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Judgment Sheet

IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH, BAHAWALPUR.

JUDICIAL DEPARTMENT

Murder Reference No.20 of 2023
(The State Vs. Sardar Ahmad alias Sardari)

Criminal Appeal No. 265-J of 2023
(Sardar Ahmad alias Sardari Vs. The State .)

Date of hearing:	10.09.2025.
Appellant by:	Mr. Zeeshan Haider, Advocate.
State by:	Mr. Asghar Ali Gill, Deputy Prosecutor General.
Complainant by:	Mr. Muhammad Azam, Advocate.

J U D G M E N T

SADIQ MAHMUD KHURRAM, J.– Sardar Ahmad alias Sardari son of Noor Ahmad (convict) was tried alongwith Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair (all since acquitted), the co-accused of the convict by the learned Additional Sessions Judge/ Model Criminal Trial Court, Bahawalnagar in the case instituted upon the private complaint titled *"Bashir Ahmad Vs. Sardar Ahmad alias Sardari and ten others"* lodged in respect of offences under sections 302 ,460, 337 L(2), 376,496-A, 148 and 149 P.P.C. (related to F.I.R. No.251 of 2021 dated 06.09.2021 registered at police station Madrissa District Bahawalnagar) for committing the *Qatl-i-Amd* of Jehangir son of Bashir Ahmad (deceased) and

rape of Hafiza Madiha (PW-3) . The learned trial court vide judgment dated 31.05.2023 convicted Sardar Ahmad alias Sardari son of Noor Ahmad (convict) and sentenced him as infra:

Sardar Ahmad alias Sardari son of Noor Ahmad:-

i) Death under section 302(b) P.P.C. as *Tazir* for committing *Qatl-i-Amd* of Jehangir son of Bashir Ahmad (deceased) and directed to pay Rs.10,00,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of the deceased; in case of default of payment of compensation amount, the convict was further directed to undergo six months of simple imprisonment.

ii) Rigorous imprisonment of 25 years under section 376 P.P.C. and directed to pay fine of Rs.50,000/- and in case of default of payment of fine, the convict was further directed to undergo six months of simple imprisonment.

iii) Rigorous imprisonment of seven years under section 496-A P.P.C. and directed to pay fine of Rs.50,000/- and in case of default of payment of fine, the convict was further directed to undergo six months of simple imprisonment.

iv) Imprisonment for life under section 460 P.P.C.

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

All the sentences awarded to the convict Sardar Ahmad alias Sardari son of Noor Ahmad were ordered to run concurrently by the learned trial court .The convict was extended the benefit available under Section 382-B of the Code of Criminal Procedure, 1898 by the learned trial court.

Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair, the co-accused of the convict, were all acquitted by the learned trial court.

2. Feeling aggrieved, Sardar Ahmad alias Sardari son of Noor Ahmad (convict) lodged the Criminal Appeal No.265-J of 2023, assailing his conviction and sentence. The learned trial court submitted Murder Reference No.20 of 2023 under section 374 Cr.P.C. seeking confirmation or otherwise of the sentence of

death awarded to the appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad (convict). We intend to dispose of the Criminal Appeal No.265-J of 2023, and the Murder Reference No.20 of 2023 through this single judgment.

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

> " Stated that in the midnight of 05/06-09-2021 at about 12/01:00 (night). I alongwith my sons Jahangir and Taswar, my maternal nephew Hafiz Irfan and women folk of my family were asleep. On learning a click of steps of accused persons, I woke-up, switched on the blub of my court-yard. My family members also woke-up and we saw Sardar alias Sardari while armed with repeater gun, Javed while armed with pistol 30-bore, Noor Muhammad while armed with "Sota", Ghulam Haidar whlie armed with pistol, Muhammad Imtiaz while armed with repeater 12-bore, Lakhwair while armed with pistol, Nusrat Pervaz, Muhammad Salam, Muhammad Khan S/O Mumtaz, Muhammad Khan S/O Noor Armed and Abu Sufyan all armed with "Sotas" respectively were entering my house. As Sardar alias Sardari raised "Lalkara" to all of us that "you after abducting my sister Parveen Bibi have committed "Ziyadati" with us and we have come to teach you a lesson", he caught hold my married daughter Hafiza Madiha, my son Jahangir intercepted and stepped ahead, on which, Muhammad Javed accused made fire with his pistol, which hit on right shin lower part of my son Jahangir. Javed step forwarded more and Sardar Ali made fire, which landed on the left side of chest below nipple of Jahngir, who fell down. Then I stepped forward, on which, Nusrat gave "Sota" blow on my left ankle, thus I fell down on the ground. On hearing our hue & cry and firing, my paternal nephew Muhammad Amin and other inhabitants of the area attracted my house. We tried to rescue my daughter (Hafiza Mediha) but accused while making firing, abducted her away. I alongwith PWs attended my son Jahangir, took him to R.H.C. Madrissa but on the way, he succumbed to the injuries. Motive behind the occurrence was that about two years back, my son Shafqat Mahmood and sister of Sardar alias Sardari (accused) namely Parveen Bib: had contracted marriage with her free will and consent, hence, Sardar alias Sardari etc were annoyed. They got registered a case at Police Station

Ahmad Yar. I also reported the occurrence/matter to police through application Exh.PA (present on judicial record), FIR was registered with Police Station Madrissa.

Between 08/09 Sep. 2021, police informed me that my daughter Hafiza Madhia after getting rid of accused had reached the Police Station, so I also reached Police Station, Hafiza Madhia told me and other PWs that accused persons took her forcibly out of my house and on seeing the people, they on gun point forced her to run in the craps to the point, where their motorcycles were parked. Sardar and Imtiaz accused forcibly took her on their motorcycle to some unknown place, while other accused on their motorcycles left to the unknown place. Accused Imtiaz and Sardar kept her confined on gun point and Sardar alias Sardari committed rape with her on gun point. Afterwards, both of them took Hafiza Madhia to another deserted house and they forced Hafiza Madhia to take her to Kasur City. Sardar alias Sardari asked Hafiza Madhia that he will manage ante-dated "Nikah" with her to take revenge of marriage of Parveen Bibi with my son Shafqat. She further told on prevailing darkness, she managed to escape from the place of rape and after covering a distance, she reached vicinity, from where, she informed police and police took her to Police Station. Hafiza Madhia did not know the names of accused. She later on, during investigation nominated other accused persons being culprits.

Previously on the marriage of Parveen Bibi with my son Shafqat, I had ousted my son Shafqat from my home and had also offered oath in this respect to family of Sardar alias Sardari but they had committed "Zulm" with me. Police did not investigate the case fairly and due to unfair investigation, police give undue benefit to some of the accused persons against merits, for which, I got dictated instant private complaint Exh.P-B, which was read-over to me by my counsel and I had also thumb marked the same."

4. The accused were summoned to face trial in the case instituted upon the private complaint titled *"Bashir Ahmad Vs. Sardar Ahmad alias Sardari and ten others"* lodged in respect of offences under sections 302 ,460, 337 L(2), 376,496-

A, 148 and 149 P.P.C. (related to F.I.R. No.251 of 2021 dated 06.09.2021 registered at police station Madrissa District Bahawalnagar) for committing the *Qatl-i-Amd* of Jehangir son of Bashir Ahmad (deceased) and rape of Hafiza Madiha (PW-3) . The learned trial court framed the charge against the accused on 28.11.2022, 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 Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3).

6. The learned trial court got as many as nine court witnesses examined. Tasawar (CW-1) stated that he had also witnessed the occurrence , however, did not give any further details and also stated that on 06.09.2021, the Investigating Officer of the case took into possession the blood stained earth from the place of occurrence through recovery memo (Exh.CW-1/A) and five empty cartridges of 12-bore through recovery memo (Exh.CW-1/B) and eleven empty shells of 30-bore bullets through recovery memo (Exh.CW-1/C) and on the same day the Medical Officer handed over the last worn clothes of the deceased to the police officials and on 20.09.2021, the appellant got recovered the Repeater gun (P-5) and on 03.10.2021, Ghulam Haider (since acquitted) got recovered the pistol (P-7) and on the same day Nusrat Pervaiz (since acquitted) got recovered the soti (P-9) and on 24.10.2021, Muhammad Imtiaz (since acquitted) got recovered a Repeater gun. Shafique Ahmad, ASI (CW-2) stated that on 06.09.2021, he got recorded the formal F.I.R. (Exh.CW-2/A). Muhammad Shahzad Hassan 1304/C (CW-3) stated

that on 06.09.2021, 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. Asmat Mukhtiar 184/LC (CW-8) stated that on 07.09.2021, she took Hafiza Madiha (PW-3) to the RHC Madrissa where she was medically examined. Shaukat Ali, SI (CW-9) investigated the case from 06.09.2021 till 24.10.2021, arrested the appellant on 08.09.2021 and detailed the facts of the investigation in his statement before the learned trial court.

