

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

**Jail Appeal No.207/2020**  
Muhammad Walayat vs. The State

**Jail Appeal No.201/2020**  
Chanzeb vs. The State

*and*

**Murder Reference No.03/2020**  
The State vs. Walayat Hussain & another

Appellants by: M/s Basharat Ullah Khan, Raja Aamir Shahzad and  
Shuja Ullah Gondal, Advocates.

Respondents by: Mr. Ishtiaq Ahmed, State Counsel.  
Ms. Qurat-ul-Ain Ayesha, Advocate for complainant

Date of Hearing: 14.02.2022.

**JUDGMENT**

**MOHSIN AKHTAR KAYANI, J:** Through this single judgment, we intend to decide the captioned jail appeals and murder reference arising out of judgment dated 20.11.2020, passed by learned Additional Sessions Judge-II / Judge MCTC (East), Islamabad, in case FIR No.23, dated 20.03.2015, under Sections 302/324/34 PPC, P.S. Nilore, Islamabad, whereby the appellants Walayat Hussain and Chanzeb have been sentenced to death under Section 302(b) PPC along with compensation of Rs.300,000/-, in failure whereof, they shall suffer further imprisonment for six (06) months, however benefit of Section 382-B Cr.P.C. has been extended to the appellants.

2. Brief and consolidated facts are that Safeer Ahmed (complainant) submitted a complaint for registration of a criminal case against the appellants alleging that on 20.03.2015, at about 05:00 p.m., when he was present in his house along with Mst. Fareeda Bibi (sister), Jahangir Ahmed (brother-in-law), Mst. Raqeeba Bibi (mother) as well as with Munir Ahmed and Muhammad Jahangir

(brothers), appellant Chanzeb while armed with .30 bore pistol as well as his father Walayat Hussain (appellant), armed with 12 bore rifle and Muhammad Ashraf armed with hatchet, appeared on their rooftop, whereby the latter raised lalkara to complainant's brother Muhammad Jahangir to come out in order to teach him a lesson for supporting Mst. Amina Bibi, whereafter both the appellants started indiscriminate firing, as a result whereof the complainant and his family members tried to save themselves by hiding behind the walls, per se, such firing attracted complainant's another brother, Amjad, who was working as a laborer in vicinity, rushed towards the house, whereupon appellant Chanzeb using his .30 bore pistol made fire shots on Amjad, hitting him on his chest, as such, the appellant Chanzeb also made fire shot on complainant's sister-in-law, Mst. Farhat Jabeen, hitting her on her left side chest, whereas appellant Walayat Hussain made fire shot on complainant's sister, Mst. Farida Bibi, hitting her on her leg and another fire shot on complainant's mother, Mst. Raqeeba Bibi, hitting her on her left foot, whereafter the accused persons fled away from the scene while making aerial firing. The injured persons were taken to hospital, but complainant's brother Amjad, sister Mst. Fareeda Bibi and sister-in-law Mst. Farhat Jabeen succumbed to injuries. The said complaint was converted into aforesaid FIR No.23/2015, whereafter the accused persons were arrested and formally charged, to which they pleaded not guilty and claimed trial. After recording of pro and contra evidence, the learned trial Court vide impugned judgment sentenced the appellants to death as Ta'zir. Hence, the captioned appeals and murder reference.

3. Learned counsel for respective appellants contended that there is a delay in lodging of the FIR as the occurrence had allegedly taken place at about 05:00 p.m., whereas the FIR has been registered at about 9:00 p.m., which manifests consultation and deliberation in involving the appellants in the instant case; that

neither any empty has been recovered from rooftop from where the appellants had allegedly made fire shots, nor any bullet on any part of the walls of complainant's house has been proved by the prosecution; that there are material contradictions and discrepancies in the statements of prosecution witnesses, even in the statement of complainant, who stated that he had handed over the complaint to police in police station, whereas the Investigating Officer acknowledged that he had received the complaint in hospital, even otherwise, all the prosecution witnesses are blood relatives and inimical to the appellants; that the medical evidence is not in line with the prosecution story, even the medical evidence as well as the forensic evidence are in contradiction with the ocular account; that neither any detail regarding the motive is given nor Mst. Amina Bibi appeared during the investigation or before the learned trial Court in support of the motive; that the case as established by the prosecution is full of dents and doubts, benefit of which always goes in favour of accused persons, but the learned trial Court ignoring all such lacunas passed the impugned judgment in a hasty manner, which is not sustainable as per available record.

