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Judgment Sheet

IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Criminal Appeal No. 671-J of 2019
(Muhammad Zafar Iqbal Vs. The State)

Date of hearing:	08.09.2025.
Appellant by:	Syed Asim Ali, Advocate.
State by:	Mr. Riaz Ahmad Khan, Deputy Prosecutor General.
Complainant of the case by:	Mr. Imran Pasha, Advocate

J U D G M E N T

SADIQ MAHMUD KHURRAM, J.–Muhammad Zafar Iqbal son of Muhammad Sadiq (convict)was tried along with Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain (all since acquitted), the co-accused of the convict, by the learned Additional Sessions Judge, Chishtian in the case instituted upon the private complaint titled "*Muhammad Nawaz vs. Muhammad Zafar Iqbal and three others.*" (relating to case FIR No.260 of 2015, dated 02.08.2015, registered at police station Bakhshan Khan, District Bahawalnagar) lodged in respect of offences under sections 302, 324 and 34 PPC. for committing the *Qatl-i-Amd* of Mumtaz son of Muhammad Hussain(deceased). The learned trial court vide judgment dated 31.10.2019,

convicted Muhammad Zafar Iqbal son of Muhammad Sadiq (convict) and sentenced him as infra:

> ***Muhammad Zafar Iqbal son of Muhammad Sadiq:-***
>
> *"Imprisonment for life under section 302(b) PPC for committing the Qatl-i-Amd of Mumtaz son of Muhammad Hussain (deceased) and directed to pay compensation of Rs.200,000/- under section 544-A of the Code of Criminal Procedure,1898 and in case of default thereof to further undergo simple imprisonment for six months."*

The benefit of Section 382-B of the Code of Criminal Procedure, 1898 was extended to the appellant by the learned trial court .

Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain, the co-accused of the convict, were however, acquitted by the learned trial court.

2. Feeling aggrieved, Muhammad Zafar Iqbal son of Muhammad Sadiq (convict) lodged the instant Criminal Appeal No. 671-J of 2019 through Jail, assailing his conviction and sentence.

3. Precisely, the necessary facts of the prosecution case, as stated by Muhammad Nawaz (PW-1), the complainant of the case, are as under:-

> "My brother Mumtaz was married with Mst. Shumaila bibi 7/8 years prior to the occurrence and one daughter was born from this wedlock. Accused Zafar Lohar was friend of my brother who used to visit our house. Accused Zafar Lohar developed illicit relations with Mst. Shumaila Bibi and took her with him about 5/6 months prior to occurrence. On 08-06-2015 at about 7:00PM accused Khadim Hussain s/o Kher Muhamnad called me and my brother that accused Zafar had given beating to Mst. Shumaila Bibi who is in his house and asked us to take her. I alongwith my brother Mumtaz, Riaz Ahmed s/o Budhan and Razzaq Hussain went there on motorcycles. At about 8:00PM when we entered in the house of Khadim, persons complained against Zafar, Latif both Lohar by caste, Nadeem dadpotra and one unknown person while armed with firearm weapons

> were present there. Accused Zafar Lohar caused fire with rifle 44-bore which hit outside the left thigh of my brother Mumtaz passed through it and hit on the right thigh. Accused Nadeem fired with his rifle 44-bore which hit me on my right wrist and went through and through. Accused Latif Lohar and one unknown also caused fired upon us. Riaz and Razzaq PWs save themselves by hiding behind the wall and witnessed the occurrence. The occurrence took place on the abetment of accused Khadim who called us through telephone. PWs took us to hospital. My statement was recorded which is Exh-PC. I thumb marked the same upon which present case was registered. On my statement FIR No.260/2015 u/s 324/34/109 P.P.C. was chalked out at PS Bakhshan Khan. Doctor referred my brother to BVH, Bahawalpur who succumbed to the injuries on the way. I took dead body of my brother to civil hospital, Chishtian where his postmortem was conducted and after postmortem I received dead body of my brother through receipt. After that offence u/s 302 P.P.C. was added. During investigation IO held accused person Khadim Hussain and Muhammad Amin alias Latif innocent and involved accused Nadeem but exonerated him to the extent of fire upon me. 10 in connivance with accused Nadeem did not recover weapon from him. I filed various applications before high ups of police but all in vain. Being aggrieved from the conduct of police I filed this private complaint Exh-PD which bears my thumb impression as Exh-PD/1. Persons complained against are real, culprits, they be punished accordingly."

4. The accused were summoned to face trial in the case instituted upon the private complaint titled "*Muhammad Nawaz vs. Muhammad Zafar Iqbal and three others.*" (relating to case FIR No.260 of 2015, dated 02.08.2015, registered at police station Bakhshan Khan, District Bahawalnagar) lodged in respect of offences under sections 302, 324 and 34 PPC. for committing the *Qatl-i-Amd* of Mumtaz son of Muhammad Hussain(deceased). The learned trial court framed the charge against the accused on 27.04.2017, to which the accused pleaded not guilty and claimed trial.

5. The complainant of the case in order to prove his case, got recorded statements of as many as **three** witnesses. The ocular account of the case was furnished by Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2). Examination in-chief of Riaz Ahmad (PW-3) was also recorded, however, the

complainant of the case got recorded his statement on 04.03.2019 that he did not want to produce Riaz Ahmad (PW-3) for the purpose of cross-examination, therefore, the statement of Riaz Ahmad (PW-3) was discarded by the learned trial court.

