qur’an as interpreted by the Holy Prophet (P.B.U.H) and the practice ensuing thereafter in the Ummah, the penalty for the contempt of the Holy Prophet (P.B.U.H) is death and nothing else. We have also noted that no one after the Holy Prophet (P.B.U.H) exercised or was authorised the right of reprieve or pardon. The next question arising in the case is thus to specify or clearly define the offence of contempt of the Holy Prophet. The words Shatam and Azi have been used for the contempt of the Prophet in Holy Qur’an and Sunnah means to suffer, to harm, to molest, to condemn, to insult, to annoy, to irritate, to injure, to put to trouble, to malign, to degrade, to scoff. (Arabic English lexicon, E.W. Lane, Book-I, Part-I page 44). The word Shatam means to insult, to abuse, to revile, to scold, to curse, to defame. (Ibid., pages 212, 249). Allama Rashid Raza, while explaining the meaning of the word Azi writes, “It means anything with which the body or the mind of a living person is pained though very lightly.” (Al-Manar, Vol.X, page 445).

Allama Ibn Taimiyyah, while explaining the significance of the contempt writes, “It means to curse the Prophet, prays for any difficulty for him, or refers to him such a thing which does not behove with his position or uses any insulting, false and unreasonable words or imputes ignorance to him or blames him with any human weakness etc.” (Aasarinul Maslul, Ibn Taimiyyah, page 526). Ibn Taimiyyah, while concluding the discussion about the scope and what constitutes the offence of the contempt of the Prophet (P.B.U.H) writes, “Sometimes a word in a situation may amount to injury and insult while such a word may not amount to injury and insult on another occasion. This shows that the interpretation of the words which bear different meanings and senses changes with the change of

circumstances and occasions. And when (insult, contempt) has neither been defined in Shariah nor in dictionary, the custom and usage will be relied upon in determining, its interpretation. So what is considered contempt and insult in the custom and usage that will be considered contempt and insult in Shariah as well and vice versa.” (Assarimul Maslul, Ibn Taimiyyah, page 540)”.

16. The Hon’ble Federal Shariat Court concurred that the alternate punishment of life imprisonment as provided in Section 295-C of PPC was repugnant to the Injunctions of Holy Quran and Sunnah and said words be deleted therefrom. Now the only penalty for the contemnor of the Holy Prophet Muhammad (P.B.U.H) is penalty of death. It is further observed that the blasphemy is offence which is recognized in every religion and in this regard the judgment of House of Lords in the case of “Whitehouse & Lemon & Whitehouse Vs Gay News Limited” is classical example in that case the appellants were the editors and publishers of a magazine called "Gay News", the readership of which consisted mainly of homosexuals, though it was on sale to the general public at some bookstalls. An issue published in June 1976 contained a poem entitled "The Love that Dares to Speak its Name" and accompanied by a drawing illustrating subject matter. It purported to describe in explicit detail acts of sodomy and fellatio with the body of Christ immediately after his death and to ascribe to Him during His lifetime promiscuous homosexual practices with the Apostles and with other men. Their lordship discussed the history of blasphemy and observed that:-

“Two things emerge clearly from the earlier history, first that between the 17<sup>th</sup> century and the last quarter of the 19<sup>th</sup>, when Sir, James Fitzjames Stephen published his history of criminal law of England (1883), the characteristics of the substantive offence of blasphemous libel had undergone progressive changes, and secondly that, as Stephen reluctantly acknowledges in his chapter on “Seditious Offences”(vol II p.298), those changes (which she personally regretted) were largely shaped by the procedural changes in the trial of

prosecution for all forms of criminal libel resulting from Fox's Libel Act 1792 and by the passing of Lord Campbell's Libel Act of 1843.

In the post-Restoration politics of 17<sup>th</sup> and 18<sup>th</sup> century England, Church and State were thought to stand or fall together. To cast doubt on the doctrine of established church or to deny the truth of the Christian faith upon which it was founded was to attack the fabric of society itself; so blasphemous and seditious libel were criminal offences that went hand in hand. Both were originally what would now be described as offences of strict liability. To constitute the offence of blasphemous libel it was enough for the prosecution to prove that the accused, or someone for whose act the law of libel held him to be criminally responsible had published matter which (in trial held before Fox's Libel Act) the judge ruled, or (in trial held after that) the jury found, to be blasphemous whether the accused knew it to be so or not. Furthermore, criminal libel in its four manifestations--- seditious, blasphemous, obscene and defamatory- that was unique among common law offences in imputing to any person who carried on the business of publisher or bookseller vicarious criminal liability for act of publication done by person in his employment even though these were done without his authority, consent or knowledge. Since in practice prosecution were brought against publishers and book sellers rather than against author so long as this remained the law, as it did until the passing of Section 7 of Lord Campbell's Libel Act 1843, it could not logically be reconciled with the notion that accused's own actual intention was relevant element in the offence

The severity of the law of blasphemous libel had, however, been somewhat mitigated before 1843 by judicial rulings not as to the mens rea but as to the actus reus of the offence. To publish opinion denying the truth of doctrine of



the established church or even of Christianity itself was not longer held to amount to the offence of blasphemous libel so long as such opinion were expressed in temperate language and not in terms of offence, insult or ridicule. *Reg v Hetherington* (1841) 4 St. Tr.N.S 563 . This introduces into the concept of the *actus reus* in addition to the publication itself, the effect that material published is likely to have upon the minds of those to whom it is published”.

17. In the Indo-Pak subcontinent during the British rule the blasphemy towards the prophet was not specifically an offence and such like matters were dealt with U/S 153-A of Indian Penal Code. The wretched Rajpal publisher of blasphemous book at that time was tried U/S 153-A of Indian Penal Code and was convicted in January 1927, his conviction was, however, set aside by the High Court in May 1927 and ultimately he was done to death by Ghazi Ilm Din on 06.04.1929. During that era first time offence U/S 295-A was included in Indian Penal Code. The Constitution of Islamic Republic of Pakistan 1973 through Principles of Policy ensured gradual Islamization of the existing laws and in consequence thereof In the year 1984, offence U/S 295-C was inserted in PPC through Act of Parliament. The Government of Pakistan had filed appeal in the August Supreme Court of Pakistan against the judgment of Federal Shariat Court reported as PLD 1991 FSC 10 and subsequently that appeal was withdrawn, therefore now the punishment for the commission of offence U/S 295-C PPC is death.

18. In the judgment *supra*, the learned full Bench of FSC further held; when the words attributed to the suspected contemnors are ambiguous in nature giving two interpretations then how the said incident is to be dealt with is provided in the judgment of Federal Shariat Court “PLD 1991 FSC 10” wherein the Hon’ble Court observed that;-

“Criminal liability may require the wrongful act to be done intentionally or with some further wrongful purpose in mind, or it may suffice that it was done recklessly; and in each case the mental attitude of the doer is such as to make punishment

effective. If a person intentionally chose the wrong doing, penal discipline will furnish him with a sufficient motive to choose the right instead, for the future. If, on the other hand, he committed the forbidden act without wrongful intent, yet realising the possibility of the harmful result, punishment may be an effective inducement for better conduct in the future.

Yet there are other cases in which, for sufficient or insufficient reasons, the law is content with a lower form of mens rea. This is the case with crimes of negligence. A person may be held responsible for some crimes if he did not do his best as a reasonable man to avoid the consequence in question. In another case the law may go even beyond this; holding, a man responsible for his acts, independently altogether of any wrongful state of mind or culpable negligence. Wrongs which are thus independent of fault may be distinguished as wrongs of Strict liability.

The wrongs thus are of three kinds:--

- (1) Intentional or Reckless Wrongs, in which the mens rea amounts to intention, purpose, design, or at least foresight.
- (2) Wrongs of Negligence, in which the mens rea assumes the less serious form of mere carelessness, as opposed to wrongful intent or foresight. With these wrongs defences such as mistake will only negative mens rea if the mistake itself is not negligent.
- (3) Wrongs of Strict Liability, in which the mens rea is not required, neither wrongful intent nor culpable negligence being recognised as a necessary condition of responsibility, and here defences like mistake are of no avail. An intention thus is the purpose or design with which an act is done. Suppose one buys a gun. His intention may be to shoot for sport or game, to use in selfdefence or to shoot some one to cause his death. However, if the latter act is proved as not shooting for defence but as killing then the intention can be said to be to do this very thing i.e., to kill him.