4. Conversely, learned State Counsel as well as learned counsel for complainant in support of the impugned judgment contended that the complainant having lost three (03) members of the family could not rush towards police station for registration of FIR, rather the natural course demands that the loved ones be saved and treated; that five eyewitnesses, including one injured witness, appeared before the Court and deposed in line with the prosecution story, who otherwise remained consistent in their testimonies, as such, the eyewitnesses could not be considered interested witness due to their relationship with the deceased persons, per se, the defence has not denied the occurrence in unequivocal terms, rather tried to puzzle the prosecution witnesses in order to create dents in the prosecution case; that the empties coupled with the led bullets

and pallets recovered from the dead bodies have matched with the weapons recovered from the appellants; the learned trial Court has rightly appreciated the overall circumstances of the case and sentenced the appellants in accordance with law.

5. Arguments heard, record perused.

6. Perusal of record reveals that complaint Exh.PA was filed by PW-1 Muhammad Safeer (complainant) to the S.H.O. alleging that on 20.03.2015, his sister Mst. Fareeda Bibi and brother-in-law Jahangir Ahmad came to his house where he along with his other brother Muhammad Jahangir and Munir Ahmad as well as his sister-in-law Mst. Farhat Jabeen and mother Mst. Raqeeba Bibi were sitting in their home, as such, all of a sudden Muhammad Ashraf (acquitted accused) while armed with a hatchet, Chanzeb (appellant) while armed with .30 bore pistol and Walayat Hussain (appellant) while armed with 12 bore shot gun having magazine, appeared at the rooftop in a manner that Muhammad Ashraf raised *Lalkara* to complainant's brother Muhammad Jahangir to come out as we have to teach a lesson for supporting Mst. Amina Bibi, as a result whereof Walayat Hussain and Chanzeb appellants started firing at their house, whereas the complainant's brother took shelter towards the house. The complainant's brother i.e. Amjad (deceased) after hearing the firing came towards the house as he was working in a nearby street, on whom Chanzeb (appellant) with his .30 bore pistol made a straight fire upon him hitting him on his chest, as such, when the complainant party learnt about Amjad's injury, they clamored while running towards Amjad in order to save him, but Chanzeb (appellant) made another fire shot on complainant's sister-in-law i.e. Mst. Farhat Jabeen hitting her on upper side of chest, whereas Walayat Hussain (appellant) fired from his gun on complainant's sister Mst. Fareeda Bibi hitting her leg followed by another fire shot on complainant's mother Mst. Raqeeba Bibi hitting her on right foot. After

the incident, the complainant and others took the injured to the Polyclinic Hospital in cot, but complainant's brother Amjad, sister-in-law Mst. Farhat Jabeen and sister Mst. Fareeda Bibi succumbed to injuries.

7. The statement recorded by the complainant has further been supported by PW-2 Muhammad Jahangir, who is husband of Mst. Farhat Jabeen as he narrated the same story as referred in Exh.PA. Similarly, PW-3 Munir Ahmad (complainant's brother), who also claims to be an eyewitness and narrated a similar stance, as such, the stance of PW-4 Jahangir Ahmad, who is husband of Mst. Fareeda Bibi, is also in line with the principal allegations of the complainant, while the last witness i.e. Mst. Raqeeba Bibi (mother) appeared as PW-5 and gave the same details. The five eyewitnesses' account spells out some minor contradictions in their testimonies, whereas on minute scanning of record, following admitted facts emerges in this case:

- i) PW-1 to PW-5 are family members, who were present at the place of occurrence, whereas the incident took place outside the house as per site plan Exh.PR.
- ii) All three accused persons, Chanzeb, Walayat Hussain and Muhammad Ashraf are also relatives of complainant party and they are neighbours.
- iii) As per complaint, the firing was made from rooftop in courtyard of complainant's house by the accused party at the first instance, from where no crime empty was recovered as per PW-18 Investigating Officer.
- iv) Deceased Amjad was not at home, who otherwise rushed towards his house from a neighboring street after hearing the firing.
- v) Chanzeb (appellant) allegedly made three (03) fire shots with his .30 bore pistol upon the deceased Amjad in a close range having

no exit wounds i.e. first on the front of right chest on third intercostals space with slight blackening and charring marks, second on left arm lateral aspect with slight blackening and charring marks and third on 5 c.m. below axilla left side with slight blackening and charring mark. All three pellets were recovered from the dead body and handed over to the police by the doctor.

