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Judgment Sheet

IN THE LAHORE HIGH COURT

MULTAN BENCH, MULTAN

JUDICIAL DEPARTMENT

Criminal Appeal No. 551 of 2016
(*Pervaiz alias Irfan v. The State*)

JUDGMENT

Date of hearing:	20.03.2025
Appellant by:	Amna Javed Hashmi, Advocate.
State by:	Mr. Ansar Yaseen, Deputy Prosecutor General.
Complainant by:	Rana Muhammad Asif Saeed, Advocate.

MUHAMMAD JAWAD ZAFAR, J.: Appellant Pervaiz *alias* Irfan (“appellant”) was tried by learned Special Judge, Anti-Terrorism Court-II, Multan (“Trial Court”) in crime report bearing FIR No. 445 of 2015 dated 10.07.2015, for offences under Section 7 of the Anti-Terrorism Act 1997 (“ATA” or “Act of 1997”) and Section 324, 336-B, 338 and 201 of the Pakistan Penal Code 1860 (“PPC”), registered with police station Gaggo, District Vehari (“crime report” or “FIR”). The learned Trial Court *vide* Judgment dated 07.03.2016 (“impugned Judgment”) convicted and sentenced the appellant as under:

Pervaiz alias Irfan:

Imprisonment for life under section 7(a) of the Act of 1997 along with fine of PKR. 100,000/-. In case of default of payment of fine, to further undergo simple imprisonment of six months.

Imprisonment for life as *ta'zir* under section 302 of the PPC and compensation of PKR. 1,000,000/- to legal heirs of deceased Mst Samina Bibi under section 544-A, Cr.P.C. In default of payment of compensation, to further undergo simple imprisonment for six months and said amount shall be recoverable as arrears of Land Revenue in the terms of Section 544-A(2) of the Code.

Imprisonment for life under section 336-B of the PPC along with fine of PKR 1,000,000/-. In case of default, to further undergo simple imprisonment of six months.

Rigorous Imprisonment of ten years under section 338 of the PPC. Benefit under section 382-B of the Code was extended to the convict/appellant.

2. Being discontented with his conviction and sentence, the appellant has filed criminal appeal bearing No. 551 of 2016, under Section 25 of the Act of

1997 read with Section 410 of the Code of Criminal Procedure 1898 ("Code" or "Cr.P.C"), before this Court.

3. The prosecution case, as delineated in the deposition of complainant Muhammad Shaukat (PW-1), is that on 08.07.2015, he (PW-1), accompanied by his son Liaqat Ali (since given up) and his son-in-law Muhammad Shahid (PW-2), visited the residence of his son-in-law, the appellant, for the purpose of presenting "*eidi*" to his pregnant daughter, Mst. Samina Bibi ("deceased"). During the course of their visit, the appellant chased after the deceased as she proceeded to her room. The deceased raised alarm, which attracted the aforementioned witnesses, who saw the appellant douse her with petrol and subsequently set her alight. Thereafter, the appellant attempted to extinguish the flames by throwing water upon her, and decamped. The deceased was then taken to various hospitals; however, she and her unborn child ultimately succumbed to burn injuries. Motive behind the overt act was attributed to the appellant's desire for a male offspring.

4. Investigation was carried out by Muhammad Afzal (PW-10), who arrested the appellant on 10.07.2015 and after completion of investigation, submitted *challan/police report* under Section 173 of the Code of Criminal Procedure 1898 ("Code" or "Cr.P.C") before the Trial Court. Formal charge was framed by the learned Trial Court to which the appellant pleaded not guilty and claimed trial. Prosecution, in order to prove its case, produced as many as ten witnesses. Ocular account was furnished by complainant Muhammad Shaukat (PW-1), and, Muhammad Shahid (PW-2); Dr. Maria Tayyab (PW-6) medically examined the deceased and after her demise, conducted autopsy; Abdul Ghaffar (PW-5) prepared injury statement and moved application for recording statement of deceased in injured condition and investigating officer Muhammad Afzal (PW-10) conducted investigation of the case; scaled site plan (Exh.PH) was prepared by private person Muhammad Arshad (PW-9) while *Moharrar Abbas Ali* appeared and deposed as PW-8. The remaining prosecution witnesses were more or less formal in nature. Prosecution gave up Liaqat Ali and Muhammad Riaz as being unnecessary witnesses, tendered in evidence the Trace Chemistry Analysis report from PFSA Lahore of burned pieces of clothes (Ex.PP) and Trace Chemistry Analysis report of plastic bottle containing petrol (Ex.PQ), closed prosecution evidence.

