

Form No: HCJD/C-121.

**ORDER SHEET**

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

**Murder Reference No. 06 of 2011**

The State.

***Vs***

Muhammad Abbasi etc.

**APPELLANT BY:** Sardar Muhammad Ishaq Khan, Advocate.  
**RESPONDENT BY:** Mr. Muhammad Ilyas Siddiqui, Advocate.  
Mian Abdul Rauf, Advocate General, Islamabad.  
**DATE OF HEARING:** 16-03-2015.

**ATHAR MINALLAH, J.-** Through this consolidated judgment we intend to decide the instant Murder Reference No.06 of 2011 along with CrI. Appeal No.103 of 2011, CrI. Appeal No.01 of 2012 and CrI. Revision No.03 of 2012, as they relate to the same incident and arise from the judgment dated 10-12-2011, passed by the learned Additional Sessions Judge, Islamabad. Cr. Appeal No. 103 of 2011 has been filed by Mohammad Abbasi, who has been convicted and sentenced to death, while Cr. Appeal No. 01 of 2011 and Cr. Revision No. 03 of 2011 have been instituted by Abdul Rehman, who had filed a private complaint regarding the incident. In the former, the acquittal of Liaqat Ali Abbasi has been assailed, while in the latter enhanced compensation has been sought.

2. The Murder Reference has been referred in respect of the judgment dated 10-12-2011, whereby the appellant in CrI. Appeal No.103 of 2011 has been convicted and sentenced in the following terms:-

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*"Since, the defence side has not produced any evidence to prove it's version, reflecting the mitigating circumstances for a lesser punishment, therefore, he is convicted under section 302(b)/34 PPC and sentenced to death by way of tazeer. He shall be hanged by his neck till he is dead. He shall also pay a compensation in the sum of Rs.3,00,000/- to the legal heirs of the deceased under section 544-A Cr.PC. In case of failure to pay compensation, he shall have to undergo six months imprisonment."*

3. The respondent, namely Liaquat Abbassi in Criminal Appeal No.01 of 2012, was acquitted on the grounds of benefit of doubt.

4. The facts, in brief, are that criminal case FIR No.52/2010 dated 13-03-2010, Ex PH/1 (hereinafter referred to as the "**FIR**") was registered under Sections 302/34 of the Pakistan Penal Code 1860 (hereinafter referred to as the "**PPC**") by Mst. Ghulam Fatima, who is the mother of the deceased Naseer Ahmed (hereinafter referred to as the "deceased"). The case of the prosecution, as narrated in the FIR, is that the complainant was informed by her daughter-in-law Mst. Nuzhat Abbass, wife of the deceased, that at 08:30 am on 13-03-2010, while the latter was travelling with the deceased on a motorcycle, a silver coloured vehicle, bearing registration No-943, intercepted them and Muhammad Abbassi, Liaquat Abbassi and two other unknown companions alighted there from. They were said to be carrying firearms at that time. It was alleged that Muhammad Abbassi placed a pistol on the head of the deceased, while the other accused forced him to sit in the vehicle. One of the accused took away the motorcycle. Mst. Nuzhat Abbass went to the nearby residence of the complainant i.e. the mother of the deceased, and

informed her about the incident. Since a male member was not present in the house of the complainant, therefore, she informed Abdul Rehman, her son-in-law. Abdul Rehman, after being so informed came to the complainants house. The three went to Bani Gala in a Taxi, and upon reaching the under construction house of Muhammad Abbasi, they witnessed that the deceased was being fired upon by the latter, along with Liaqat Abbassi and two other unknown persons on the roof. Having witnessed the incident, they promptly proceeded to the nearest Police Station and an FIR was registered pursuant to the complaint, Ex PH. The deceased had been nominated in a criminal case registered for the murder of Muhammad Abbassi's brother and nephew. The deceased remained a proclaimed offender in the said trial till his murder on 13-03-2010. The proceedings for the attachment of the properties of the deceased in the said criminal case had also been ordered by the learned trial court.

5. Pursuant to the complaint Ex-PH, and FIR, Ex-PH/1, the Investigation Officer, namely Mohammad Fayyaz Khan S.I, who appeared as CW-7, proceeded to the crime scene i.e. the under construction house of Muhammad Abbassi. He found the dead body of the deceased, while Muhammad Abbassi was said to be lying on the floor in an injured condition. The latter was taken to the hospital for medical examination. The injury statement of Muhammad Abbassi Ex.CW-7/A and site plan Ex-CW-7/B were prepared. Recovery memos were also prepared and the same are as follows:-

- i. *Blood sample obtained on cotton Ex-PB.*
- ii. *Two empties of 30 Bore pistol Ex-PD.*
- iii. *9MM pistol P-20 alongwith magazine and four live bullets Ex-PC.*
- iv. *Two empties of 30 Bore pistol Ex-PD.*



- v. *One empty of 9MM Ex-PE.*
- vi. *One helmet, two live rounds, one broken pair of glasses, keys of motorcycle Ex-PF.*
- vii. *A mobile phone taken into possession after the search of the deceased, a handkerchief and cash amount Ex-PG.*