6. The learned trial court recorded statements of eleven witnesses as Court witnesses. Ijaz Ahmad Kamboh Patwari (CW-1) prepared the scaled site plan of the place of occurrence (CW-1/A). Muhammad Riaz 769/C (CW-6) stated that on 07.08.2015, he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Medical Officer after the post mortem examination of the dead body of the deceased. Nazir Ahmad, SI (CW-8) stated that on 06.08.2015, he recorded the formal F.I.R. (CW-8/A). Razzaq Ahmad , SI (CW-11) stated that he had been working with Muhammad Nawaz, SI (since dead) who investigated the case from 20.12.2015 till 01.02.2016. Nasir Mahmood, SI (CW-3) stated that he investigated the case from 06.08.2015 till 30.11.2015 and narrated the facts of the investigation conducted by him in his statement recorded by the learned trial court.Razzaq Ahmad, SI (CW-4), stated that he investigated the case from 10.10.2016 till 04.04.2017, arrested the appellant on 12.12.2016 and narrated the facts of the investigation conducted by him in his statement recorded by the learned trial court.

7. The learned trial court also recorded the statement of Dr. Ghazanfar Mahmood (CW-2), who on 07.08.2015 was posted as Medical Officer at THQ hospital Chishtian and on the same day conducted the post-mortem

examination of the dead body of the deceased, namely Mumtaz. Dr. Ghazanfar Mahmood (CW-2) on examining the dead body of the deceased namely Mumtaz, observed as under:-

> **" Injury No. 1.**
>
> A lacerated wound measuring 2 cm X 1.5 cm X deep going with inverted margins on lateral side of left thigh, 20 cm below left iliac spine. There was no burning or blanking present on wound or clothes, Corresponding hole was present on clothes. Injury No.1 was entry wound. On exploration skin, soft vessels tissues, mussels, damaged. nerves and blood
>
> **Injury No.2**.
>
> A lacerated wound measuring 4.00 cm X 2.00 cm X deep going with everted margins on medial side of left thigh at the level of injury No.1. There was no burning or blackening present on clothes or wound. Corresponding hole present on clothes. Injury No.2 is exit wound.
>
> **Injury No.3**.
>
> A lacerated wound 2.5 cm X 2 cm X deep going with inverted margins on medial side of right thigh at the level of injury no.2. Corresponding hole was present on clothes. There was no burning or blackening present on clothes or wound. Injury no.3 was entry wound. On exploration soft tissues, mussels (sic) and blood vessels damaged. A bullet recovered from wound, sealed and handed over to police.
>
> ……..
>
> **OPINION**. After thorough external and internal postmortem examination I was of the opinion that injuries No. 1, 2 and 3 were collectively cause of death leading to severe hemorrhage, shock, cardiopulmonary arrest leading to death. These injuries were ante mortem in nature and were caused by firearm."

On 06.08.2015,Dr. Ghazanfar Mahmood (CW-2) had medically examined Muhammad Nawaz (PW-1) and observed as under:-

> "Injury No.01-A

A lacerated wound of 6cm X 2cm X deep going with inverted margins on lateral aspect of right wrist. Injury No.01-A is entry wound.

Injury No.01-B

A lacerated wound of 7.5cm X 2.5cm X deep going with everted margins on medial aspect of right wrist. Injury No.01-B is exit wound. Distal neurovascular status was intact. Advised X-Ray right wrist A/Plateral view."

Dr. Ghazanfar Mahmood (CW-2) further stated that on 06.08.2015, he had examined Mumtaz (deceased) in an injured condition and had observed the same injuries as observed by him at the time of the post mortem examination of the dead body of Mumtaz (deceased).

8. On 28.10.2019, the learned Assistant District Public Prosecutor closed the prosecution evidence after tendering in evidence the reports of Punjab Forensic Science Agency, Lahore (Exh.PJ and Exh.PK).

9. After the closure of prosecution evidence, the learned trial court examined the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq under section 342 Cr.P.C. and in answer to the question *why this case against you and why the P.W.s have deposed against you*, he replied that he had been involved in the case falsely and was innocent. The appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq opted not to get himself examined under section 340(2) Cr.P.C and produced (Exh.DB, Exh.DB/1 and Exh.DC) as evidence in his defence.

10. At the conclusion of the trial, the learned Additional Sessions Judge, Chishtian convicted and sentenced the appellant as referred to above.

11. The contention of the learned counsel for the appellant precisely was that the whole case was fabricated and false and the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible, and relevant evidence. Learned counsel for the appellant further contended that the story of the prosecution mentioned in the statements of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2), on the face of it, was highly improbable. Learned counsel for the appellant further contended that the statements of the prosecution witnesses were not worthy of any reliance. The learned counsel for the appellant also argued that the appellant had been involved in the occurrence only on suspicion. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

12. On the other hand, the learned Deputy Prosecutor General and the learned counsel for the complainant contended that the prosecution had proved its case beyond shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General and the learned counsel for the complainant further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned Deputy Prosecutor General and the learned counsel for the complainant further contended that the medical evidence also corroborated the statements of the prosecution

witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2). The learned Deputy Prosecutor General also argued that the recovery of rifle 44-bore (P-4) also supported the prosecution's case. The learned Deputy Prosecutor General and the learned counsel for the complainant further contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offender with the innocent in this case. Lastly, the learned Deputy Prosecutor General and the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq.

13. I have heard the learned counsel for the appellant, the learned counsel for the complainant ,the learned Deputy Prosecutor General and with their able assistance, perused the record and evidence recorded during the trial.

14. The learned Deputy Prosecutor General has vehemently argued that as the prosecution witness namely Muhammad Nawaz (PW-1) was injured during the occurrence, therefore, his statement could not be doubted in any manner. The stamp of injuries on the person of a witness may be proof of his presence at the place of occurrence, at the time of occurrence, however the same can never guarantee a truthful deposition. Injuries received by a witness during an incident do not warrant acceptance of his evidence without scrutiny. At the most, such traumas can be taken as an indication of his presence on the spot, but still his evidence is to be scrutinized on the benchmark of principles laid down for the appraisal of evidence. It is not a given that a witness who suffered injuries during the occurrence will depose nothing but the truth. Even otherwise, it is not the simple presence of a witness at the crime scene but his

credibility, which makes him a reliable witness. It has been held by the august Supreme Court of Pakistan repeatedly that the facts that an injured witness narrates are not to be implicitly accepted rather, they are to be attested and appraised on the principles applied for the appreciation of evidence of any prosecution witness, regardless of him being injured or not. Guidance is sought from the principle enunciated by the august Supreme Court of Pakistan in the case of *Nazir Ahmad vs. Muhammad Iqbal and another* (**2011 SCMR 527**) where at page 534 the august Supreme Court of Pakistan, was pleased to hold as under:

> *"It is settled law that injuries of P.W. are only indication of his presence at the spot but are not affirmative proof of his credibility and truth".*

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of *Amin Ali and another Vs. The State*(**2011 SCMR 323**) where the august Supreme Court of Pakistan was pleased to hold that the presence of injuries does not stamp a witness to be a truthful one and observed as under :-.