5. Thereafter, statement under Section 342 of the Code of the appellant was recorded, wherein the appellant pleaded his innocence. Appellant did not opt to appear as his own witness in terms of subsection (2) of Section 340 of the Code nor produce any defence evidence. On conclusion of trial, the learned Trial Court found the case against the appellants to have been proved, thus, convicted and sentenced them as detailed above.

6. The learned counsel for the appellant contended, *inter alia*, that the learned Trial Court lacked jurisdiction to try the offence as offence in terms of Section 7 of ATA is not made out; the witnesses were not present at the venue of occurrence; conduct of the prosecution witnesses was unnatural; prosecution witnesses made dishonest improvements; dying declaration was not recorded in accordance with the law; and, recoveries are inconsequential.

7. On the other hand, the learned DPG, duly assisted by learned counsel for the complainant, averred that the FIR was lodged without any inordinate delay; presence of witnesses cannot be questioned as it is norm in our society for father to give "*eid*" to his daughter; minor contradictions are natural due to efflux of time; in the dying declaration, the deceased specifically mentioned the appellant as her assailant; reports of the PFSA are positive; motive was proved by the prosecution; an offence of heinous nature was committed which spread horror in the society, therefore, learned Trial Court was fully competent to try the case and has rightly sentenced the appellant; and, even if offence under Section 7 of ATA is taken out of the equation, the learned Trial Court had jurisdiction because Section 336-B of the PPC falls within Paragraph No. 4(iv) of the "third schedule" appended with the Act of 1997.

8. Arguments heard and record perused with the able assistance of the learned counsel for the appellant, learned counsel for the complainant and the learned Deputy Prosecutor General. It is the case of the prosecution that the appellant used to ask the daughter of the complainant (PW-1), Mst. Samina, to give birth to a son and in case she gave birth to a daughter, he would kill her, and due to the said grudge, he sprinkled the petrol on her, causing burn injuries, which resulted in her demise. Initially, two questions arise, namely, whether the learned Anti-Terrorism Court had jurisdiction to try the case and whether offences under Section 7 of ATA as well as 336-B of the PPC were made out from the material

available on record.

9. The Federal or Provincial Government may establish an Anti-Terrorism Court in terms of Section 13 of ATA. Said Anti-Terrorism Court, for the purpose of speedy trial, can try cases involving offences mentioned in the “third schedule” appended with the Act of 1997.¹ Power to try “third schedule” offences is in addition to its jurisdiction to try offences punishable under Section 7 of the ATA. Paragraph No. 4(iv) of the “third schedule” appended with the Act of 1997 clearly postulates that the Anti-Terrorism Court, to the exclusion of any other court, shall try the offence relating to hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance, i.e., Section 336-B of the PPC.² In the present *lis*, material available on record was scrutinised and neither the question of forum nor jurisdiction of the learned Trial Court arises since offence under Section 336-B of the PPC finds mention in the “third schedule”.³

10. Material available on record was also appraised to decipher whether offence under Section 7 of ATA was made out. To determine this controversy, it is essential to take recourse to the provision of Section 6 of the ATA which defined the term “terrorism”, which provides that the offence so committed, if committed with the *mens rea* to overawe or intimidate the government or to destabilize the society at large or to advance any sectarian cause, etc. would attract the jurisdiction of the Anti-Terrorism Court, which *mens rea* is irrespective of the consequent horror, shock, fear and insecurity likely to be created by the overt act from which the crime report stems. In other words, the “design” and “purpose” specified in Section 6(1)(b) and 6(1)(c), respectively, are required for offence under Section 7 of ATA to be made out. The act must be designed in such a way so that the government or any specific section of the community or public is/becomes the target and not the deceased. Moreover, the “purpose” must be evident and should be intended to advance a sectarian, or ethnic cause, or intimidate or terrorise the public. Irrespective of the fact that if the public is terrorised, if the “purpose” of the act was not so, then such a case cannot come under the ambit of Section 7 of ATA.⁴ When the aforementioned jurisprudence is read in conjunction with the crime report and prosecution evidence, it can be safely

¹ See “*Javed Iqbal v. The State*” (2024 SCMR 1437).