6. An inquest report Ex-PW-4/B was prepared and the body of the deceased was dispatched for conducting an autopsy (Postmortem). Vehicle No.HJ-943 and the motorcycle of the deceased were taken into possession vide recovery memo. Muhammad Abbassi was arrested at the hospital and his cell phone and trousers (Shalwar) were taken into possession vide recovery memo Ex-PW-7/C. The clothes of the deceased were taken into possession vide Ex-CW-7/E. At 3:45 pm Muhammad Abbassi gave a written application and the same was received and placed on record as Ex-CW-7/F. The site plan of the place from where the deceased was said to have been forcibly taken away/abducted was prepared as Ex-PW-7/D. The draftsman visited the place of occurrence on 22-03-2010 and prepared site plans Ex-CW-4/A & CW-4/B. The Investigating Officer received the respective cell phone details said to have been in the possession of the deceased and Muhammad Abbassi. The autopsy report of the deceased, dated 13-03-2010, is Ex-CW-1/1. The medico legal certificate of Muhammad Abbassi is CW-3/1, whereas the report of the *Medical Board*, which had examined the latter on 19-05-2010 is Ex-CW-13/A. The reports of the Chemical Examiner, Forensic Science Laboratory and the Serologist were tendered during the trial as Ex PJ, Ex PK and Ex PL respectively.

7. The report under Section 173 of the Criminal Procedure Code (hereinafter referred to as the "*Cr. P. C*") was submitted before the Trial

Court on 02-07-2010. In the said report, Liaqat Abbasi was placed in column No.2. The charge was formally framed on 18-09-2010 against Muhammad Abbassi and Liaqat Abbasi under Sections 302/34 of the PPC. A private complaint was filed by Abdul Rehman under Section 302 PPC on 07-05-2011. Pursuant to conducting an inquiry under Section 202 of the Cr.P.C, a report was submitted on 25-08-2011. On 10-09-2011, the proceedings of the Challan case and the complaint case were consolidated, and a charge was framed under Section 302/34 PPC on 17-09-2011. Muhammad Abbassi and Liaqat Abbassi did not plead guilty and consequently the trial ensued.

8. The prosecution produced five witnesses, while thirteen witnesses appeared and were examined as Court witnesses. The prosecution gave up six witnesses namely Fazal-ur-Rehman, Tariq Mehmood, Muhammad Shafi, Abdul Ghaffar, Ahsan Ali and Tahir Abbass. Mst. Ghulam Fatima was also given up as a witness on the ground that due to her old age she could not appear. Muhammad Khan, said to be the guard of Muhammad Abbassi, was alleged to have been influenced and won over by the defense side and, therefore, dropped.

9. Muhammad Asad Mughal S/o Shoukat Ali Mughal Pw-1, deposed regarding handing over of the pistol belonging to the deceased along with the license in the latter's name to the Investigating Officer. The ocular account was given by Abdul Rehman S/o Mehboob Rabanni Pw-2, Mst. Nuzhat Abbass, widow of Naseer Ahmed, as Pw-3, Zamir Ahmad S/o Masood Akhtar Pw-4 and Liaqat Abbassi S/o Muhammad Jaffar Abbassi Pw-5. Mst Nuzhat Abbas Pw-3 and Liaqat Abbassi, Pw-5 stated having witnessed the taking away of the deceased from near the portrait of Quaid-e-Azam Muhammad Ali Jinnah on the Expressway. Abdur Rehaman, Pw-2, and Mst Nuzhat Abbas, Pw-3, deposed that they had witnessed the occurrence of firing at the deceased

by Muhammad Abbassi and others on the roof of the under construction house. Zamir Ahmed, Pw-4, stated that when he received information regarding the incident he reached the place of occurrence and witnessed the concerned police officials there. He also signed the inquest report Ex-PW-4/A.

10. The medical evidence in the form of the autopsy report dated 13-03-2010 Ex-CW-1/1, was prepared pursuant to conducting of the autopsy by Dr. Muhammad Naseer, Director Emergency, PIMS Hospital, Islamabad, who appeared as CW.1. He signed the inquest report Ex-CW-1/2 and prepared the pictorial diagram Ex-CW-1/3. The details of injuries on the body of the deceased are as follows;

- i. *Fire arm entry wound with no blackening but, charring marks on the medical aspect of axillary line 5CM inferlateral to right nipple measuring 2x1CM.*
- ii. *Fire arm exit wound on the lateral aspect of T12 area on the back of left side of chest in the 6<sup>th</sup> intercostals space measuring 1.5x1CM.*
- iii. *Fire arm injury wound no blackening but charring marks on the later aspect of the lower 1/3<sup>rd</sup> of right thigh measuring 2x1CM.*
- iv. *Small fire arm entry wound six in number in a diameter of 8x4CM, each measuring 0.5x0.5CM.*
- v. *Fire arm exist wound on the posterior aspect of lower 1/3 of right thigh just about the right knee measuring 1.5x1.5CM.*
- vi. *Fire arm entry wound with no blackening but charring marks on the posterior lateral aspects of*

*right knee just below the right knee joint measuring 1x1CM.*

- vii. Fire arm exit wound on the medial aspect of lower 1/3 of right leg measuring 4x3CM in diameter.*
- viii. Fire arm entry wound with no blackening but charring marks on the lower 1/3 of posterior aspect of right thigh measuring 1x1CM.*