> *"12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of P.Ws. would not stamp them truthful witnesses. It has been held in the case of Said Ahmed supra as under:--*
>
> > *"It is correct that the two eye-witnesses are injured and the injuries on their persons do indicate that they were not self-suffered. But that by itself would not show that they had, in view of the aforenoted circumstances, told the truth in the Court about the occurrence; particularly, also the role of the deceased and the eye-witnesses. It cannot be ignored that these two witnesses are closely related to the deceased, while the two other eye-witnesses mentioned in the F.I.R. namely,Abdur Rashid and Riasat were not examined at the trial. This further shows that the injured eyewitnesses wanted to withhold the material aspects of the case from the Court and the prosecution was apprehensive that if independent witnesses are examined, their depositions might support the plea of the accused."*

In the case of Mehmood Hayat supra at page 1417, it has been observed as under:--

> *"10. There is no cavil with the proposition laid down in the case of Zaab Din and another v. The State (PLD 1986 Peshawar 188) that merely because the P.Ws. had stamp of firearm injuries on their person was not per se tantamount to a stamp of credence on their testimony."*

In the case of Mehmood Ahmed supra, this Court at page 7 observed as under:

> *"For an injured witness whose presence at the occurrence is not disputed it can safely be concluded that he had witnessed the incident. But the facts he narrates are not to be implicitly accepted merely because he is an injured witness. His testimony is to be tested and appraised on the principles applied for appreciation of any other prosecution witness."*

13. From the above evidence of the P. Ws., they do not appear to be truthful witnesses; therefore, no implicit reliance can be placed on their evidence."

With this principle of appreciation of evidence in mind that an injured witness cannot be presumed to be also a truthful witness, I have proceeded to examine the statements of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2). I have already mentioned that along with the appellant, his co-accused, namely Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain, since acquitted by the learned trial court, were also tried. The learned trial court acquitted the above mentioned co-accused of the charges. I have queried the learned Deputy Prosecutor General and the learned counsel for the complainant regarding the filing or otherwise of an appeal against the acquittal of the said co-accused, who have stated that the acquittal of Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain, since acquitted by the learned trial court, had attained finality as neither the State nor the complainant or any other aggrieved person had filed an appeal against the acquittal of Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain , the co-accused of the appellant. The question for determination

before this Court now is that whether the evidence which has been disbelieved qua the acquitted co-accused of the appellant can be believed against the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq. The proposition of law in Criminal Administration of Justice, that a common set of witnesses can be used for recording acquittal and conviction against the accused persons who were charged for the commission of same offence, is now a settled proposition. The august Supreme Court of Pakistan has repeatedly held that partial truth cannot be allowed and perjury is a serious crime. This view stems from the notion that once a witness is found to have lied about a material aspect of a case, it cannot then be safely assumed that the said witness will declare the truth about any other aspect of the case. I have noted that the view should be that "*the testimony of one detected in a lie was wholly worthless and must of necessity be rejected."* If a witness is not coming out with the whole truth, then his evidence is liable to be discarded as a whole, meaning thereby that his evidence cannot be used either for convicting accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim *falsus in unofalsus in omnibus*. The august Supreme Court of Pakistan in *Criminal Miscellaneous Application No. 200 of 2019 in Criminal Appeal No. 238-L of 2013* reported as **PLD 2019 Supreme Court 527** has enunciated the following binding principles: -

> *"The Pakistan Penal Code, 1860 (P.P.C.) contains many offences dealing with perjury and giving false testimony. The very fact that there is a whole chapter, numbered XI, dedicated to such offences amply testifies to the fact that matters relating to giving of testimony were taken very seriously by those who drafted the P.P.C. and their continued retention in the P.P.C. ever since reflects the will of the legislature, which is the chosen*

> *representative body of the people of Pakistan through which they exercise their authority within the limits prescribed by Almighty Allah. The following sections, listed under Chapter XI titled "Of False Evidence And Offences Against Public Justice", highlight the fact that giving false testimony has been treated to be a very serious matter entailing some serious punishments.*
>
> *……*
>
> ***Holding that the rule falsus in uno, falsus in omnibus is inapplicable in this country practically encourages commission of perjury which is a serious offence in this country. A court of law cannot permit something which the law expressly forbids****.*
>
> *……*
>
> *……*
>
> *21.* ***We may observe in the end that a judicial system which permits deliberate falsehood is doomed to fail and a society which tolerates it is destined to self-destruct. Truth is the foundation of justice and justice is the core and bedrock of a civilized society and, thus, any compromise on truth amounts to a compromise on a society's future as a just, fair and civilized society. Our judicial system has suffered a lot as a consequence of the above mentioned permissible deviation from the truth and it is about time that such a colossal wrong may be rectified in all earnestness. Therefore, in light of the discussion made above, we declare that the rule falsus in uno, falsus in omnibus shall henceforth be an integral part of our jurisprudence in criminal cases and the same shall be given effect to, followed and applied by all the courts in the country in its letter and spirit. It is also directed that a witness found by a court to have resorted to a deliberate falsehood on a material aspect shall, without any latitude, invariably be proceeded against for committing perjury."***

