

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

**Criminal Appeal No.512/ 2009**

Raja Naveed Akhtar

*Versus*

Ansar Baig & others

Appellant by: M/S Raja Rizwan Abbasi & Malik  
Mushtaq Ahmad, Advocates  
Respondents No.1 to 3 by: M/S Raja Asim Iftikhar & Husnain  
Haider Thaheem, Advocates.  
State by: Mr. Muhammad Atif Khokhar, State  
Counsel.  
Date of Hearing: 16.09.2020

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**Ghulam Azam Qambrani, J. :-** This appeal has been directed against the impugned judgment dated 11.11.2009, passed by the learned Sessions Judge, Islamabad, in case F.I.R No.209 dated 10.11.2005, under Sections 302, 34 PPC registered at Police Station Bhara Kahu, Islamabad, whereby respondent No.1 was convicted under Section 302-C P.P.C and sentenced to 05 (five) years R.I with benefit of Section 382-B Cr.P.C and to pay an amount of Rs.50,000/- (fifty thousand) as diyat to mother of the deceased, in default to pay the Diyat amount, to further undergo three months S.I. whereas, respondent No.2 & 3 were acquitted from the charge hence, this acquittal appeal under Section 417 Cr.P.C

2. Briefly stated facts of the case as narrated by the complainant, Raja Naveed Akhtar in the complaint (Ex.PC), brother of Nokhaiz Akhtar deceased, is that on 09.11.2005, he started re-construction of his old house, and Mehmood Ahmad Mason, was constructing the wall, when at about 2:30 p.m., Maqsood Khan alongwith his sons Ansar Baig and Sagheer Ahmed, both armed with 12 bore guns, came over there and asked the complainant to stop the work; the complainant asked them that he was raising the construction in his land, upon which the accused threatened him to

kill, if he did not stop the work; due to fear of the accused, he stopped the work and informed his younger brother namely Nokhaiz Akhtar on telephone. At about 3:30 p.m., Nokhaiz Akhtar deceased alongwith PWs Kamran and Adnan reached there. On seeing them, Maqsood Khan accused exhorted his co-accused to kill them, upon which Ansar Baig as well as Sagheer Ahmad, fired shots with their respective guns hitting Nokhaiz Akhtar. Thereafter, all the accused decamped from the spot while making aerial firing. Nokhaiz Akhtar, in injured condition was taken to PIMS in Mazda Car No. LXS 8292, owned by Kamran, but he could not survive and expired in the hospital. According to the complainant, motive for the occurrence was the dispute of land between the parties.

3. The complaint was lodged with Zafar Iqbal Sub-Inspector, who alongwith other police officials reached the hospital on coming to know about the occurrence and prepared injury statement of the deceased and inquest report (Ex.PG) and dispatched the dead body to the mortuary for post mortem examination. He recorded his endorsement on the back of the application, moved by the complainant and sent the complaint to the police station for registration of the F.I.R. Liaqat Ali, A.S.I, Duty Officer recorded formal F.I.R, Ex.PP, on the basis of complaint. Investigation of the case was entrusted to PW-11 Arshad Ali, Sub-Inspector, who had already proceeded to the spot after getting information of the occurrence. At some distance from the place of occurrence near Pulli on the Nulla, he found 05 empties and live bullet of Kalashnikov lying on the path, he collected those empties and bullets and sealed them in a parcel and took that parcel in his possession vide memo Ex.PA, attested by Muhammad Akbar Sub-Inspector and Mohammed Riaz Constable No. 2926. He carried out spot inspection in presence of PW Adnan, who was present there and prepared the site plan without scale Ex.PM. Two empties of 12 bore gun were recovered from the spot, which were also sealed into parcel and taken into possession vide memo Ex.PL attested by Adnan and Muhammad Ibraheem. Blood stained earth was also collected from the spot, sealed into a parcel and taken into

