

Stereo. HC JD A 38.
Judgment Sheet

**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT**

Murder Reference No.08 of 2023
(The State Vs. Muhammad Usman Ali)

Criminal Appeal No. 102-J of 2023
(Muhammad Usman Ali Vs. The State .)

JUDGMENT

Date of hearing: 08.09.2025.

Appellant by: Mr. Sohaib Abdullah Akhtar, Advocate.

State by: Ch. Asghar Ali Gill, Deputy Prosecutor General.

SADIO MAHMUD KHURRAM, J. – Muhammad Usman Ali son of Muhammad Sadiq alias Bhola (convict) was tried by the learned Additional Sessions Judge. Rahim Yar Khan in case F.I.R. No. 874 of 2020 dated 13.09.2020 registered at Police Station City Khanpur, District Rahim Yar Khan in respect of offences under sections 302 and 34 PPC for committing the *Qatl-i-Amd* of Asma Bibi daughter of Muhammad Yaseen (deceased). The learned trial court vide judgment dated 25.02.2023, convicted Muhammad Usman Ali son of Muhammad Sadiq alias Bhola (convict) and sentenced him as infra:

Muhammad Usman Ali son of Muhammad Sadiq alias Bhola :-

Death under section 302(b) PPC as *Tazir* for committing *Qatl-i-Amd* of Asma Bibi daughter of Muhammad Yaseen (deceased) and directed to pay Rs.500,000/- as compensation

under section 544-A, Cr.P.C. to the legal heirs of the deceased, in case of default thereof, the convict was directed to undergo further six months of simple imprisonment.

The convict was ordered to be hanged by his neck till dead.

2. Feeling aggrieved, Muhammad Usman Ali son of Muhammad Sadiq alias Bhola (convict) lodged Criminal appeal No.102-J of 2023 assailing his conviction and sentence. The learned trial court submitted Murder Reference No.08 of 2023 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of death awarded to the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola. We intend to dispose of the Criminal Appeal No. 102-J of 2023 and Murder Reference No.08 of 2023 through this single judgment.

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

“On 13.09.2020 at about 9.00 P.M occurrence of murder of my daughter Asma Bibi committed by Muhammad Usman accused present in Court. Muhammad Usman accused is real Bhanja of my wife. On the same date and time I alongwith my guest Ghulam Rasool and Muhammad Zafar were sitting in the Courtyard of my house situated in Gulshan Usman Colony Khan Pur City. At that time, accused Muhammad Usman alongwith one un-known person came there. Accused Muhammad Usman demand the hand of my daughter Asma Bibi aged about 17/18 years, upon which we asked him to send his parents for Rishta. Accused Usman refused to bring his parents and demanded Rishta from us. I refused, upon which Muhammad Usman accused extended threats of dire consequences to me. MY daughter Asma Bibi was standing in the Courtyard of the house and in our presence, accused Usman with the intention to kill Mst. Asma Bibi made a straight fire with his pistol which landed on head near right ear and passed through and through the head. Accused Usman made second fire with his pistol which landed on the back side of right shoulder of Asma Bibi. Accused Usman made third fire with his pistol which landed on the neck under left ear of Asma Bibi. Asma Bibi smeared in blood and fell down on the ground. I alongwith witnesses Ghulam Rasool and Muhammad Zafar saw the occurrence in the light of bulb. I alongwith witnesses tried to apprehend the

accused Usman, upon which accused Usman brandishing pistol extended threats of dire consequences and fled away from the spot alongwith his co-accused while brandishing the pistol. I alongwith witnesses took care of Mst. Asma Bibi who became un-conscious due to the injuries. We shifted Mst. Asma Bibi to Tehsil Headquarter Hospital Khan Pur where Mst. Asma Bibi succumbed to the injuries. Occurrence was reported to 15 by my neighbour. Police reached at Tehsil Headquarter Hospital Khan pur. I stated the whole occurrence to police. Police recorded my statement Exh.PA which bears my signature. Then police visited the place of occurrence and conducted necessary proceedings and sent the dead body for post mortem examination. After post mortem examination, dead body of Asma Bibi was handed over to me for burial.”

4. After the formal investigation of the case, the report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court, wherein the accused was sent to face trial. The learned trial court framed the charge against the accused on 06.07.2021, to which the accused pleaded not guilty and claimed trial.

5. The prosecution in order to prove its case, got statements of as many as **thirteen** witnesses recorded. The ocular account of the case was furnished by Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2). Syed Tahir Hussain Rizvi, Land Officer, Municipal Committee (PW-7) stated that he prepared the scaled site plan of the place of occurrence (Exh.PE). Ishtiaq Ahmad, SI (PW-5) stated that on 13.09.2020 he recorded the formal F.I.R. (Exh.PA/1). Musawir Sadiq 2341/C (PW-13) stated that on 13.09.2020, he escorted the dead body of the deceased to the hospital and received the last worn clothes of the deceased from the Woman Medical Officer. Sajjad Ahmad 1705/C (PW-8) stated that on 09.04.2021, the appellant got recovered the pistol (P-6). Faheem Ahmad Rasheed, ASI (PW-9) investigated the case from 11.11.2020 till 20.11.2021, arrested the appellant in this case on 31.03.2021 and detailed the facts of the investigation as conducted by him in