Guided by the said judgment of the august Supreme Court of Pakistan, I have examined the prosecution evidence. I have scrutinized the statements of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2). The prosecution witness namely Muhammad Nawaz (PW-1) in his statement before the learned trial court, stated as under:-

> "On 08-06-2015 at about 7:00PM accused Khadim Hussain s/o Kher Muhamnad called me and my brother that accused Zafar had given beating to Mst. Shumaila Bibi who is in his house and asked us to take her. I alongwith my brother Mumtaz, Riaz Ahmed s/o Budhan and Razzaq Hussain went there on motorcycles. At about 8:00PM when we entered in the house of Khadim, persons complained against Zafar, Latif both Lohar by caste, Nadeem dadpotra and one unknown person while armed with firearm weapons were present there. Accused Zafar Lohar caused fire with rifle 44-bore which hit outside the left thigh of my brother Mumtaz passed through it and hit on the right thigh. **Accused Nadeem fired with his rifle 44-bore which hit me on my right wrist** and went through and through. Accused Latif Lohar and one unknown also caused fired upon us." (emphasis supplied)

The prosecution witness namely Muhammad Razzaq (PW-2) in his statement before the learned trial court, stated as under:-

> "Accused Zafar Lohar fired with rifle 44-bore which hit outside the left thigh of deceased Mumtaz and went through and hit on the right thigh. **Accused Nadeem fired with his rifle 44-bore which hit on Nawaz right wrist and passed through it and through**. Accused Latif Lohar and one unknown also fired upon us. (emphasis supplied)

The perusal of the above-mentioned portions of the statements of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) clearly reveals that according to the said eye witnesses, Muhammad Nadeem , the acquitted co-accused of the appellant, injured the prosecution witness namely Muhammad Nawaz (PW-1) by firing at him with a rifle 44-bore and hitting him on his right wrist, however the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad

Razzaq (PW-2) were adjudged to have deposed falsely against Muhammad Nadeem (since acquitted) by the learned trial court . I am unable to find any independent corroboration of the prosecution case against the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq and I am unable to distinguish the case of the appellant from the case of acquitted co-accused namely Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain (since acquitted) as the prosecution evidence with regard to the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq and regarding his co-accused namely Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain (all since acquitted), is similar, being based on the statements of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2). I find no reason to believe their statements with regard to the appellant in the absence of any reason to do so. This lying on the part of the witnesses with regard to Muhammad Amin alias Latif, Muhammad Nadeem and Khadim Hussain (all since acquitted) has vitiated the trust of this Court in them. I am thus satisfied that the evidence of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) has no worth and is to be rejected outright. A witness who has been disbelieved with regard to his statement about an accused **who had injured the said witness** cannot be believed with regard to his statement about the other accused. Reliance in this regard is placed on the case of *MUNIR AHMED and others Vs. The State and others* (**2019 S C M R 2006**) wherein the august Supreme Court of Pakistan has held as under: -

> *"Loss of precious lives, within a family fold, though on rocks, confirmed by the witnesses including the one with a stamp of injury, notwithstanding, there are certain intriguing aspects, haunting the prosecution, in the totality of circumstances, a hugely large number of assailants, including the unknown, being the most prominent. In the face of indiscriminate firing, a case unambiguously put forth by the prosecution, receipt of single shot by each deceased as well as the injured belies the hypothesis of massive indiscriminate firing by each member of unlawful assembly comprising no less than 26, the unknown included; from amongst the volley of assailants, precision attribution, in an extreme crisis situation, is a feat, beyond human capacity, it sans forensic support as well; quite a few from amongst the array were let off at investigative stage, on the basis of an affidavit sworn by no other than the injured himself; prosecution's dilemma is further compounded by acquittal of four accused, framed through the same set of evidence by the Trial Court; a severer blow came from the High Court that acquitted all others except the petitioners. The petitioners, though distinctly assigned single shot qua the deceased and the injured, nonetheless, are identically placed with those by now, off the hook. Inclusion of the unknown, eight in numbers, if factually correct was certainly not without a purpose; if at all, they were there, the petitioners and other known members of the family had no occasion to carry out the assault without being out of mind. Notwithstanding the magnitude of loss of lives, the totality of circumstances, unambiguously suggest that the occurrence did not place in the manner as is alleged in the crime report; argument that number of assailants has been hugely exaggerated, as confirmed by the acquittals of the co-accused with somewhat identical roles, though without specific attributions, is not entirely beside the mark and in retrospect calls for caution. It would be unsafe to maintain the convictions. Consequently, Jail Petitions are converted into appeals and allowed; impugned judgment is set aside; the appellants are acquitted from the charge and shall be released forthwith, if not required in any other case."*

Reliance is also placed on the case of *SAFDAR ABBAS and others Versus The STATE and others* (**2020 S C M R 219**) wherein the august Supreme Court of Pakistan has held as under: -

> *"Petitioners' father, namely, Charagh co-accused is assigned multiple club blows to Muhammad Bukhsh deceased; same is charge against*

> *Muzaffar co-accused; remainder of the accused, though assigned no harm to the deceased, nonetheless, are ascribed effective roles to the P.W.s; they are closely related being members of the same clan and in the totality of circumstances given the accusation, their roles cannot be bifurcated without nullifying the entire case. Motive cited in the crime report is non-specific; investigative conclusions were inconsistent with the case set up by the complainant. Recoveries are inconsequential. Complainant abandoned his case against the acquitted co-accused after failure of his petition seeking leave to appeal in the High Court. In this backdrop, no intelligible or objective distinction can be drawn to hold the petitioners guilty of the charge in isolation with their co-accused. Prosecution evidence, substantially found flawed, it would be unsafe to maintain the conviction without potential risk of error. Criminal Petition No.955-L/2016 is converted into appeal and allowed, impugned judgment is set aside, the petitioners/appellants shall be released forthwith, if not required to be detained in any other case."*