11. Muhammad Abbassi was attended by Dr. Sajid Zaki Chohan, Medical Officer, Federal Government Services Hospital, Islamabad on 13-03-2010. He appeared as CW-12 and produced the medico legal certificate Ex-CW-3/8. The outdoor ticket issued by the hospital is Ex-CW-3/B. The recorded findings on the medico legal report are as follows:-

- i. "Person well oriented at time E. space.*
- ii. Bone deep laceration 02CM at parietal region anteriorly.*
- iii. Muscle deep puncture wound at parietal region 3CM behind to the fist laceration.*
- iv. Lower incisor dislocated.*
- v. Puncture wound 2CM to lower lip, not through E. through.*

*Dental Findings*

- vi. Laceration of upper E. Lower lip mucosa.*
- vii. Degree 1 mobility.*
- viii. No fracture of Jaw seen. "*

12. A *Medical Board* was also constituted and its report was produced by one of its members, namely Dr. M. Ehsan Ul Haq, Medical Specialist, who appeared as CW-13. The findings of the Medical Board are Ex-CW-13/A.

13. Muhammad Abbassi preferred not to be examined on oath and, therefore, recorded his statement under Section 342 of the Cr.P.C. In his statement he denied and controverted all the allegations leveled against him, and he claimed to be innocent. He, however, opted not to make a statement on oath under section 340(2) of the Cr.P.C.

14. After the conclusion of the trial Mohammad Abbassi was convicted and sentenced, as the learned trial Court was satisfied that the prosecution had been able to prove its case beyond a shadow of doubt, while Liaqat Abbasi was acquitted.

15. Mr. Sardar Muhammad Ishaq Khan, senior Advocate, Supreme Court, argued the case on behalf of Muhammad Abbassi and contended that; the complaint Ex-PH/1 has not been endorsed by a police officer; the story of the alleged abduction of the deceased from near the portrait of the Quaid-e-Azam on the expressway is false and concocted; instead of recording a direct statement by the police officer, the complaint in writing was placed on record as an afterthought; Mst. Nuzhat Abbass, despite being an educated lady and admittedly being present in the Police Station, deliberately did not become the complainant, nor it is possible that she is unaware of the person who wrote the application; the complainant Mst. Ghulam Fatima, the mother of the deceased, was not produced in the Court; no document was produced in the Court in support of the contention that she was of old age and could not attend the Court proceedings; her statement has been deliberately withheld and, therefore, it is to be presumed that had she been produced she would have spoken the truth by contradicting the prosecution's case; witnesses were

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procured and a false story was concocted after the body of the deceased was sent to the hospital, as is evident from the fact that it was kept in the mortuary pursuant to the written request made in this regard; the placing of the body in the mortuary is enough to establish that the story was concocted; the place of occurrence is the roof top of the under construction house of Muhammad Abbassi; the story of abduction of the deceased from the expressway near the portrait of the Quaid-e-Azam is illogical and unbelievable; the alleged abduction is said to have taken place in the morning, when the highway is not only busy but guarded by the personnel of law enforcing agencies deployed for the protection of high officials and other important dignitaries; the Police Station, Koral, is hardly 2 furlongs from the place of occurrence and yet Mst. Nuzhat Abbass, wife of the deceased, did not report the matter nor raise an alarm at the time when her husband was being taken away as alleged; Naseer Ahmed, deceased, and his two brothers had killed the brother and nephew of Muhammad Abbassi and all of them remained proclaimed offenders; one of them, namely Shaukat, was arrested in the criminal case and has been convicted, while orders for the confiscation and auction of the property of the deceased had also been passed; the deceased and the other proclaimed offender had vigorously pursued Muhammad Abbassi for reconciliation; the silence of Mst. Nuzhat Abbass at the time of the alleged abduction is not convincing nor possible, particularly when Muhammad Abbassi had nominated the deceased in the case registered for the murder of his brother and nephew; the falsity of the claim of abduction is also evident from the contradictions in the statement of Mst. Nuzhat Abbass regarding the apparel worn by the deceased at the time he was taken away, as it does not correspond with the clothes taken into possession at the hospital; the brother of the deceased, namely Liaqat Ali, was produced as a witness of the alleged abduction after a considerable delay, and obviously as an afterthought; the

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delay in recording the statement of PW-5 is fatal and, therefore, his testimony cannot be believed; the Challan was submitted in the Court on 23-06-2010 and the charge was framed on 18-09-2010, which did not include the offence under Section 365 of PPC; the complaint filed by Abdul Rehman after more than one year from the date of the incident was also an afterthought and an attempt to fill in the lacunas of the prosecution case; the complaint and Challan were consolidated, and the fresh charge framed on 25-08-2011 also did not include a charge under Section 365 PPC; this by itself establishes that the story of the abduction is concocted; from the place of abduction to the crime scene there are several areas where the murder could have been committed, instead of taking the deceased to the roof the house of Muhammad Abbassi; neither is the assertion that the deceased was dragged from the motorcycle and forced into the vehicle supported by evidence, nor the taking by force of the deceased onto the roof via temporary wooden stairs; the medical report or the autopsy report does not support the said story; it does not appear to a reasonable and prudent mind that the alleged abductors would also take away the motorcycle and the helmet of the deceased; the time of occurrence is not mentioned in the FIR nor in the statements of the alleged eye witnesses i.e. Pw-2 & Pw-3; the FIR does not mention the description of the injury; it is not believable that Muhammad Abbassi would have waited for PW-3, PW-2 and the complainant in the FIR to reach the place of occurrence and then fire at the deceased; this is also not a plausible story on account of the enmity between the two parties; the Trial Court could not have allowed the complainant's counsel to cross examine the court witnesses without first declaring them hostile, as an objection had been raised and in this regard reliance has been placed on PLD 1966 S.C 708, "Noor Ellahi vs. The State"; there is nothing on record to indicate as to why the complainant, PW-2 and PW-3 proceeded to the place of occurrence rather than first reporting the