7. The learned trial court also examined Dr. Gohar Ali (CW-6), who on 06.09.2021 was posted as Medical Officer at DHQ hospital Bahawalnagar and on the same day conducted the post-mortem examination of the dead body of the deceased, namely Jehangir son of Bashir Ahmad. Dr. Gohar Ali (CW-6) on examining the dead body of the deceased namely Jehangir son of Bashir Ahmad, observed as under:-

> **DESCRIPTION OF INJURIES:**
>
> 1. lacerated wound measuring about 10cm X 08cm on left lateral chest, clotted blood present, wade alongwith multiple pellets recovered from wound. Underline heart ruptured, ribs fractured and left lung ruptured small intestine damaged, liver damage, main blood vessels of chest cavity perforated.
>
> 2. A lacerated wound measuring 02cm X 01cm on front of right leg clotted blood present.
>
> …….
>
> **REMARKS OF MEDICAL OFFICER**:-
>
> In my opinion, death in this case had occurred due to injury No.1 which damaged the vital organs i.e. heart, lung, liver, intestines. main blood vessels which lead to hemorrhagic shock and ultimately death, which was sufficient to cause death in ordinary course of nature.
>
> **PROBABLE TIME THAT ELAPSED**:
>
> A. Between injury and death: Within half hour

B. Between death and Postmortem Within 12-hours."

The learned trial court also examined Dr. Muhammad Shahid (CW-4), who on 09.09.2021 was posted as Medical Officer at RHC Madrissa and on the same day medically examined Bashir Ahmad (PW-1) and observed as under :-

> **"INJURY NO.1**:-
>
> Complains of pain with complains of swelling on left wrist joint. But movements of left wrist joint are normal. So, injury No.1 declared as 337-L(ii)."

The learned trial court also examined Dr. Rabia Iram (CW-7), who on 08.09.2021 was posted as Woman Medical Officer at the RHC Madrissa and on the same day medically examined Hafiza Madiha (PW-3) and observed as under:-

> "No tears, lacerations, bruises, abrasions, swellings or hyperemia seen on and around the private parts. Hymen was old healed margins and two fingers admissible per vaginally. No evidence of bleeding or staining with semen.
>
> ……..
>
> I have gone through the Forensic DNA and Serology Analysis Report, I am of opinion that Hafiza Mudiha was subjected to the intercourse by Sardar, assailant in recent past "

8. On 01.04.2023, the learned counsel for the complainant gave up the prosecution witness namely Tasawar as being unnecessary. On 04.04.2023, the learned counsel for the complainant gave up the prosecution witness namely Muhammad Amin as being collusive with the accused. On 06.05.2023, the learned Deputy District Public Prosecutor tendered in evidence the reports of the Punjab Forensic Science Agency, Lahore (Exh.PC and Exh. PD).

9. After the closure of prosecution evidence, the learned trial court examined the appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad (convict) and 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 was innocent and had been falsely involved in the case. The appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad opted not to get himself examined under section 340(2) Cr.P.C and did not adduce any evidence in his defence.

10. At the conclusion of the trial, the learned Additional Sessions Judge/ Model Criminal Trial Court, Bahawalnagar convicted and sentenced the appellant as referred to above.

11. The contention of the learned counsel for the appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad, 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 witnesses, 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 submitted that the recovery of the *Repeater gun (P-5)* from the appellant namely Sardar Ahmad alias Sardari was full of procedural defects, of no legal worth and value, and were result of fake proceedings. 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 along with the learned counsel for the complainant, contended that the prosecution had proved its case beyond the shadow of doubt by producing independent witnesses. The learned Deputy Prosecutor General along with 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 along with the learned counsel for the complainant further contended that the medical evidence also corroborated the statements of the eye witnesses. The learned Deputy Prosecutor General along with the learned counsel for the complainant submitted that it was proved that the appellant had raped Hafiza Madiha (PW-3) after having abducted her. The learned Deputy Prosecutor General along with the learned counsel for the complainant, further argued that the recovery of the Repeater gun (P-5) from the appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad also corroborated the ocular account. The learned Deputy Prosecutor General along with 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 along with the learned counsel for the complainant prayed for the rejection of the appeal as lodged by the appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad.

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

14. The learned Deputy Prosecutor General and the learned counsel for the complainant have vehemently argued that as the prosecution witness namely Bashir Ahmad (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 which 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 our minds that an injured witness cannot be presumed to be also a truthful witness, we have proceeded to examine the statement of the prosecution witness namely Bashir Ahmad (PW-1) .

15. It is with great anxiety and concern that we have noted that it could not be established by the prosecution during the course of trial that the prosecution witness namely Bashir Ahmad (PW-1) was injured during the incident which took place on **06.09.2021 at about 12.00 a.m (night)** rather it was proved on record that the prosecution witness namely Bashir Ahmad (PW-1) made a totally false claim of having been injured on the night of the incident, rather he suffered an injury on **09.09.2021** and thereafter claimed wrongly that he had suffered the said injury on the night of the incident. The claim of the prosecution witness namely Bashir Ahmad that he was injured on 06.09.2021 at about 12.00 a.m (night) was totally shattered by the statement of Dr. Muhammad Shahid (CW-4), who on **09.09.2021** was posted as Medical Officer at RHC Madrissa and on the same day had medically examined Bashir Ahmad (PW-1). In his statement before the learned trial court, Dr. Muhammad Shahid (CW-4) stated that it was on **09.09.2021 at 12.00 p.m** when the prosecution witness namely Bashir Ahmad (PW-1) was brought to the hospital by the police to be medically examined. More importantly,Dr. Muhammad Shahid (CW-4) opined that the injury which he observed on the left wrist joint of Bashir Ahmad (PW-1) had been suffered by him within **twelve hours** of his medical examination. During cross-examination, Dr. Muhammad Shahid (CW-4) explained as under:-

> "I had mentioned probable time of injury **within 12 hours**. I had medically examined Bashir Ahmad, injured, on 09.09.2021 at 12:00PM. **Injury referred by me in MLC could not be beyond 12 hours**. " (emphasis supplied)

It has not been explained by the prosecution that if Bashir Ahmad (PW-1) had suffered the injuries in the same incident during which Jehangir (deceased) was injured, then why Bashir Ahmad (PW-1) was not taken to the hospital for as many as three days and was produced before the Medical Officer only on 09.09.2021 at 12.00 p.m. Moreover, as is apparent, the prosecution witness namely Bashir Ahmad (PW-1) made a totally untruthful claim that he was injured on the night of the incident; however, he was badly exposed in this regard. The manner in which Bashir Ahmad (PW-1) went on to claim himself as an injured witness of the incident exposes the bent of the devious mind of Bashir Ahmad (PW-1) who, by exercising fraud, dishonestly claimed that he was injured during the incident, however, Dr. Muhammad Shahid (CW-4) exposed the false claim of Bashir Ahmad (PW-1). The learned counsel for the complainant is unable to explain the opinion of Dr. Muhammad Shahid (CW-4) that Bashir Ahmad (PW-1) had suffered the injury within **twelve hours** of his medical examination on **09.09.2021 at 12.00 p.m** and there was no possibility that the said injury could have been suffered by Bashir Ahmad (PW-1) prior to twelve hours of his medical examination on 09.09.2021 at 12.00 p.m **.** The opinion of Dr. Muhammad Shahid (CW-4) is in itself sufficient to expose Bashir Ahmad (PW-1) as a false witness and as a witness upon whom no reliance can be placed. The evidence which is available creates more doubt regarding the circumstances in which Bashir Ahmad (PW-1) was injured and also proves that the narrative of the prosecution witnesses

namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) as being flawed beyond mending and not truthful.