An unintentional act is the one lacking such purpose or design. An act such as killing, which consists of a cause and an effect, may be unintentional when the actor brings about consequences which he does not intend. One may kill by mistake, say firing at a game or wrongly imagining him to be someone else. In the former cases he fails to foresee the consequences, in the latter he is ignorant of some of the circumstances. A system of law, however, could provide that a man be held liable for such consequences, even though he did not intend them. In the first place, such a rule would obviate the need for difficult inquiries into the mental element. But secondly, and more important, the rule could be justified on the ground that a man should not do acts which he foresees will involve consequential harm to others, whether or not he intent to cause this harm. Such behaviour is clearly reckless or blameworthy, unless the risk can be justified by reason of the social interest of the act itself. Both in this special connection and generally, then it is to be observed that the law may, and sometimes does, impute liability, outside the strict definition of intention, for what is called constructive intention. Consequences which are in fact the outcome of negligence merely are sometimes in law dealt with as intentional. Thus he who intentionally does grievous bodily harm to another, though with no desire to kill him, or certain expectation of his death, is guilty of murder if death ensues.

Law frequently, though by no means invariably, treats as intentional, all consequences due to that form of negligence which is distinguished as recklessness that is to say, which the actor foresees as the probable results of his wrongful act. The foresight of the reasonable man is of course an obviously useful evidential test, whereby to infer, what the actor himself foresaw, but the rule just mentioned has transformed it into a presumption of law which cannot, as it seems, be rebutted. Intention thus covers acts expressly intended or those done recklessly.



In the Shariah, it makes no difference whether the criminal intent precedes the offence or synchronizes with it. In either case the penalty is identical. This principle is substantiated by the following Tradition of the Holy Prophet (P.B.U.H):-

“Allah condones all those sinister ideas coming into the minds of the members of my Ummah which they have not expressed or put into practice.”

That is why the Shariah draws no line of distinction between homicide or infliction of injury decided upon beforehand and unpremeditated homicide or injury and lays down identical penalty in both the cases. The prescribed punishment for murder is ‘qisas’ whether it is premeditated or not. The intention may be definite or indefinite. The intention of an offender to do a definite wrong to an indefinite person will be regarded as definite intent. If the offender is conscious of the potential results of his act and does intend to produce all or some of those results his offence would in spite of its indefinite results be treated as a definite act, whatever the results produced by it. The Hanafites and the Hanbalites as well as some Jurists of the Shafi’ee School do not differentiate between definite and indefinite intents in criminal cases including homicide. Hence if the act of the offender results in homicide he is a willful killer whether or not his intention of murder involves a definite victim. Further, in determining the accountability of the offender and the sort of offence he is guilty of, the Jurists place both definite and indefinite intents on equal footing and regard them as subject to the same injunction except when the offence consists of homicide and the criminal intent is indefinite.

The Shariah has kept in view the difference between criminal intent and the motive of crime, right from its very beginning but has not admitted of the bearing of the motive on the commission and pattern of the crime and the punishment entailed by it. Thus, it matters little in the Shariah whether the

motive of offence is noble, just as killing, in retaliation, for the murder of one's next of kin or for the indignity suffered at the hands of the victim, or whether the motive is ignoble just as killing in lieu of pecuniary compensation or to commit larceny. In other words, the motive of crime has nothing to do with the criminal intent; nor does it affect the pattern of crime or its punishment. So it is practically possible to reject the effect of motive so far as the 'hadd', 'qisas' offences are concerned but it is not so in the case of penal punishment. The motive does not affect the 'hadd' or 'qisas' offences because the law-maker has confined the Powers of the Court to the prescribed punishments, admitting of no consideration of the motive behind the commission of offences. But in the case of 'tazeer' punishments the law-maker empowers the Court to determine the quantum of Penalty and choose the kind of penalty so that it may be possible for the Court to take into account the motives of offences in the determination of the quantum of Punishment".

In other words the difference between the man made laws in force and the Islamic Shariah is that the latter does not recognize the effect of motives in the case of offences which are categorised as 'Hudood' or 'Qisas' but in the case of other offences, there is nothing in the Shariah inhibiting the Court to take into account the motive of crimes although it does not theoretically admit of its effect on Punishment. It will be seen from the above discussion that Shariah recognises an offence liable to Hadd only if it is accompanied by an express intention. Shariah also waives the penalty of Hadd if any doubt occurs therein. It is also based on a Tradition of the Holy Prophet (P.B.U.H) that doubts dispel sentences of Hadd. So the wrongs of the first category only in para. 37 above will attract the penalty of Hadd and it will apply to the contemner of the Holy Prophet (P.B.U.H). Further, as intention is to be gathered from the facts surrounding the event, the acts falling

in the second and third categories will not attract the sentences of Hadd, provided the accused shows that he never intended to commit the offence and is penitent if the words said, gesture made or the act done were ambiguous or they could show some straits of guilty mind or malice. We may also clarify that penitence, in an alleged offence of contempt of the Holy Prophet (P.B.U.H), would be availed to show that mind of the accused had no guilty straits or malice and the penalty will be dispelled on that account and not for the reason that penitence can wipe out an intended contempt.(underlining is supplied by us)

The Holy Qur'an says:

“33:5 And there is no sin for you in the mistakes that ye make unintentionally, but what your hearts purpose (that will be a sin for you), Allah is forgiving, merciful.”

“6:54 When those come to thee who believe in Our Signs, Say: “Peace be on you; Your Lord had inscribed for Himself (the rule of) Mercy: verily, if any of you did evil in ignorance, and thereafter repented and amended (His conduct), lo! He is oft-Forgiving, Most Merciful.”

“16:106 Anyone who, after accepting faith in Allah, utters unbelief, except under compulsion, His heart remaining firm in faith but such as open their breast to unbelief, on them is Wrath from Allah, and theirs will be a dreadful penalty.”

“40:19 (Allah) knows of (the tricks) that deceive with the eyes, and all that hearts (Of men) conceal.”

It has been related on the authority of Hazrat Umar that he heard the Prophet (P.B.U.H) say “the reward of deeds depends upon the intention and every person will get the reward according to what he had intended. So whoever emigrated for worldly benefits or for a woman to marry, his emigration was for what he emigrated for.” (Bukhari, Vol.I, page 1, Hadith No.1). It has been related on the authority of



Ubbaye Ibn Ka'b who said, "There was a person among the Ansar whose house was situated at the farthest end of Madina, but he never missed any prayer along with the Messenger of Allah. We felt pity for him and said to him: O, so and so, why don't you buy a house near the Prophet's house so as to save you from the troubles of the heat and the coming from a long distance. He said: Listen! by Allah, I do not like my house to be situated by the side of Muhammad. I took (these words of his) ill and came to the Apostle of Allah and informed him about (these words). He (the Holy Prophet) called him and he said exactly like that (which he had mentioned to Ubbaye Ibn Ka'b) but made a mention of this also) that he wanted a reward for his steps. Upon this the Apostle of Allah said: in fact for you is the reward which you intend. (Muslim, Vol. I, English Translation by Abdul Hameed Siddiqui, pages 323-324, Hadith No.1404). The above Tradition clearly shows that on the face of it the words said sounded contemptuous but 289 that was not the intention of the utterer and so he was absolved of any penalty. (underlining is supplied by us)