possession vide recovery memo Ex.PK attested by same P.Ws. On 11.11.2005, last worn clothes of deceased viz Shalwar, P4, shoes P5/1-2, and socks P.6/1-2 were produced before the investigation officer. He took the same in his possession vide memo Ex.PE attested by Naveed Akhtar and Kamran Ahmed. On 13.11.2005, Draftsman visited the place of occurrence and on pointation of the P.Ws., he inspected the spot and prepared scaled site plan, in duplicate, Ex.PJ and Ex.PJ/1. On 18.11.2005, accused Ansar Baig was produced before the I.O by Ghazanfar Khan, who was accordingly arrested. On 22.11.2005, said accused got recovered 12 bore gun from his cattle shed, which was accordingly sealed into a parcel and taken into possession vide recovery memo Ex.PB attested by Sajjad Hussain and Naveed Constable No.1243. Site plan of place of recovery Ex.PN was also prepared by the Investigation Officer.

4. The accused, Sagheer Ahmed and Maqsood Khan, after getting pre-arrest bail joined the investigation on 26.11.2005. No recovery was affected from them. As such, they were sent to judicial lockup. After completion of investigation, report under Section 173 Cr.P.C was submitted before the learned trial Court. Formal charge was framed against the accused under Section 302, 324 and 34 P.P.C for committing Qatal-e-Amd of Nokhaiz Akhtar and attempted to commit Qatal-e-Amd of PWs Naveed Akhtar, Kamran Ahmed and Adnan Ahmed to which they pleaded not guilty and claimed trial. Therefore, the prosecution evidence was summoned. In order to prove the case, prosecution examined the following witnesses:-

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|--------|-------|----------------------------------|
| (i)    | PW.1  | Muhammad Akbar, S.I,             |
| (ii)   | PW.2  | Waheed-ur-Rehman, H.C,           |
| (iii)  | PW.3  | Sajjad Hussain, H.C,             |
| (iv)   | PW.4  | Mehmood Ahmad, Mason,            |
| (v)    | PW.5  | Naveed Akhtar, Complainant,      |
| (vi)   | PW.6  | Dr.Waseem Khawaja,               |
| (vii)  | PW.7  | Malik Muhammad Akram, Draftsman, |
| (viii) | PW.8  | Naveed Hussain, H.C,             |
| (xi)   | PW.9  | Muhammad Hafeez, A.S.I,          |
| (x)    | PW.10 | Adnan Ahmad,                     |
| (xi)   | PW.11 | Arshad Ali, S.I,                 |
| (xii)  | PW.12 | Liaqat Ali, A.S.I,               |

5. Statements of the accused under Section 342 Cr.P.C., were recorded, wherein all the incriminating evidence recorded in their presence was put to them. They claimed innocence, however accused Ansar Baig took the following version:-

*"On the day of occurrence, at about 2:00 p.m., I started ploughing my land with the tractor. Nokhaiz deceased forcibly stopped me from doing so and also vilified me. I went to the shop of my father to lodge a complaint regarding the aggression of Nokhaiz Akhtar. In midway, I was again intercepted by Nokhaiz Akhtar, who tried to crush me under his vehicle and also slapped me. After sometime, Nokhaiz Akhtar along with Adnan, Karman, Adeel and Waqar came towards our house on their vehicle. Naveed was already there. Nokhaiz Akhtar took out a Kalashnikov from their vehicle and gave it to Naveed. Nokhaiz and Adnan were armed with 30 bore pistols, whereas, Kamran and Adeel were armed with 12 bore gun and Lathe respectively. They started firing at our house and the fires hit at the outer wall and window of our room. I went outside and firstly fired a shot in the air to deter them. In the meanwhile, Nokhaiz tried to enter into our courtyard through the broken portion of our boundary wall. Seeing a pistol in his hand, and while believing in good faith, that if he will not be stopped, he will kill both of us, I fired at Nokhaiz with my shot gun who was injured and later on succumbed to the injuries. My intention was not to kill the deceased but simply to injure him to save our lives."*

6. After recording evidence and hearing arguments of the learned counsels for the parties, the learned Sessions Judge, Islamabad, passed impugned judgment dated 11.11.2009, convicting respondent No.1 & acquitting respondents No.2 & 3, hence this appeal.