16. We have noted that according to the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) , the occurrence took place in the dead of night at about **12.00 a.m** in the 6th night of the month of September, 2021, however, admittedly no source of light, which could have enabled the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) to had rightly identified the accused and also would have allowed the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) to note 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 Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) claimed that they had witnessed the occurrence in the light of an electric bulb which was lit at the place of occurrence, however, the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) also admitted during cross-examination that they never produced the said electric bulb which was lit at the place of occurrence before the Investigating Officer of the case during the investigation of the case. The prosecution witness namely Hafiz Muhammad Irfan (PW-2) admitted during cross-examination, as under:-

> "Police did not secure any bulb etc. "

Tasawar (CW-1) also admitted during cross-examination, as under:-

"Police did not secure any electric bulb "

Shaukat Ali SI (CW-9), the Investigating Officer of the case, also admitted during cross-examination as under:-

"I did not take into my possession any bulb from crime scene."

The non-production of the electric bulb, which was lit at the place of occurrence, is all the more a matter of disquiet for the reason that if the said source of light was indeed available, then the complainant of the case could have easily produced the same before the learned trial court. The failure of the complainant of the case to produce the same before 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 prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) to have identified the assailants and also witness the individual roles of the assailants as acted by them during the occurrence. The prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) also admitted that the house where the occurrence took place had no electricity supplied by the MEPCO authorities. Bashir Ahmad (PW-1) admitted during cross-examination, as under:-

" There is no electricity connection of WAPDA in our house. "

Similarly, Hafiz Muhammad Irfan (PW-2) also admitted during cross-examination, as under:-

" There is no electricity connection provided by WAPDA Volunteered that solar system is installed"

Being conscious of this fact that there was no source of light which could have enabled the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz

Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) to witness the occurrence, the prosecution witnesses came up with an invented claim that they had installed Solar Energy Conversion Plates for the purpose of energizing the said electric bulb, however, also admitted that the said Solar Energy Conversion Plates were never taken into possession by the Investigating Officer of the case and moreover no battery storing the electric energy was even pointed out or its existence mentioned by the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3), which battery could have powered the electric bulb at night as no electricity could be generated by the use of Solar Energy Conversion Plates at the time of the incident. It was also brought on record that the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) had not mentioned the installation and availability of Solar Energy Conversion Plates at the place of the incident in any of their previous statements and came up with the claim of the said installation of Solar Energy Conversion Plates to justify the energizing the electric bulb only during trial. Bashir Ahmad (PW-1) admitted during the cross-examination as under:-

> "Volunteered that we have installed Solar penals. In my statement for registration of FIR, I did not refer installation of solar penals (sic) "

During cross-examination Shaukat Ali, SI (CW-9) admitted as under:-

> " Complainant in his statement did not refer installation of solar penals in his house. None of the witnesses cited in this case stated about installation of solar penals in the house of complainant. I did not secure any solar penal in my possession."

It was also brought on record that the claim of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) that Bashir Ahmad (PW-1) had turned on the electric bulb on the night of occurrence was also a dishonest improvement on part of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3). Hafiz Muhammad Irfan (PW-2) was confronted in this regard with his previous statement (Exh.DA) and the learned trial court observed as under:-

> "I had mentioned in my statement U/S 161 Cr.P.C. that on noting a click, Bashir Ahmad woke-up and switched on the blub of the court yard. (Confronted with statement (Exh.DA) where name of Bashir Ahmad is not mentioned and name of Muhammad Tasawar is referred)."

Similarly, the prosecution witness namely Hafiza Madiha (PW-3) was also confronted with her previous statement (Exh.DB) during cross-examination and the learned trial court observed as under:-

> " I had mentioned in my statement U/S 161 Cr.P.C. that my father switched on bulb of courtyard. (Confronted with Exh.DB, where it is not so mentioned). "

According to the prosecution evidence, Shaukat Ali SI (CW-9) , the Investigating Officer of the case, visited the place of occurrence after the occurrence but the electric bulb , which was allegedly available and lit at the place of occurrence, at the time of occurrence or the Solar Energy Conversion Plates , were not taken into possession at the spot by the Investigating Officer alongwith other recoveries, though there was no occasion for the said electric bulb or the Solar Energy Conversion Plates not to have been present at the place of occurrence or they being not produced by the witnesses before the Investigating Officer or they being not taken into possession by the Investigating Officer during his visit at the place of occurrence. The joint failure of Bashir Ahmad (PW-1), the complainant of the

case and Shaukat Ali SI (CW-9), the Investigating Officer, to produce the electric bulb allegedly present at the place of occurrence and lit up at the time of occurrence and the Solar Energy Conversion Plates, proves that none were available and only an invented and false claim of such an electric bulb and Solar Energy Conversion Plates being available was made by the said witnesses. 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, we 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 prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) that it was a dark night and they had used the light of the electric bulb, never produced, to identify the assailants during the occurrence and as the prosecution witnesses failed to prove the availability of such light source, the statements of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) identifying the assailants 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. Reliance is 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 FIR 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.****" (emphasis supplied)*

Reliance is also 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 "*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 FIR 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*."

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."*

17. We have noted with serious anxiety that the ocular account of the occurrence as furnished by the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) is inconsistent with the medical evidence as furnished by the Medical Officers who had not only examined Bashir Ahmad (PW-1) but had also conducted the post mortem examination of the dead body of Jehangir (deceased) and flawed beyond mending , resulting in disfiguring the complexion of the whole prosecution case beyond reparation and recognition. According to the statements of the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) they had seen Muhammad Javaid, (since acquitted) while armed with a pistol and *firing at the right leg of the deceased* and had also seen Nusrat Pervaiz (since acquitted), while armed with a sota, giving a blow with the same to Bashir Ahmad (PW-1), hitting him on *the ankle of his left leg*. Bashir Ahmad (PW-1), in his statement before the learned trial court, stated as under:-

> "….my son Jahangir intercepted and stepped ahead, on which, **Muhammad Javed accused made fire with his pistol**, which hit on right shin lower part of my son Jahangir.
>
> ……..

> Then I stepped forward, on which, Nusrat gave "Sota" blow on my **left ankle**, thus I fell down on the ground. ”(emphasis supplied)

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

> “……, he caught hold of my wife, Jahangir intercepted and stepped ahead, on which, **Muhammad Javed accused made fire with his pistol, which hit right shin** lower part of Jahangir, Sardar All made fire, which landed on the left side of chest of Jahngir. Complainant stepped forward, on which, **Nusrat gave "Sota" blow on his left ankle**, thus he fell on the ground**.**” (emphasis supplied)

Similarly, Hafiza Madiha (PW-3), in her statement before the learned trial court stated as under:-

> “……..my brother Jahangir intercepted and stepped forward, on which, **Muhammad Javed accused made fire with pistol, which hit right shin lower part above right ankle** of my brother Muhammad Jahangir. As Sardar alias Sardari made fire, which landed on the left side of chest below left nipple of my brother Jahngir who fell down on the ground. My father stepped forward, on which, Nusrat gave "Sota blow on **his left ankle**, thus he fell on the ground.”

A perusal of the above referred statements of the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) reveals that according to them they had seen Muhammad Javaid, (since acquitted) while armed with a *pistol* and *firing at the right leg of the deceased* and had also seen Nusrat Pervaiz (since acquitted), while armed with a sota, giving a blow with the same to Bashir Ahmad (PW-1), hitting him on the *ankle of his left leg*. Contrary to the above-referred statements of the eyewitnesses namely Bashir Ahmad (PW-1)

Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) , Dr. Gohar Ali (CW-6), who conducted the medical examination and later the post mortem examination of the dead body of the deceased namely Jehangir, observed that the injury present on the right leg of the dead body of the deceased was inflicted upon him by use of a **blunt weapon** and was **not a firearm injury**. During cross-examination,Dr. Gohar Ali (CW-6), explained as under:-

> "Injury No.2 at the body of deceased is not by fire arm. Injury No.2 is by blunt weapon.
>
> ……
>
> Injury No.2 was caused by some different weapon. Injury No.2 was not by fire arm "

As mentioned above, Dr. Muhammad Shahid (CW-4) not only declared that Bashir Ahmad (PW-1) had suffered the injury within **twelve hours** of his medical examination on **09.09.2021 at 12.00 p.m** but also explained that Bashir Ahmad (PW-1) had not suffered any injury on the ankle of his left leg, contrary to the statements of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3). During cross-examination, Dr. Muhammad Shahid (CW-4), declared as under:-

> " I did not observe any injury on the left ankle of injured."