- vi) Chanzeb (appellant) also made fire shot with his .30 bore pistol on Mst. Farhat Jabeen (wife of Muhammad Jahangir), which landed on right side of chest below axilla with slight blackening and charring marks having no exit wound. The deceased Mst. Farhat Jabeen also received a bruise mark on left lumbar aspect. The pellet was also recovered from her dead body, which was handed over to the police.
- vii) Complainant's sister Mst. Fareeda Bibi also received 12 bore shot gun injuries at the hands of Walayat Hussain (appellant) on (i) posterior aspect of mid thigh on right leg, (ii) on posterior aspect of mid thigh on left leg, (iii) on lateral aspect of right calf with no blackening, (iv) on medial aspect of right ankle with no blackening and (v) bruise with entry wound over the medial aspect of right leg.
- viii) PW-5 Mst. Raqeeba Bibi (mother) also received firearm injuries at the hands of Walayat Hussain (appellant) on left foot, but no MLR to her extent is available.
- ix) Muhammad Ashraf (acquitted accused) while armed with hatchet has only been attributed with the role of *Lalkara*.
- x) Muhammad Aslam (S.H.O.) has recovered four firearm empties of .30 bore pistols and nine 12 bore shot gun cartridges from place of occurrence having been collected from two different

locations in presence of witnesses through memo Exh.PZD on same day of occurrence.

- xi) No motive has been set up by the prosecution, though the complaint reveals that Ashraf (acquitted accused) raised *lalkara* that Jahangir come out as we have to teach a lesson for supporting Amina Bibi.
- xii) No evidence to the extent of Amina Bibi or a dispute to her extent has been brought on record by either party or by the Investigating Officer.
- xiii) PW-18 Muhammad Aslam Kalyar acknowledged that four firearm empties of .30 bore pistols and nine 12 bore shot gun cartridges were recovered from the place of occurrence.
- xiv) The Investigating Officer has not seen firing marks on the house of complainant.
- xv) Nothing has been recovered from accused Muhammad Ashraf (acquitted accused) in this case.
- xvi) Investigating Officer reached Polyclinic Hospital on 20.03.2015, at about 8 p.m., when all injured persons were dead, except Mst. Raqeeba Bibi, who sustained minor injuries.
- xvii) MLR of Mst. Raqeeba Bibi was not prepared on 20.03.2015 by the MLO.
- xviii) Investigating Officer did not mention or note the number of wounds in column No.10 of the three inquest reports.
- xix) A written complaint was received in hospital from the complainant at 8:30 p.m.
- xx) Six eyewitnesses were present in hospital before the Investigating Officer, who recorded their statements under Section 161 Cr.PC.

- xxi) As per Investigating Officer, Muhammad Jahangir son of Boota PW made dishonest improvement against the role of accused Chanzeb.
- xxii) On 23.03.2015, Muhammad Ashraf (acquitted accused) was arrested.
- xxiii) On 30.05.2015, appellants Walayat Hussain and Chanzeb were arrested.
- xxiv) On 02.06.2015, .30 bore pistol (Exh.P10) and 12 bore shot gun (Exh.P11) were recovered from old house of Chanzeb appellant situated in Chirah on his pointation vide recovery memo Exh.PZE.
- xxv) All fire empties were sent on FSL on 14.05.2015 for examination.
- xxvi) FIR under Section 13/20/65 of the Arms Ordinance was registered.
- xxvii) On 02.06.2015, appellant Walayat Hussain made disclosure and led the police party for recovery of .30 bore pistol Exh.P12 and 12 bore shot gun Exh.P13 from his house, which were taken into custody through recovery memo Exh.PG.
- xxviii) PW-14 Malik Amir Shahzad / Draftsman prepared the scale site plan (Exh.PR) on the pointation of complainant and in presence of Muhammad Aslam Kalyar / Investigating Officer.
- xxix) On 25.06.2015, PW-12 Muhammad Riasat (Moharrar Malkhana) received two sealed parcels of two pistols and two rifles from Muhammad Aslam / Investigating Officer to keep the same in Malkhana, which were handed over to Naveed / Constable for onward transmission to Punjab Forensic Science Laboratory, Lahore, on the same day.
- xxx) On 14.05.2015, PW-10 Muhammad Naveed (Constable) received three (03) parcels containing *goli sikka* having been stamped by