² See “*Rab Nawaz v. Special Judge, Anti-Terrorism Court, Sargodha*” (PLD 2016 Lahore 269 (dB)).

³ See “*Ghulam Hussain v. The State*” (PLD 2020 Supreme Court 61 (7-MB)).

⁴ *Ibid.*

concluded that the appellant lacked the *requisite* intention of “design” or “purpose” as contemplated by Section 6(1)(b) or (c) of the Act of 1997 and, thus, the *actus reus/overt act attributed to the appellant is not accompanied by the necessary mens rea to brand the incident as “terrorism”*. Consequently, conviction under Section 7 of the ATA cannot be sustained.

11. Be that as it may, a question arises as to whether “petrol” itself constitutes as a corrosive substance under Section 336-A of the PPC or not. Before delving into this query, it would not be out of place to state that it is a cardinal principle of construction of statutes that any provision entailing penal consequence, whether of criminal law or of civil law, must be construed strictly. This principle of strict construction of penal statutes is also called the principle against doubtful penalisation, and it stresses that a person should not be penalised except under clear law and if, in construing the relevant provisions, there appears any reasonable doubt or ambiguity, it should be resolved in favour of the person who would be liable to the penalty.⁵ The relevant provision, i.e., Section 336-A of the PPC, which defines what constitutes corrosive substance, was examined with the aforementioned principle of statutory interpretation and it follows that for any substance to fall within the definition of Section 336-A of the PPC, the substance must itself be inherently corrosive, like “sulfuric acid”, which causes injuries without the need of any external agent or the need for any additional act/factor, and said substance is itself capable of causing harm on contact. The factor of immediate chemical damage without requiring any activation or further actions or an external agent would attract the definition under Section 336-A of the PPC, and not otherwise. For example, if “sulfuric acid” is thrown on a person, the same is itself sufficient, without requiring any additional action or external agent, to cause injuries; thus, “sulfuric acid” attracts punishment under Section 336-B of the PPC. Conversely, if “petrol” is thrown on another person, it cannot cause any injury until some external agent or additional factor - such as setting the “petrol” ablaze *via* a matchstick - is used to ignite the “petrol”.⁶ As a consequence thereof, the overt act of throwing “petrol” does not attract the penal provision of Section 336-B of the PPC. Therefore, the appellant is acquitted of the charge under said provision.

⁵ See “*Sunni Ittehad Council v. Election Commission of Pakistan*” (PLD 2025 Supreme Court 67); “*Tahir Nagash v. The State*” (PLD 2022 Supreme Court 385); and, “*Zahid Rehman v. The State*” (PLD 2015 Supreme Court 77 (5-MB))

⁶ See Aisha H. Al-Moubarak and Ime Bassey Obot, “Corrosion Challenges in Petroleum Refinery Operations: Sources, Mechanisms, Mitigation, and Future Outlook,” *Journal of Saudi Chemical Society* 25, no. 12 (December 2021): 101370, <https://doi.org/10.1016/j.jscs.2021.101370>, wherein it is stated that ‘*crude oil is not corrosive in and of itself*’.

12. Akin to the charge under Section 7 of ATA, prosecution in order to prove the charge in terms of Section 338 of the PPC produced complainant (PW-1) and Muhammad Shahid (PW-2). Before appraising this aspect of the case, it needs to be noted that even if the prosecution's case is taken as the gospel truth, offence under Section 338 of the PPC (isqat-i-haml) will not stand constituted; rather, offence under Section 338-B of the PPC (isqat-i-janin), will be made out. Regardless, the complainant (PW-1) deposed that”

‘At night time she gave birth to a dead female child. Firstly we buried the daughter of Mst. Samina’

Muhammad Shahid (PW-2) testified the same but with additional details. During cross-examination, complainant (PW-1) conceded that:

‘We did not show the grave of the daughter of Mst. Samina to the police nor police asked us to do so’

He (PW-2) further deposed that:

‘The father of Pervaiz brought a midwife/DAI for the delivery of that child but Mst. Samina had already delivered the child. Said DAI was not joined into the investigation nor she is present before the court for getting recording her statement’.