The said opinions and observations of Dr. Gohar Ali (CW-6) and Dr. Muhammad Shahid (CW-4), were never challenged by the prosecution either during the investigation of the case or during the course of the trial. In this manner, the statements of the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) are in direct contradiction and in conflict with the opinions and observations of Dr. Gohar Ali (CW-6) and

Dr. Muhammad Shahid (CW-4). The prosecution witnesses very well knew that the observations and opinions of Dr. Gohar Ali (CW-6) and Dr. Muhammad Shahid (CW-4), were in themselves sufficient to shatter the very foundation upon which the prosecution case was built, however, even being in knowledge of this fact, no effort was made by the prosecution witnesses to challenge the observations and opinions of Dr. Gohar Ali (CW-6) and Dr. Muhammad Shahid (CW-4) or if the same could not be challenged, then to explain the same. Despite our repeated queries, the learned Deputy Prosecutor General and the learned counsel for the complainant have failed to explain the said discrepancies in the prosecution evidence. In this manner, irreconcilable and harrowing contradictions have cropped up in the ocular account of the occurrence as narrated by the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) and the medical evidence as furnished by Dr. Gohar Ali (CW-6) and Dr. Muhammad Shahid (CW-4). The contradictions in the ocular account of the occurrence, as narrated by Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) and the medical evidence as furnished by Dr. Gohar Ali (CW-6) and Dr. Muhammad Shahid (CW-4), clearly establish that the prosecution miserably failed to prove the charge against the appellant. The contradictions in the ocular account of the occurrence, as narrated by Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) and the medical evidence, as furnished by Dr. Gohar Ali (CW-6) and Dr. Muhammad Shahid (CW-4), sound the death knell for the prosecution case and prove to be the cause of its sad demise. Had the witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) deposed truthfully, then there did not exist any possibility that they would have fallen into error. The august

Supreme Court of Pakistan in the case of *"ZAFAR ALI ABBASI and another Versus ZAFAR ALI ABBASI and others "* (**2024 S C M R 1773**) has held as under:-

> *"It is also worth noting that in his cross-examination, the doctor explained that the injuries were lunar shaped, which means that probably, the injuries were caused through lunar shaped weapon. On the contrary, the complainant and the eye-witnesses alleged that the appellant inflicted dagger blows on the deceased. Their statements regarding nature of the injuries sustained by the deceased and the weapon used contradict the postmortem report and the statement of the doctor. We are conscious of the fact that just because the witnesses are related to the deceased, their testimonies cannot be disregarded, however, it is also important that testimonies of such witnesses have to be scrutinized with greater care and circumspection. The facts discussed herein makes it clear that the conduct of the witnesses was unnatural. It leads us to a conclusion that presence of the witnesses at the time of the crime was doubtful, as such the occurrence seems to be unseen."*

The august Supreme Court of Pakistan in the case of *"ABDUL JABBAR alias JABBARI vs. The State " (***2017 S C M R 1155**) has held as under:-

> *"The Medico-legal Certified issued in respect of Manzoor Ahmed deceased when he was alive showed that the injuries received by him had been caused by a firearm, a sharp-edged weapon as well as a blunt weapon which surely was not the case of the prosecution."*

The august Supreme Court of Pakistan in the case of *"Muhammad Shafi alias Kuddoo vs. The State and others "* (**2019 S C M R 1045**) has held as under:-

> *"Ocular account is in conflict with medical evidence inasmuch as according to the crime report both the appellant, as well as, Abdul Razzaq, co-accused, are assigned one blow each to the deceased, whereas according to the initial medical examination, Medical Officer noted solitary injury on the head, its impact on the eye has been utilized by the witnesses to array the latter in the crime."*

Reliance is also placed on the case of *"Muhammad Zaman vs. The State and others "* (**2014 S C M R 749**) wherein it has been held as under:-

> *"The more so, when the total number of injuries found on the deceased as well as the injured could be caused by one or two L.G. Cartridges. The number of assailants in the circumstances of the case appears to have been exaggerated"*

Reliance is placed on the cases of *"Muhammad Ali Vs. The State"* **(2015 SCMR 137)** "*Muhammad Ashraf Vs. The State"* (**2012 S C M R 419**) ,*USMAN alias*

KALOO Vs. The State (**2017 S C M R 622**) ,*Muhammad Hussain Vs. The State* (**2008 S C M R 345**) and "*Ain Ali and another Vs. The State"* (**2011 SCMR 323**) where the august Supreme Court of Pakistan was pleased to reject the evidence of prosecution witnesses when the same was found to be in contrast with the medical evidence.

18. Another aspect of the case raising doubt over the statements of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) is the fact the matter was reported to the police on **06.09.2021 at 10.40 a.m**., when the prosecution witness namely Bashir Ahmad (PW-1) got recorded the oral statement (Exh.PA) to Shaukat Ali, SI (CW-9), the Investigating Officer of the case, whereas the occurrence had taken place on **06.09.2021 at 12.00 a.m**. (night time). In this manner, the delay in reporting the matter to the police was of more than **ten hours,** for which delay no reason, much less plausible, was offered. No justification, much less credible, has been given by the prosecution at any stage for such deferral in reporting the matter to the police and the delay in recording of the oral statement (Exh. P.A.) of Bashir Ahmad (PW-1) by Shaukat Ali, SI (CW-9). The Investigating Officer of the case namely Shaukat Ali, SI (CW-9), stated during cross-examination, as under:-

> "I recorded statement of Bashir Ahmad, complainant at RHC, Madirssa at 10:40PM. (sic) .1 do not remember that how much earlier to 10:40PM, I got information of occurrence. " (emphasis supplied)

The reason for this inordinate delay in reporting the matter to the police by the prosecution witness namely Bashir Ahmad (PW-1) is obvious, being that no one

had witnessed the occurrence and the delay was used for the formulation of a false narrative. The prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3), even admitted that the police had arrived at the place of occurrence as early as within *three hours of the incident*, however, still the oral statement (Exh.PA) of Bashir Ahmad (PW-1) was not recorded till *10.40 a.m*. During cross-examination Hafiz Muhammad Irfan (PW-2) claimed as under:-

> "Tasawar had called at police helpline 15. Police came to house of complainant after **two hours of occurrence**. Police came at the spot at about 02:30AM/03:00AM. When police met us, at that time, Jahangir. deceased had died. Police had examined dead body.
>
> ……..
>
> Firstly **we proceeded to P.S. Madrissa with dead body**, thereafter, we proceeded to RHC and then we went to DHQ, Hospital, Bahawalnagar.
>
> …….
>
> Police brought dead body at hospital from police station."(emphasis supplied)

Tasawar (CW-1), who had informed the police about the incident, claimed during cross-examination, as under:-

> "Police came at the spot at about 03:00AM. "

In this case, the ocular account furnished is suffering from legal and factual infirmities and does not appeal to a prudent mind, much less a legal one, because the witnesses never reported the matter to the police for more than **ten hours**. This inordinate delay in reporting the matter conclusively proves that the oral statement

(Exh. P.A.) of Bashir Ahmad (PW-1) and the formal F.I.R (Exh.CW-2/A) were prepared after probe, consultation, planning, investigation and discussion and as the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) had not witnessed the incident at all, therefore, the delay was used to devise a false account of the incident. More than **ten hours** were taken to invent a false and dishonest narrative of the oral statement (Exh. P.A) of Bashir Ahmad (PW-1). The scrutiny of the statements of the prosecution witnesses reveals that the oral statement (Exh.PA) of Bashir Ahmad (PW-1) was neither prompt nor spontaneous nor natural, rather was a contrived, manufactured and a compromised document. Sufficient doubts have arisen and inference against the prosecution has to be drawn in this regard and the delay in reporting the matter to the police and the failure of the prosecution witnesses to proceed to the Police Station evidences their absence at the time of occurrence, at the place of occurrence. Reliance is placed on the case of "*Ghulam Abbas and another v. The State and another"* **(2021 SCMR 23)** wherein the august Supreme Court of Pakistan observed as under:-

> *"As per contents of F.I.R., the occurrence in this case took place on 19.06.2008 at 01.40 a.m. and the matter was reported to the Police on the same morning at 07.00 a.m. and as such there is a delay of more than five hours in reporting the crime to the Police whereas Police Station was situated at a distance of just six kilometers from the place of occurrence. No explanation whatsoever was furnished by the complainant for this delay in reporting the crime to the Police. Hameed Ullah Khan SI (PW.15) who investigated the case stated during his cross-examination that he reached at the place of occurrence at about 05.00 a.m. and he had completed the police proceedings by 06.30 p.m. In the circumstances, chances of deliberations and consultations before reporting the matter to the Police cannot be ruled out*."