CMO Polyclinic Hospital, empty of 12 bore shot gun as well as of .30 bore pistol along with road certificate for onward transmission to F-10 Laboratory Islamabad, which were deposited on same day.

- xxxix) PW-7 Umar Hayat / ASI, duty officer of Police Station Nilore received the formal complaint from Imran / Constable, drafted by the Investigating Officer, which was registered and converted into FIR No.23, dated 20.03.2015, under Sections 302/324/34 PPC, P.S. Nilore, Islamabad, at about 8:55 pm.
- xxxii) Dead bodies were taken to the home on the next morning by PW-1 Muhammad Safeer (complainant) from hospital.
- xxxiii) PW-1 complainant / eyewitness acknowledged that Amina Bibi is his niece and Muhammad Ashraf is his uncle. The houses of complainant's brother Muhammad Jahangir and his uncle Muhammad Ashraf (acquitted accused) are adjacent, whereas the house of complainant is at some distance. Same is the case with the house of Muhammad Ashraf.
- xxxiv) PW-1 complainant acknowledged that no dispute ever arose or existed amongst Muhammad Ashraf (acquitted accused) or his *biradari* / fraternity, who is the oldest in his *biradari* / fraternity.
- xxxv) Not a single question has been asked from PW-1 complainant qua the incident.
- xxxvi) Houses of all four brothers of complainant are in same line. House of appellants Chanzeb and Walayat Hussain is on western side of complainant's house.
- xxxvii) PW-1 complainant acknowledged that complaint (Exh.PA) for registration of FIR was given by him on 20.03.2015, at about 4 / 5 p.m. in Police Station Nilore.

- xxxviii) PW-1 complainant had not seen Amjad (deceased) coming towards the place of incident and his presence was notified by the people from outside that he was coming from his workplace towards his house.
- xxxix) PW-2 Muhammad Jahangir i.e. second eyewitness of the case, received the last worn clothes of deceased Amjad, Mst. Fareeda Bibi and Mst. Farhat Jabeen.
- xl) The first part of incident had taken place in the house of PW-2 Muhammad Jahangir and as per his stance the accused persons made fire shot from their roof.
- xli) PW-2 Muhammad Jahangir acknowledged that they had no enmity with Muhammad Ashraf (acquitted accused) and all family members, including his brother and sisters, were present along with his mother on the day of incident in the house.
- xlii) PW-2 Muhammad Jahangir acknowledged that he had not seen when Amjad (deceased) was hit from fire of accused persons, as such, he came out of house after hearing the firing where he found Amjad in injured condition.
- xlili) PW-2 Muhammad Jahangir further acknowledged that bullet marks on their walls were seen by the police.
- xliv) PW-3 Munir Ahmad i.e. another eyewitness and real brother of deceased, who has introduced two blows of pistol butt on head of Mst. Farhat Jabeen at the hands of Chanzeb (appellant), which is not in the medical evidence.
- xlvi) PW-3 Munir Ahmad divided the incident into two parts i.e. first part is firing from the roof and second in the street after 10 minutes.
- xlvi) PW-3 Munir Ahmad also acknowledged that they have no enmity with accused persons.