7. The learned counsel for the appellant has contended that the impugned judgment dated 11.11.2009, passed by the learned Sessions Judge, is against the facts and manifestly wrong; that the judgment passed by the learned trial Court is perverse and arbitrary, resulting into miscarriage of justice; that the findings of the learned trial Court are not supported by the material available on record; that there was direct evidence available against the

respondents and the prosecution has successfully proved the charge against the accused persons but the learned trial Court erred in non-appraising the evidence in accordance with the settled principles of appraisal of evidence; that the statements of PW-5 and PW-10 is fully corroborated with the statement of PW-6; that the respondents brought the cross-version after an inordinate delay in the form of a private complaint, wherein, the plea of self defence was taken, which was refuted and all the accused persons of private complaint have been acquitted of the charge; that the benefit of doubt was wrongly extended by the learned trial Court in favor of the accused persons. Further contended that sufficient evidence is available against the accused persons to connect them with the commission of alleged offence; that there are no contradictions in the statements of the PWs. It is further contended that motive part of the occurrence coupled with the role attributed to the accused, which is supported by the evidence of PWs has not been appreciated by the learned trial Court in its true perspective; that the recovery effected from respondent No.1 and addition of Section 201 P.P.C to the extent of respondent No.2 and lalkara raised by respondent No.3 also escaped notice of the learned trial Court. Lastly, prayed for acceptance of the appeal and conviction of the accused/ respondents under Section 302/34 P.P.C.

8. *Per contra*, learned counsel for the accused/ respondents opposed the contentions raised by the learned counsel for the appellant contending that they have been falsely implicated in this case; they are innocent; that nothing is on the record from which it could be established that the respondents/ accused committed any offence, as such, the learned trial Court has rightly acquitted the respondents/ accused; that the active participation of the accused Sagheer Ahmed is not established from the evidence available on record; that nothing has been recovered from him during the course of investigation; that the empties recovered from the place of occurrence matched with the gun recovered from the accused Ansar Baig; that the involvement of the accused Sagheer in the commission of the alleged offence has not been proved; therefore,

he has rightly been acquitted by the learned trial Court. Further the accused/ respondent No.3 has already been died. The learned State Counsel supported the arguments advanced by the learned counsel for the appellant.

9. We have heard the arguments of learned counsel for the parties and have perused the material available on record.

10. The case of the appellant is that Maqsood Khan alongwith his sons, Ansar Baig and Sagheer Ahmed, both armed with 12 bore guns committed the alleged occurrence. Maqsood Khan, accused exhorted his co-accused to kill them, upon which Ansar Baig as well as Sagheer Ahmad, fired shots with their respective guns hitting Nokhaiz Akhtar. Thereafter, all the accused made their escape good from the spot while making aerial firing Nokhaiz Akhtar, in injured condition was taken to PIMS but succumbed to the injuries.

11. PW-1, Muhammad Akbar, Sub-Inspector deposed about recovery of five (05) empties of cartridges and a live bullet of Kalashnikov. PW-2 Waheed-ur-Rehman H.C deposed that he received bloodstained earth from Arshad Ali S.I and kept the same in Malkhana and thereafter dispatched the same to the office of Chemical Examiner through Sajjad Ahmad, H.C. PW-3 Sajjad Ahmad H.C stated that he took the parcel of blood stained earth to the office of Chemical Examiner, Lahore. He further deposed that on 24.11.2005, he took the sealed parcel of empty cartridges to the office of Forensic Science Laboratory and that on 06.12.2005, he delivered the sealed parcel of 12-bore gun to Forensic Science Laboratory, Lahore. PW-4, Mehmood Ahmad, Mason deposed that on 10.11.2005, when he was constructing the house of Nokhaiz Akhtar, in the presence of Naveed Akhtar, the accused Maqsood Ahmad, Ansar Baig and Sagheer Ahmad came over there at 2/2.30 p.m. Nokhaiz Akhtar also reached there on the call of Naveed Akhtar, in the company of Kamran Ahmad and Adnan Ahmad. As soon as Nokhaiz Akhtar reached the debris of his house, Maqsood

exhorted his sons to kill Nokhaiz Akhtar, upon which Ansar Baig fired first shot at Nokhaiz Akhtar hitting him on the right side and the accused Sagheer also made a fire shot hitting on right side of face of Nokhaiz Akhtar; that Ansar Baig also made second fire shot, which did not hit any person; that Naveed and Kamran took Nokhaiz Akhtar to the Hospital where he succumbed to the injuries. PW- 5 Naveed Akhtar/ complainant reiterated his version set forth in the complaint Ex.PC. PW-10, Adnan Ahmad, is the eye witness of the alleged occurrence and also the witness of recovery memos i.e. Ex.PK and Ex.PL through which bloodstained earth and two empties of 12-bore gun were taken into possession.