It has been related on the authority of Yahya Ibn Sayyed that the Apostle of Allah was seated while a grave was being dug at Madina. A man suddenly looked down into the grave and said: Bad is the sleeping place of a believer. The Apostle of Allah retorted: What a bad thing you have said! The man explained: I have not meant that, but I meant that fight in the way of Allah (is better). Then the Apostle of Allah said thrice: There is nothing like death in the way of Allah. There is no other tract of land in the world in which I would prefer my grave. (Mishkat, Vol.III, pages 662-663, English Translation by Fazlul Karim, Hadith No. 575). It is relevant to mention here that the mere fact that the words uttered sounded contemptuous of the Prophet is not an offence until it is based on malicious action or degradation. For example,

speaking loudly has been prohibited before the Prophet. The Holy Qur'an says, "O ye who believe! Raise not your voice above the voice of the Prophet nor speak aloud to him in talk, as ye may speak aloud to one another, lest your deeds become void and ye perceive not." (49:2). In this connection Allama Qurtubi while explaining Verse 49:2 writes, "this is the prohibition of shouting and raising the voice over the voice of Prophet which actually injured him. However, it will be no offence if it is done for the cause of battle or for frightening the enemy etc. (underlining is supplied by us)

The Holy Prophet (P.B.U.H) didn't punish Mistah, Hassan and Hamnah who had actually participated in the accusation of Hazrat Aisha and he also did not declare them as hypocrites. Ibn-e-Taimiyyah, explaining that position writes, "they had not intended the injury of the Prophet and there was not any-sign of that, while Ibn Ubayy had intended the injury. This was because at that time it had not been told to them that the wives of the Prophet in this world will be his wives hereinafter and it was possible about their wives in general sense. It is for this reason that Holy Prophet (P.B.U.H) hesitated in their matter and consulted Ali and Zaid and enquired from Barirah and consequently didn't declare those who didn't intend the injury of the Prophet as hypocrites on the possibility in their mind that Holy Prophet might have divorced the accused wife. But after the order that his wives in this world will be his wives hereinafter and that they are the mothers of the believers, their accusation would be the injury of the Prophet at any cost." (Assarimul Maslul, ala Shatimir Rasul, page 49). Maulana Ahmad Yar Khan Badayuni writes, "intention" of the contemner is necessary for proving the offence of contempt of the Holy Prophet (P.B.U.H). If a person said, "The Holy Prophet (P.B.U.H) was poor and was not a fortunate." So he will become infidel only when he intends the contempt of the Prophet with that."

(Nurul Irfan, Part X, page 74). Some of the Jurists are, however, of the opinion that if the contempt of the Holy Prophet (P.B.U.H) is in manifest and express words, the contemner will not be asked as to what was his intention but if the words are such which bear or have the capacity of bearing different meanings and senses out of which only one amounts to contempt, he will be asked as to what was his “intention.” (Al-Shifa by Qazi Ayaz, Vol.II, page 221).  
**(underlining is supplied by us)**

We, however, do not agree. Firstly, the meaning and import of words differ from place to place. Again context may also suggest different meaning. The accused therefore, must be allowed an opportunity to explain lest an innocent person is punished. It is related that Holy Prophet (P.B.U.H) said, The mistake of Qazi judge) in releasing a criminal is better than his mistake in punishing an innocent.” (Sunan Al-Baihaqi, Vol. VIII, page 184). The Holy Qur’an also confers right of hearing on every accused. It is to be noted that though Allah Almighty knows, that whatever is written in the scrolls by the guardian Angels, about the deeds of a person in this world, is correct beyond any doubt, yet we find that the man will be heard and if he objects to the writings of the angels, Allah shall call witnesses including his hands, feet, eyes and ears. See alQur’an 17:13, 14, 36:65, 27:20, 22, 16:93 and 21:23. We also find from the Traditions referred to in paras.36-41 above that the right of an accused to explain is there and cannot be taken away. It is, therefore, only after the explanation that the Court can decide whether the words so said were intended to malign, were they used maliciously and contemptuously or were uttered innocently. **(underlining is supplied by us)**

19. In the light of above, we have given our anxious thoughts to the arguments advanced at the bar, perused the prosecution evidence



and appreciated the plea of appellant with the valuable assistance of the learned counsel for the parties:

20. During trial, framing of charge to recording of statement u/s 342 Cr.P.C, appellant's stance/version/plea surfaced in the following words:

In response to Question No. 2:

**"Do you plead guilty."**

Appellant answered as under:-

**" I have not committed murder of an apostate like Suleman Taseer (the then Governor Punjab) contrary to dictum of the Holy Quran and Sunnah"**

As per stance of the appellant before resorted to firing following conversation took place between him and deceased. Put to an eye witnesses (PW-11 Nadeem Asif, ASI & Muhammad Amer Khan, PW-12.

**PW-11: Honorable Governor you have labeled the blasphemy law as black law despite you are also "Umati" follower of Holy Prophet (PBUH)**

Ans: "It is not only a black law but my shit"

**PW-12 Honorable Governor you are Umati and follower of prophet (PBUH) even then you have labeled the blasphemy law as black law"**

Ans: "It is not only a black law but my shit"

On conviction to one Asia Bibi in a blasphemy case, deceased went to kotlakhpat, Jail, met with her and got arranged mercy petition from her and said that he would forward it to the president of Pakistan and he also stated that it was a black law" put to PW-11,12 & 14).

**PW-10: Sheharyar Taseer, complainant:-**

**"I have heard about my father that he was zani, drunk, never offered a prayer, not kept fast and ate pork"**

**"it is incorrect that my father was given Holy Quran when he was behind bars during Zia regime. It is further incorrect that he**

returned the same with remarks **“There is nothing in this book for me”**.

It is incorrect to suggest that my father contracted marriage with a Sikh lady during the year 1980-82

It is incorrect to suggest that my father was fond of merry making and gay time particularly in the late hours of night

It is correct that Atish Taseer had written book **“Stranger to History”**. I have not read that book. I do not know that the said writer claimed himself to be a son of Sikh lady. I do not know that it was published in section of press that this Atish Taseer was born from the wedlock of Taseer with Sikh lady

**PW-12:** It is incorrect that deceased used filthy language showing disrespect to the Holy name, Holy Prophet (PBUH). It is incorrect that under Islamic teachings the accused was right to cause death of Suleman Taseer who was a known prostrate. It is incorrect that in spite of all that appellant has shown resistance and lastly in the eventuality the deceased uttered filthy, nasty and disrespectful words pertaining to the personality Of Holy Prophet (PBUH) appellant could not abstain and that under sudden and grave occasion, appellant shot him dead.

Statement u/s 342 Cr.P.C.

**Question No. 8: Why this case is against you and why PWs deposed against you?**

Ans. Salman Taseer, at relevant time, was acting as Governor of the Province of Punjab, He was a representative of the Federal Government of Punjab. While holding the position of the Governor of a Province of the Islamic Republic of Pakistan, he publically exposed himself as a sympathizer of condemned prisoner namely Mst. Aasia, who was sentenced to death by a court of law for use of derogatory remarks about the Holy Prophet Mohammad (PBUH) and directly defiled the name of the Holy Prophet (PBUH). Needless to point out that the

sentence awarded to the above lady was still holding field and the judgment passed by the trial court, was yet to undergo judicial scrutiny in the courts of appeal. However, Salman Taseer in a very derogatory manner on his visit to Jail at Lahore, arranged a “Darbar” for making himself available to receive only self arranged mercy petition of the condemned prisoner. It was not that simple, But Salman Taseer also in his interview published on 23.12.2010, in a very shameful manner called Blasphemy law as “black Law”. To criticize such law and to challenge it as it was manmade law tantamount to directly defiling the sacred name of the Holy Prophet Mohammad (PBUH) and was an attempt to lower down this sacred provision of law, which is in consonance with the dictates of Quran and Sunnah. In this connection Daily Express Tribune of 5.12.2010. (portion highlighted Mark A to A) and the Daily Express tribune (urdu) dated 23.11.2010, marked B to B at page 8 and marked C to C at page 5 are worth mentioning. It is pointed out that the news items mentioned above were never denounced by Salman Taseer in his life time. This situation reveals that Salman Taseer himself was responsible for commission of an offense U/S 295-C of PPC punishable to death or life imprisonment. In spite of that he was not dealt with in accordance with law, obviously he was the left hand of President Asif Zardari and a bully of Americans. So nature had to take its own course and justice was to be done. It is a lesson for all the apostates as finally they have to meet the same fate.