his statement before the learned trial court. Ghulam Farid, SI (PW-11) investigated the case from 20.11.2021 till 10.05.2022 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court. Abdul Ghaffar, SI (PW-12) investigated the case from 13.09.2020 till 03.11.2020 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Gul-e Rukh (PW-4) examined who on 13.09.2020 was posted as Woman Medical Officer at the THQ hospital, Khanpur and on the same night i.e 14.09.2020 at 12.50 a.m (night time) had conducted the post mortem examination of the dead body of the deceased namely Asma Bibi daughter of Muhammad Yaseen. Dr. Gul-e Rukh (PW-4), on conducting the post mortem examination of the dead body of the deceased namely Asma Bibi daughter of Muhammad Yaseen, observed as under:-

Description of Injuries:-

Injury No.1: A fire arm perforating lacerated wound on the right temple near right ear measuring 1.5 x 1.7 cm with inverted margins (entry wound), no burning, blackening and tattooing seen. Exit lacerated wound present on the vertex of skull measuring 5.2 x 3.7 cm with everted margins. Brain matter with meninges coming out from the wound.

Injury No.2: A fire arm skin deep lacerated wound on the left shoulder and on the lateral side of neck present. Penetrated left ear lobe measuring 2.8 x 1.5 cm, 1.7 x 1.4 cm respectively.

Injury No.3: A fire arm skin deep lacerated wound present on the back right side (middle of scapula 0.7 x 0.7mm)

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Opinion:

Probable time that elapsed

- (a) Between injury and death. Within 45 minutes.
- (b) Between death and post mortem. About 06 hours

Final Opinion:

After conducting the Autopsy, I am of the opinion that Asma Bibi has died of Hemorrhage and shock due to injury No.1,2 and 3 caused by fire arm. The injury No.1,2 and 3 are ante-mortem and are sufficient to cause death in ordinary course of nature..”

7. On 22.02.2023, the learned Deputy District Public Prosecutor gave up the prosecution witnesses namely Imran Saleem, Muhammad Zafar, Fazal Mahmood and Muhammad Ahmad 738/C as being unnecessary and closed the prosecution evidence after tendering in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PL, Exh.PM and Exh.PN).

8. After the closure of prosecution evidence, the learned trial court examined the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola under section 342 Cr.P.C. and in answer to the question *why this case against you and why the PWs have deposed against you*, he replied that he had been involved in the case falsely and was innocent. The appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola opted not to get himself examined under section 340(2) Cr.P.C and did not adduce any evidence in his defence.

9. On the conclusion of the trial, the learned Additional Sessions Judge, Rahim Yar Khan, convicted and sentenced the appellant as referred to above.

10. The contention of the learned counsel for the appellant was that the whole case was fabricated and false. The learned counsel for the appellant argued that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence to prove the same. The learned counsel for the appellant further contended that the statements of Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) were not worthy of any reliance. The learned counsel for the appellant also argued that the recoveries were full of procedural defects, of no legal worth and value

and result of fake proceedings. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the appellant beyond the shadow of doubt.

11. On the other hand, the learned Deputy Prosecutor General contended that the prosecution had proved its case beyond shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General further argued that the deceased died as a result of injuries suffered at the hands of the appellant. The learned Deputy Prosecutor General further contended that the medical evidence also corroborated the statements of Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2). The learned Deputy Prosecutor General further argued that the recovery of the *Pistol (P-6)* also corroborated the ocular account. The learned Deputy Prosecutor General 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 prayed for the rejection of the appeal.

12. We have heard the learned counsel for the appellant, the learned Deputy Prosecutor General and with their assistance have perused the record and evidence recorded during the trial.

13. The whole prosecution case orbits around the statements of the prosecution witnesses Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2). Both the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) were not only related to the deceased but very closely related to the appellant. Mst. Sobia Bibi (deceased) was the daughter of Muhammad Yaseen (PW-1) and the paternal niece of Ghulam Rasool (PW-2). The appellant himself was related to the prosecution witness namely

Muhammad Yaseen (PW-1) as being the maternal nephew of the wife of Muhammad Yaseen (PW-1). The relationship of the appellant with the prosecution witness namely Muhammad Yaseen (PW-1) is admitted. Both the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) explained their presence at the place of occurrence categorically. We have noted that both the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2), in a very natural and forthright manner, narrated the occurrence and gave each and every detail of the same. More importantly, the occurrence took place inside the house of the prosecution witness namely Muhammad Yaseen (PW-1) and during cross-examination Muhammad Yaseen (PW-1) explained that at the time of occurrence he was present inside his house and further explained that the prosecution witness namely Ghulam Rasool (PW-2) was also present in his house prior to the occurrence and also explained that during the days of occurrence , he was working as a labourer at *Al-Farid* restaurant and it was usual for him to return from his work to his house in the evening and on the day of occurrence he had returned to his house at 07.00 p.m. During cross-examination, Muhammad Yaseen (PW-1) explained as under:-

“ On 13.9.2020 the family members of my family including me, my wife Pervin Bibi, my daughter Asma Bibi(deceased) aged about 17 years, my daughter Marryum bibi aged 10/11 years, my son Muhammad Hammad aged about 07/08 years were present in my house.