Reliance is also placed on the case of "*Muhammad Ilyas and another VersusAmeer Ali and another"*(**2020 S C M R 305**) wherein the august Supreme Court of Pakistan has held as under: -

> *"8. It is crystal clear that the case of the prosecution, against the appellant and his co-accused/co-convict Shahbaz to the extent of murder of Ijaz Ahmed (deceased) was on the same pedestal. At the cost of reiteration, it has been observed by us that significantly one injury was attributed to the appellant on the chest of Ijaz Ahmed, whereas two injuries were attributed to Shahbaz on the chest and neck of deceased and as per doctor all the three injuries contributed towards the death of Ijaz Ahmed. Since the prosecution failed to bring on record any strong and independent corroboration to distinguish the case of appellant from that of his co-accused Shahbaz, therefore, in the circumstances of the case, it can safely be held that case of prosecution against the appellant for the murder of Ijaz Ahmed (deceased) is not proved beyond reasonable doubt."*

14. Another grave flaw of the prosecution case is that according to the statements of both the eye witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2), they were residents of places which were at a distance of 10-15 kilometres from the place of occurrence, however they had

no reason to be present at the place of occurrence at the time of occurrence . Muhammad Nawaz (PW-1) admitted during cross-examination, as under:-

> " The house of accused Khadim Hussain i.e. place of occurrence is at a distance of about **10/15 kilometer from my house**. " (emphasis supplied)

Most importantly, the occurrence took place in front of the house of Khadim Hussain(since acquitted) , the co-accused of the appellant and according to the statements of both the eye witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2), they themselves proceeded to the house in front of which the occurrence took place. Being conscious of this fact that there did not exist any justifiable reason for the said prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) for having proceeded to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant, in front of which house the incident took place, the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) came up with a stance that they had received a telephonic call from Khadim Hussain(since acquitted) , the co-accused of the appellant, to come to his house and take away Mst. Shomila, the wife of Mumtaz (deceased) who had been sent to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant by the appellant after having given her a beating and it was only after receiving the said call from Khadim Hussain(since acquitted) , the co-accused of the appellant that the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2), along with other witnesses proceeded to the said place. During cross-examination, both the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) made such

statements proving that the said reason for their proceeding to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant, was absolutely false. In the first instance, Muhammad Nawaz (PW-1) admitted during cross-examination that Khadim Hussain(since acquitted) , the co-accused of the appellant had not called him, however, had called his brother Mumtaz (deceased), deviating from the stance taken by him in his examination in-chief wherein he had specifically stated that it was him who had received the call from Khadim Hussain(since acquitted) , the co-accused of the appellant.During cross-examination, Muhammad Nawaz (PW-1) claimed as under:-

> "Khadim Hussain **did not call me** however he called my brother Muhammad Mumtaz (deceased). I did not get recorded in Exh-PC that accused Khadim Hussain called me on 06-08-2015 at 07:00PM. **Confronted with Exh-PC where it is so recorded.** " (emphasis supplied)

Nasir Mahmood, SI (CW-3) , the Investigating Officer of the case also admitted during cross-examination that during investigation it was not proved that Khadim Hussain(since acquitted) , the co-accused of the appellant had made any call either to the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) or even the deceased asking them to come to his house to take away Mst. Shomila Bibi. Nasir Mahmood, SI (CW-3) explained during cross-examination, as under:-

> " It is further correct that the message of said torture through phone call made by accused Khadim Hussain to complainant party was also not proved."

In this manner, the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) were exposed to having fashioned out a

false reason for their proceeding to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant, on the day of the incident.

15. This Court has also noted with grave concern that the prosecution witness namely Muhammad Nawaz (PW-1), though initially claimed that the appellant had developed an illicit relationship with Mst. Shomila, the wife of the deceased and had also enticed away Mst. Shomila, five six months prior to the occurrence, however, during cross-examination, Muhammad Nawaz (PW-1) even denied that his brother Mumtaz (deceased) was married to Mst. Shomila and even denied that he had any knowledge about the marriage of Mst. Shomila with Mumtaz (deceased). Contradicting himself, Muhammad Nawaz (PW-1) stated during cross-examination, as under:-

> " **It is incorrect to suggest that Shumaila Bibi was wife of my deceased brother Muhammad Mumtaz**. I did not participate even the marriage of my brother deceased Muhammad Mumtaz solemnized with Shumaila Bibi. I did not even visit the in laws of my brother Muhammad Mumtaz deceased" (emphasis supplied)

The statement of Muhammad Nawaz (PW-1) that it was incorrect that Mumtaz (deceased) was married to Mst. Shomila opens up a gaping flaw in the prosecution's case in the manner that if Mst. Shomila was not married to Mumtaz (deceased) then why the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) had proceeded to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant, on the day of the incident, ostensibly to bring back Mst. Shomila, who had arrived at the said house after having been beaten by the appellant. This sole statement of Muhammad Nawaz (PW-1) that Mst. Shomila was not even the

wife of his brother makes the whole prosecution case completely doubtful and the circumstances in which the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) proceeded to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant , on the day of the incident, very sinister.

16. This Court has also considered the statement of Muhammad Razzaq (PW-2) who came up with another version regarding the relationship of Mumtaz (deceased) and Mst. Shomila and claimed that the relationship between Mumtaz (deceased) and Mst. Shomila was very cordial and furthermore Mumtaz (deceased) had never reported the matter of enticing away of Mst. Shomila by the appellant to the police. During cross-examination, Muhammad Razzaq (PW-2) claimed as under:-

> " Deceased Muhammad Mumtaz and Shumaila had no strained relations with each other prior to this occurrence.
>
> ……..
>
> Deceased Mumtaz neither filed any criminal case against accused Zafar nor he filed any petition u/s 22-A Cr.P.C. for registration of case against accused Zafar prior to this occurrence regarding alleged abduction of Shumaila Bibi by accused Zafar Iqbal."