matter to the police; the data obtained from the cellular phone company relating to the SIM recovered from the body of the deceased clearly shows that calls were received till 10:11 am, which establishes that the deceased was alive and in contact with others; the details of the SIM obtained by the Investigating Officer from the concerned cellular company is admissible in evidence and reliance has been placed on “Alamgir Khalid Chughtai vs. The State”, PLD 2009 Lah 254; this in itself establishes that the story of abduction is false; Muhammad Abbassi and Liaqat Abbassi remained on remand for a considerable time but nothing incriminating was recovered from them; the police found Muhammad Abbassi lying in an injured condition at the crime scene, and was taken to the hospital by CW-2; the evidence recorded by CW-3, a member of the Board which had examined Muhammad Abbassi, is being misinterpreted and misconstrued; the medical practitioner who had immediately attended to Muhammad Abbassi when he was brought to the hospital is reliable, and the medico legal certificate clearly shows/describes the nature of injuries on the body of Muhammad Abbassi; the opinion/findings of the Board, which had conducted the examination of Muhammad Abbassi after two months and six days is of no legal value; the report of the *Medical Board* is also not to be considered, as Muhammad Abbassi had not been confronted by framing a question to him for the purpose of the statement under Section 342 of Cr.P.C; it has remained a consistent version of Muhammad Abbassi that the deceased came to the roof fully armed and attacked the former; the guard Muhammad Khan, upon witnessing that Muhammad Abbassi was being fired at, killed the deceased and, thereafter, disappeared from the scene; said Muhammad Khan was later arrested and after settlement and striking a deal with the police, his statement under Section 164 Cr.P.C was recorded; however, he was given up as a witness as he realized his mistake; the learned Trial Court has committed an error by

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observing that Muhammad Abbassi had preferred not to be examined on oath nor produced any evidence, whereas it is a settled principle of law that the prosecution has to prove the case beyond a shadow of doubt; the version of an accused may be false, a sham and inconsistent, yet the case will hinge on the evidence produced by the prosecution, and in this regard reliance has been placed on “Shamir alias Shamla vs. The State” PLD 1958 S.C 242, “Khalid Mehmood vs The State”, 2004 Cr. LJ 984, and “Nadeem-ul-Haq Khan and others vs. The State”, 1985 SCMR 510; the evidence against Liaqat Abbassi and Muhammad Abbassi was the same, and yet the former was acquitted by giving benefit of doubt, while the latter convicted and sentenced to death; neither were any pellets recovered from the body of the deceased, nor were exit wounds found corresponding thereto; the injury on the body was on account of the deceased falling on the ribbed iron bars, as is evident from the photographs taken at the crime scene; the motive for the deceased to attack Muhammad Abbassi was obviously their enmity. The learned counsel took us through the relevant portions of the judgments in “Alamgir Khalid Chughtai vs. The State” P L D 2009 Lahore 254, “Shamir alias Shamila vs. The State”, P L D Supreme Court (Pak) 242, “Khalid Mehmood vs. The State”, 2004 P Cr. LJ 984, “Muhammad Iqbal vs. The State”, 1999 M L D 1557, “Safdar Ali vs. The Crown” P L D 1953 Federal Court 93, “Rab Nawaz and others vs. The State” P L D 1994 Supreme Court 858, “Hakim Ali and 4 others vs. The State and another” 1971 S C M R 432, “Nadeem Ul Haq Khan and others vs. The State”, 1985 S C M R 510, “Inayatullah and another vs. The State”, P L D 1966 (W.P) Lahore 8, “Ghulam Qadir and 2 others vs. The State”, 2008 S C M R 1221, “Allah Ditta vs The State”, 1999 Y L R 1478, “Muhammad Khan vs. Maula Bakhsh and another” 1998 S C M R 570, “Syed Saeed Muhammad Shah and another vs. The State”, 1993 S C M R 550, “Muhammad Ashiq vs. The State”, PLJ 1990 Cr. C (Peshawar) 147, “Asghar Ali alias Sabah and

others vs. The State and others”, 1992 S C M R 2088, “Ch. Zafar Ul Haq and another vs The State”, P L D 1968 Lahore 437, “Gulab and another vs The State” 1986 P Cr; LJ 1297, “Muhammad Mushtaq vs The State”, P L D 2001 Supreme Court 107 and “Shaukat Ali vs. The State”, 2005 M L D 1470.