.....

Volunteer, my brother Ghulam Rasool was already present in my house.

.....

During the days of occurrence, I also used to work as labourer at Al-Fareed hotel, used to go in the morning and came back in the evening.

Now a days, I am serving as a private guard at Al-Fareed Transport Company at Khanpur. On the day of occurrence, I came back at my house at about **7.00 P.M.**

.....

My house consists of 05 marlas. At the time of occurrence, we were sitting in front of the room which came in front of main outer door of the house.”

Ghulam Rasool (PW-2) also explained during cross-examination as under:-

“Complainant remained sitting with me after my arrival there. After 20/25 minutes of my arrival in the house of complainant, Asma Bibi received fire shots. I was sitting on a cot at the time of occurrence. Complainant Yasin also sat with me on the same cot.”

The presence of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) inside the house Muhammad Yaseen (PW-1) and where Muhammad Yaseen (PW-1) was residing at the time of occurrence, cannot be doubted and was but natural. The defence could not prove that the said witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) were not present at the place of occurrence, at the time of occurrence, inside the house where the occurrence took place. The occurrence took place at around 09.00 p.m on 13.09.2020 and at that time the presence of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) at the place of occurrence was established. During the course of investigation, Abdul Ghaffar, SI (PW-12), the Investigating Officer of the case, also collected the blood stained cotton from the place of occurrence and took the same into possession through the recovery memo (Exh. PB). The report of the Punjab Forensic Science Agency, Lahore (Exh.PL) establishes

that the said blood taken from the place of occurrence was of human origin. The place of occurrence was further established by the rough site plan of the place of occurrence (Exh.PK) as prepared by Abdul Ghaffar, SI (PW-12), the Investigating Officer of the case, and the scaled site plan of the place of occurrence (Exh.PE) as prepared by Syed Tahir Hussain Rizvi, Land Officer (PW-7). A perusal of both the site plans reveals that the occurrence took place inside the house where the prosecution witness namely Muhammad Yaseen (PW-1) was residing along with the deceased. As the occurrence had taken place within the house of the prosecution witness namely Muhammad Yaseen (PW-1), hence the witnessing of the occurrence by the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) cannot be put to the question in absence of any circumstance necessitating raising of any doubt over the presence of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) at the place of occurrence, at the time of occurrence. As the prosecution witness namely Muhammad Yaseen (PW-1) admittedly was the resident of the house where the occurrence took place and the prosecution witness namely Ghulam Rasool (PW-2) was visiting his brother namely Muhammad Yaseen (PW-1), therefore, they can be safely termed as natural witnesses and implicit reliance can be placed upon their statements. Reference is made to the judgment in the case titled as Abid Ali v. The State (2017 SCMR 662) wherein the august Supreme Court of Pakistan was pleased to observe as under:--

"The occurrence in this case had taken place early in the morning in the month of May at a time when the day had already broken. The appellant was not only an immediate neighbour of Fateh Bibi complainant (PW10) but he was also related to the complainant party as the complainant was the appellant's aunt. Mst. Fateh Bibi complainant was the mother of Manazir Ali deceased and she resided in the very house in which the occurrence had taken place and the time of occurrence was such that availability of the

complainant in her house at that time was nothing but natural and expected.”

Reference is made to the judgment in the case titled as Nadeem Raamzan v. The State (2018 SCMR 149) wherein the august Supreme Court of Pakistan was pleased to observe as under:--

“The said eye-witnesses were inmates of the house wherein the occurrence had taken place and, thus, were nothing but natural witnesses.”

Reference is made to the judgment in the case titled as Muhammad Ikram and another v. The State (2011 SCMR 1133) wherein the august Supreme Court of Pakistan was pleased to observe as under:--

“Aqeel Shahzad (complainant) and her sister Mst. Saima were natural witnesses as the occurrence took place inside the house where they were residing.”

We have scrutinized the statements of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) and find that not even a single inconsistency could be brought up in their statements during cross-examination despite the fact that the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) were cross-examined at length. Furthermore, in the incident in issue, the weapon had been used from very close proximity and, thus, it would not have been difficult for the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) to identify the present appellant, who was very well known to both of them as being so closely related to them. Moreover, during the cross-examination, the sequence of the occurrence was brought on record and both the witnesses remained consistent. Additionally, the role of the appellant during the occurrence was further explored and got proved during the cross-

examination of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2). Hence, in view of the above facts, Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) by no stretch of the imagination, can be declared as chance witnesses or be declared not to be present at the time of occurrence as they explained their presence at the place of occurrence in the most natural and consistent manner. Furthermore, according to column No.8 of the inquest report (Exh.PD/4) relating to the deceased namely Mst. Asma Bibi daughter of Muhammad Yaseen, at the time of preparation of the same, the eyes of the deceased were also closed and had the deceased met her death in the absence of the witnesses, then her eyes would not have been found closed. It is correct that it is a tradition in Pakistan that after the death, people immediately close the eyes of the deceased. Thus, the closed eyes of the deceased at the time of the preparation of the inquest report further prove the prosecution's version regarding the presence of the witnesses at the place, at the time of occurrence. The presence of the witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) at the place of occurrence, at the time of occurrence stands proved beyond a shadow of doubt. We have examined the evidence of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) and find that they proved themselves to be truthful witnesses. There is no evidence on record that the said witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) were motivated by any enmity to depose against the appellant. As mentioned above, the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) were closely related to the deceased as well as the appellant and no reason existed, prior to the occurrence, which could have