- xlvi) PW-4 Jahangir Ahmad i.e. complainant's brother-in-law, also acknowledged that he had no enmity with accused Walayat Hussain, Chanzeb or Muhammad Ashraf prior to the incident.
- xlvi) PW-5 Mst. Raqeeba Bibi i.e. mother of complainant and deceased, acknowledged that she lives with the complainant. Walayat Hussain (appellant) is real nephew of her husband.
- xlix) PW-5 Mst. Raqeeba Bibi also narrated the firing of Walayat Hussain (appellant) from the roof.
  - l) PW-5 Mst. Raqeeba Bibi acknowledged that she had no previous enmity prior to the occurrence, even no litigation was pending between the parties.
  - li) She also acknowledged that no motive was existed prior to this occurrence.
  - lii) NFSA report (Exh.PZI) reveals that the crime empties recovered from spot matched with the weapon recovered on pointation of appellants Walayat Hussain and Chanzeb.
  - liii) The crime projectile pallets recovered from dead body of deceased Mst. Fareeda Bibi was fired from 12 bore shot gun matched with other crime projectile.
  - liv) Similarly, the three projectiles recovered from dead body of Amjad have also been matched with 12 bore shot gun of Chanzeb appellant.

8. While scanning the admitted facts referred above, we are of view that the incident took place into two parts i.e. in the first part, it was alleged that the accused party made firing in courtyard of complainant's house from their roof, though no one was injured in that portion of occurrence, even no sign of firing was confirmed from courtyard by the Investigating Officer, even not a single fire empty from rooftop of accused person house was recovered. In the second part

of the occurrence, Amjad (deceased) received fire-arm injuries outside the house, who was not present in the first part of the occurrence and as per claim of PW-1 complainant, Amjad (deceased) after hearing the firing came to the house from nearby vicinity, but he was done to death outside the house allegedly by accused persons. The second part of the incident took place outside the house on a *katcha rasta*, where Amjad (deceased) was allegedly done to death in front of *katcha rasta* of accused persons' house, whereas Mst. Fareeda Bibi and Mst. Farhat Jabeen received fire arm injuries allegedly at the hands of accused persons opposite the *katcha rasta* across the small field, whereby the second *katcha rasta* leads to the complainant's house. The detailed cross-examination of the defence on eyewitnesses has not achieved any fruitful result in their favour to dispel the consistency of events narrated by the eyewitnesses, though two of witnesses have not seen the receiving of injuries by Amjad (deceased). However, the most surprising factor surfaced on record is the non-introduction of the motive by the complainant, rather it was introduced by the accused person, however no witness or evidence has ever been brought on record as to why such a murderous assault had taken place, whereby three persons were done to death while one was injured. The detailed cross-examination of eyewitnesses' by the accused persons reveals that all the eyewitnesses acknowledged that they had no enmity with accused persons on any account prior to the said occurrence, but the defence side time and again introduced certain defences in the cross examination of eyewitnesses, which are as under:

- a) The suggestion made to PW-1 by defence side has been controverted in the manner that, *"it is incorrect to suggest that we all four brothers equipped with arms 12 bore rifle and .30 bore pistols trespassed on to the house of accused persons to commit murder of accused Walayat"*.

- b) PW-1 (complainant) also controverted the suggestion that, *it is incorrect to suggest that we have captured the cattle, goats, cows, buffalos and precious articles of Walayat's and Chanzeb's house, including gold ornaments, cash amount, cheque books of accused, pension book of accused and the whole articles belongs to Walayat and Chanzeb's family and were in use of their family.*
- c) While cross examining PW-2 Muhammad Jahangir, the accused persons suggested a defence to him, but same was controverted in the manner that, *it is incorrect to suggest that we all were assembled and preparing to commit murder of accused Wilayat on that day at my house. It has also been controverted by PW-2 Muhammad Jahangir that, it is incorrect that we attacked the house of present accused on the day of incident to commit murder of accused Wilayat because he was alone male member at that time in his house. It is incorrect to suggests that the ladies of the house locked accused Wilayat in room to save his life.*
- d) PW-2 Muhammad Jahangir also denied the suggestion that, *it is incorrect to suggest that we have captured the cattle, goat, cows, buffalos and precious articles of Wilayat's and Chanzeb's house including gold ornaments, cash amount, cheque books of accused, pension book of accused and the whole articles belongs to Wilayat and Chanzeb's family and were in use of their family.*
- e) PW-2 Muhammad Jahangir further denied the suggestion that, *it is incorrect to suggest that deceased and injured suffered injuries from their own friendly firing.*
- f) PW-3 Munir Ahmad has been suggested with a defence by the accused side, but same was denied in the manner that, *it is incorrect to suggest that my brother Jahangir Ahmad fired two accused Walayat instead of his own brother and sisters came in front of him and received injuries.*