16. Mr. Muhammad Ilyas Siddiqui, Advocate Supreme Court, appeared on behalf of the appellants in Criminal Appeal No.01/2012 and 03/2012 and argued that; the FIR was promptly lodged; an inquest report was prepared at the spot, as is evident from the statement of PW-4; Muhammad Abbassi had submitted an application Ex-CW/F, soon after the incident, and the story narrated therein contradicts the later version; in his application CW/F Muhammad Abbassi had claimed that the firing had started from the road side when the deceased had climbed the roof to attack him; Muhammad Abbassi has been giving contradictory versions, and in this regard the learned counsel took us through the record; the statement of Muhammad Abbassi in his application Ex-CW-7/F has been confirmed by witnesses i.e. the Investigating Officer etc; the application made by Muhammad Abbassi Ex-CW-7/F and referred to in the statement of CW-7, clearly contradicts the version of the accused; Muhammad Abbassi failed to prove his version of self-defense to the effect that the deceased had come to the place of occurrence to attack him and consequently was killed by his guard, Muhammad Khan; the *Medical Board* gave its findings clearly establishing that the injuries on the body of Muhammad Abbassi were self-inflicted; Muhammad Abbassi admits that he was present at the crime scene, which happened to be the roof of his under construction house; the evidence of CW-3 and outdoor ticket in the name of Muhammad Abbassi establishes that the medico legal report is fake and has been fabricated so as to facilitate the creation of a false plea; the medical evidence goes against the version of Muhammad Abbassi; the assertion made by the defense that the injuries on the body of the deceased are on account of

his falling on the iron rods is beyond belief; the recoveries of empties from the place of occurrence establish that the firing took place from three different fire arms, thus conclusively contradicting the version of Muhammad Abbassi; the handing over to the Investigating Officer of the pistol and license belonging to the deceased proves that he was unarmed at the time of his abduction; the abduction is established through ocular evidence of PW-3; the data obtained from the cellular phone was not in the name of the deceased and the owner was neither examined nor his statement recorded during the investigation; reliance has also been placed on “Kashif Saddique and 2 others vs. The State”, 2008 P. Cr. LJ 1039, “Muhammad Sarfraz vs. The State through P.G Punjab and another”, P L D 2013 Supreme Court 386, “Mazhar Hussain vs The State”, 2002 P Cr. LJ 614, “Mawaz Khan vs. Muhammad Iqbal and 4 others” 2001 P Cr. LJ 396, “Mst. Naziran vs. Saifal and others” 1998 P Cr. LJ 1689, and “Fazal-E-Haq vs. The State”, 2015 P Cr. LJ 189 Lahore.

17. Mian Abdul Rauf, learned Advocate General, has urged that the murder reference be answered in the affirmative and has, therefore, argued that; the occurrence is admitted; it is also admitted that the place of occurrence is the roof of the property owned by Muhammad Abbassi; the motive is also admitted i.e. the deceased having killed the brother and nephew of Muhammad Abbassi; Muhammad Abbassi raised the plea of self-defense and, therefore, the onus was on him to prove his version; the prosecution had established its case beyond a reasonable doubt, while Muhammad Abbassi neither got himself examined under Section 340 (2) of Cr. P. C by making a statement on Oath nor produced any evidence in support of his version; the evidentiary obligation is provided in Article 70 and 71 of the Qanun-e-Shahadat Order 1984; Muhammad Abbassi failed to substantiate the defense taken by him; the onus or burden of proving that the case of the accused came within the exceptions was on him, as provided under Article 121 of the order;

reliance has been placed on “Muhammad Ahmed vs. The State” 2009 S C M R 1133, “Anwar Shamim and another vs. The State” 2010 S C M R 1791 and “Khadim Hussain vs. The State” 2010 S C M R 1720.

18. We have heard the learned counsels and the learned Advocate General at length. With their able assistance we have perused the record and have carefully gone through the evidence and, therefore, our opinion is as follows:-

19. The prosecution version consists of taking away of the deceased from near the portrait of the Quaid-e-Azam on the Expressway, and then the incident on the roof of the under construction house of Muhammad Abbassi in Bani Gala. The motive is previous enmity, and the same is not denied. The deceased was nominated in a criminal case registered against him and others for the murder of the brother and nephew of Muhammad Abbassi. The FIR was registered promptly. The first part of the prosecution case i.e. the taking away of the deceased from the Expressway is supported by the ocular evidence of Mst Nuzhat Abbas, PW-3 and Liaqat Abbasi, PW-5. The firing at the deceased by Muhammad Abbassi and others on the roof of the under construction building has been testified in the statements of Abdul Rehman, PW-2 and Mst Nuzhat Abbas PW-3. The said witnesses along with the complainant of the FIR, Mst Ghulam Fatima, after witnessing the incident had promptly proceeded to the Police Station. The deceased was a proclaimed offender and was obviously hiding from the police to avoid arrest. Mohammad Abbassi and the family of the deceased were known to each other due to the enmity. The testimony of Mst Nuzhat Abbas, PW-3, is credible and despite being subjected to extensive cross examination its credibility could not be shattered. The contradictions pointed out by the learned counsel for Mohammad Abbassi are not material enough to discredit her statement