interested Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) to get the appellant involved in this occurrence falsely and let-off the real accused. There is no such material available on record which would indicate the substitution of the appellant in the case with the real culprit. Substitution is a phenomenon of a rare manifestation because even the interested witnesses would not normally allow the real culprit for the murder of their relations let off by involving an innocent person. In this context, reference can usefully be made to the case of "Irshad Ahmad and others v. The State and others" (**PLD 1996 SC 138**). The appellant namely Muhammad Usman Ali has not been able to establish any animosity of the complainant or the police for his false involvement in the case. Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2), in a forthright manner, held the appellant namely Muhammad Usman Ali responsible for the *Qatl-i-Amd* of the deceased namely Asma Bibi daughter of Muhammad Yaseen.

14. The learned counsel for the appellant has vehemently argued that as the occurrence had taken place at night time therefore, it was not possible for the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) to have identified the appellant. Both the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) explained that there was an electric bulb lit around the place of the occurrence and there was sufficient light available for them to have identified the appellant . Besides it is observed that Abdul Ghaffar, SI (PW-12) on his visit to the place of occurrence, took into possession the *electric bulb (P-1)* which was present at the place of occurrence and lit and was providing sufficient light. The presence of the *electric bulb (P-1)* is further established by the

rough site plan of the place of occurrence (Exh. PK) as prepared by Abdul Ghaffar, SI (PW-12) and the scaled site plan of the place of occurrence (Exh. PE) as prepared by Syed Tahir Hussain Rizvi, Land Officer (PW-7). The perusal of the said rough site plan of the place of occurrence (Exh.PK) as prepared by Abdul Ghaffar, SI (PW-12), the Investigating Officer of the case, and the scaled site plan of the place of occurrence (Exh.PE) as prepared by Syed Tahir Hussain Rizvi, Land Officer (PW-7) clearly shows that the electric bulb (P-1) was clearly marked in the same at point No.3 .With the electric bulb (P-1) being present and lit around the very place where the deceased received the injuries ,no possibility exists that the appellant was not identified. Furthermore, we have already mentioned that the appellant was very well known to the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) , therefore, there did not exist any possibility that the appellant could not have been identified by the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) during the occurrence. It is also a fact of the prosecution case that there was nothing in the line of sight of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) which could have obstructed the view of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) from witnessing the appellant committing the occurrence. The prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) made natural and coherent statements and therefore proved that they had indeed identified the appellant during the occurrence. Reliance in this regard is placed on the case of “Mst. SHAMIM AKHTAR Versus FIAZ AKHTAR and two others” (**P L D 1992 Supreme**

Court 211) wherein the august Supreme Court of Pakistan was pleased to observe as under: --

"20. Another infirmity pointed out by the learned counsel is nonproduction of the torch. According to the complainant, she had identified the accused in the torchlight. The accused were fully known to the complainant prior to the occurrence. There was no question of wrong identification. Even otherwise non-production of torch does not detract the evidentiary value of the complainant. It is not fatal to the prosecution case. If she had produced the torch, it could be easily said that it was procured from Bazar. How can it be said that due to the non-production of the torch the case had been fabricated against the respondents.

.....

The statement of a witness cannot be discarded on mere presumption of certain facts. After going through the statement of the complainant, the conclusion is irresistible that the same has come from the mouth of a natural and true witness. The statement of Mst. Shamim Akhtar is natural and coherent, therefore, implicit reliance can be placed on the testimony of this witness."

15. We have also appreciated the fact that the occurrence, in this case, took place at about **09.00 p.m** and was reported by the complainant namely Muhammad Yaseen (PW-1), immediately. According to the prosecution evidence, the oral statement (Exh.PA) of Muhammad Yaseen (PW-1) was recorded by Abdul Ghaffar, SI (PW-12) at **10.00 p.m.** on the night of the occurrence. The formal F.I.R. (Exh.PA/1) was registered at 10.20 p.m by Ishtiaq Ahmad, SI (PW-5), when the distance between the place of occurrence and the Police Station was as much as **02 kilometres**. The whole narrative of the oral statement (Exh.PA) of Muhammad Yaseen (PW-1) was reproduced in the inquest report (Exh.PD/4) and this also proves that the matter was reported immediately to the police. Thus, it is apparent that the oral statement (Exh.PA) of Muhammad Yaseen (PW-1) was recorded immediately and the formal F.I.R (Exh.PA/1) was registered with remarkable promptitude, especially when Muhammad Yaseen (PW-1), the complainant of the case, had suffered the trauma of the death of his daughter namely Asma Bibi daughter of Muhammad Yaseen (deceased) at the hands of the appellant, the maternal nephew of the wife of Muhammad Yaseen (PW-1). Muhammad Yaseen (PW-