I may put a question to the prosecution “If a Muslim due to “Sub-o-Shattim” and “Ertad” does not render himself liable to dual liability of being killed? That act which is embedded with both “Sub-o-Shattim” and “Ertad” touches the heights of gravity. Here Prosecution has to show that due to Shattum one does not become “Murtad” (apostate) and that “Murtad” is not liable to be



killed ? This proposition would definitely settle fate of the case, one way or the other. Personal life of Salman Taseer shows that right from early times, he proved himself as an infidel. He married three times, his one wife was Sikh by religion. He arranged his so called marriage in a secret way with that lady in New Delhi in India. From the wedlock a son named Atish Taseer was born. On attaining youth Atish adopted Journalism in London and once or twice traveled to Pakistan to see his father. Atish Taseer wrote a book. Stranger to history and it was published by MC CLELLAND STEWART OF LONDON” The author while describing his father Salam Taseer writes at page 21 & 22 of the Book "Stranger to History" (Book Attached). “My father who drank scotch every evening, never fasted or prayed even ate pork and once said “ It was only when I was in jail and all they gave me to read was the Kuran- and I read it back to front several times-that I realized there was nothing in it for me, “

His lifestyle, faith and living with a lady of non Muslim faith, reflects his act of living in constant state of Zinna under pretext of marriage (not permissible in Islam) speaks volume of his character and associated matters.

On the fateful day, I being member of Elite Force I was deployed as one of the member of Escort Guard of Salman Taseer, The Governor of Punjab. In Kohsar Market, the Governor with another after having lunch In restaurant walked to his vehicle. In adjoining mosque I went for urinating in the washroom and for making ablution, When I came out with my gun, I came across Salman Taseer. Then I had the occasion to address him. “your Honor being the Governor had remarked about blasphemy law as black law, if so it was unbecoming of you” Upon this he suddenly shouted and said, Not only that it is black law, but also it is my shit” Being a Muslim I lost control

and under grave and sudden provocation, I pressed the trigger and he lay dead in front of me. I have no repentance and I did it for “Tahafuz-i-Namoos-i-Rasool” Salman offered me grave and sudden provocation. I was justified to kill him kindly see my accompanying written statement U/s 265 (f) of Cr. PC.

In crux, appellant’s accusation against deceased reflected from the words mentioned here under;

*Being Apostate, Blasphemous Accused of offence  
U/S 295-C PPC, “Mubal-ul-dum” Womeniser,  
having habits of drinking and eating of pork, merry  
making and gay time ...*

As is evident from above, appellant admitted that he had committed the murder of deceased but with a very specific plea that this act of commission of the murder was not contrary to the dictums of Holy Quran and Sunnah.

21. Appellant admitted the factum of committing murder of deceased but took a specific plea. It is well settled law that initial onus to prove case against an accused is upon the prosecution, but when accused takes up a specific plea that onus is upon him to prove the plea raised by him. Article 121 of the Qanun-e-Shahadat order, deals with this preposition which for convenience, reproduced hereunder:-

**Article 121:-**

**“Burden of proving that case of accused comes within exception.**

**"When a person is accused of any offence the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Pakistan Penal Code (Act XLV of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence, of such circumstances."**

The Honorable Supreme Court through different authoritative pronouncements observed as under in the case of **YARA Vs. The State** reported as 2005 SCMR 829, it has been held that

" S.302-- Burden of proof--Principles --- when a specific defense plea is raised by an accused burden to prove the same shifts upon him"

In the case of **Mst. Dur Naz & another Vs. Yousaf & another**, reported as 2005 SCMR 1906," it has been held that

S.302 --Burden of proof -- Initial burden to prove the guilt of accused lies upon prosecution , but when a specific plea is raised by the accused in his defense the burden to prove the same lies on him and both are to be considered in justa-position and the one nearer to the truth is to given weight"

Similarly in the case, **Anwar Shamim Vs. The State**, 2010 SCMR 1791," the apex Court maintained as under:-

Art.121 -- Criminal trial-- Specific plea --Proof -- It is duty and obligation of accused to prove the plea taken by him in his defense in terms of Art.121 of Qanun-e-Shahadat, 1984."

22. The preamble of the Constitution started with the words that the sovereignty over the entire universe belongs to Allah Almighty alone and the authority to be exercised by the people of Pakistan within the limits prescribed by Him is a sacred trust. With the above mentioned opening statement the people of Pakistan represented through the constituent assembly framed the Constitution of 1973 and became the subject of a sovereign independent State with the belief that State shall exercise its powers and authority through the chosen representatives of the people, observing all the principles of democracy, freedom, equality, tolerance and social justice as enunciated by Islam. The people of Pakistan further vowed that the people would be guaranteed fundamental rights including equality of status, of opportunity and before law, social, economic and political justice, and



freedom of thought, expression, belief, faith, worship and association, subject to law and public morality and they have also vowed that independence of the Judiciary shall be fully secured with the aim that people of Pakistan may prosper and attain their rightful and honored place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity. Through the preamble/objective resolution the people of Pakistan surrendered their rights in favour of the State and agreed to abide by the boundaries / limits set out by the Constitution. This reveals that subject of the State of the Islamic Republic of Pakistan by virtue of the framing of the Constitution had executed a social contract and they agreed to surrender their individual authority in favor of the State to be exercised through the chosen representative of the people. After framing of the Constitution of 1973 no individual person or individual citizen of the State was left with any authority to take the law in his own hands and to pass the judgments for himself touching the rights of the others and it was only for the State and its various pillars / organs to resolve the controversies and disputes between the individuals, the citizens of the State and to ensure that the principles of the Islamic law would be implemented in every sphere of life qua individual, social and international level. Furthermore, the preamble/objective resolution itself provided that judiciary of the State would be fully independent so as to ensure the dispensation of the justice to the entire satisfaction of the people who opted to exercise the powers and authority through their chosen representative.

23. The Constitution, being the organic law of the country provide certain guarantees to its citizens and other person, for the time being in Pakistan. For the purpose of this matter Articles, 4, 5, 9, 10-A, 14 & 25 are of some significance, therefore, same are reproduced herein below:-

4. **Right of individuals to be dealt with in accordance with law, etc.-**  
(1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen,

wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular-

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and (c) no person shall be compelled to do that which the law does not require him to do.

**5. Loyalty to State and obedience to Constitution and law.—**

(1) Loyalty to the State is the basic duty of every citizen.

(2) Obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan.

**9. Security of person.—**

No person shall be deprived of life or liberty save in accordance with law.

**[10A. Right to fair trial.—**

For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.]

**14. Inviolability of dignity of man, etc.—**

(1) The dignity of man and, subject to law, the privacy of home, shall be inviolable.

(2) No person shall be subjected to torture for the purpose of extracting evidence.

**25. Equality of citizens.—**

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

24. Above Articles provide rights, put obligations and give assurances ,Order in which these articles are placed in the constitution is of great significance. Article 4 & 5 fall under Part I and articles 8 to 28 under Part II , Chapter I dealing with fundamental rights. Article 4 speaks about Rule of Law, Protection of Law, to be dealt in accordance with law. Article 4 is valuable that it provides guarantee to be dealt in accordance with law , even when fundamental rights under Part II, Chapter I are suspended. Loyalty to the state is basic duty and

obedience to the Constitution and law is the inviolable obligation of every citizen wherever he may be and of every other person for the time being within Pakistan. Plain reading of above articles manifest that after assurance of protection of law through inalienable right (which cannot be taken away). The constitution demands loyalty from the citizens, it's obedience and of the law, then come the fundamental rights enshrined under Article 8 to 28.

For every citizen most valuable thing is " life" and liberty. Article 9 gives guarantee to every person that he will not be deprived of his most valuable thing i.e. life and liberty and he can enjoy the pleasures of life, fruits of liberty but, he has to remain within the limits prescribed by law. And if someone cross the limits and break the law the guarantee can be withheld. How great are the constitutional guarantees that if someone loses his status under Article 9, article 10 and 10-A are there to provide him protection of law. Security of life and liberty cannot be taken away by the individuals or group of individuals, rather state, that to as per law of the land and in accordance with the procedure prescribed therein. If someone commits a crime, law is there to deal with him and no one is authorized to take law into his own hands. Fair trail and due process is entitlement of every person and it is a constitutional guarantee.