The above referred statement of Muhammad Razzaq (PW-2) also creates a fatal flaw in the prosecution's case as to why the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) proceeded to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant on the day of the incident, if Mst. Shomila was living a

happy matrimonial life with Mumtaz (deceased), as claimed by Muhammad Razzaq (PW-2) himself. Nasir Mahmood, SI (CW-3) also admitted during cross-examination that there was no dispute between the appellant and the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) or the deceased prior to the incident. During cross-examination, Nasir Mahmood, SI (CW-3) stated as under:-

> " It is further correct that the complaint of torture by accused Zafar Lohar upon his wife was also not proved during investigation. It is further correct that the message of said torture through phone call made by accused Khadim Hussain to complainant party was also not proved. It is correct that as per my investigation accused party never ever committed the occurrence with premeditation however it is proved during my investigation that it was the complainant party who came at the place of occurrence upon their own and occurrence took place.
>
> ……..
>
> It is correct that there is nothing in Exh-PC about the quarrel of complainant party and accused party prior to firing. It is correct that there is nothing in statement of witnesses Riaz and Razzaq u/s 161 Cr.P.C. about the quarrel of complainant party and accused party prior to firing. It is correct that I recorded the statement u/s 161 Cr.P.C. of complainant and witnesses and Exh-PC according to their version without any addition, omission or deletion on my part. It is correct that complainant did not give any supplementary statement about the dispute between the parties before firing. It is correct that in my whole investigation no one from locality appeared before me and said about the dispute between the parties before firing." (emphasis supplied)

If it is true that there was no dispute between the appellant and the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) or the deceased prior to the incident then the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) should have explained as to why they proceeded to the house of Khadim Hussain(since acquitted) , the co-accused of the appellant on the day of the incident. More importantly, Mst. Shomila neither appeared during the investigation of the case nor was summoned by the learned trial court as a witness to determine the fact as to whether Mst. Shomila was ever married to the deceased on the day when the incident took place or whether the Mst. Shomila had ever taken refuge in the house of Khadim Hussain(since acquitted) , the co-accused of the appellant on the day of the incident and whether Mst. Shomila had been given a beating by the appellant . The failure to produce Mst. Shomila as a witness has fatal consequences for the prosecution's case and presently the same is not only highly doubtful but also mired in uncertainties. The very inception of the prosecution case is put in doubt due to the identified flaws of the prosecution case. In this manner, both the eye witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) failed miserably to establish the reason for their departure to the place of occurrence and their subsequent presence at the place of occurrence, at the time of occurrence.

17. Another fact which proves that there was no reason for the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) to have proceeded to the place of incident is that the appellant produced the certified copy of the judgment and decree (Exh.DB

and Exh.DB/1) passed in the suit as filed by Mst. Shomila seeking dissolution of marriage as against Mumtaz (deceased) and also produced the certified copy of the *Nikahnama* (Exh.DC) dated **08.06.2015** of Mst. Shomila, with himself and the said documents, were never even challenged by the complainant or the witnesses. In this manner, when Mst. Shomila had already been married to the appellant since 08.06.2015 and was residing with him as his validly wedded wife, then the story of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) that they had gone to the place of occurrence to bring Mst. Shomila Bibi back, is absolutely false and improbable. On 06.08.2015, the day of occurrence , Mumtaz (deceased) as well as the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) had no relationship with Mst. Shomila and therefore there existed no reason for Mumtaz (deceased) as well as the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) to have proceeded to the place of occurrence on the pretext of bringing Mst. Shomila Bibi back. These facts also create an incurable and fatal flaw in the prosecution's case.

18. I have also noted that according to the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2), the occurrence took place at about **08.00 p.m.** on the night of **06.08.2015**, however, admittedly, no source of light, which could have enabled the witnesses to have rightly identified the accused and also allowed the witnesses to have noted the individual roles of each and every accused present at the place of occurrence, at the time of occurrence, was produced by the witnesses during the investigation of case or even before the learned

trial court. The prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) , in their statements recorded by the learned trial court, did not even mention the presence of any source of light which could have enabled them to correctly identify not only the accused but also the other various facts of the incident. The failure of the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) even to mention any source of light in their statements recorded by the learned trial court leads to only one conclusion, and that being that no such source of light was available at the place of occurrence which could have enabled the eye witnesses to have identified the assailants and also witness the individual roles of the assailants as acted by them during the occurrence. According to the prosecution evidence, the Investigating Officer of the case, visited the place of occurrence after the occurrence, still, he did not observe or take into possession any source of light which was allegedly available and lit at the place of occurrence at the time of the occurrence. The scaled site plan of the place of occurrence (Exh.CW-1/A) as prepared by Ijaz Ahmad Kamboh Patwari (CW-1) and the rough site plan of the place of occurrence (EXh.CW-3/A) as prepared by Nasir Mahmood, SI (CW-3), also do not mention the presence of any source of light at the place of occurrence. The prosecution witnesses failed to establish the fact of such availability of a light source and in the absence of their ability to do so, this Court cannot presume the existence of such a light source. The absence of any light source has put the whole prosecution case in the dark. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements

with regard to them identifying the assailants, including the appellant, cannot be relied upon. The failure of the prosecution witnesses to prove the presence of any light source at the place of occurrence, at the time of occurrence, has repercussions, entailing the failure of the prosecution's case. The august Supreme Court of Pakistan in the case of *"IMTIAZ HUSSAIN SHAH alias Tajjay Shah and another vs. The State and others"* **(2025 SCMR 1110)** has held as under:

> *"Had there been any source of light, the Investigating Officer would have taken the same into possession or the alleged eye-witnesses would have pointed out the same to him. Given this context, identification of the accused is doubtful. This Court has repeatedly held that in the absence of the source of light having been mentioned in the FIR and recovery of such source, the identification of the accused becomes questionable."*

Reliance is placed on the case of "*Gulfam and another v. The State"* **(2017 SCMR 1189)** wherein the august Supreme Court of Pakistan observed as under:-