Reliance is also placed on the case of "*MUHAMMAD ASHRAF JAVEED and another vs. MUHAMMAD UMAR and others"* (**2017 SCMR 199**) wherein the august Supreme Court of Pakistan was pleased to hold as under:

> *"The hospital is closely situated to the Police Station but neither the complainant nor P.W.s took a little pain to report the matter, nor the staff of the hospital including the treating doctor took initiative*."

Guidance is also sought from the principle enunciated by the august Supreme Court of Pakistan in the case of "*Zafar vs. The State and others"* (**2018 SCMR 326**) where the august Supreme Court of Pakistan was pleased to hold as under:-

> *"It has been observed by us that the occurrence in this case as per prosecution took place on 03.09.1999 at 3.00 a.m. (later half of night) and the matter was reported to the police on the same day at 8.30 a.m. i.e. after five hours and thirty minutes of the occurrence. The distance between the place of occurrence and the police station is 09 miles. The postmortem on the dead body of deceased was conducted on the same day at 2.00 p.m. i.e. after 11 hours of the occurrence. No explanation whatsoever has been given by the complainant Shahadat Ali (PW5) and Umer Daraz (PW6) in the F.I.R. or while appearing before the learned trial Court qua the delay in lodging the F.I.R. or for that matter the belated postmortem of the deceased."*

Guidance is sought from the principles enunciated by the august Supreme Court of Pakistan in the cases of "*G. M. NIAZ Vs. The State"* (**2018 SCMR 506**), "*Abdul Jabbar and another Vs. The State"* (**2019 S C M R 129**) and "*Muhammad Shafi alias Kuddoo Vs. The State and others"* (**2019 S C M R 1045**).

19. We have also noted with disquiet that despite the fact that the occurrence took place at about **12.00 a.m.(night) on 06.09.2021**, the post-mortem examination of the dead body of the deceased was conducted after much delay. According to Dr. Gohar Ali (CW-6), he conducted the post-mortem examination of the dead body of the deceased namely Jehangir at **12.30 p.m on 06.09.2021** i.e. after **twelve hours** of the occurrence. Dr. Gohar Ali (CW-6), who conducted the post-mortem examination of the dead body of Jehangir (deceased) and prepared the post-mortem examination report (Exh.CW-6/A), gave the time between death and post-mortem examination as being **twelve hours**. Dr. Gohar Ali (CW-6) also

stated that he received the complete papers from the police on **06.09.2021 at 12.15 p.m**. despite the fact that the deceased had died in the hospital. The reason which is apparent for the delay in conducting of the post-mortem examination of the dead body of Jehangir son of Bashir Ahmad (deceased) is that by that time, the details of the occurrence were not known and the said time was used not only to procure the attendance of the witnesses but also to fashion a false narrative of the occurrence. No explanation was offered to justify the said delay in receiving the complete documents from the police and the delay in conducting the post-mortem examination. These facts clearly establish that the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) claiming to have seen the occurrence, had not and the delay in the post-mortem examination was used to articulate a dishonest account, after consultation and planning. It has been repeatedly held by the august Supreme Court of Pakistan that such a delay in the post-mortem examination is reflective of the witnesses having not seen the incident and the sole purpose of causing such delay is to advance a false narrative to involve any person. 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:

> *'We are surprised to note that according to statement of Dr. Muhammad Imtiaz Ahmad (PW.13), he conducted autopsy on the dead body of the deceased on 19.07.2009 at 11.30 p.m. According to him, the dead body of the deceased was brought by Rabnawaz constable at 09.30 p.m., but he started postmortem examination at 12.30 p.m. and completed the same till 2.00 a.m. He stated that delay in starting the postmortem examination was the receipt of police papers; that he was provided the injuries statement and inquest report of the deceased at 11.30 p.m. and thereafter he started postmortem examination; that he started postmortem without any delay on his part. He admitted it correct that postmortem of the deceased was completed factually on 20.07.2009. According to statement of Rabnawaz 717-C (PW.12), who escorted the dead body of the deceased, postmortem of the deceased was conducted on the next day of occurrence i.e. 20.07.2009.The prosecution has not brought an iota of evidence to justify the inordinate delay in postmortem*

> *examination of the deceased. In such eventuality the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eye-witnesses of the occurrence. Reliance is placed on case titled, "Muhammad Rafique alias Feeqa v. The State" (2019 SCMR 1068). Similarly, in case titled, "Irshad Ahmad v. The State" (2011 SCMR 1190) this court has observed that noticeable delay in postmortem examination on the dead body of the deceased is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses before preparing police papers necessary for the same. Same is the view of this court reaffirmed in cases titled, Ulfat Hussain v. The State (2018 SCMR 313), Muhammad Yaseen v. Muhammad Afzal and another (2018 SCMR 1549), Muhammad Rafique v. The State (2014 SCMR 1698), Muhammad Ashraf v. The State (2012 SCMR 419) and Khalid alias Khalidi and 2 others v. The State (2012 SCMR 327)."*

The august Supreme Court of Pakistan in the case of "*Khalid alias Khalidi and two others vs. The State"* **(2012 SCMR 327)** has held as under:

> "*The incident in the instant case took place at 2.00 a.m, F.I.R. was recorded at 4/5 a.m, Doctor Muhammad Pervaiz medically examined the injured person at 4.00 a.m. but conducted the post mortem examination of the deceased at 3.00 p.m i.e. after about ten hours, which fact clearly shows that the F.I.R. was not lodged at the given time".*

The august Supreme Court of Pakistan in the case of "*Mian SOHAIL AHMED and others vs. The State and others"* **(2019 SCMR 956)** has held as under:

> "*According to the Doctor (PW-10), who did the post-mortem examination, the dead-body of the deceased was brought to the mortuary at 11:15 a.m. on 01.9.2006 and the post-mortem examination took place at 12 noon after a delay of 15 hours. This delay in the post-mortem examination, when the occurrence was promptly reported at 8:45 p.m. and formal F.I.R. was registered at 9.00 p.m. on 31.8.2006 gives rise to an inference that the incident was not reported as stated by the prosecution"*

The august Supreme Court of Pakistan in the case of "*Muhammad Rafique alias Feeqa vs. The State"* **(2019 SCMR 1068)** has held as under:

> *"More importantly, the only person who can medically examine the dead body during the said police custody of the dead body is the medical officer, and that too, when the same is handed over to him by the police for its examination. For the purposes of the present case, it is crucial to note that, at the time of handing over a dead body by the police to the medical officer, all reports prepared by the investigating officer are also to be handed over in order to assist in the examination of the dead body.*
>
> *10. Thus, once there is suspicion regarding the death of a person, the following essential steps follow: firstly, there is a complete chain of police custody of the dead body, right from the moment it is taken into custody until it is handed over to the relatives, or in case they are*

> *unknown, then till his burial; secondly, post mortem examination of a dead person cannot be carried out without the authorization of competent police officer or the magistrate; thirdly, post mortem of a deceased person can only be carried out by a notified government Medical Officer; and finally, at the time of handing over the dead body by the police to the Medical Officer, all reports prepared by the investigating officer are also to be handed over to the said medical officer to assist his examination of the dead body.*
>
> *11. **It is usually the delay in the preparation of these police reports, which are required to be handed over to the medical officer along with the dead body, that result in the consequential delay of the post mortem examination of the dead person**. To repel any adverse inference for such a delay, the prosecution has to provide justifiable reasons therefor, which in the present case is strikingly wanting."*