25. Similarly dignity of man and, subject to law, the privacy of home, shall be inviolable and no person shall be subjected to torture for the purpose of extracting evidence. Article 25 of the Constitution provides that all citizens are to be equal before law and entitled to equal protection of law and there shall be no discrimination. Hon'ble Justice ® Fazal Karim in his famous book "Judicial Review of Public Actions, Vol. 1 Chapter 1, Page 607 while referring 71 U.S (4 Wallace)2 (1867) provided under mentioned historical phrase recorded by Justice Davis:-



*“By the protectin of the law human rights are secured; withdraw the protection and they are at the mercy of wicked rulers or the clamor of an excited people.”*

26. We have discussed the provisions of the Constitution of Islamic Republic of Pakistan 1973, and the importance which it gives to the human life and it is the responsibility of the State that no one should be deprived from his life save in accordance with law. These provisions of the Constitution compelled the legislatures to the formation / adoption of the Pakistan Penal Code, Cr.P.C, law of evidence / Qanun-e-Shahadat Order 1984, and other substantive and procedural penal laws like Anti Terrorism Act 1997 etc. Section 44,45 of the Criminal Procedure Code 1898 caste a duty upon every person aware of the commission of any offence to the local police / law enforcing agencies etc.

27. With reference to the above narrated legal position it is observed that as per the plea of appellant the deceased had committed the offence U/S 295-C of PPC declaring blasphemy law as black law. The version of appellant as recorded through his statement U/S 342 Cr.PC does not reflect that he had ever made any effort to report the commission of attributed offence by the deceased to any law enforcing agency. He did not file any petition U/S 22-A of Cr.P.C to obtain a direction for the registration of the criminal case against the deceased for the commission of offence U/S 295-C of PPC and though as per his version and as highlighted by the learned defense counsel the State had failed to enforce the Hadd against the deceased and he was dissatisfied from the role of the State and its law enforcing agencies, even then he continued to reap the fruits from the system of Governance established through the Constitution of Islamic Republic of Pakistan 1973, and kept on serving as soldier in the Elite Force. In this way appellant was getting all the benefits from the State in the shape of the salary / protection of job and all other allied benefits in accordance with law but he opted to take the law in his own hands which is totally unjustified,

uncalled for and unwarranted to any citizen of the State of the Islamic Republic of Pakistan and especially from the member of disciplined force established to protect the State from the internal aggression and threats posed to the State.

The plea of the appellant might have carried some weight if he would have made any effort to set the law in motion by reporting the alleged commission of the offence of blasphemy by the deceased and the different departments of the State designated to redress the grievances and dispensation of the justice would have failed to take the appropriate action against the deceased. In his written statement recorded U/S 342 Cr.P.C appellant has himself stated that an accused with the name of Mst. Asia Bibi was convicted by the learned trial court for the commission of the offence U/S 295-C of PPC and after such conviction the deceased had declared the blasphemy law as black law, therefore, to the knowledge of the appellant the law enforcing agencies and the courts established under the Constitution were discharging their obligations in accordance with law. In these circumstances, there was ample opportunity with appellant to initiate the proceedings for the trial of the deceased and if the learned courts would have found the allegations to be true, then the deceased would have been liable to be sentenced to death. As per Article 248 of the Constitution of Islamic Republic of Pakistan the deceased being the sitting Governor of the most populous Province of the State was enjoying the immunity and during his tenure in office he was not liable for any criminal prosecution but registration of case was no bar.

28. We have appreciated the case law along with the relevant Ahadiths and the verses of the Holy Quran. It is evident that neither the appellant nor his learned defense counsel are oblivious of the fact that in their endeavor to provide the shelter to the criminal act of the appellant by referring to the judgments of the Holy Prophet Muhammad (P.B.U.H) they have confused the reality that the Holy Prophet Muhammad (P.B.U.H) was not only a human being but was

also the Messenger of Allah. The Holy Prophet Muhammad (P.B.U.H) in the post migration era was head of the State, Commander in Chief of the army, the Chief Executive of the State and also the Chief Judge, ultimate legislative authority of his territory and therefore, if the Holy Prophet Muhammad (P.B.U.H) ordered the killing of some contemnors or he ratified some individual acts of killing of the contemnors by the Muslims, he was exercising the power which accumulated in his personality with above status. Now the question arises that whether, after the time the Holy Prophet Muhammad (P.B.U.H) left us, who is supposed to exercise that authority and the reply is found in the elevation of the firstly rightly guided Caliphate Hazrat Abu Bakar Siddique (R.A) as all the Muslims chose him to succeed him to the office of Head of the State to manage the affairs. This reveals that no single person can claim to have inherited the unique / multiple authorities as enjoyed by the Holy Prophet Muhammad (P.B.U.H) in his own right without the assent of the people of the State.

29. Admittedly appellant is neither the Chief Executive, nor Head of the State and not even a Judge, he was a soldier in the uniformed force, under the legal obligation to obey the orders of his superiors and beside this there was no other duty of appellant. With reference to the contention of the learned defense counsel that the deceased was Mubah-ud-Dum like any other contemnor and that appellant was justified in murdering him, it is observed that the golden time of the history when the Holy Prophet Muhammad (P.B.U.H) had been dictating / changing the obsolete culture of the ancient world and was imparting the knowledge to the humanity may very conveniently be divided into two eras, one pre-migration and second post migration era. In depth perusal of the renowned Tafaseers of the Holy Quran and the books of Seerat, Ahadiths prove beyond any shadow of doubt that in the pre migration era the struggle of the Holy Prophet Muhammad (P.B.U.H) was the struggle of the individual who was striving to spread



the message of Allah Almighty as a result of which the Holy Prophet Muhammad (P.B.U.H) faced exemplary resistance from the pagans of Makkah and even from his near relatives. The history quoted the hardships which Holy Prophet Muhammad (P.B.U.H) faced during this period and he was also physically tortured by Mushriks. In this period the Holy Prophet (P.B.U.H) went to Taif in the hope that people of that city would listen and accept the message of God but they turned to be more brutal than Makkans as they injured the Holy Prophet Muhammad (P.B.U.H) by pelting stones. This era also witnessed a period of three years when the Holy Prophet Muhammad (P.B.U.H) was socially boycotted by infidels and he along with his tribe was forced to live in an inhabited valley of Shaib Abi Talib where the family members of the Holy Prophet Muhammad (P.B.U.H) had no other stuff to eat except the leaves and barks of the trees. This era witnessed that any contemnor of Holy Prophet Muhammad (P.B.U.H) was never sentenced as at that time the struggle of the Holy Prophet Muhammad (P.B.U.H) was individual in capacity and at that time the Holy Prophet Muhammad (P.B.U.H) was not heading any State and there was no Islamic law concerning the Governance of the State, the inviolability of the head of the State and the prestige and honor attached to the office of Holy Prophet Muhammad (P.B.U.H). That era only witnessed two incidents whereby the persons who had tortured the Holy Prophet Muhammad (P.B.U.H) were reprimanded as in the 1<sup>st</sup> case one Mushrik namely Abu Jahal had injured the Holy Prophet Muhammad (P.B.U.H) and the Imam of Martyrs Amir Hamza who was the uncle of the Holy Prophet Muhammad (P.B.U.H) and at that time had not yet converted to Islam punished that person in individual capacity and the second example is of Hazrat Umer (R.A) as the great second Caliph soon after converting to Islam snapped a person who had humiliated Holy Prophet Muhammad (P.B.U.H). In that era the Allah Almighty was consoling his Prophet through various verses of Holy Quran i.e. Surah Kausar, Surah Lahab, Surah Mawah and Allah

Almighty promised that who ever would torture, humiliate or give stress to the Holy Prophet Muhammad (P.B.U.H) would readily face the fire on day of resurrection and no responsibility was caste on the Muslims at that time or upon the Holy Prophet Muhammad (P.B.U.H) to show the resistance and to punish the contemnors.