Likewise, the autopsy is completely silent about the question of pregnancy and/or delivery of the child. Prosecution could have brought on record any previous ultrasound(s), or any other medical report, to substantiate the plea of pregnancy of the deceased, but the same was not done. Consequently, since no evidence was led by the prosecution to prove the charge, the appellant is acquitted of charge of offence under Section 338 of the PPC. Even otherwise, it does not appeal to reason that the appellant would remain mum *qua* gender of the child for almost nine months and only on the day, the prosecution witnesses visited, he would, in their presence, commit the overt act.⁷

13. Insofar as the remaining charges against the appellant are concerned, it is evident from wading through the prosecution case that the unfortunate incident took place on 08.07.2015, whereas the crime report was lodged on 10.07.2015, after an inordinate delay of two days, for which no

⁷ See “*Muhammad Jayed v. The State*” (2016 SCMR 2021).

explanation has been provided. Pertinently, column No. 5 of the crime report is silent *qua* delay in the registration of FIR, whereas the investigating officer (PW-10) deposed that there is a delay of three days in the lodging of FIR. In view thereof, inordinate delay in setting the machinery of law into motion speaks volumes against the veracity of the prosecution version and the possibility of deliberation and concoction cannot be ruled out.⁸

14. Irrespective of the delay in the registration of the crime report, prosecution claims that burn injuries were caused on the person of the deceased on 08.07.2015, while the first medical report available on record is dated 10.07.2015, after a delay of two days. The complainant (PW-1) deposed that the deceased was taken to Irshad Hospital, where the doctor refused to provide treatment to her, so the deceased, in then injured condition was taken back to the house of the appellant, whereas Muhammad Shahid (PW-2) testified that Doctor Irshad gave some emergency treatment and asked us to take her home; we brought her to home. Not only is the deposition of Muhammad Shahid (PW-2) contradictory to the complainant (PW-1), but neither said doctor Irshad was made a witness in this case to prove the *factum* of medical treatment of the deceased in injured condition, nor was the record of said clinic/hospital brought on record, which at once attracts illustration (g) of Article 129 of the Qanun-e-Shahadat Order 1984 ("QSO") insofar as had the prosecution produced said person and material, the same would not have supported the prosecution case.⁹

15. It is even more astonishing that the said prosecution witnesses did not attempt to apprehend the appellant despite outnumbering him while he was not armed with any deadly weapon, nor did they chase after him. As observed above, they took the deceased in injured condition back to the house of the appellant, which fact was conceded by the complainant (PW-1) in his cross-examination as well. Likewise, they did not get any medical treatment administered on the then-injured nor did they take her to any other hospital. It does not appeal to a prudent mind that the father and brother of the victim did not attempt to save the life of the deceased at the time of occurrence; no first aid was rendered by them according to

⁸ See "*Ghulam Rasool v. The State*" (2025 SCMR 74); "*Zafar Ali Abbasi v. Zafar Ali Abbasi*" (2024 SCMR 1773); "*Muhammad Jahangir v. The State*" (2024 SCMR 1741); "*Muhammad Nawaz and another v. The State and others*" (2024 SCMR 1731); and, "*Amir Muhammad Khan v. The State*" (2023 SCMR 566).

⁹ See "*Muhammad Anwar v. The State*" (2025 SCMR 45); "*Riasat Ali v. The State*" (2024 SCMR 1224); and, "*Riaz Ahmed v. The State*" (2010 SCMR 846).

material available on record; and no attempt was made by them to shift the deceased in injured condition to a hospital or send for a doctor or any local medical practitioner. On the contrary, after life-threatening occurrence, according to the prosecution witnesses, they opted to take the victim back to the house of her perpetrator and that too on the same day. The conduct of the witnesses as deposed by them is opposed to the common course of natural events¹⁰ and inevitably tremors the whole edifice of the prosecution case and reasonably hypothesizes their absence at the scene of the crime, therefore, this Court has no doubt in its mind that the prosecution case against the appellant is doubtful and possibility of false implication cannot be ruled out.¹¹