regarding the taking away of her husband from the Expressway, which is further corroborated by the deposition of Liaqat Abbassi, PW-5. Even if the latter evidence is not taken into consideration, still the defense side could not shatter the credibility of the former. Likewise, regarding the incident on the roof of the under construction house of Mohammad Abbassi, Abdul Rehman PW-2 and Mst Nuzhat Abbass, PW-3, remained consistent in their respective depositions and the credibility could not be successfully undermined during lengthy cross examinations. They were obviously not chance witnesses as suggested by the learned counsel for Mohammad Abbassi. The argument that why Mst Nuzhat Abbass did not rush to the Police Station instead of going to the house of her mother in law, or how she along with others reached the scene of the crime in Bani Gala are conjectural in nature. On the other hand, it appeals to reason that in such circumstances a lady would first want to inform a close relative regarding the incident rather than rushing to the Police Station alone, particularly when she knew that her husband was nominated in a criminal case. In this case the house of the mother of the deceased was at a distance of a few minutes walk as is evident from the testimony of Nuzhat Abass, PW-3. It is also not unusual in the circumstances that she along with her mother in law and Abdul Rehaman had rushed to the under construction house of Mohammad Abbassi. The said witnesses had deposed consistently and the suggestion by the defense of false implication is not supported by anything on record. The testimony of the witnesses to the extent of Mohammad Abbassi is sufficiently corroborated through strong evidence.

20. The enmity of the deceased and Mohammad Abbassi is not disputed nor denied. The place of occurrence is the roof of an under construction house admittedly owned by Mohammad Abbassi. The murder having taken place on the roof of the property owned by the latter is also not in dispute. According to the investigation and the deposition of the





Investigation Officer, the deceased was alone. The version of Mohammad Abbassi that the deceased was accompanied by another person who had also given him a blow on his head is not supported by any independent evidence. The weapon owned by the deceased was produced by Mohammad Asad Mughal, PW 1, before the Investigating Officer and, therefore, establishes that the deceased was not armed. The injuries inflicted on the body of Mohammad Abbassi also remained doubtful and nothing could be placed on record to corroborate his version of being attacked by the deceased and his accomplice. The medical evidence and recoveries collected from the place of occurrence establish that more than one weapon was used qua the injuries of the deceased. There is nothing on record to corroborate the version taken by Mohammad Abbassi in his statement recorded under section 342 of Cr.P.C. Though he admitted that he had signed the application Ex CW-7/F but in his statement under section 342 Cr.P.C he took the stance that the scribe was a police official. The statement in the said application was altogether different from his later version that his guard, namely Mohammad Khan, had fired upon the deceased when the latter attacked him on the roof of his house. The plea taken by Mohammad Abbassi that he was attacked by the deceased and another person on the roof of the under construction house owned by him, is not corroborated by any shred of evidence, nor could he produce any evidence whatsoever. The deceased, with whom he had enmity, was murdered on the roof of his property, but he or any other person from his side had not informed the police. It was the complainant, the mother of the deceased along with Mst Nuzhat Abbas, PW 3, and Abdul Rehman, PW 2, who had rushed to the nearest police station. The promptness with which they reached the crime scene and thereafter caused the FIR to be registered is evident from the fact that when the police arrived at the under construction house, the murder had taken place a short while ago, and Mohammad Abbassi was found lying on

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the floor, thus further giving credence to the ocular account of the witnesses. The medical report sufficiently establishes the case in favour of the prosecution while simultaneously demolishing the version taken by Mohammad Abbasi. The learned Trial Court, after thoroughly examining and minutely analyzing the evidence on record was persuaded that the prosecution had established its case beyond reasonable doubt, and consequently convicted and sentenced Mohammad Abbasi. The learned counsel, despite his able assistance, has not been able to persuade us, particularly for what has been discussed herein above, to find any infirmity with the conclusion arrived at by the learned trial court. The prosecution, through credible and confidence inspiring evidence has established its case beyond reasonable doubt

21. There is no cavil to the proposition that the onus to prove the guilt of an accused beyond a reasonable doubt throughout the trial rests on the prosecution. It is also settled law that the onus or burden does not shift to the accused, except in cases falling *under Article 121 of the Qanun-e-Shahdat Ordinance 1984*. In case an accused raises the plea of self-defense of his person or property and wants to bring his case within one of the exceptions, then the onus for establishing the plea lies upon him. Reliance in this regard is placed on “Farid vs The State”, *P L D 2002 S C 553* & “Muhammad Asghar alias Nannah and another vs. The State”, *2010 SCMR 1706*. We are also guided by the principle enunciated by the august Supreme Court in “Talib Hussain vs. The State”, *1995 SCMR 1538*, which is to the effect that in cases where there is no direct evidence to establish the manner in which the offence has been committed, then the probabilities are to be examined in the light of indirect evidence of the injuries of the deceased, the nature and condition of the place where the incident took place, the articles secured from there, motive for the crime and the other surrounding circumstances. If such circumstances and factors are proved by the prosecution beyond a reasonable doubt then the

(23)

charge against the person stands established. Mere concurrence of circumstances, unless based on proved facts, is not enough to draw inference. The august Supreme Court has held that the coincidence should be undesigned and not maneuvered or planted. Reliance is placed on "Talib Hussain vs. The State", 1995 SCMR 1538. It has also been held by the august Supreme Court that capital punishment can also be awarded if circumstantial evidence is strong enough to persuade the court that the person charged with the offence has committed the same. The circumstantial evidence, however, must be so clear, cogent and convincing that facts could not be accounted for on any other rational hypothesis than guilt of the accused. It has also been held that even when no witnesses are available, simpliciter denial on the part of the accused is not sufficient to nullify circumstantial evidence, which otherwise directly connects him with the commission of the charge. Reliance in this regard is placed on "Muhammad Latif vs The State", P L D 2008 SC 503, "Akbar Ali vs. The State", 2007 SCMR 486, "Khurshid vs The State", P L D 1996 SC 305, "", "Khuda Bukhsh vs. The State", 2004 SCMR 331 & "Talib Hussain vs The State", 1995 SCMR 1538.