1) not only named the appellant, but also mentioned each and every minor as well as material fact of the incident in his oral statement (Exh. PA), which of course excludes the possibility of deliberation or consultation regarding the false implication of the appellant in the instant case. The essential features of the occurrence have been elaborately explained in the oral statement (Exh.PA) of Muhammad Yaseen (PW-1). The promptitude in lodging of the FIR also corroborates the case of the prosecution as against the appellant. This notable promptitude in reporting the matter to the police also establishes the presence of the witnesses at the place of occurrence, at the time of occurrence and supports their narrative. In this regard, reference is made to the judgment in the case titled as "Muhammad Waris v. The State" (**2008 SCMR 784**) wherein the august Supreme Court of Pakistan was pleased to observe as under:--

"The names of the said two eye-witnesses could not have been mentioned in such a promptly lodged F.I.R. if they had not been with the deceased persons at the time of their death."

Reliance is also placed on the case of MUHAMMAD ARSHAD Versus The State (**2020 S C M R 2025**) wherein it has been held as under:-

"The crime report was lodged with promptitude, although the inter-se distance between the place of occurrence and the police station is 10-KM. The facts and figures narrated above, rules out any possibility of deliberation and consultation. Further that there is only single accused nominated in the crime report which shows the fairness of the prosecution which normally is against the prevalent custom in our society."

Reliance is also placed on the case of Noor Sultan and others Versus The State (**2021 S C M R 176**) wherein it has been held as under:-

"The instant occurrence has taken place on 28.02.2020 at 6.15 p.m. while the matter was reported to the police within 2.15 hours whereas inter-se

distance between the place of occurrence and police station is 16 kilometers. Promptness in reporting the matter to the police reflect that there is no chance of any consultation or deliberation at the part of prosecution.”

Reliance is also placed on the case of Shaheen Ijaz Alias Babu Versus The State (**2021 S C M R 500**) wherein it has been held as under:-

“petitioner's nomination in a broad daylight incident by resident witnesses hardly admits a space to entertain any hypothesis of mistaken identity or substitution. Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation.”

Reference is also made to the judgment in the case titled as “Muhammad Aslam v. The State” (**2012 SCMR 593**) wherein the august Supreme Court of Pakistan was pleased to observe as under:--

“F.I.R. in the present case was recorded with a promptitude and in such circumstances prosecution has been able to prove the case against the appellant beyond any shadow of doubt.”

During the course of the trial, it was proved that the oral statement (Exh.PA) of Muhammad Yaseen (PW-1), upon the basis of which the formal F.I.R (Exh.PA/1) was registered, was a genuine document and was made spontaneously, naturally and contained the true facts, devoid of any manipulation.

16. We have noted that not only the oral statement (Exh.PA) of Muhammad Yaseen (PW-1) and the formal F.I.R (Exh.PA/1) were recorded with promptitude but the post mortem examination of the dead body of the deceased was also conducted without any loss of time. According to Dr. Gul-e Rukh (PW-4) , she conducted the Post-Mortem Examination of the dead body of the deceased on 14.09.2020 at 12.50 a.m. (night time) when the

occurrence had taken place on 13.09.2020 at 09.00 p.m and the oral statement (Exh.PA) of Muhammad Yaseen (PW-1) had been recorded at 10.00 p.m. on 13.09.2020 and the formal F.I.R (Exh.PA/1) had been registered on 13.09.2020 at 10.20 p.m.. All these facts prove that after the matter had been reported to the police by Muhammad Yaseen (PW-1), all the relevant police papers were handed over to the Woman Medical Officer and the post mortem examination of the dead body of the deceased was started at 12.50 a.m. (night time) .The promptitude in the holding of the post mortem examination of the dead body of the deceased also proves that both the witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) had witnessed the occurrence and thereafter reported the same to the police promptly and spontaneously.

17. The medical evidence produced by the prosecution in the case, proves that the deceased namely Asma Bibi daughter of Muhammad Yaseen succumbed to the injuries caused by the appellant. The medical evidence fully supports the ocular account. During the course of cross-examination of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2), the role of the appellant in the occurrence was further brought on the record. Dr. Gul-e Rukh (PW-4), on conducting the post mortem examination of the dead body of the deceased namely Asma Bibi daughter of Muhammad Yaseen had observed a firearm perforating lacerated wound present on the right temple, near right ear, measuring 1.5cm x 1.7 cm with inverted margins with the brain matter with meninges coming out from the wound and observed another firearm skin deep lacerated wound, present

on the left shoulder and on the lateral side of neck , penetrating the left ear lobe, measuring 2.8 cm x 1.5 cm and 1.7 x 1.4 cm respectively and observed another firearm skin deep lacerated wound ,present on the back right side, middle of the scapula of the dead body.Dr. Gul-e Rukh (PW-4) opined that the injuries observed by her on the dead body of Asma Bibi daughter of Muhammad Yaseen (deceased) were caused by the use of a firearm and were sufficient to cause death in the ordinary course of nature. During cross-examination, Dr. Gul-e Rukh (PW-4) further explained as under:-

“Injury No.3 tissues of the skin damaged but muscles not damaged.