16. Due to the aforementioned reasons, the case file was minutely scrutinized to ascertain whether the witnesses were present at the scene of occurrence or planted witnesses. To this end, investigating officer (PW-10) deposed that prosecution witnesses were not residents of the place of occurrence, which is situated within the limit of police station Gaggo, tehsil Burewala, district Vehari, but complainant (PW-1) resided at tehsil Arif Wala, district Pakpattan. In order to justify their presence, prosecution witnesses claimed that they went to the place of occurrence on the date of commission of offence to give “*eidi*” to the deceased. Admittedly, neither the day of occurrence was Eid, nor was it remotely close to Eid. Therefore, prosecution witnesses were, at best, chance witnesses.¹² Under the law, presumption arises against their presence at the scene of the crime, unless a plausible explanation has been rendered by justifying their presence. Where no explanation has been tendered, his/her testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.¹³

17. While examining the testimonies of eyewitnesses, it was immediately observed that both the complainant (PW-1) and Muhammad Shahid (PW-2) contradicted themselves on material aspects of the case. One such contradiction, which is in addition to the contradiction reproduced in the preceding paragraph, is that Complainant (PW-1) deposed that:

‘I have stated in my examination in chief that Pervaiz put petrol

¹⁰ See “*Mst. Rukhsana Begum v. Sajjad*” (2017 SCMR 596); and, “*Pathan v. The State*” (2015 SCMR 315).

¹¹ See “*Inran alias Mani v. The State*” (2024 SCMR 1811); “*Zafar Ali Abbasi v. Zafar Ali Abbasi*” (2024 SCMR 1773); and, “*Abid Hussain v. The State*” (2024 SCMR 1608).

¹² See “*Mst. Sughra Begum v. Qaiser Pervaiz*” (2015 SCMR 1142).

¹³ *Ibid.*

upon my daughter and thereafter put the water upon her. volunteered that after putting the petrol he put her to the fire and thereafter, put the water upon her. ... The petrol was not put by the accused in my presence, when myself and PWs entered in the room the accused had already put petrol upon her and put her to the fire and in our witness he was putting water upon her'.

Conversely, Muhammad Shahid (PW-2) deposed that:

'he in our presence with a match burnt to her. We tried to apprehend him ... again said before leaving from there, he put water upon her as well ... In our presence he put her to fire'.

Furthermore, the said witnesses made dishonest improvements and were duly confronted. These contradictions and dishonest improvements make the testimonies of the eyewitnesses unreliable.¹⁴ Consequently, it is held that the occurrence remained unseen,¹⁵ due to lack of justification by the witnesses *qua* their presence at the scene of the crime and suspect behaviour which runs contrary to natural human conduct, as well as dishonest improvements made by them, which are all sufficient to discard their testimonies.¹⁶

18. The next piece of evidence relied on by the prosecution is the dying declaration of the deceased. Dying declaration stems from the *latin maxim* "nemo moriturus praesumitur mentire", which translates to '*a man will not meet his maker with a lie in his mouth*'.¹⁷ The doctrine of dying declaration has been codified by the legislature in Article 46 of QSO defines its scope, which is *pari materia* with the erstwhile Section 32 of the Evidence Act of 1872, while Rule 21 of Chapter 25 of the Punjab Police Rules 1934 ("Police Rules") explicate the mode and manner of recording a dying declaration. It is an exception to not only the hearsay rule,¹⁸ but also the general rule specified in Article 71 of QSO, which provides that oral evidence in all cases must be direct,¹⁹ i.e. it must be evidence of a witness, who says she saw it. The rationale behind dying declaration is that someone who is dying or believes death to be imminent would have less incentive to fabricate testimony.

¹⁴ See "*Muhammad Akhtar v. The State*" (2025 SCMR 45); "*Muhammad Jahangir v. The State*" (2024 SCMR 1741); "*Rafiqat Ali alias Faji v. The State*" (2024 SCMR 1579); and, "*Mst. Saima Noreen v. The State*" (2024 SCMR 1310).

¹⁵ See "*Zafar Ali Abbasi v. The State*" (2024 SCMR 1773); "*Pathan v. The State*" (2015 SCMR 315); "*Masood Ahmed and Muhammad Ashraf v. The State*" (1994 SCMR 6).