20. We have already mentioned that along with the appellant his co-accused, namely Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair, since acquitted by the learned trial court, were also tried. The learned trial court acquitted the above mentioned co-accused of the charges. We have queried the learned Deputy Prosecutor General regarding the filing or otherwise of an appeal against the acquittal of the said co-accused, who has stated that the acquittal of Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair , since acquitted by the learned trial court, had attained finality as the petition seeking Special Leave to file an appeal by the complainant of the case assailing the acquittal of Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair, the co-accused of the appellant, had been dismissed. 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. 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. We 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 the accused or acquitting some of them facing trial in the same case. This proposition is enshrined in the maxim *falsus in uno falsus 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, we have examined the prosecution evidence. We have scrutinized the statements of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3).The perusal of the statements of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) clearly reveals that according to the said eye witnesses, they had seen Muhammad Javaid, (since acquitted) while armed with a *pistol* and *firing at the right leg of the deceased* and had also seen Nusrat Pervaiz (since acquitted), while armed with a sota, giving a blow with the same to Bashir Ahmad (PW-1), hitting him on the ankle of his left leg.The prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) were adjudged to have deposed falsely against Muhammad Javaid and Nusrat Pervaiz (both since acquitted). We are unable to find any independent corroboration of the prosecution case against the appellant and we are unable to distinguish the case of the appellant from the case of acquitted co-accused namely

Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair (since acquitted) as the prosecution evidence with regard to the appellant and his co-accused namely Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair (all since acquitted), is similar, being based on the statements of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3). We find no reason to believe their statements with regard to the appellant in absence of any reason to do so. This lying on the part of the witnesses with regard to Noor Muhammad, Ghulam Haider, Muhammad Javed, Nusrat Pervaiz, Muhammad Imtiaz, Muhammad Salam, Muhammad Khan son of Muhammad Mumtaz, Muhammad Khan son of Noor Muhammad and Lakhwair (all since acquitted) has vitiated our trust in them. We are thus satisfied that the evidence of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) 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 Versus Ameer 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."*

21. Another flaw of the prosecution case apparent from the perusal of the record is that fact that on 01.04.2023, the learned counsel for the complainant, gave up the prosecution witness namely Tasawar as being unnecessary , however, thereafter the learned trial court examined Tasawar (CW-1) as a court witness and Tasawar (CW-1) stated that he was an *eye witness of the incident*, however, Tasawar (CW-1) did not mention any detail of the incident in his statement recorded by the learned trial court and only gave evidence with regard to the different recoveries made during the investigation of the case. In his statement before the learned trial court ,Tasawar (CW-1) got recorded as under:-

> "**States that I am also eye witness of occurrence.** On 06.09.2021, police came at the spot. In my presence, investigating officer collected blood stained soil whereof Jahangir, deceased after fallen. He made it into sealed parcel and secured through recovery memo (Exh.CW-1/A), witnessed and thumb marked by me. Investigating officer also collected five empties of cartridges of gun 12-bore in my presence. Investigating officer secured said empties of cartridges and made them into sealed parcel and secured through recovery memo

> (Exh.CW-1/B),, witnessed and thumb marked by me. Investigating officer also collected eleven empties of pistol 30-bore from the crime scene in my presence, made them into sealed parcel and secured said empties through recovery memo (Exh.CW-1/C), witnessed and thumb marked by me. 1.0 recorded my statement U/S 161 Cr.P.C."(emphasis supplied)

It is also a fact that Tasawar (CW-1) was cross examined by the learned counsel for the complainant , however, the learned counsel for the complainant also did not question him at all with regard to the details of the incident in which Jehangir (deceased) lost his life and Hafiza Madiha (PW-3) was abducted. The following cross-examination was conducted by the learned counsel for the complainant upon Tasawar (CW-1) :-

> "X X X X Cross-examination by Mirza Muhammad Azam Advocate. learned counsel for the complainant.
>
> Muhammad Ameen PW had become in league with accused and for said reason, he did not appear today to depose."

This silence of Tasawar (CW-1) with regard to the particulars of the occurrence during which Jehangir (deceased) lost his life and Hafiza Madiha (PW-3) was abducted and the failure of the learned counsel for the complainant to question him about such details engulfs and mires the whole prosecution case in uncertainty and doubt.

22. With regard to the charge against the appellant that he had raped Hafiza Madiha (PW-3) after having abducted her, we have observed that the prosecution evidence in that regard is also not only contradictory but the said alleged facts could not be proved. The learned Deputy Prosecutor General has stressed much

upon the rule of appreciation of evidence that the sole statement of the victim can be taken into account to maintain the conviction and sentence of the appellant under the charge of rape. However, the said rule is applicable only when the said statement of the prosecutrix is found to be confidence inspiring and trustworthy. The self-contradictory statement of Hafiza Madiha (PW-3), recorded during the trial of the case by the learned trial court, is neither trustworthy nor confidence inspiring and thus, the same is not worthy of any reliance. We have noticed that during the course of trial, the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) could not prove beyond shadow of doubt as to whether Hafiza Madiha (PW-3) was indeed raped or otherwise. The very foundational flaw in the prosecution's case with regard to the abduction and rape of Hafiza Madiha (PW-3) is the date as mentioned by Hafiza Madiha (PW-3) of escaping from the custody of the appellant. According to Hafiza Madiha (PW-3), it was only on the **night of 08.09.2021**, that she got an opportunity to escape and after leaving the place of her detention, she went to a shop in the morning and it was the said shopkeeper who then informed the police and thereafter it was the police who brought Hafiza Madiha (PW-3) to the police station. Hafiza Madiha (PW-3) in her statement recorded by the police claimed as under:-

> "**On the night of 08-09-2021**, I on finding opportunity and prevailing of darkness, I escaped from the house of my detention, reached a vicinity and found a shop when **sun was to a rise**, I told the shop owner whole story, who got me sit inside the shop and informed the police through his mobile phone. After some time, police reached there and took me to Police Station. " (emphasis supplied)

Contrary to the above statement of Hafiza Madiha (PW-3) that it was on the **night of 08.09.2021**, that she got an opportunity to escape and after leaving the place of her detention, she went to a shop in the morning and it was the said shopkeeper who then informed the police and thereafter it was the police who brought Hafiza Madiha (PW-3) to the police station, Shaukat Ali, SI (CW-9) stated that Hafiza Madiha (PW-3) had arrived at the police station on **07.09.2021** and it was also on 07.09.2021 that he recorded her statement. In his statement recorded by the learned trial court, Shaukat Ali, SI (CW-9) stated as under:-

> " **On 07.09.2021**, Mst. Hafiza Madiha, abductee,was recovered and joined the investigation.
>
> ……..
>
> On 07.09.2021, Hafiza Madiha appeared before me alongwith her father. I recorded statement of Hafiza Madiha on 07.09.2021
>
> ……..
>
> On 07.09.2021, complainant alongwith Hafiza Madiha, victim appeared before me for the first time in the area."

In this manner, it could not be proved as to when Hafiza Madiha (PW-3) was abducted and raped and when she escaped after the rape, as the dates of her escape as given by the different prosecution witnesses are quite contradictory. It is also a fact that Hafiza Madiha (PW-3) also claimed that she could not direct the police to the place of her abduction and rape for the reason that the police refused. In her statement, Hafiza Madiha (PW-3) repeatedly stated as under:-

> " I could locate the place of detention to police but the police was not equipped with certain weapons, hence, they did not visit the place.
>
> ……

> I asked police for pointing out places where I was raped and detained but due to meager resources, police did not visit said places. Even subsequently police did not take me for pointation of said places."

In this manner, the place of rape of Hafiza Madiha (PW-3) could also be not proved.