وَمَا خَلَقْنَا السَّمَوَاتِ وَالْأَرْضَ وَمَا بَيْنَهُمَا إِلَّا بِالْحَقِّ وَإِنَّ السَّاعَةَ لَآتِيَةٌ  
فَاصْفَحَ الصَّفْحَ الْجَمِيلَ ﴿٨٥﴾

" We created not the heavens, the earth, and all between them, but for just ends. And the Hour is surely coming (when this will be manifest). So overlook (any human faults) with gracious forgiveness"

30. With the migration “Hijrat” of the Holy Prophet Muhammad (P.B.U.H) a radical change took place as soon as after reaching Madina the Holy Prophet Muhammad (P.B.U.H) made a social contract with the different tribes settled in great city of Madina which is called as Misaq-e-Madina. Through this agreement/Constitution Islamic State was established and Holy Prophet Muhammad (P.B.U.H) became the head of the State having all the legislative, executive, judicial and military powers beside being the Messenger of Allah Almighty. This was the time when the verses of Holy Quran setting out all the principles governing the social, national and international issues revealed to the Holy Prophet Muhammad (P.B.U.H). Now the newly created Islamic State was under threats from the pagan of Makkah and others resulting in Ghazwa e Badr in which the Muslims under the command of the Holy Prophet Muhammad (P.B.U.H) were victorious. Even during the early years of post migration era the history did not quote any example that any contemnor was done to death on the order of the Holy Prophet Muhammad (P.B.U.H) or the Holy Prophet ratified any individual act of any Muslim killing any contemnor. It was the era after Ghazwa e

Badar that Islamic State fully established its ground and became formidable power in the Arab Peninsula. In this period there are the examples of the killing of the contemnors on the orders / judgments of the Holy Prophet Muhammad (P.B.U.H) and the ratification of the individual acts of the Muslim murdering the contemnors but it has already been observed that at that time the Islamic State was in the state of war with the Jews who were expelled from Madina and they were not only guilty of the individual contempt of the Holy Prophet Muhammad (P.B.U.H) but they were also rebels of the State. In view of the above discussion it is evident like the broad day light that act of appellant of murdering the deceased can never be justified on the touchstone of the decisions of the Holy Prophet Muhammad (P.B.U.H) and the settled principle of the Islamic law about the subject of blasphemy.

31. The plea of appellant that he was justified to kill the deceased as he had committed the offence U/S 295-C PPC has already been discussed. Appellant took the second plea that the deceased had provoked him and in the state of aggression and sudden provocation he lost his self-control and killed him. Learned defense counsel have argued that it is established from the record that it was the deceased who had provoked the appellant by declaring that the blasphemy law was a black law and his shit, therefore, the act of the appellant of committing the murder of the deceased becomes no offence. With reference to this contention the learned counsel have placed reliance upon the cases laws “Ali Muhammad Vs The State” “1993 PC.rLJ 557”, & “Ghulam Farid Vs The State “1997 P.Cr. LJ 1411”. But here we are fortified with the dictum laid down by august Supreme Court in the case reported as PLD 2001 S.C 96 wherein observed as under:-

*“Legally and morally speaking, nobody has any right nor can anybody be allowed to take law in his own hands to take the life of anybody in the name of “Ghairat”. Neither the law of the land nor religion permits so-called honour*



*killing which amounts to murder (Qatal-i-Amd) simpliciter. Such iniquitous and vile act is violative of fundamental right as enshrined in Article 9 of the Constitution of Islamic Republic of Pakistan which provides that no person would be deprived of life or liberty except in accordance with law and any custom or usage in that respect is void under Article 8(1) of the Constitution.*

This plea of the appellant that he had talked to the deceased and the deceased had replied that blasphemy law was not only a black law but also his shit is not established as PW11 Nadeem Asif ASI and PW12 Muhammad Ameer Khan Inspector who have narrated the eye witness count have absolutely denied any conversation between the deceased and the appellant. Later on in his statement stated in narration form that " There was no talk/ conversation between appellant and deceased just before occurrence" They have also ruled out any possibility of such like conversation as they have stated that appellant was in second layer of security. Learned trial court considered the plea of the appellant and rightly observed that

*“accused claimed that deceased was uttering remarks time and again against blasphemy law. Deceased went to Jail at Lahore to who solidarity with the condemn prisoner of blasphemy. Remarks of the deceased were being published in the press. However the documents / press clippings produced by the appellant in this regard provides that said remarks were published lastly in the month November 2010 while occurrence of this case did take place on 04.01.2011. Meaning thereby accused had no sudden provocation. More so it is pertinent to add here that it is not case of the defence that deceased, in the past made the remarks against the blasphemy law in presence of the accused. As such element of sudden provocation of the accused is missing”*

32. As to the defence plea that accused was returning after urination when he had chance to pose question to the deceased, it is to be observed that Ex.PD scaled site plan provides that accused was 8 feet away from the deceased at the time of occurrence. Meaning thereby he had no occasion to ask question from the deceased to clarify as to why the deceased was commenting upon blasphemy law.

33. However, if for the sake of arguments it is admitted that Appellant had chance to be conversant with the deceased even then he cannot be given benefit of sudden provocation for the reasons that it spells out even from the plea of appellant that it was he who sought for provocation. The deceased himself did not utter even a single word in the presence of the accused just before the occurrence. In the case of **NASRULLAH KHAN and 2 others Vs. The State**, reported as “2011 SCMR 613” the Honorable Supreme Court held as under:-

*“—S. 7(a)— Appreciation of evidence— Defence plea— Grave and sudden provocation ----Principle -----Benefit of grave and sudden provocation can only be given, if the provocation was not sought by the accused himself.*

*“—S. 7(a)— Grave and sudden provocation— Provocation, nature of --- Provocation must be such as will upset not merely a hasty, hot-tempered and hypersensitive person, but would upset also a person of ordinary sense and calmness---Law does not take into account abnormal creatures reacting abnormally in given situations, but contemplates the acting of normal beings in given situations, and the protection that is offered by the exception is the protection of normal beings reacting normally in a given set of circumstances---Provocation sought by the accused cannot furnish any defence against the charge of murder.*

34. Perusal of the impugned judgment and dictum laid down by apex court reveals that the learned trial court rightly rejected the

possibility regarding the plea of grave and sudden provocation as first of all this plea is not established and it is not proved and even if it is presumed that the appellant somehow went to the deceased and had the chance to be conversant with him then it is obvious that it was the appellant who was searching for an excuse to do what he wanted to do. With reference to the above said findings of the learned trial court the learned defense counsel have argued that the deceased was undoubtedly guilty of the commission of offence U/S 295-C of PPC, the recurring provocation was there for the accused as the remarks of the deceased were published in the newspapers and the appellant has produced the clipping of these news papers. Learned counsel have referred to some case law cited as “Abdul Ghani Vs The State” “2007 YLR 969 & “Mohtarma Benazir Bhutto Vs President of Pakistan” “PLD 1998 SC 388” that the press clipping can be relied and can be looked into. We have considered this contention of the learned defense counsel and it is observed that in the presence of some other direct unimpeachable and confidence inspiring evidence the press clippings can be considered and looked into as corroborative material but on their own strength, these press clippings are not enough to prove the existence of certain facts. If we accept the accusation of appellant that deceased committed offence of 295-C PPC, then question arises that to prove such a serious charge and getting approval of his act of killing, what evidence has been adduced by the defense? Not a single witness to state that deceased used derogatory words in his presence. Article 71 & 72 of Qanun e Shahadat Order 1984 put certain conditions which are mandatory, which reads as under"

**71. Oral evidence must be direct.** *Oral evidence must, in all cases whatever, be direct; that is to say:  
If it refer to a fact which could be seen, it must be the evidence of a witness who says he saw it;  
If it refers to a fact which could be heard it must be the evidence of a witness who say he heard it;  
If it referrers to a fact which could be perceived by any other sense or in any other manner, it must be the*



*evidence of a witness who says he perceived it by that sense or in that manner;*

*If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds;*

*Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises, if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the court regards as unreasonable;*