¹⁶ See "*Mst. Rukhsana Begum v. Sajjad*" (2017 SCMR 596); and, "*Riaz Masih alias Mithoo v. The State*" (1995 SCMR 1730).

¹⁷ See "*Sudhakar & Anr v. State Of Maharashtra*" (2000 (6) Supreme Court Cases 671).

¹⁸ See "*Muhammad Ameer and another v. Riyat Khan*" (2016 SCMR 1233).

¹⁹ See "*Somaid v. Ali Gohar alias Gohar Zaman*" (2019 SCMR 1008).

19. Rule 25.21 of the Police Rules postulates that, ideally, a dying declaration should be recorded by a magistrate, who can ensure that it was made without coercion.²⁰ If that is not possible, then a medical officer should record the statement. Likewise, Section 174-A of the Code provides that the medical officer or the officer in charge of police station, as the case may be, shall immediately intimate the nearest magistrate where any person, grievously injured by burns through fire, kerosene oil, acid, chemical or by any other way, is brought before them. Simultaneously, while intimating the magistrate, the medical officer shall record the statement of the injured, if the injured cannot make the statement before the magistrate, his/her statement recorded by the medical officer shall be sent in a sealed cover to the magistrate and may be accepted as a dying declaration.²¹ Where neither medical officer nor magistrate is available, a gazetted police officer should record it.²² Where none of the above are present, it can be recorded in the presence of two or more reliable witnesses who are not connected to the police or the parties involved.²³ In case a police officer records such a statement, it should be signed by the person making.²⁴ But before said statement is recorded, the fitness of the maker should be examined, in the absence whereof, it cannot be relied upon.²⁵ Therefore, if any application is submitted to the medical officer seeking permission for recording such a statement and to ascertain whether the injured has the capacity to make such a statement, then the medical officer as well as the application should be brought on record to substantiate the same. Additionally, the statement should be verified by the doctor²⁶ and be made in the presence of hospital staff to prove that the statement was actually made and to avoid the possibility of tutoring and fabrication.²⁷ Where the statement is recorded by the police official without adhering to criteria laid down in Rule 25.21 of the Police Rules, '*status of such statement would be hardly a statement u/s 161 Cr.P.C. and not a dying declaration of the deceased*'.²⁸ Regarding statements under Section 161 of the Code, the honourable Supreme Court of Pakistan in "*The State v. Abdul Khaliq*" (**PLD 2011 Supreme Court 554**) held that:

²⁰ See "*The State v. Safdar*" (2002 MLD 1698 Lahore (dB)).

²¹ See "*Imran Ashraf v. The State*" (2012 YLR 325 Federal Shariat Court (3-MB)).

²² See "*Naseeb-ur-Rehman v. Muqarab Khan*" (2013 MLD 836 Peshawar (dB)).

²³ See "*The State v. Ghulam Abbas alias Agha*" (2024 YLR 2222 Lahore (dB)).

²⁴ *Ibid.*

²⁵ See "*Khyber Khan v. Shahid Zaman*" (2019 PCr.LJ 979 Peshawar (dB)).

²⁶ See "*Sohail Aslam v. The State*" (2017 YLR 1383 Lahore).

²⁷ See "*Mst. Zahida Bibi v. The State*" (PLD 2006 Supreme Court 255).

²⁸ *Ibid.*

'... argument that statements 'under section 161, Cr.P.C. should be strictly construed in consonance with section 162, Cr.P.C. and if those are signed by the witnesses, such is an incurable defect and an illegality which vitiates the statement and it shall not be that previous statement which is contemplated by the above provision; available for confrontation in terms of Article 140 of the Qanun-e-Shahadat Order, 1984 (QSO, 1984). To this extent, we agree with the learned counsel...'.