23. More concerning is the fact that the complainant of the case namely Bashir Ahmad (PW-1) admitted that he had not given any statement to the Investigating Officer of the case regarding the abduction and rape of Hafiza Madiha (PW-3), whereas both Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) were confronted with their previous statements wherein it had not been mentioned that Hafiza Madiha (PW-3) had been raped and abducted or that she narrated the incident of her rape and abduction to Bashir Ahmad (PW-1) and Hafiz Muhammad Irfan (PW-2). During cross-examination Bashir Ahmad (PW-1) admitted as under:-

> " I did not give any statement to police. regarding the fact that between 08/09.09.2021, police informed me that my daughter Hafiza Madhia after getting rid of accused had reached the Police Station. **I did not mention in my statement before police that Hafiza Madhia informed me and PWs that she was abducted by accused from her house**. I did not mention in my any statement before police that Hafıza Madiha told me her abduction, accused forced her to run in the fields, where their motorcycles were parked.
>
> ……..
>
> I had not given any statement to police except my statement (Exh.PA). **I did not mention** in my statement that between 08/09.09.2021, police informed me that my daughter Hafiza Madiha after getting rid of accused had reached police station, so I also reached there, Hafiza Madiha told me and other PWs that

> accused persons took her forcibly out of her house and on seeing the people, they on gun point forced her to run in the crops to the point where their motorcycle were parked, Sardar and Imtiaz accused, forcibly took her on their motorcycle to some unknown place while other accused on their motorcycle left to unknown place,Imtiaz and Sardar, accused, kept her confined on gun point and Sardar alias Sardari committed rape with her on gun point. I did not give any statement to police that afterwards both of them took Hafiza Madiha to another deserted house and they forced Hafiz Madiha to take her to Kasur city, Sardar alias Sardari asked Hafiza Madiha that he will manage ante dated Nikah with her to take revenge of marriage of Parveen Bibi with my son Shafqat. I also did not mention in my statement before police that she further told that on prevailing darkness she managed her escape from place of rape and after covering a distance she reached in vicinity where she informed police and police took her to police station"

Hafiz Muhammad Irfan (PW-2) was cross-examined in this regard and the learned trial court observed as under:-

> " I had given statement to police that ori 08.09.2021, police informed us that my wife Hafiza Madiha after getting rid of accused had reached Police Station, so I reached at Police Station with complainant. Hafiza Madhia told us that accused took her forcibly out of her house of the occurrence and on seeing the people, they on gun point forced her to run in the crops to the point where their motorcycles were parked. (**Learned defense counsel requested for provision of copy of said statement, however, it is not available on record**)." (emphasis supplied)

During cross-examination of Hafiza Madiha (PW-3), the learned trial court observed as under:-

> " I had mentioned in my statement U/S 161 Cr.P.C. that on the night of 08.09.2021, I finding an opportunity and prevailing of darkness, escaped from house of my detention, I reached a vicinity and found a shop when sun had risen, I told the shop owner whole story, who got me inside the shop and informed the police through his mobile phone. (Confronted with Exh.DB, **where it is not so mentioned**). I had mentioned in my statement U/S 161 Cr.P.C. that police reached there and took me to Police Station. (Confronted with Exh.DB, **where it is not so mentioned**). I had mentioned in my statement U/S 161 Cr.P.C. that I could locate the place of detention to police but police was not well equipped with certain weapons, hence, they did not visit the place (Confronted with Exh.DB, where **it is not so mentioned**). I had mentioned in my statement U/S 161 Cr.P.C. that I had referred source of light. (Confronted with Exh.DB, **where it is not so mentioned**). In my first statement before police, I had mentioned name of Salam, Muhammad Khan S/O Mumtaz, accused. (Confronted with Exh.DB, where **it is not so mentioned**)." (emphasis supplied)

The said improvements made by Hafiza Madiha (PW-3) and Hafiz Muhammad Irfan (PW-2) were substantial and were made with regard to crucial aspects of the prosecution case. By improving their previous statements, Hafiza Madiha (PW-3) and Hafiz Muhammad Irfan (PW-2)impeached their own credit. Article 151 of the Qanun-e-Shahadat Order 1984 provides as under: -

> "151. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:
>
> (1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be un worthy of credit;
>
> (2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence ;
>
> **(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted ;"**

As Hafiza Madiha (PW-3) and Hafiz Muhammad Irfan (PW-2) introduced dishonest, blatant and substantial improvements to their previous statements and were duly confronted with their former statements, hence their credit stands impeached and Hafiza Madiha (PW-3) and Hafiz Muhammad Irfan (PW-2)cannot be relied upon on being proved to have deposed with a slight, intended to mislead the court. The august Supreme Court of Pakistan in the case of "*Muhammad Ashraf Vs. State"* (**2012 SCMR 419**) took a serious notice of the improvements introduced by witnesses and rejected their evidence. This Court is satisfied that the evidence of Hafiza Madiha (PW-3) and Hafiz Muhammad Irfan (PW-2) has no intrinsic worth and is to be rejected out rightly. The august Supreme Court of Pakistan in a recent case reported as "*Muhammad Mansha Vs. The State"* (**2018 SCMR 772**) has enunciated the following principle:

> *"Once the Court comes to the conclusion that the eye witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that whenever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence".*

The august Supreme Court of Pakistan in the case reported as *Muhammad Arif Vs. The State* (**2019 SCMR 631**) has enunciated the following principle:

> *"It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge."*

It is a well-established principle of administration of justice in criminal cases that finding of guilt against an accused person cannot be based merely on the high probabilities that may be inferred from evidence in a given case. The finding as

regards the guilt of the accused should be rested surely and firmly on the evidence produced in the case and the plain inferences of guilt that may irresistibly be drawn from that evidence. Mere conjectures and probabilities cannot take the place of proof. Reliance is placed on the case of *"IBRAR HUSSAIN and others Versus THE STATE and another"* (**2007 SCMR 605**), wherein, the august Supreme Court of Pakistan has held as under:-

> *"It is a settled law that in rape/Hudood cases conviction can be awarded on the sole testimony of the victim subject to the condition that the statement of victim must inspire confidence. In the present case as mentioned above the statement of the victim is not inspiring-confidence at all and this fact was not considered by both the Courts below in its true perspective and the principle laid down by this Court in various pronouncements. We are pained to note that both Courts below had given benefit of doubt to the prosecution in violation of principle laid down by this Court in various pronouncements. It is a settled law that benefit of doubt always be given to the accused and this principle was violative by the Courts below."*

24. Another fault of the prosecution case is that the facts narrated in the statement of Hafiza Madiha (PW-3) were not supported by the observations and opinion of Dr. Rabia Iram (CW-7). Though Hafiza Madiha (PW-3) alleged that she had been violently raped however Dr. Rabia Iram (CW-7) did not observe any evidence of such violence. This Court has noted that Dr. Rabia Iram (CW-7), on examining Hafiza Madiha (PW-3) found only one small abrasion on the back and a fresh bruise on the neck of Hafiza Madiha (PW-3) at the time of examination of Hafiza Madiha (PW-3). Dr. Rabia Iram (CW-7) did not observe that there was any presence of laceration, abrasion, or contusion on any part of the body, especially on elbows, thighs, or lower back of Hafiza Madiha (PW-3). Being thrown on hard ground would necessarily have resulted in marks of violence appearing on the body of Hafiza Madiha (PW-3), however, Dr. Rabia Iram (CW-

7) did not observe any such marks. Hafiza Madiha (PW-3) had claimed that on the night of her abduction, she was made to run barefoot, which resulted injuring her feet. During cross-examination Hafiza Madiha (PW-3) claimed as under:-

> "My feet were injured and received number of thrones"

Dr. Rabia Iram (CW-7), contradicted the said statement of Hafiza Madiha (PW-3) and conclusively stated that she did not find any such injury. During cross-examination, Dr. Rabia Iram (CW-7) stated as under:-

> "I did not observe any injury on the feet of victim. I did not observe any injury on the private parts of victim."

Dr. Rabia Iram (CW-7) also stated that at the time of examination of Hafiza Madiha (PW-3) she had also recorded the history of the incident as narrated to her by Hafiza Madiha (PW-3) and at that time Hafiza Madiha (PW-3) never stated that she had been raped by the appellant. Dr. Rabia Iram (CW-7) stated that she recorded the history of the incident as narrated to her by Hafiza Madiha (PW-3) as under:-

> "According to the victim, there was some guy named Sardar **attempted to rape her. She punched him and he got away.** She was rescued by police. She mentioned that she was married one month ago. Assailant name was Sardar and not related to the victim" (emphasis supplied)

It was not ever the claim of any of the prosecution witnesses namely Bashir Ahmad (PW-1), Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) that Dr. Rabia Iram (CW-7) had not recorded the history of the incident as narrated to her by Hafiza Madiha (PW-3) correctly or that Dr. Rabia Iram (CW-7) had recorded the said history of the incident on her own. The failure of Hafiza Madiha (PW-3) to allege rape at the time of giving the history of the incident to Dr. Rabia Iram (CW-7) is revealing of the fact that Hafiza Madiha (PW-3) developed the

narrative of being raped subsequently. All these facts of the prosecution case themselves prove that the prosecution could not prove the charge of abduction and rape beyond a shadow of doubt.