12. PW-6, Dr. Waseem Khawaja, conducted the autopsy of dead body of Nokhaiz Akhtar on 11.11.2005 at 12.15 p.m., and observed the following injuries on the person of deceased Nokhaiz Akhtar:-

1. *An entry wound 0.5 x 0.5 c.m. on right peritemporal area;*
2. *An entry wound measuring 0.5 x 0.5 c.m. on right parito-temporal area above injury No.1;*
3. *An exit wound above right eye brow 0.5 x 0.5 c.m.*
4. *An entry wound below left eye brow 0.5 x 0.5 c.m.*
5. *An entry wound below right eye 0.5 x 0.5 c.m.*
6. *An entry wound below injury No.5 measuring 0.5 x 0.5 c.m.*
7. *An entry wound below injury No.6. 0.5 x 0.5 c.m.*
8. *An entry wound on right side of chin measuring 0.5x 0.5 c.m.*
9. *A lacerated wound on right cheek.*
10. *An entry wound 0.5 x 0.5 on right upper arm.*
11. *An entry wound on right shoulder back.*
12. *An entry wound 0.5 x 0.5 c.m. black on front of right ear.*
13. *An entry wound on right chest 0.5 X 0.5 c.m. on right nipple.*
14. *An entry wound 0.5 x .5 c.m. on left side of the neck.*
15. *An entry wound 0.5 x 0.5 c.m. on left side of neck.*
16. *An exit wound on medial side of right upper arm 1x 1.5 c.m.*
17. *An exit wound on right side of the chest on axillary line 1 x 1.05 c.m.*

He has also opined that death of deceased had occurred due to fire-arm injuries. Time of injury and death was 2 to 3 minutes and between death and post mortem was within 24 hours. A foreign body was recovered from the brain of the deceased, which was accordingly handed-over to the Police. EX. PF is the copy of the post-mortem report and Ex.PF/1-2 are the sketch of injuries prepared by the Doctor. In this report, it has not been specifically mentioned that which fire-arm injury caused the death of the deceased Nokhaiz Akhtar. As per stance of Ansar Baig, he made fire shot with his gun at Nokhaiz Akhtar, which hit him on the front side of his body, whereas Injury No.11 is an entry wound on right shoulder back. As per record, the complainant party i.e. Naveed Akhtar, armed with Kalashnikov, Nokhaiz Akhtar and Adnan armed with Pistol 30-bore, Kamran and Adeel armed with 12-bore gun and Lathi had attacked at the house of the accused and started firing at their house and fire shots hit at the outer wall and window of their room and this fact is also verified by Arshad Ali, Sub-Inspector, who in his cross-examination, admitted that on 10,11,2005, Sardar Sadaqat, DSP/SDPO visited the place of occurrence and in his Zimni it has been recorded that there were bullet marks on the walls and windows of the house of the accused. This fact is also fortified by the recovery of five (05) empties and one live bullet of Kalashnikov were recovered from the path leading to the place of occurrence, which were taken into custody by the said Arshad Ali, Sub-Inspector vide recovery memo Ex.PA, which was also attested by Muhammad Akbar, Sub-Inspector, (PW-1) and Muhammad Riaz Constable. As per statement of PW-1, they stopped official vehicle at a distance of about 60/70 paces from the place of occurrence and found empties and live bullet lying there, whereas the prosecution case is silent about this recovery and it has not been explained as to who had fired with Kalashnikov at that place. The said Arshad Ali, Sub-Inspector further admitted that those empties were not rusty, meaning thereby that those were freshly fired.