In addition thereto, it is a well-settled principle of law that a dying declaration can even be made before a private person, and it is proved that it is free from influence and the persons before whom such dying declaration was made were examined, then it becomes a substantive piece of evidence.²⁹ In absence thereof, dying declaration requires close scrutiny and is considered a weak kind of evidence due to being without the test of cross-examination.³⁰

20. The parameters for assessing evidentiary value of dying declaration was summarised by the Supreme Court of India in "*Smt. Paniben vs State Of Gujarat*" (1992 (2) Supreme Court Cases 474). Thereafter, the Supreme Court of Pakistan in "*Farmanullah v. Oadeem Khan*" (2001 SCMR 1474) laid down similar parameters, reproduced as under:

'7. A bare perusal of the said Article would indicate that there is no ambiguity in it and it is a combination of the following ingredients and the language as employed does not permit to add, delete or insert anything new:--

- (a) It relates to the cause of death.*
- (b) It includes the circumstances which resulted into death.*
- (c) It is relevant when the cause of declarant's death comes into question whatever may be the nature of proceedings irrespective of the fact whether such statement was made under the expectation of death or otherwise?*

The abovementioned ingredients were discussed by various higher Courts in different cases which resulted into formulation of acknowledged and time tested principles which are mentioned hereinbelow:--

- (i) There is no specified forum before whom such declaration is required to be made.*
- (ii) There is no bar that it cannot be made before a private person.*

²⁹ See "*Majeed v. The State*" (2010 SCMR 55).

³⁰ See "*Mst. Zahida Bibi v. The State*" (PLD 2006 Supreme Court 255). Also see "*Tahir Khan v. The State*" (2011 SCMR 646); and, "*Farman Ahmad v. Muhammad Inayat*" (2007 SCMR 1825), wherein it was observed that such a declaration would require close scrutiny and corroboration.

- (iii) *There is no legal requirement that the declaration must be read over or it must be signed by its maker.*
- (iv) *It should be influenced free.*
- (v) *In order to prove such declaration the person by whom it was recorded should be examined.*
- (vi) *Such declaration becomes substantive evidence when it is proved ¹ that it was made by the deceased.*
- (vii) *Corroboration of a dying declaration is not a rule of law, but requirement of prudence.*
- (viii) *Such declaration when proved by cogent evidence can be made a base for conviction'.*

To sum up the jurisprudence reproduced above, it is essential to assess the sanctity of a dying declaration with the utmost care and caution since the maker of a dying declaration is unavailable for cross-examination, which creates significant challenges for the accused. The evidence provided in such a declaration must be evaluated diligently, as its credibility is a matter of fact that depends on a case-by-case basis. Relying mechanically on such a statement because it merely exists would be dangerous; therefore, to verify the veracity of a dying declaration, the case must be examined in its entirety, considering all physical surroundings and relevant factors. The Courts must remain vigilant to ensure that the statement of the deceased was not influenced by tutoring, prompting or imagination and conviction can be based on such a statement only when it inspires confidence in its truthfulness.³¹

21. In the present *lis*, the deceased, in injured condition, was taken to the hospital under police docket after registration of FIR, as opposed to the claim of complainant (PW-1) that the deceased was taken by him. At the hospital, Dr. Maria Tayyab (PW-6) observed that the deceased was found conscious, well oriented to time, space and person. Abdul Ghaffar (PW-5) filed an application (Exh.PF) to the medical officer, THQ Burewala, for recording the statement of the then-injured, since deceased. In the meantime, the deceased in injured condition was referred to the Burn Unit, Mayo Hospital, Lahore. The investigating officer (PW-10) reached the hospital and recorded her statement '*U.S. 161 Cr.P.C. and procured her thumb impression on her statement which is Ex.PJ. Ex.PJ is in my hand and bear my signatures. I read over her statement Ex.PJ to her and she admitted it correct and affixed her thumb impressions at Ex.PJ/1 and my signature on it are Ex.PJ/2*' and during cross-examination, investigating officer (PW-10) stated that:

³¹ See "*Qaiser Abbas v. The State*" (2025 PCr.LJ 311 Lahore (dB)).

'When I recorded the statement of Mst. Samina Bibi, at that time complainant Shaukat, Liaqat & Shahid PWs were present'.