Q. From what distance a fire can damage muscles of a body of human being?

Ans. It depends upon the weapon.

It was a single entry and exit wound; therefore, it was **a bullet and not cartridge**. Volunteer, in case of cartridge, there must be pellets on the body”

As mentioned above, both the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) saddled the appellant with the responsibility of causing the said fatal injuries to Asma Bibi daughter of Muhammad Yaseen (deceased). Dr. Gul-e Rukh (PW-4) further opined that the time which elapsed between the receiving of the injuries by the deceased and her death was within 45 minutes and the time which elapsed between the death of the deceased and the post mortem examination was within six hours. The opinion of Dr. Gul-e Rukh (PW-4) with regard to the time which elapsed between the receiving of the injuries by the deceased and her death as being within 45 minutes and the time which elapsed between the death of the deceased and the post mortem examination as being within six hours, also offers further corroboration of the statements of the prosecution witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) according to

whom the occurrence had taken place on **13.09.2020 at 09.00 p.m.** and Dr. Gul-e Rukh (PW-4) conducted the post mortem examination of the dead body of the deceased on **14.09.2020 at 12.50 a.m.(night time)**, and Dr. Gul-e Rukh (PW-4) determined that the time which had elapsed between the death of the deceased and the post mortem examination was **within six hours**. In view of the above discussion, it is ascertained and proved that the intent of the appellant was to cause death and that he is guilty of *Qatl-i-Amd* of the deceased namely Asma Bibi daughter of Muhammad Yaseen.

18. Then there is also the matter of the unexplained disappearance of the appellant after the occurrence. Faheem Ahmad Rasheed, ASI (PW-9) arrested the appellant in this case on **31.03.2021**. Faheem Ahmad Rasheed, ASI (PW-9) got issued the proclamation (Exh.PH/1) of the appellant and handed over the same to Muhammad Akram 228/C (PW-10) for execution who on 31.12.2020 handed back the proclamation after executing the same. Muhammad Akram 228/C (PW-10) stated that on 24.12.2020 he was handed over non-bailable warrants of arrest (Exh.PG/1) of the appellant and on 30.12.2020, he was handed over the proclamation (Exh.PH/1) for execution by Faheem Ahmad Rasheed, ASI (PW-9) and his reports on the said documents are Exh.PG/2 and Exh.PH/2. There is no explanation forthcoming of the sustained absconcence of the appellant. The occurrence in this case took place on **13.09.2020** whereas the appellant was arrested in this case on **31.03.2021**, meaning thereby that he evaded the process of law for as many as nearly six months. Article 21 of the Qanun-e-Shahadat, 1984 provides that the fact that any person accused of a crime absconded after the same is a relevant

fact to prove the fact in issue. Illustration (i) of Article 21 of the Qanun-e-Shahadat, 1984 reads as under:-

"(i) A is accused of a crime.

The facts that, after the commission of the alleged crime, he absconded, or was in possession of property or the proceeds of property acquired by the crime, or attempted to conceal things which were or might have been used in committing it, are relevant."

This conduct of the appellant to evade the law after the occurrence is a further indicator pointing towards his guilt when considered in conjunction with the ocular evidence in the case. The august Supreme Court of Pakistan in the case of "*Mst. ROHEEDA Versus KHAN BAHADUR and another*" (**1992 SCM R 1036**) has held as under:-

"No doubt, absconderence by itself is not sufficient to convict an accused person but is a strong piece of corroborative evidence of the other direct and circumstantial evidence in the case. In the instant case the accused/respondent No.1, Jahanzeb accused (since murdered) and their brother Aurangzeb remained fugitive from justice for a very long time without any plausible and reasonable explanation. Their conduct after the occurrence was indicative of their guilt when considered in conjunction with the ocular and circumstantial evidence in the case."

The august Supreme Court of Pakistan in the case of "ASHIQ HUSSAIN Vs. The State" (**2017 SCMR 188**) has held as under:-

"During the investigation the appellant had made himself scarce and had, thus, been declared a Proclaimed Offender and such conduct on the appellant's part had provided further corroboration to the ocular account."

The august Supreme Court of Pakistan in the case of "MUHAMMAD LATIF alias TIFA Vs. The State" (**2008 SCMR 1106**) has held as under:-

"It is also an admitted fact that after the occurrence, the appellant remained at large for about 4½ years and his absconderence was taken as an incriminating piece of evidence."

The august Supreme Court of Pakistan in the case of "SAIF-UL-ISLAM Vs. The State" (**2008 SCMR 1236**) has held as under:-

"The occurrence took place on 4-7-2004 but accused/petitioner did not joint investigation rather he went abroad (Dubai). He was brought to Pakistan through Interpol Police and on 23-2-2005 he was arrested in this case. The petitioner was declared P.O. He has failed to explain as to why he remained absent and this incriminating circumstance too operates to his disadvantage."

19. Regarding the recovery of the *Pistol (P-6)* from the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola, the same cannot be relied upon as the Investigating Officer of the case, did not join any witness of the locality during the recovery of the said *Pistol (P-6)* from the appellant which was in clear violation of section 103 Code of Criminal Procedure, 1898 and therefore 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. Section 103 of the Code of Criminal Procedure, 1898 is of vital significance to render search proceedings both transparent and creditable. The provisions of this section, 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.