*Provided further that, if oral evidence refers to the existence or condition of any material thing other than a document, the court may, if it thinks fit, require the production of such material thing for its inspection;*

*Provided further that, if a witness is dead or cannot be found or has become incapable of giving evidence, or his attendance cannot be procured without an amount of delay or expense which under the circumstances of the case, the court regards as unreasonable, a party shall have the right to produce shahada ala al-shahada by which a witness can appoint two witnesses to depose on his behalf except in the case of hadood.*

**72. Proof of contents of documents.** *The contents of documents may be proved either by primary or by secondary evidence.*

35. Assuming that, deceased had actually committed the offence punishable U/S 295-C of PPC than what course was left for appellant to take the deceased to the task. Was he authorized to hold a court at the place of occurrence i.e. Kohsar Market, ask a question to seek explanation from the deceased about the remarks allegedly attributed to him, hear the explanation of the deceased in a single sentence, without framing any charge or recording any evidence then and there declare in his heart that deceased was liable to be murdered and to execute that sentence then and there. No body on earth would dare to justify this conduct of the appellant as we are living in a State governed by the Constitution, law, rules and regulation and everyone is required to proceed within the limits prescribed by the State. It is

observed that through his reply appellant has left it for the determination of the court to seek verdict in his favour that his act be justified under the principles of Islamic law but at the cost of repetition it is observed that we have already held that criminal act of the appellant is not justified under the principles of Islamic law governing the subject of blasphemy. This reveals that the appellant is himself not certain that his act of committing murder of the deceased was justified.

36. There is no denial that punishment of “Shatam-e-Rasool” is capital punishment, but question arises that can it be awarded and executed without production of evidence/ answer is in negative. Even otherwise it is held by the superior courts of the country that if element of bad intent missing or some doubt created, it is better to withhold punishment than awarding. Now, question arises that what plausible, convincing and cogent evidence has been led by defense, make us to believe that deceased committed the offence attracting provisions of Section 295-C PPC? We are afraid that there is no material before us on the basis of which we may presume that deceased in fact committed the offence and he was “Mubah-ud-Dum” being prostrate. Guidance in this regard sought from the case reported as “Ayub Masih Vs The State” “PLD 2002 SC 1048”, the Apex Court of Pakistan observed that

“in the present case the defiling words highlighted in the FIR certainly constituted the offence U/S 295-C of PPC but the prosecution has failed to prove its case against the accused beyond any reasonable doubt. The accused is, therefore, entitled to the benefit of doubt which was withheld by the two courts without any support of sound reasons”.

In that case the accused Ayub Masih was not only convicted by the learned trial court but his conviction was also upheld by the Honorable Lahore High Court so there would have been strong case against the accused of the commission of offence punishable U/S 295-C of PPC yet the august Supreme Court of Pakistan acquitted him

of the charge and did not issue the direction to kill the accused though he was accused of the offence U/S 295-C of PPC. Nature of the accusations overwhelmed the Trial Court to such an extent that the Court became oblivious of the fact that the standard of proof for establishing such an accusation and as required, was missing. Mere accusation should not have created a prejudice or a bias and the duty of the Court as ordained by the Holy Prophet was to ascertain the facts and the circumstances and look for the truth with all the perseverance at its command. Accused had not confessed and had stated that he had not committed any offence and through his affidavit he had expressed his profound respect for the Holy Prophet in his own words. Held faithfully following the traditions of the Holy Prophet and his directions and ordinances and while keeping in view the standard of proof brought on record and the statement of the accused both made under S.342, Cr.P.C and through his affidavit, the present case was the one ridden with doubts, Accused, in circumstances, was ordered to be acquitted of the charge and released forthwith if not required in any other case”.

37. Similarly in the case of Muhammad Mahboob Alias Booba Vs. The State, reported as PLD 2002 Lah. 587 (upheld by S.C). Learned Division Bench held as under:-

*“Section 295-A, 295-B & 295-C- blasphemy- increase in the number of registration of blasphemy cases and element of mischief involved therein calls for extra care at the end of the prosecuting officers- Failure, inefficiency and incompetence of the Investigation in handling the case of blasphemy- Directions by High Court with regard to Investigation and trial of cases of blasphemy- High Court in circumstances directed the Inspector General of Police of Province to ensure that whenever such a case is registered, the same may be entrusted for the purpose of investigation to a team of at-least two gazetted investigating*



*officers preferably those conversant with the Islamic Jurisprudence and in case they themselves are not conversant with Islamic law, a scholar of known reputation and integrity may be added to the team at the team should then investigate as to whether an offence is committed or not and if the team comes to the conclusion that the offence is committed, the police may then proceed further in the matter- Trial in such a case be held by a Court presiding by a Judicial Officer who himself is not less than the Rank of District & Sessions Judge”.*

38. In the case in hand the complainant, the IO, Investigating Officer, learned trial court, learned High Court and Apex Court of Pakistan apparently joined in one personality i.e. the appellant who done away with all the provisions of the criminal law and the Constitution which guarantee a free trial to every citizen. He passed judgment and assumed the role of assassin and executed the sentence at the spot. It is amazing to note that appellant took protections and rights guaranteed by the constitution but deprived deceased from all constitutional guarantees.

It is pertinent to note that State being the guardian of the rights of the people and being oblivious of the fact that sovereignty in the entire universe belongs to Allah Almighty and it has to protect the tenets of Islam, introduced the legislation for the protection of the respect and dignity of Holy Prophet Muhammad (P.B.U.H) inserted Section 295-C by virtue of Act III of 1986 in Pakistan Penal Code. It has provided the sentence of death.

Even in murder case the sentence is death or life imprisonment or U/S 302 (c) PPC it may extend to 25 years. Under Section 345 of Cr.P.C the offence of murder may be compounded, it may be waived off by the Wali of the victim / deceased U/S 309 of PPC and it may also be compounded U/S 310 of PPC but in the case of conviction for

the offence U/S 295-C of PPC, it cannot be compounded or forgiven by any complainant as the State is custodian of protecting the honor and dignity of our last and beloved prophet Muhammad (P.B.U.H) and the complainant of the such offence reporting the matter to the law enforcing agency is a mere informer.

45. Since one of the arguments of the learned counsel is that learned trial court did not follow the mandate of Section 338-F PPC. For convenience said provision is reproduced here.

***“338-F. Interpretation.** In the interpretation and application of the provisions of this chapter, and in respect of matters ancillary or akin thereto, the court shall be guided by the injunction of Islam as laid down in the Holy Quran and Sunnah.*

It is nobody's case that provision of Section 295-C, Chapter XVI of PPC related to offences affecting the human body and Qanun-e-Shahadat Order 1984 have not been promulgated in accordance with the injunctions of Islam. We failed to understand that how learned trial court fell in error by not following the codified law? This argument of learned counsel is of no substance. It is also beyond our comprehension that how by declaring the act of appellant as “*extra judicial*” learned counsel describe it in accordance with law? Section 295-C PPC is a valid law, how approval can be accorded to any individual to take law in his own hands and use it as sword to eliminate those, to whom he consider as contemnor or prostrate. The injunctions of Islam, law of the land and globally accepted principles of safe administration of criminal justice do not permit so. Extra judicial act itself is unlawful. Mistake of law becomes no excuse as it is embedded in the human being that what is the right and what is the wrong. There may be some excuse to a person about delicate procedure of law enunciated through the rules and regulations but there can be no mistake by a person that how the life of another person can be taken under the Constitution and the law.

39. As far number of witnesses is concerned, it is also well established law that prosecution is not bound to produce all witnesses, material and natural witnesses have been produced, which to our mind are sufficient. In the case of Muhammad Mansha, reported as 2001 SCMR 199 august S.C para to be reproduced.