g) PW-4 Jahangir Ahmad i.e. husband of Mst. Fareeda Bibi (deceased) has been suggested with defence by the accused side, though same was controverted in the manner that, *it is incorrect to suggest we attacked house of Walayat and Chanzeb to kill Walayat Hussain, because the whole Mohalla and village gathered and due to that our friendly firing was carried out by Muhammad Jahangir and injured his brother, sister and my wife. It is incorrect to suggest that before first episode my wife Fareeda Bibi, Mst. Farhat Jabeen Jabeen and some other women rushed to the house of Walayat Hussain and attacked on the wife of Walayat Hussain and severally beaten her and upon her crying the whole Mohallah was gathered.*

h) PW-5 Mst. Raqeeba Bibi i.e. mother of deceased and complainant, has been put a suggestion by the accused, but same was denied in the manner that, *it is incorrect to suggest that Jahangir PW was making aerial firing with 12 bore shot gun. It is incorrect to suggest Mst. Farhat Jabeen was hurt due to the fire shots made by Jahangir.*

9. While going through the above referred defences put forward by the appellants and acquitted accused during the cross examination of eyewitnesses suggested a pattern, which is not consistent with the defence version recorded under Section 340 Cr.P.C. nor any clarity is visible from the suggestions, though this aspect demonstrates that the incident and presence of both the parties were admitted, however when all three accused persons have been confronted with the evidence in their statements under Section 342 Cr.PC., Walayat Hussain (appellant) took the following plea:

Q.No.3        *It is in the evidence that on 20.3.2015, complainant at the house of Jahangir with other family members and close relatives / guests were sitting together in their home when all you three accused persons appeared on the rooftop of your house? What do you have to say about this?*

*Ans. It is incorrect. Actually Jahangir, his brother Safeer, Muneer, Amjad (deceased) son of Jehangir Mohsin, both sons of Muneer namely Husnain and Saqlain, the uncle of Jahangir namely KHalil Ahmed, his son Rustam and ladies Fareeda Bibi, Amna Bibi and Mst. Farhat Jabeen Jabeen etc. suddenly attacked my house whereupon my wife Zamurd Bibi, daughter Saiqa Parveen and daughter in law Forin Bibi locked me in a room and put lock outside the room. The raiders were armed with deadly weapons. I was alone with three ladies (my wife Zamurd, daughter Saiqa Parveen daughter in law Foreen Bibi). I was unarmed at home, no other male member was present at home. The co-accused Ashraf and Chanzaib were not present at home.*

10. On the other hand, Chanzeb (appellant) denied the entire incident, rather not acknowledged his presence in the occurrence, except that his father (Walayat Hussain) being only male member was present in his house when complainant party made an attack on their house.

11. Besides the statements under Section 340 Cr.P.C., the accused persons in order to prove their own case also recorded their statements under Section 340(2) Cr.PC, whereby Muhammad Ashraf (acquitted accused) appeared as DW-1 and took the plea that he was in village Kirpa to sell woods when he heard about the incident, even he attended the funeral and allowed the complainant party to bury their deceased in his landed property. He also admitted his residence in the neighborhood of complainant party.

12. On the other hand, Walayat Hussain (appellant) appeared as DW-2 in his own defence and acknowledged in the following manner:

*“One Amjad, Mst. Farhat Jabeen, Mst. Fareeda Bibi and 2/3 other females started kicking the door of my room in the meanwhile the other person namely Jahangir s/o Boota Khan, Mohsin s/o Jahangir, Jahangir s/o Nazar, Munir s/o Boota Khan, Rustam s/o Khalil, Khalil s/o Muhammad Hussain and Shan s/o Muhammad Jahangir while armed with weapon started straight firing at my house, and due to their firing the deceased and*

*injured received injuries and they themselves took all the injured to the hospital. They did not inform the police; they themselves took the injured from my house and took them to the hospital. I have not committed any offence and the complainant party themselves caused injuries to all the injured persons and due to their firing the three persons were murdered. I am not involved in this incident. We are innocent. They have planted recovery of 12. Bore and repeater against me and I am ready to take oath that neither I made any firing from 12. Bore or from repeater. This is only false case against us. When the people of locality gathered they escaped me from the place.*

13. DW-2 Walayat Hussain (appellant) was cross examined, who acknowledged the attack as well as the timing of the incident as about 6:10 pm. He also admitted that he was not injured in the attack nor produced any witness of the attack.