> *"The occurrence in this case had taken place at about 11.45 p.m. during the fateful night and the source of light at the spot had never been established by the prosecution. It had been presumed by the courts below that as the occurrence had taken place at a medical store, therefore, some electric light must be available at the spot. The courts below ought to have realized that presumptions have very little scope in a criminal case unless such presumption is allowed by the law to be raised"*

Reliance is also placed on the case of "*Hameed Gul v. Tahir and two others"* **(2006 SCMR 1628)** wherein the august Supreme Court of Pakistan observed as under:-

> *"Next is the identification of the accused on the spot. The torch in the light of which the accused were identified, was produced before the Investigating Officer sixteen days after the occurrence. The one Haid Akbar who produced the same before he Investigating Officer was never produced at the trial and hence there is no satisfactory evidence that the torch produced in the given circumstances was the same, available at the time of occurrence. It was never found on the spot along with other*

> *recoveries though there was no occasion for the injured and the deceased to have carried it along."*

Reliance is also placed on the case of "*Basar Vs. Zulfiqar Ali and others"* (**2010 SCMR 1972**) wherein the august Supreme Court of Pakistan observed as under:-

> *"7. It is also alleged by the prosecution that the witnesses had identified the culprits on torch lights. The complainant and P.Ws. did not produce the torches before the police immediately but the same were produced after 10 days of the incident.*
>
> *8. Considering all aspects of the case, we are of the view that the prosecution has failed to prove the case against the respondents beyond any reasonable doubt."*

Reliance is also placed on the case of "*Azhar Mehmood and others v. The State"* **(2017 SCMR 135)** wherein the august Supreme Court of Pakistan observed as under:-

> "*It has straightaway been noticed by us that the occurrence in this case had taken place after dark and in the F.I.R. no source of light at the spot had been mentioned by the complainant. Although in the site-plan of the place of occurrence availability of an electric bulb near the spot had been shown yet no such bulb had been secured by the investigating officer during the investigation of this case."*

Reliance is also placed on the case of "*Arshad Khan v. The State"* **(2017 SCMR 564)** wherein the august Supreme Court of Pakistan observed as under:-

> *"The occurrence in this case had taken place before Fajar prayers at about 05.00 a.m. and according to the F.I.R. the occurrence in issue had been witnessed by the eye-witness in the light of an electric bulb but during the investigation no such electric bulb had been secured by the investigating officer*."

19. The learned Deputy Prosecutor General has also relied upon the recovery of the *Rifle 44-bore (P-4)* from the appellant namely Muhammad Zafar Iqbal and has submitted that the said recovery from the appellant offered sufficient corroboration of the ocular account of the occurrence as

furnished by the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2).The recovery of the *Rifle 44-bore (P-4)* from the appellant namely Muhammad Zafar Iqbal cannot be relied upon as the Investigating Officer of the case did not join any witness of the locality during the recovery of the *Rifle 44-bore (P-4)* from the appellant namely Muhammad Zafar Iqbal, which action of his was in clear violation of the provisions of the section 103 Code of Criminal Procedure, 1898 and therefore the evidence of the recoveries cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The provisions of section 103 Code of Criminal Procedure, 1898 , unfortunately, are honoured more in disuse than compliance. To appreciate it better, this section is being reproduced:-

> "103.--(1) Before making a search. under this chapter, the officer or other person about to make it **shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do**.

Therefore the evidence of the recovery of the *Rifle 44-bore (P-4)* from the appellant namely Muhammad Zafar Iqbal cannot be used as incriminating evidence against the appellant, being evidence which was obtained through illegal means and hence hit by the exclusionary rule of evidence. The august Supreme Court of Pakistan in the case of *Muhammad Ismail and others Vs. The State*(**2017 SCMR 898**) at page 901 has held as under:-

> *"For the above mentioned recovery of weapons the prosecution had failed to associate any independent witness of the locality and, thus,*

the mandatory provisions of section 103, Cr.P.C. had flagrantly been violated in that regard."

In this manner, the recovery of the *Rifle 44-bore (P-4)* from the appellant namely Muhammad Zafar Iqbal could not be proved and cannot be considered as a relevant fact for proving any fact in issue. Moreover, according to the report of Punjab Forensic Science Agency, Lahore (Exh.PK), the empty shells of the bullets taken into possession from the place of the incident, when compared with the *Rifle 44-bore (P-4)* recovered from the appellant namely Muhammad Zafar Iqbal, were found **not to had been fired in the same.** This fact also proves the claim of the appellant with regard to his false involvement in the incident.

20. The learned Deputy Prosecutor General has also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive behind the occurrence of this case, as stated by the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) in their statements before the learned trial court was that Mst. Shomila, the wife of Mumtaz (deceased) was enticed away by the appellant, however, thereafter disputes arose between the appellant and Mst. Shomila, whereafter the appellant left Mst. Shomila, after beating her. A perusal of the record reveals that the said Mst. Shomila, never even joined the investigation of the case and moreover the prosecution witnesses namely Muhammad Nawaz (PW-1) and Muhammad Razzaq (PW-2) made contradictory statements with regard to the marital status of Mst. Shomila. The Investigating Officer of the case did not collect any evidence with regard to the motive of the occurrence. The prosecution witnesses failed to provide

evidence enabling this Court to determine the truthfulness of the motive alleged, and the fact that the said motive was so compelling that it could have led the appellant, namely Muhammad Zafar Iqbal son of Muhammad Sadiq to have committed the *Qatl-i-Amd* of the deceased. There are haunting contradictions with regard to the minutiae of motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. Moreover, it is an admitted rule of appreciation of evidence that motive is only a corroborative piece of evidence and if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction. Even otherwise, a tainted piece of evidence cannot corroborate another tainted piece of evidence. The august Supreme Court of Pakistan has held in the case of *Muhammad Javed v. The State* **(2016 SCMR 2021)** as under:

> "*The said related and chance witnesses had failed to receive any independent corroboration inasmuch as no independent proof of the motive set up by the prosecution had been brought on the record of the case.*"

21. The learned Deputy Prosecutor General and the learned counsel for the complainant have also laid much stress upon the stance taken by the appellant namely Muhammad Zafar Iqbal while questioning the prosecution witnesses and making answers to the questions posed to him during his examination under section 342 of the Code of Criminal Procedure, 1898. Suffice it to observe that the onus to prove the facts in issue never shifts and always lies on the prosecution. The law is quite settled by now that if the prosecution fails to prove its case against an accused person, then the accused person is to be acquitted, even if he had taken a plea and had thereby admitted

killing the deceased which at least was not the plea of the appellant Muhammad Zafar Iqbal in this case. Reliance is placed on the case of *Azhar Iqbal Vs. The State* (**2013 SCMR 383**) wherein the august Supreme Court of Pakistan has held as under:-

> *"It had not been appreciated by the learned courts below that the law is quite settled by now that if the prosecution fails to prove its case against an accused person then the accused person is to be acquitted even if he had taken a plea and had thereby admitted killing the deceased. A reference in this respect may be made to the case of Waqar Ahmed v. Shaukat Ali and others (2006 SCMR 1139). The law is equally settled that the statement of an accused person recorded under section 342, Cr.P.C. is to be accepted or rejected in its entirety and where the prosecution's evidence is found to be reliable and the exculpatory part of the accused person's statement is established to be false and is to be excluded from consideration then the inculpatory part of the accused person's statement may be read in support of the evidence of the prosecution. This legal position stands amply demonstrated in the cases of Sultan Khan v. Sher Khan and others (PLD 1991 SC 520), Muhammad Tashfeen and others v. The State and others (2006 SCMR 577) and Faqir Muhammad and another v. The State (PLD 2011 SC 796). It is unfortunate that the Lahore High Court, Lahore had failed to apply the said settled law to the facts of the case in hand."*

22. The only other piece of evidence left to be considered is the medical evidence with regard to the injuries observed on the dead body of the deceased by Dr. Ghazanfar Mahmood (CW-2) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incident. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by this Court, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled "*Hashim Qasim and another Vs. The State*" **(2017 SCMR 986)** has enunciated the following principle of law:

> *"The medical evidence is only confirmatory or of supporting nature and is never held to be corroboratory evidence, to identify the culprit."*

The august Supreme Court of Pakistan in its binding judgment titled "*Naveed Asghar and two others Vs. The State*" **(P L D 2021 Supreme Court 600)** has enunciated the following principle of law:

> *"31. The prosecution has attempted to complete the chain of circumstantial evidence by medical evidence relating to the post mortem examinations of the deceased persons. This evidence proves only the factum that death of the deceased persons was caused by cutting their throats through some sharp edge weapon; it does in no way indicate who had cut their throats and with what particular weapon. Medical evidence is in the nature of supporting, confirmatory or explanatory of the direct or circumstantial evidence, and is not "corroborative evidence" in the sense the term is used in legal parlance for a piece of evidence that itself also has some probative force to connect the accused person with the commission of offence. Medical evidence by itself does not throw any light on the identity of the offender. Such evidence may confirm the available substantive evidence with regard to certain facts including seat of the injury, nature of the injury, cause of the death, kind of the weapon used in the occurrence, duration between the injuries and the death, and presence of an injured witness or the injured accused at the place of occurrence, but it does not connect the accused with the commission of the offence. It cannot constitute corroboration for proving involvement of the accused person in the commission of offence, as it does not establish the identity of the accused person.[32] Therefore, the medical evidence is of little help to the prosecution for bringing home the guilt to the petitioners."*

23. Considering all the above circumstances, this Court entertains serious doubt regarding the involvement of the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq in the present case. It is a settled principle of law that for giving the benefit of the doubt it is not necessary that there should be so many circumstances rather if only a single circumstance creating reasonable doubt in the mind of a prudent person is available then such benefit is to be extended to an accused not as a matter of concession but as of right. The august Supreme Court of Pakistan in the case

of "*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

> *"Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akramv.The State (2009 SCMR 230) and Muhammad Zamanv.The State (2014 SCMR 749)."*

Reliance is also placed on the judgment of the august Supreme Court of Pakistan *Najaf Ali Shah Vs. the State* (**2021 S C M R 736**) in which it has been observed as infra:

> *"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that ten guilty persons escape, than that one innocent suffer." Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer." All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must got to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the the earlier judgments of We have categorically held that "if a single circumstance creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and AyubMasih v.The State (PLD 2002 SC 1048)." The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129) when this court observed that once a single loophole is observed in a case presented by the prosecution, such as conflict in the ocular account and medical evidence or presence of eye-witnesses*

> *being doubtful, the benefit of such loophole/lacuna in the prosecution's case automatically goes in favour of an accused."*

24. For what has been discussed above, the instant Criminal Appeal No.671-J of 2019 lodged by the appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq is **allowed** and the conviction and sentence of the appellant awarded by the learned trial court through the impugned judgment dated 31.10.2019 are hereby set-aside. The appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq is ordered to be acquitted by extending him the benefit of the doubt. The appellant namely Muhammad Zafar Iqbal son of Muhammad Sadiq is in custody and is directed to be released forthwith if not required in any other case. *The sentence of the appellant was suspended by this Court vide order dated 17.12.2021 and he was released from custody, however, the learned counsel for the appellant has reported that the appellant now stands convicted in another case F.I.R. No. 259 of 2024 registered at the police station City B-Division Chishtian District Bahawalnagar vide judgment dated 12.06.2025, passed by the learned Additional Sessions Judge , Chishtian and is confined in jail in lieu of undergoing the sentence in the said case, therefore, the sureties of the appellant in the instant case are discharged from the liabilities*.

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

Approved for Reporting

Judge