22. It is settled law that the relationship of a witness by itself is not sufficient to discard the statement of an interested witness.

23. It is further important to note that the maxim "falsus in uno falsus in omnibus" has been discarded by the Courts in Pakistan. The august Supreme Court in the case of "Tawaie Khan and another Versus State", PLD 1970 S.C. 13, held as follows:-

*" The maxim "falsus in uno falsus in omnibus" has all along been discarded by the Courts in this country. Similarly, the rule that the integrity of a witness is indivisible, despite its moral virtue, has not been endorsed*

*by the superior courts of this country without reservations and cannot be accepted as one of universal applications. In the last analysis, as stated in some of the eminent judicial decisions, "the grain has to be shifted from the chaff" in each case, in the light of its own particular circumstances".*

24. The above principle has been consistently followed and reference in this regard may, therefore, be made to "Khairo and another Versus State", 1981 SCMR 1136, "Irshad Ahmad etc Versus State" PLD 1996 S.C. 138 and "Muhammad Sharif Versus State", PLD 2009 S.C. 709.

25. It would also be pertinent to refer to the expression 'reasonable doubt' as interpreted and elucidated by the august Supreme Court in the case "Muhamamd Asghar Ilyas Nanna Versus State", 2010 SCMR 1706 as follows:-

*"The two concepts i.e. "proof beyond a reasonable doubt" and "presumption of innocence" are so closely linked together, that they must be presented as a unit. If the presumption of innocence is the golden thread of criminal justice then proof beyond a reasonable doubt is the silver and these two threads are forever intertwined in the fabric of criminal justice. Therefore, the expression is of fundamental importance to our criminal justice system. It is one of the principles, which seeks to ensure that no innocent person is convicted. Thus, there cannot be a fair trial, which is the goal of*



*criminal justice, if the Judges have not clearly understood the basic and fundamentally important concept of the standard of proof that the prosecution must meet in order to obtain a conviction. Therefore, the Court/Judge must appreciate the meaning and importance of the expression. Reference is invited to a decision of Supreme Court of Canada indexed as (R. v. Lifchus, [1997] 2 S.C.R. 320).*

*The meaning of reasonable doubt can be arrived at by emphasizing the word "reasonable". It is not a surmise, a guess or mere conjecture (State v. Griffin, 253 Conn. 195, 206 (2000)). It is not a doubt raised by anyone simply for the sake of raising a doubt. It is such a doubt as, in serious affairs that concern any one and that such a doubt would cause reasonable men and women to hesitate to act upon it in matters of importance (State v. Morant, 242 Conn. 666, 688 (1997)). It is not hesitation springing from any feelings of pity or sympathy for the accused or any other person who might be affected by the decision. It is, in other words, a real doubt, an honest doubt, a doubt that has its foundation in the evidence or lack of evidence (State v. Vesasco, 253 Conn. 210, 249 (2000)). It is doubt that is honestly entertained and is reasonable in light of the evidence after a fair comparison and careful examination of the entire*



*evidence (State v. Torres, 82 Conn. App. 823, 836-37 (2004)).”*

26. It would also be pertinent to quote the following passage from the judgment;

*“Thus the proof beyond a reasonable doubt should be based on reasons and commonsense, which must be logically based upon the evidence or lack of evidence, however, it cannot be based on sympathy or prejudice, or by imaginary or frivolous. Nevertheless, the prosecution is not required to prove its case to an absolute certainty since such an unrealistically high standard could seldom be achieved. Proof beyond a reasonable doubt does not mean proof beyond all doubts. The law does not require absolute certainty on the part of the Court before it returns a verdict of guilty. The law requires that, after hearing all the evidence, if there is something in the evidence or lack of evidence that leaves in the minds of Judges, as reasonable men reasonable doubt as to the guilt of the accused, then the accused must be given the benefit of that doubt and acquitted, even if the Court/Judge believes that the accused is probably guilty or likely to be guilty, that is not sufficient. Proof beyond a reasonable doubt is proof that precludes every reasonable hypothesis except guilt and is inconsistent with any other rational conclusion. Reference is invited to (State v. Ryerson, 201 Conn. 333, 342 (1986), (State v. Hires, 243 Conn 796, 820 (1998) and (State v. Denson, 67 Conn, App 803, 802-22 (2002). Thus, if the*



*Judge is sure, on the evidence produced by the prosecution that the accused has committed the offence, then he should be convicted as it shows that the Judge is satisfied of guilt of the accused beyond a reasonable doubt"*