14. Similarly, DW-3 Chanzeb (appellant) took the plea of *alibi* and contended that he was working with contractor Shahzad in Ali Pur Farash, but he failed to produce any such witness to justify his defence.

15. Putting in juxtaposition the above referred defence evidence with the evidence of prosecution, it has clearly been established that the defence has no straight line of versions, nor they are able to suggest anything to witnesses in a correct manner, even otherwise, the suggestions made to all five PWs by the defence side are contrary to the stance taken in statements recorded under Section 342 Cr.PC having been totally different from the version recorded on oath in terms of Section 340 (2) Cr.PC by the three accused persons, therefore, their entire version stands discarded as they are unable to remotely suggest their own version in terms of Articles 121 and 122 of the *Qanoon-e-Shahadat Order, 1984*, as such, Article 121 of the Order states that 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, 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, whereas Article 122 of the *Qanun-e-Shahadat Order, 1984* reads that, when any fact is especially within the knowledge of any person, the burden to proving that fact is upon him, like in this case all the appellants / accused have to shoulder the burden of proof qua their facts they brought on record in contemplation of Article 122 of the *Qanoon-e-Shahadat Order, 1984* as held in **PLD 2002 Karachi 152 (Mayzone Pak International vs. The State)**. Similarly, they have failed to bring their case in exception on the basis of right of private defence in terms of Sections 96, 97 and 100 PPC. It is also settled law that when specific defence has been taken, the onus to discharge the plea is transferred upon the accused person, though all the three DWs i.e. the accused have acknowledged that they have no evidence to produce, which remotely suggest that they had been attacked, even two of the appellants have taken the plea of *alibi*, but they failed to prove such aspect. In such scenario, the plea taken by the appellants stand discarded based on the principle settled in **PLD 2015 SCMR 145 (Muhammad Raheel alias Shafique vs. The State)**.

16. Now adverting towards the medical evidence, which clearly establishes that all three deceased namely Amjad, Mst. Farhat Jabeen and Mst. Fareeda Bibi died due to fire arm injuries made through 12 bore shot gun and .30 bore pistol, allegedly used by the appellants Walayat Hussain and Chanzeb i.e. father and son, respectively, even two of the eyewitnesses had not seen the occurrence to the extent of first part of incident in which Amjad (deceased) received the fire arm injuries, but the complainant version could not be discarded in presence of the available evidence, though certain discrepancies have been noted in shape of improvements made in the account of prosecution evidence, but the same do not remotely suggest the falsity of the incident narrated in this case by the witnesses, whereby three persons were done to death on *katcha rasta* in front of their house,

even the autopsy reports of deceased Amjad Hussain and Mst. Farhat Jabeen, prepared by PW-13 Dr. Tanvir Afsar Malik and PW-17 Dr. Henna Azmat, suggested one commonality that both deceased received the fire arm injuries on chest, even pellets (metallic foreign body) were recovered, as such, the doctors have also referred blackening and charring marks in the autopsy reports Exh.PM and Exh.PS. Both the doctors have been cross examined at length, but nothing fruitful has been achieved by the accused persons, per se, the blackening and charring marks could only be seen when the weapon is discharged from close range as settled by the *Modi's Medical Jurisprudence and Toxicology* in the following manner:

*"If a fire-arm is discharged very close to the body or in actual contact, subcutaneous tissues over an area of two or three inches around the wound of entrance are lacerated and the surrounding skin is usually scorched and blackened by smoke and tattooed with unburnt grains of gunpowder or smokeless propellant powder. The adjacent hairs are signed, and the clothes covering the part are burnt by the flame. If the powder is smokeless, there may be a grayish or white deposit on the skin around the wound. If the area is photographed by infrared light, a smoke halo round the wound may be clearly noticed. Blackening is found, if a fire-arm like a shotgun is discharged from a distance of not more than three (03) feet and a revolver or pistol discharged within about two feet."*