13. PW-7, Malik Muhammad Akram, Draftsman prepared the site plan in duplicate Ex.PJ and Ex.PJ/1 in the scale of one inch equal



to 20 feet and recorded notes in black ink on these site plans. PW.8, Naveed Hussain, Head constable No.1243 received a sealed phial from the Doctor on 18.11.2005 and produced the same before the S.I/investigation officer. PW-9, Muhammad Hafeez, A.S.I, who was the Moharrar Malkhana of Police Station at the relevant time and he kept the case property in his safe custody and dispatched the same to the concerned offices through Sajjad Hussain, Head Constable. PW-11, Arshad Ali, S.I, has deposed to prove the Investigation conducted by him. PW-12, Liaqat A.S.I, recorded formal F.I.R EX.PP on the basis of complaint Ex.PC sent by Zafar Iqbal S.I.

14. During the trial, widow of the deceased namely Mst. Isma Zafar on her own behalf and on behalf of her minor children waived off their right of Qisas on 26.05.2007, and received an amount of Rs.2,87,500/-, as share of diyat of minor whereas, the other widow of the deceased namely Mst. Sobia also compounded the offence against the accused through her statement dated 30.10.2007, she also received Rs.57,500/- as share of diyat of her minor daughter namely Mst. Nayab.

15. Bare perusal of the record reveals that it was a promptly lodged F.I.R. During the investigation, 12 bore gun was got recovered from the accused Ansar Baig and empty cartridges recovered from the house of accused matched with the 12 bore gun. Record further shows that compromise was not affected with the mother of the deceased. It further transpires from the record that Mehmood Ahmed, Mason PW-4 and Naveed Akhtar PW-5 have supported the prosecution version as narrated in the F.I.R. The presence of PW-4, Mehmood Ahmed, Mason at the place of occurrence seems to be doubtful because when the PW-11 Arshad Ali reached the place of occurrence on the same day, the said Mehmood Ahmed was not found at the place of occurrence and he did not join the investigation and when again on 13.11.2005, the investigation officer visited the place of occurrence alongwith draftsman, the presence of said PW-4 has not been marked,

therefore, prima facie, it seems that PW-4 has not witnessed the actual occurrence, the reason behind was that in the map Ex.PJ nowhere the presence of witness Mehmood was shown whereas, the names of Naveed, Kamran and Adnan were shown as such, prosecution story seems to be doubtful. It is important to note that he joined the investigation on 13.11.2005 by producing a statement already written by him wherein, mentioned that yesterday the occurrence took place. In other sense when he recorded his statement on 13.11.2005, it means that as per his statement the occurrence took place on 12.11.2005 whereas, as per prosecution case, the alleged occurrence was of 10.11.2005. PW-11, Arshad Ali, Investigation Officer, admitted that the statement of this witness was recorded on 13.11.2005 in the same line as it was already written by him. PW-10, Adnan Ahmed, has deposed in the same line as deposed by PW-5, Naveed Akhtar, and further witnessed the recovery of blood stained earth and crime empties of 12 bore gun from the place of occurrence. The delay caused in recording of the statement of Mehmood Ahmed has not been plausibly explained. In the absence of satisfactory nature of explanation, normally rule is that statement recorded by police after delay and without explanation are to be ruled out of consideration. Reliance is placed upon the judgment of August Supreme Court of Pakistan titled "Syed Muhammad Shah Vs. The State" (1993 SCMR 550),

16. The motive of the occurrence as stated by the complainant is that the accused persons asked him to stop construction work at his house but it is not proved on record that there was any litigation between the parties with regard to the said house and the record shows that the complainant subsequently inserted the motive in the complaint with the words "وجه عناد تنازعہ زمین ہے۔". This fact has also been admitted by Arshad S.I while appearing as PW.11, wherein it is stated that the motive is not mentioned in the first case already recorded by him.