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.”

Furthermore, it was admitted by Sajjad Ahmad 1705/C (PW-8) that the *Pistol (P-6)* was recovered from an area which was accessible to the public. During cross-examination Sajjad Ahmad 1705/C (PW-8) stated as under:-

“ The place of recovery was situated in a town which was not public thoroughfare; however there was a road of town. Volunteer, town was under development. Any person can easily access to the place of recovery”

In view of the above-mentioned facts, the alleged recovery of the *Pistol (P-6)* is not proved and the same cannot be used as a circumstance against the appellant. Therefore, the recovery of the *Pistol (P-6)* from the appellant does not further the case of prosecution in any manner. In view of the above-mentioned facts, the alleged recovery of the *Pistol (P-6)* is not proved and the same cannot be used as a circumstance against the appellant.

20. The motive of the occurrence, as mentioned by the prosecution witness namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2) was that the appellant wanted to marry the deceased , however, on the refusal of the said marriage proposal, the appellant, being annoyed, murdered her. We have scrutinized the statements of the prosecution witnesses and find that the motive as alleged could not be proved. Though it was claimed by the prosecution witness namely Muhammad Yaseen (PW-1) that he refused to marry his daughter with the appellant as the appellant never sent his parents to seek the hand of the deceased, however, Muhammad Yaseen (PW-1) admitted during cross-examination that the

mother of the appellant had indeed sought the hand of the deceased five to six months prior to the occurrence. During cross-examination, Muhammad Yaseen (PW-1), admitted as under:-

“ My sister in law came only once to demand the hand of Asma Bibi about 05/06 months prior to occurrence. She came to my house alongwith her father in law, my another sister in law, Saleh husband of my first sister in law and Muhammad Sultan my brother in law.”

Similarly, Ghulam Rasool (PW-2) also admitted during cross-examination that the brother of the deceased used to work with the appellant prior to the occurrence and had been living with him for more than a year but during the said period, the appellant never broached the topic of him seeking to marry the deceased. During cross-examination, Ghulam Rasool (PW-2) admitted as under:-

“Before going to Karachi, Usman son of complainant used to work at Lahore with accused Usman. Usman son of complainant remained at Lahore for about 01/1½ years. Usman son of complainant used to come his house after 04/05 months from Lahore. Usman son of complainant never disclosed me that accused Usman wanted to marry with Asma Bibi.”

Furthermore, during the course of the investigation, the Investigating Officers of the case did not collect any evidence so as to establish that there was any grievance developing in the heart of the appellant as against the deceased which motivated him to act in the manner in which he did. The prosecution witnesses failed to provide evidence enabling us 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 to have committed the *Qatl-i-Amd* of the deceased namely Asma Bibi daughter of Muhammad

Yaseen. There is an indicative absence of evidence with regard to the particulars of the motive alleged. No independent witness was produced by the prosecution to prove the motive as alleged. The august Supreme Court of Pakistan has held in the case of "Muhammad Asif v. The State" (2008 SCMR 1001) as under:

"Coming to motive, no independent witness was produced in whose presence the altercation had taken place between Shafi and appellant at one side and Mazhar Hussain deceased on the other side."

So, this leads us to the conclusion that the prosecution remained unable to prove the motive as alleged.

21. We have disbelieved the evidence of prosecution qua the motive and recovery of the *Pistol (P-6)* in this case. However, if the evidence of motive and recovery of the *Pistol (P-6)* is excluded from consideration, even then there is sufficient incriminating evidence available on the record against the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola to prove the case of the prosecution against him. As discussed earlier, the prosecution case was fully proved through the evidence of the eye-witnesses namely Muhammad Yaseen (PW-1) and Ghulam Rasool (PW-2). The said eye-witnesses stood the test of lengthy cross-examination, but their evidence could not be stunned. Their evidence is quite natural, straightforward and confidence inspiring. The ocular account of the prosecution as given by the abovementioned eye-witnesses is fully supported by the medical evidence, therefore, we hold that the prosecution has proved its case against the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola beyond the shadow of any doubt.

22. Now coming to the quantum of the sentence we have noted some mitigating circumstances in favour of the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola, firstly, the evidence of recovery of the *Pistol (P-6)* from the possession of the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola has been disbelieved by us for the reason mentioned in Para No.19 of this judgment, secondly the prosecution had alleged a specific motive in this case but failed to prove the same. It is a well recognized principle by now that the question of quantum of the sentence requires utmost attention and thoughtfulness on the parts of the Courts. In this regard, we respectfully refer the case of Mir Muhammad alias Miro v. The State (2009 SCMR 1188) wherein august Supreme Court has held as under:-

"It will not be out of place to emphasize that in criminal cases, the question of quantum of sentence requires utmost care and caution on the parts of the Courts, as such decisions restrict the life and liberties of the people. Indeed the accused persons are also entitled to extenuating benefit of doubt to the extent of quantum of sentence."