27. Next, it would be pertinent to advert to the quantum of the sentence in such circumstances. The august Supreme Court in "Hassan and others vs The State & others", P L D 2013 SC 793, dilated on the question of the alternate sentence provided under Section 302 (b) of Pakistan Penal Code, 1860 (hereinafter referred to as the "PPC"), in the light of Section 367 (5) of the Cr.P.C. The relevant portion is as follows:-

*"We have not been able to find anything in the said provision of law even hinting at the sentence of death being the normal sentence in such a case section 302(b), P.P.C. clearly provides for two alternative sentences, i.e. sentence of death or sentence of imprisonment for life for the offence of murder and it does not state that any one of those sentences is to be treated as the normal sentence. As a matter of fact section 302(b), P.P.C. itself mentions that any one of the two alternative sentences provided for therein is to be passed "having regard to the facts and circumstances of the case". There are cases wherein "the facts and circumstances of the case" do not warrant a sentence of death and what is required by subsection (5) of section 367, Cr.P.C. is that such facts and circumstances of the case ought to be mentioned by the trial court in its judgment so that the higher Courts may straightaway become aware of the same while entertaining or deciding a challenge thrown against the trial Court's judgment."*



28. The august Supreme Court followed and re affirmed the above principle in the case of “Ghulam Mohy-ud-Din alias Haji Babu and others vs. The State”, 2014 SCMR 1034. After holding that the two sentences, as provided in Section 302(b), are alternative to one another, the august Supreme Court observed that awarding one or the other sentence shall essentially depend upon the facts and circumstances of each case. It would be beneficial to reproduce paragraph 21 of the judgment and the same is as follows:-

*“A single mitigating circumstances, available in a particular case, would be sufficient to put on guard the Judge not to award the penalty of death but life imprisonment. No clear guideline, in this regard can be laid down because facts and circumstances of one case differ from the other, however, it becomes the essential obligation of the Judge in awarding one or the other sentence to apply his judicial mind with a deep thought to the facts of a particular case. If the Judge/Judges entertain some doubt, albeit not sufficient for acquittal, judicial caution must be exercised to award the alternative sentence of life imprisonment, lest an innocent person might not be sent to the gallows. So it is better to respect the human life, as far as possible, rather to put it at end, by assessing the evidence, facts and circumstances of a particular murder case, under which it was committed.*

*Albeit, there are multiple factors and redeeming circumstances, which may be quoted, where awarding of death penalty would be unwarranted and instead life imprisonment would be appropriate sentence but we would*





*avoid to lay down specific guidelines because facts and circumstances of each case differ from one another and also the redeeming features, benefiting an accused person in the matter of reduced sentence would also differ from one another, therefore, we would deal with this matter in any other appropriate case, where, it proper assistance is given and extensive research is made.*

*In any case, if a single doubt or ground is available, creating reasonable doubt in the mind of Court/Judge to award death penalty or life imprisonment, it would be sufficient circumstances to adopt alternative course by awarding life imprisonment instead of death sentence”.*

29. We are also mindful of the observations and principles enunciated by the august Supreme Court regarding taking the factor of deterrence into consideration while awarding the sentence of death as elucidated in “Dadullah and another vs. The State” 2015 SCMR 856, “Noor Muhammad vs. The State”, 1999 SCMR 2722, “Muhammad Yasin and 2 others vs The State”, 2002 SCMR 391.

30. We have given anxious consideration to the question of sentence awarded by the learned trial court in the light of the above principles enunciated by the august Supreme Court, and applying the same to the facts and circumstances of the instant case. We have not been able to discover any mitigating circumstance or a single doubt or ground to persuade ourselves in favour of awarding the alternate sentence of life imprisonment. There was admitted enmity between the deceased and Mohammad Abbasi. The deceased was taken away while travelling with his wife. The murder took place on the roof of the under construction house of Mohammad Abbasi. The latter took the plea that the deceased had trespassed his property, climbed the temporary

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ladder, attacked him and fired at him. Except for his statement under section 342 Cr.P.C no evidence whatsoever lends any support to this version. The witnesses remained consistent and their credibility remained unshaken. The injuries on the deceased, the nature and condition of the crime scene i.e the roof of the property owned by Mohammad Abbasi, the articles collected, motive and all other surrounding circumstances have been proved by the prosecution beyond a reasonable doubt. The chain of guilt has been found unbroken. The prosecution established the guilt of Mohammad Abbasi in the gruesome and pre meditated murder of the deceased. The evidence, as discussed, by no stretch of the imagination discloses any mitigating circumstance so as to give us a reason to consider interference in the sentence awarded by the learned trial court. The impugned judgment is well reasoned and has taken all the relevant matters into consideration before passing the sentence.

31. We, therefore, answer the reference in the affirmative and confirm the conviction and sentence awarded by the learned trial Court. Criminal Appeal No.103 of 2011, filed by Muhammad Abbasi is also consequently dismissed. Criminal Appeal Nos.01 of 2012 is dismissed as well as nothing has been pointed out from the record to interfere with the acquittal of Liaqat Abbasi. Cr Revision No.03 of 2012 is without merit and dismissed, as the compensation awarded by the learned trial court is just proper and reasonable.

(AAMER FAROOQ)  
JUDGE

(ATHAR MINALLAH)  
JUDGE

Announced in open Court on 18 June, 2015.

/ JUDGE

JUDGE

Approved for reporting