17. The stance of the accused/convict Ansar Baig is that on the day of occurrence at about 2:30 p.m., he was ploughing his land

through Tractor of Farooq Shah son of Nazar Shah, when Nokhaiz Akhtar deceased came over there and stopped him from ploughing the land, he abused and uprooted the barbed wire fence; that when he was going to the shop of his father to inform him about that incident, Nokhaiz Akhtar again intercepted him and tried to crush him under his vehicle and also slapped and abused him. Thereupon, he came back to his house; that after a while, Nokhaiz Akhtar deceased alongwith Adnan, Kamran, Adeel and Waqar came over there in his vehicle; that he handed-over Kalashnikov to complainant/ Naveed Akhtar, who was already present there while he himself was equipped with 30 bore pistol. His companions except Adeel and Waqar were also armed with deadly weapon and they started firing at their house; that he took out his licensed gun and in his self-defence, made two fire shots out of which one shot hit Nokhaiz Akhtar deceased, who was trying to enter into their house through a broken portion of their boundary wall.

18. When versions of both the parties are put in juxtaposition, It seems that both the parties exchanged hot words to each other and thereafter, the deceased alongwith his companions reached at the place of occurrence, armed with deadly weapons and resorted to firing on the house of the accused persons. From perusal of the record, it transpires that although, no empty of Kalashnikov or 30-bore pistol have been shown to have been recovered from the spot nor the Investigation Officer mentioned the factum of firing of deceased in the inspection note or case diary but in his cross-examination, the investigation officer stated that on the same day i.e. 10.11.2005, Sardar Sadaqat DSP/SDPO visited the place of occurrence and in his Zimini, he recorded that there were bullet marks on the walls and windows of house of the accused, whereas, as per record, five (05) empty shells and one live bullet of Kalashnikov were recovered from the path, leading to the place or occurrence, which were accordingly taken into possession by Arshad Ali S.1/ I.O vide recovery memo Ex.P.A attested by PW.1 Muhammad Akbar S.I and Muhammad Riaz Constable. Further according to PW-1 they stopped the official vehicle at a distance of

60/70 paces of place of occurrence and found empties and live bullet lying there, whereas, the prosecution case is silent about the said recovery and it has not been explained as to who fired Kalashnikov bullets at that place. As per the statements of PW-11 Arshad Ali S.I, those empties were not rusty, meaning thereby that same were freshly fired. Perusal of the Exh. P.F/ postmortem report reveals that Dr. Waseem Khawaja PW-6 on examination of the dead body reported series of injuries, wherein, injury No.11 is an entry wound on right shoulder back, which give arise to question that who made fire at the deceased, which admittedly hit him from the back side and injury No.17 is an exit wound on right side of the chest. The admitted position is that the accused Ansar Baig made fire from front side, the entrance of the wounds must be from the front but at serial No.17, the exit wound on right side of chest do not suggest that it was caused by the fire of accused Ansar. During the investigation, the prosecution failed to bring on record any such evidence, hence, said question is shrouded in mystery. Therefore, the accused cannot be held responsible for causing such injuries to the deceased, which entered from backside at his body. The stance of the accused, Ansar Baig, seems to be justified that he made fire shots in his self-defence with his gun at the deceased when he was entering into their house, to save his and his family members' lives.

19. It was deposed by PW-5, Naveed Akhtar, that the accused Ansar and Sagheer both made fires at the deceased with 12 bore shot gun. During the trial, it stood proved that only accused Ansar made two fires and the report of Forensic Science Laboratory, Exh.PS, confirmed that the recovered 12 bore cartridges were fired from the short gun, recovered from the accused Ansar. This piece of the statement made by PW-5, Naveed Akhtar, is totally false that the accused Sagheer made fires; the empties of 12 bore gun recovered from the place of occurrence were matched with the gun of Ansar Baig vide report Ex.PS, the statement of witness stood proved untrue, therefore, cannot safely be relied upon.

20. The co-accused Maqsood Ahmed, who was the real father of the accused Ansar Baig and Sagheer Ahmed, has died, therefore, to his extent, this appeal stands abated. Further, his presence at the place of occurrence was not proved during the investigation and he was declared innocent by the investigation officer. Further, it is also established during the evidence that though he was present at the place of occurrence but his active participation in the occurrence is not proved, which makes the prosecution story doubtful. As per the prosecution story, he was armed with 12-bore gun and during the occurrence, he made fire shots but during the course of investigation nothing could be recovered from him rather the crime empties recovered from the place of occurrence were matched with the gun of accused/convict Ansar Baig, as such, keeping in view the facts and circumstances of the instant case, the learned trial Court convicted the accused Ansar Baig under Section 302 (c) P.P.C and sentenced him for five years R.I.