The august Supreme Court of Pakistan has held in the case of "Ansar Ahmad Khan Barki v. The State and another" (**1993 SCMR 1660**), that the prosecution is bound by law to exclude all possible extenuating circumstances in order to bring the charge home to the accused for the award of the normal penalty of death. We are convinced that the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola, in the peculiar circumstance of this case, deserves consideration to the extent of his sentence one out of two provided under section 302(b) of P.P.C. It is not determinable in this case as to what was the real cause of occurrence and as to what had actually

happened immediately before the occurrence and elicited such a colossal retort from the appellant, which had resulted into the death of the deceased namely Asma Bibi daughter of Muhammad Yaseen, therefore, in our view the death sentence awarded to the appellant is quite punitive. It has been held in a number of judgments of the august Supreme Court of Pakistan that if a specific motive has been alleged by the prosecution, then it is duty of the prosecution to establish the said motive through cogent and confidence inspiring evidence and non-proof of motive may be considered a mitigating circumstance in favour of the accused. While treating it a case of mitigation, we have fortified our view by a judgment of the august Supreme Court of Pakistan in the case of "Ahmad Nawaz and another v. The State" (2011 SCMR 593), wherein, at page 604, the Hon'ble apex Court of the country has been pleased to lay emphasis as under:-

"10. The recent trend of the courts with regard to the awarding of penalty is evident from several precedents. In the case of Iftikhar-ul-Hassan v. Israr Bashir and another (PLD 2007 SC 111), it was held that "This is settled law that provisions of sections 306 to 308, P.P.C. attracts only in the cases of Qatl-i-amd liable to Qisas under section 302(A), P.P.C. and not in the cases in which sentence for Qatl-i-amd has been awarded as Tazir under section 302(b), P.P.C. The difference of punishment for Qatl-i-amd as Qisas and Tazir provided under sections 302(a) and 302(b), P.P.C. respectively is that in a case of Qisas, Court has no discretion in the matter of sentence whereas in case of Tazir Court may award either of the sentence provided under section 302(b), P.P.C. and exercise of this direction in the case of sentence of Tazir would depend upon the facts and circumstances of the case. There is no cavil to the proposition that an offender is absolved from sentence of death by way of qisas if he is minor at the time of occurrence but in a case in which qisas is not enforceable, the Court in a case of Qatl-i-amd, keeping in view the circumstances of the case, award the offender the punishment of death or imprisonment for life by way of Tazir. The proposition has also been discussed in Ghulam Muretaza v. State (2004 SCMR 4), Faqir Ullah v. Khalil-uz-Zaman (1999 SCMR 2203), Muhammad Akram v. State (2003 SCMR 855) and Abdus Salam v. State (2000 SCMR 338)".

The august Supreme Court of Pakistan has held in the case of "Mst. NAZIA ANWAR v. The State and others" (2018 SCMR 911), while considering the penalty for an act of commission of *Qatl-i-amd*, as under :-

"In these circumstances it is quite obvious to me that the motive asserted by the prosecution had remained utterly unproved. The law is settled by now that if the prosecution asserts a motive but fails to prove the same then such failure on the part of the prosecution may react against a sentence of death passed against a convict on the charge of murder."

We are also fortified in our view in this regard by the cases of "Nawab Ali v. The State" (**2019 SCMR 2009**), "Muhammad Akram alias Akrai v. The State" (**2019 SCMR 610**), "Iftikhar Mehmood and another v. Qaiser Iftikhar and others" (**2011 SCMR 1165**), "Muhammad Mumtaz v. The State and another" (**2012 SCMR 267**), "Muhammad Imran alias Asif v. The State" (**2013 SCMR 1554**), "Sabir Hussain alias Sabri v. The State" (**2013 SCMR 1554**), "Zeeshan Afzal alias Shani and another v. The State and another" (**2013 SCMR 1602**), "Naveed alias Needu and others v. The State and others" (**2014 SCMR 1464**), "Muhammad Nadeem Waqas and another v. The State" (**2014 SCMR 1658**), "Muhammad Asif v. Muhammad Akhtar and others" (**2016 SCMR 2035**), "Qaddan and others v. The State" (**2017 SCMR 148**) and "Ghulam Murtaza v. The State" (**2021 S C M R 149**).

23. In the light of above discussion, the conviction of the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola, as awarded by the learned trial Court through the abovementioned judgment, is maintained but the sentence of death awarded to the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola under section 302(b) P.P.C. is altered to **imprisonment for life**. The compensation awarded by the learned trial Court under section 544-A of Cr.P.C. and sentence in default thereof are maintained and upheld. The benefit provided under section 382-B of the Code of Criminal Procedure, 1898, is also

extended to the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola. Consequently, with the above said modification in the sentence awarded to the appellant namely Muhammad Usman Ali son of Muhammad Sadiq alias Bhola under section 302 (b) PPC, Criminal Appeal No.102-J of 2023, is hereby ***dismissed***.

24. **Murder Reference No. 08 of 2023** is answered in **Negative** and the sentence of death awarded to Muhammad Usman Ali son of Muhammad Sadiq alias Bhola , is **Not Confirmed**.

(RAJA GHAZANFAR ALI KHAN)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

*Raheel/**

Approved for Reporting

Judge