*“—S. 302 — Qanun-e-Shahadat (10 of 1984), Art. 17(2) (b) —Conviction based upon evidence of single witness— Competence and number of witnesses required for conviction----Scope----If testimony of the single witness is found by the Court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof---Even as the guilt of an accused person may be proved by the testimony of a single witness, innocence of accused person may be established on the testimony of a single witness, even though considerable number of witnesses may be forthcoming to testify to the truth of the case of the prosecution---Court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact---Particular number of witnesses is not required for the proof of any fact and the same can be produced by a single witness under the provisions of Aert. 17(2) of Qanune-e Shahadat 1984.*

The contention of the learned defense counsel that the act of the appellant was no offence being protected by the provision of Section 79 of PPC. For convenience same is being reproduced here under:-

*“79. Act done by a person justified, or by mistake of fact believing himself justified, by law.--- Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.*



We failed to understand that on what basis learned counsel brings appellant under the umbrella of this provision, as we have not been able to find any lawful “justification” for appellant to deprive the deceased from his life.

40. There is no cavil with the proposition that Supreme Law of the State is Islamic law and all of our laws whether procedural, substantive or penal are to be interpreted in the light of the injunctions of the Holy Quran and Sunnah of Holy Prophet Muhammad (P.B.U.H) but from whatever angles it is considered neither the Islamic law nor the law of the land gives any justification to the act of the accused and searching for any justification for the act of the accused would defeat the purpose for which Islamic Republic of Pakistan was established and the social contract amongst its people in the shape of the Constitution of Islamic Republic of Pakistan was promulgated resulting in anarchy, lawlessness, and rule of might is right.

41. We are convinced that the learned trial court appreciated the evidence in complete adherence to the principles settled by the Apex Courts of Pakistan in various pronouncements and it has reached a just conclusion. The learned trial court held that

“PW11 Nadeem Asif ASI was one of the security personnel who was also deputed to safeguard the life of the deceased. He deposed that accused on 04.1.2011 all of sudden resorted to firing with his official weapon at the deceased. This episode was completed within seconds. Same is statement of PW12 Muhammad Amir Khan Inspector. They were correctly recorded on these lines by PW14 Hakeem Khan Inspector / IO. Presence of these witnesses at the relevant time is not disputed by the defense, they were members of security escorts deputed with the deceased. They are natural witness there is nothing on file to establish that they were hostile or have any animosity towards the accused. These PWs were

subjected to lengthy cross examination but defense could not get anything in its favor. There is not even a slightest discrepancy in their statements regarding mode of the occurrence, time of occurrence and place of occurrence”.

It is further observed that it will be appropriate to reproduce last suggestion put to PW11 Nadeem Asif ASI which is as under:-

“It is also incorrect that the deceased himself was responsible for his own end at the hands of the accused present in the court”

42. Presence of eye witness PW11 and PW12 at the place of occurrence being natural witnesses is not disputed by the defense. No ill will or animosity suggested against them, rather in answer to question put to appellant that why PW’S deposed against him, appellant did not say a word. It is proved through the statement of PWs that the crime weapon was recovered from the accused at the place of occurrence where he was arrested, 28 crime empties were recovered from the place of occurrence and as per report of Forensic Science Laboratory Lahore Ex.PH the empties matched with the crime weapon. The medical evidence furnished by Dr. Arshad has fully corroborated the prosecution case to the extent of numbers of injuries, time of injuries and time of occurrence. In the presence of this convincing unimpeachable and un-interested evidence, the prosecution has remained successful to prove that the appellant had committed the murder of the deceased on 04.01.2011 at 03.50 pm. The contention of the learned defense counsels that the version of the appellant that he was justified in killing the deceased is plausible, it has already been observed that those incidents of the murders of the contemnors which were ratified by the Holy Prophet Muhammad (P.BU.H) relates to the era when the Islamic State was at war with the enemies and it was strengthen its ground in the Arabian Peninsula.

43. As far as the findings of the learned trial court that the appellant is also guilty of commission of offence punishable U/S 7 (a) of Anti-Terrorism Act is concerned, to our estimation this finding of the learned trial court is not sustainable as only PW12 Muhammad Amir Khan Inspector stated that the incident created panic and no other PW has stated that occurrence resulted in intimidating and terrorizing the public. It is note worthy that I.O of the case did not utter any word in this regard. Moreover, if any incriminating material was there, same not put to appellant in his statement u/s 342 Cr.P.C. The PWs have not stated that act of the appellant committing the murder of the deceased created sense of fear and sense of insecurity in the society. Even the prosecution evidence by itself reveals that appellant was motivated against deceased due to certain reasons and he has no other intention except to murder the deceased. Appellant murdered the deceased and he did not injure or assault any other person standing nearby the place of occurrence. In these circumstances, findings of the learned trial court that the appellant was also guilty of commission of the offence of terrorism as defined in Section 6 of Anti Terrorism Act 1997, is not sustainable and resultantly conviction of sentence awarded to the extent U/S 7 of Anti Terrorism Act 1997, is liable to be set-aside. However, we are convinced that learned trial court had the jurisdiction to hold trial.

44. Learned defense counsel have also argued that there are mitigating circumstances and in this case the maximum punishment of death is unwarranted. They have argued that the deceased had provoked the appellant and under the influence of said grave and sudden provocation the appellant lost self-control and committed the murder of the deceased, therefore, he should have been punished U/S 302 (c) of PPC and that too for a minimum period of imprisonment. They have further argued that the appellant has unblemished service record and prior to this he has committed no other offence and they



have prayed that sentence of the appellant be reduced to minimum period of imprisonment as provided in Section 302 (c) of PPC. The learned counsels for the appellant have supplement their arguments with the case laws “Shafique Ahmed Vs The State” “1997 PC.rLJ 1”, “Ifikhar Mehmood Vs Qaiser Iftikhar” “2011 SCMR 1165”, “Naveed Vs The State” “2014 SCMR 1464” & “Muhammad Nadeem Waqas Vs The State” “2014 SCMR 1658”.

45. We have considered the contentions of the learned defense counsel and have also perused the case law referred by the defense. In the case in hand it is established beyond any reasonable doubt that the murder of the deceased at the hands of appellant was preplanned, cold blooded and gruesome. Intent, preparation; and act with *mensrea* manifest from the prosecution evidence and stance of appellant itself. The deceased had suffered 28 firearms wounds on his body, entire magazine containing 28 bullets made empty appellant. The principles of mitigating as provided in the case law are not applicable to the facts of the present case, therefore, the sentence awarded by the learned trial court to the appellant U/S 302 (b) PPC warrants no interference. Case law relied by the learned counsel, not attracted to the facts and circumstances which cannot be applied in general.

46. The appellant in this case may be a pious man in his personal life but admittedly neither he is scholar nor a Qazi and it is the job of the courts to go in the depth of the words and then to declare that words attributed to a person amounts to commission of offence of blasphemy or not. The Holy Prophet (P.B.U.H) was the blessing for whole mankind and the instances where the Holy Prophet (P.B.U.H) forgave the contemnors are more in number than the instances where the contemnors were done to death. It is quite strange that appellant leveled allegations of “**Kaba’ir**” (major sins) without any proof and merely on perceptions. This act of appellant cannot be termed as Islamic and moral. If the deceased had made any irresponsible

statement about the blasphemy law he should have been taken to the courts of law for the trial and it was for the court to decide whether he have committed any offence or not. Prosecution proved its case through oral and medical evidence, recoveries made and stance taken by the appellant. Although much emphasis has been put on non-proving of motive set up in the FIR, but to our mind act of appellant and stance taken by him itself exhibit the motive. Moreover, it is well settled law with the mandate of the dictums of superior courts of the country that motive or no motive becomes irrelevant when case is otherwise proved beyond shadow of doubt. Prosecution proved its case beyond shadow of doubt and in our estimation motive has also been proved.

47. The crux of above discussion is that the conviction of the appellant recorded by the learned trial court U/S 7 (a) of Anti-Terrorism Act is set-aside, the appeal to this extent is allowed and appellant is acquitted form the said charge whereas, conviction and sentence recorded U/S 302 (b) PPC is upheld and appeal to this extent is dismissed. The murder reference is answered in affirmative.

(NOOR-UL-HAQ N.QURESHI)	(SHAUKAT AZIZ SIDDIQUI)
JUDGE	JUDGE

**Announced in open Court on 09.03.2015.**

**JUDGE**

**JUDGE**

**Approved for Reporting.**

**"Waqar Ahmad"**

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