22. Paramount to observe here that neither the investigating officer (PW-10) nor the medical officer intimated the nearest magistrate. Further, Abdul Ghaffar (PW-5) handed over the application to Dr. Maria Tayyab (Exh.PF), who permitted recording the dying declaration, however, Dr. Maria Tayyab (PW-6) did not depose in her examination-in-chief about granting permission to record the dying declaration or receipt of said application (Exh.PF). Even otherwise, other criteria of Rule 25.21 of the Police Rules had also not been followed, because while recording the statement, the doctor was not associated with it nor was it verified by any official of the hospital that the statement was actually made by the deceased. There is nothing on record to ensure that the so-called dying declaration was made in the presence of medical officials who could verify the same. On the contrary, the said statement was made in the presence of prosecution witnesses, due to which it cannot be stated with certainty that it was not the result of tutoring, prompting or imagination. Additionally, the investigating officer (PW-10) himself admitted that the "statement of Samina Bibi" brought on record as "Exh.PJ" was a statement under Section 161 of the Code. Since it was mere statement under Section 161 of the Code of the deceased, it could not be exhibited by the prosecution and only the defence could use it in terms of Section 162 of the Code as well as Article 140 of QSO to contradict and confront the witnesses in the manner provided therein and even otherwise, due to being signed by the deceased, it is not in consonance with Section 162 of the Code, an incurable defect and an illegality which vitiates the statement in its entirety.

23. It has also been observed that the dying declaration was not put to the appellant in his statement under Section 342 of the Code, therefore, even if the same was made in accordance with the law, the same could not have been considered as a piece of evidence against the appellant.³²

24. The recoveries affected from the appellant and forensic report are of no evidentiary value as the investigating officer (PW-10) conceded that he neither took the same into possession, nor did he record the statement of Moharrar regarding the handing over of cylinder and burner for keeping in safe custody.

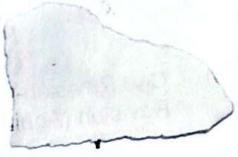
³² See "*Muhammad Mumtaz v. The State*" (1997 SCMR 1011); "*Din Muhammad v. The Crown*" (1969 SCMR 777); and, "*Hafeez Ahmed v. The State etc*" (2025 LHC 752).

Adverting to the motive of the case, except oral assertions, no other material/evidence is available on record to prove the same, therefore, the motive is discarded.

25. In view of the above, it is held that the prosecution cannot prove its case against the appellant to the hilt as the prosecution's case is marred by serious infirmities, making its version wholly unreliable. It is an established principle of law that to extend the benefit of the doubt it is not necessary that there should be so many circumstances. If one circumstance is sufficient to discharge and bring suspicion in the mind of the Court that the prosecution has fabricated the evidence to procure conviction then the Court can come forward for the rescue of the accused persons.³³

26. Accordingly, **criminal appeal No. 551 of 2016** of appellant Pervaiz alias Irfan is accepted in *toto*; conviction and sentence recorded by the learned Trial Court *vide* judgment dated 07.03.2016 is set aside; and, the appellant is acquitted of the charges against him in in crime report bearing FIR No. 445 of 2015 dated 10.07.2015, for offences under Section 7 of the Anti-Terrorism Act 1997 and Section 324, 336-B, 338 and 201 of the Pakistan Penal Code 1860, registered with police station Gaggo, District Vehari. If not required in any other case, the appellant is directed to be released forthwith.

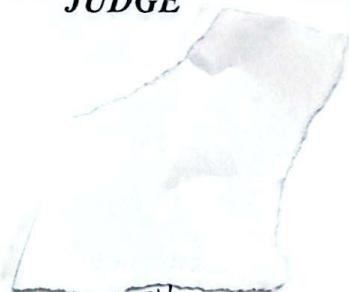

(**MUHAMMAD WAHEED KHAN**)
JUDGE


(**MUHAMMAD JAWAD ZAFAR**)
JUDGE

Approved for Reporting

Gulfam/*


JUDGE


JUDGE

³³ See "*Hussain v. The State*" (2022 SCMR 1567); "*Kashif Ali v. The State*" (2022 SCMR 1515); "*Mst. Asia Bibi v. The State*" (PLD 2019 Supreme Court 64); "*Abdul Jabbar v. The State*" (2019 SCMR 129); "*Muhammad Mansha v. The State*" (2018 SCMR 772); "*Tariq Pervaiz v. The State*" (1995 SCMR 1345); and, "*Daniel Boyd (Muslim Name Saifullah) v. The State*" (1992 SCMR 196).