17. The above referred view of Modi's Medical Jurisprudence and Toxicology has also been endorsed by the superior Courts in PLD 2002 SC 786 (Muhammad Tufail vs. The State), 2018 PCr.LJ Note 52 (Nooro alias Noor Muhammad Sehar vs. The State) and 1971 PCrLJ 1108 Karachi (Mir Muhammad, etc. v. The State), therefore, we are of the view that both Amjad and Mst. Farhat Jabeen (deceased) received fire arm injuries from close range by Chanzeb accused, which is in line with the evidence of eyewitnesses and same could not be discarded, though the learned counsel for appellants raised a question that the distance mentioned in site plan Exh.PZC suggested otherwise, but in our view the site plan has been

prepared after the incident on the recalling of facts by any of the eyewitness or by the complainant, as the case may be, which might have created certain discrepancies as it is very difficult to suggest in such type of incident, in which events had been changing on a spur of moment, when both the families and a number of people were fighting in open area, therefore, we have to take the commonality of facts narrated by the eyewitnesses in their statements, who remained consistent, even the eyewitnesses have not been cross examined with particularity by the defence witness, which is otherwise suggestive of the fact that incident has been acknowledged and admitted in this case. The recoveries of weapons of offence are fully established against the accused side, fire empties were sent to expert prior to recoveries of weapons of offence, which have been found matched through the report Exh.PZI.

18. Besides the above referred evaluation of evidence, this Court has also gone through the judgment of the learned Trial Court and it has been observed that the learned Trial Court has appreciated the entire case in a proper manner, whereby appellants Walayat Hussain and Chanzeb have resorted to firing with their weapons 12 bore shot gun and .30 bore pistol and murdered Amjad, Mst. Fareeda Bibi and Mst. Farhat Jabeen for no justifiable reason nor any motive has been suggested in this case, rather it is a case of no motive where parties had no dispute or enmity on record. In such scenario, the plea taken by the appellants side has already been discarded, who failed to explain their reasonable conduct in which they had allegedly been attacked as per their own stance, but failure of such defence version, which is considered adverse to the accused side, proves their presence and acknowledgment of events, hence the learned Trial Court has rightly acquitted Muhammad Ashraf (accused) of the charges as he has not caused any injury to any of the deceased person in this case nor he had used the hatchet, even no witness has attributed any injury to him. The appellants

Walayat Hussain and Chanzeb have been attributed with death of three persons separately on two counts and one count, respectively, which is in line with the medical evidence. Some consultation and deliberation have also been suggested in the evidence of prosecution, but it will not affect the entire prosecution case as the event took place before the sunset and all accused persons and eyewitnesses were known to each other, therefore, there is no probability of mistaken identity. In such scenario, the murderous assault has been attributed to the appellants Walayat Hussain and Chanzeb, who have been found guilty of offence, where the prosecution proved their case beyond any shadow of doubt.

19. Before going into the portion of sentence, there are certain mitigating factors, which persuaded this Court to disagree with the portion of death sentence awarded by the learned Trial Court, *firstly*, on the ground that there is no motive in this case and even till date no one has come up with any justifiable reason as to why what ignited the situation, which resulted into death of three persons, such aspect reveals that something very important is missing and without the same capital sentence could not be awarded, and, *secondly*, the NFSA report Exh.PZI reveals that three top bullets recovered from body of Amjad Hussain are pellets of smooth bore, which have not been explained by the witnesses, therefore, this Court is of the view that the death sentence could not be awarded, rather the rule of abundant caution is to be applied.

20. In view of above, impugned judgment of conviction, dated 20.11.2020, is hereby maintained and the captioned Jail Appeal No.207/2020 (Muhammad Walayat vs. The State) and Jail Appeal No.201/2020 (Chanzeb vs. The State) are hereby **DISMISSED**. However, the death sentence awarded to Muhammad Walayat and Chanzeb is hereby converted into **LIFE IMPRISONMENT** in terms of Section 302(b) PPC. Rest of the portion qua the compensation awarded by learned Trial Court under Section 544-A Cr.P.C. is also maintained with benefit of Section

382-B Cr.P.C. Accordingly, the captioned Murder Reference No.03/2020 (The State vs. Walayat Hussain & another) is answered in NEGATIVE.

(SAMAN RAFAT IMTIAZ)  
JUDGE

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in open Court on: 17.03.2022.

JUDGE

JUDGE

Khalid Z.