21. In the case in hand, the stance of accused Ansar Baig was that when the complainant party started firing at their house and fires hit at the outer walls and window of their room, he went outside and firstly fired a shot in the air to deter them but in the meanwhile Nokhaiz Akhtar tried to enter into their courtyard through a broken portion of their boundary wall and seeing a pistol in his hand , while believing in good faith that he is not stopped he will kill them then he made a fire shot at Nokhaiz with his short gun who was injured and later on, succumbed to the injuries. Keeping in view the same, the learned trial Court held that the accused Ansar Baig exceeded his right of self defence as such he was convicted under Section 302-c P.P.C., and while extending benefit of doubt, co-accused Maqsood Khan and Sagheer Ahmed were acquitted from the charge

22. Keeping aside the above, the general principle in criminal jurisprudence is that the prosecution is to prove its case beyond doubt and this burden does not shift from prosecution even if the accused person takes up any particular plea and fails in it. Keeping

in view all these facts and circumstances, the story of occurrence as narrated and deposed by the eyewitnesses, is full of doubts and it cannot be accepted by a prudent mind. Hence, extending the benefit of doubt, the accused persons Maqsood Ahmed and Sagheer Khan were acquitted of the charge through a well-reasoned judgment. In this regard, reliance is placed upon the case reported as "Muhammad Karim Vs. The State"(2009 SCMR 230) has held as under:-

*"in case of doubt, the benefit thereof must be given to convict as a matter of right and not as a matter of grace, for giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts, single circumstance creating reasonable doubt in a prudent mind about the guilt of convict makes him entitled to benefit, not as matter of grace and concessions, but as matter of right."*

In the case reported as Muhammad Imran Vs. The State (2020 SCMR 857), it has been held as under:-

*"It is by now well settled that benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation; the case is fraught with many. It would be unsafe to maintain the conviction. Criminal Petition is converted into appeal and allowed. The appellant is acquitted from the charge; he shall be released forthwith, if not required to be detained in any other case."*

In the case of "Ghulam Akbar and another Vs. The State" (2008 SCMR 1064), it has been held as under:-

*"It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the convict securely lied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof."*

In the case reported as "Sanaullah Vs. The State through Prosecutor General" (2015 P.Cr.L.J. 382 (Balochistan)), it has been held that as under:-

*"Rule of prudence, stipulated that prosecution had to prove its case beyond the shadow of doubt. Convict had not to prove his innocence, until and unless proved guilty. Benefit of slightest doubt would necessarily be extended in favour of convict and not otherwise."*

23. The scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous. The Court of appeal should not interfere simply for the reason that on re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities.

24. It has been held in "The State v. Muhammad Sharif" (1995 SCMR 635) and "Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others" (1998 SCMR 1281) as under:-

*"The Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below."*

This Honourable Supreme Court of Pakistan in "Ghulam Sikandar and another v. Mamaraz Khan and others" (PLD 1985 SC 11) has authoritatively ruled that whole examining defects about order of acquittal, substantial weight should be given to the findings of subordinate Courts whereby accused are exonerated from committing the crime. Obviously, approach for dealing with appeal against, conviction would be different and distinguishable from appeal against acquittal, because presumption of double innocence is attached in the later case.

25. The learned counsel for the appellant has failed to advance any ground to justify the setting aside of the acquittal judgment. There is no misreading or non-reading of evidence nor the findings of the learned trial Court are patently illegal. The findings of acquittal, by no stretch of imagination, can be declared as perverse, shocking, alarming and misreading or non-reading of evidence.

26. For what has been discussed above, the instant appeal having no force, is hereby **dismissed**.

**(AAMER FAROOQ)**  
**JUDGE**

**(GHULAM AZAM QAMBERANI)**  
**JUDGE**

Announced in open Court on this 1<sup>st</sup> day of December, 2020.

**JUDGE**

**JUDGE**