25. The learned Deputy Prosecutor General alongwith the learned counsel for the complainant has also laid much stress upon the report of the Punjab Forensic Science Agency, Lahore (Exh.PC), wherein it had been determined that the DNA profiles obtained from the swabs taken from the vagina of Hafiza Madiha (PW-3) were a mixture of two individuals and the appellant could not be excluded as being a contributor to the DNA profiles obtained from the swabs taken from the vagina of Hafiza Madiha (PW-3) . In Chapter 17 “Examination of Biological Stains and Hair”, from page 430 to page 440 of Rai Bahadur Jaising P. Modi's *A Textbook of Medical Jurisprudence and Toxicology* (26th Edition 2018) it has been discoursed as under:-

> "DNA PROFILING (DEOXYRIBONUCLEIC ACID TYPING)
>
> General-
>
> Life on earth is based on cells; Cell is the basic unit of life. There are around trillions of cells in a human blood. Every cell has a nucleus (except the RBCS); Inside the nucleus which is considered to be the central processing unit of the cell, 23 pairs of chromosomes are present. Twenty-two pairs of autosomal chromosomes and one pair of sex chromosomes (XX in females and XY in males). Chromosomes carry linearly arranged genetic units, which are materially referred as Deoxyribonucleic Acid (DNA). There are about 3 billion nucleotides in human DNA. Human DNA is approximately 2 metres long if it is place end to end from 46 chromosomes of a single cell. DNA is present in coiled and super coiled form in the cell. The super coiled structures are known as the chromosomes. This DNA contains genetic information which decides the phenotypic character (height, skin colour, eye colour, hair colour, etc) of an individual. The DNA carries the genetic information from parents to offspring, being half of the DNA from mother and the other half from father. The DNA carries all the information to make proteins (hormones, antibodies, enzymes and structural proteins like actin, myosin,

keratin, tubuline) for proper functioning of the body. Another class of DNA present in human cell is the mitochondrial DNA which is present in the cell organelle mitochondria. Unlike nuclear DNA mitochondrial DNA is maternally inherited because the mitochondria of sperm are present in the tail and the tails is digested by hyluronic acid present around the egg cell at the time of fertilization. The DNA is the genetic material that makes every individual different, except for genetically identical twins. A pattern of chemical signals ie, genetic code, has been discovered within the DNA molecule, which is very unique to each individual, just like their actual fingerprint. Thus, the DNA profiling, unique to each individual, is colloquially referred to as 'DNA Fingerprinting' and it is also known as DNA typing. The companies who offer the DNA profiling claim that a DNA match of two individuals is as unlikely as 1 in 30 billion. One more estimation puts it at 1 in 800, 000, 000 The chemical DNA was first discovered in 1869, but its role in genetic inheritance was not demonstrated until 1943. In 1944, Oswald Avery made the breakthrough discovery that DNA is the basic genetic material. A few years later, in 1953, James Watson and Francis Crick determined that the structure of DNA is a double-helix polymer, a spiral consisting of two DNA strands wound around each other. The technique of DNA Fingerprinting was 229 first developed in 1984 by Dr Alec Jeffreys from Britain. Since then, increasing attention has been paid around the world to the use of DNA profiling for individualization purposes in criminal and allied cases. Paternity testing is another important use through DNA since 1988. The use of Restriction Fragment Length Polymorphism (RFLP) analysis of minisatellites or Variable Number of Tandem Repeat (VNTR) loci scattered along the chromosomes has spread interest among the medico legal professionals. The use of microsatellites or Short Tandem Repeats (STRs) also gained momentum with the passing years. These are consecutive repeats that are abundantly found in DNA. In contrast to 100-200 bps length of RFLPS and VNTRs, the STRS are of a smaller length of 2-10 bps. The short size of STRS is particularly useful if the sample is degraded or with Low Copy Number (LCN) DNA. Such degraded or fragmented DNA is encountered in samples that have been exposed to hostile external environment conditions like sunlight, heat, excessive salt etc. The traditional techniques like RFLP and VNTRS are not very helpful in such cases. The variants of STRS including Autosomal STR, MINI-STR, Y-STR and X-STR have immensely contributed to the forensic field. Three types of results are possible after comparing the question sample (Q) and the known sample (K) in cases of autosomal, Y and X STR markers analysis. These are-(1) Exclusion This result is produced when the STR haplotypes are different and could not have originated from the same source. (2) Inclusion (or failure to exclude)- This result is produced when STR haplotypes that result from Q-K comparison are the same and could have originated from the same source. (3) Inconclusive:-The result is inconclusive when the data are insufficient to render an interpretation or in other words ,ambiguous results are obtained.

The Autosomal STR markers: are commonly used to establish identity and settle paternity disputes. They are studied on all the 22 pairs of autosomes to avoid linkage issues within the markers.

……..

Samples required for DNA profiling. Any biological material such as a drop of blood, saliva, semen, and any body part such as bones, tissue, skull, teeth, and hair with the root found at the scene of crime may serve as a sample for DNA profiling. The CDFD gives the following guidelines about collecting samples:

(i) Maternity/paternity/parentage: Blood samples of mother, disputed child and alleged father are required. The blood samples (2 - 3ml) can be collected in the sterile blood collection material (EDTA vials) sent by the laboratory, in the presence of Court authorities. These samples should be sent in ice in a thermos flask either by a messenger or through courier, so as to reach the laboratory within 72 hours after collection. (ii) Identity of the deceased: Any body part of the deceased found at the scene of crime along with the blood samples of the blood relatives of the suspected individuals (viz., parents, and children) should be sent.
(iii) Identity of rape/rapist: Blood / semen stained clothes, garments, swabs, and slides of the victim and the accused is forwarded to the laboratory.

…….

Problems linked with DNA profiling. One of the lasting effects of the OJ Simpson case will likely be greater scrutiny by defence lawyers of the prosecution's forensic DNA presented in criminal cases. In the Simpson case, the defence, in essence, put the crime evidence laboratory on trial. There is no substantial dispute about the underlying scientific principles in DNA profiling, however, the adequacy of laboratory procedures and the competence of the experts who testify should remain open to inquiry.

Although, there is a common consensus within the scientific community that DNA profiling can yield results with a very high probability, the complex procedure of DNA profiling is not without problems. At every phase of the seven-step procedure just described, mistakes **and improper handling of the DNA-probe can produce false results** which in some cases can lead to a life sentence or even death-penalty judgement. Therefore, the adequacy of laboratory procedures and the competence of the experts who testify should remain open to inquiry.

Furthermore, the DNA samples can be mixed up by the police or the laboratory personnel (this actually took place in one case) or the amount of DNA can be insufficient. The various contaminants include microbes, fibres, concrete, soil, vegetable matter, other body fluids besides foreign DNA from field agents and laboratory workers. It can be avoided by handling the forensic evidence at a place that is segregated from the , where amplication of the sample is to be conducted. If the sample is accidentally mixed with foreign DNA before amplification, the contaminant will also get amplified resulting in mixed profiles at the time of STR analysis. Secondly, a significant 'source of error' is the incomplete digestion of the DNA by the restriction enzymes. The other extreme can be an over-digestion also called 'star activity'. Thirdly, a 'band shift' can occur, meaning that the DNA fragments which are put in several lanes next to each other can influence each other's mobility, thus causing

> wrong results of the gel electrophoresis. In connection with the problem of 'band shift', the gel electrophoresis itself may not be conducted properly, i.e., the voltage can be too low or too high or the concentration of the gel can be incorrect. Finally, the expert who determines a match can be biased ".

In our legal framework DNA evidence is evaluated on the strength of Articles 59 and 164 of the Qanun-e-Shahadat, 1984. The former provision states that expert opinion on matters such as science and art falls within the ambit of 'relevant evidence'. On the other hand, the latter provision provides that the Court may allow reception of any evidence that may become available because of modern devices and techniques. Under this regime the technician who conducts experiment to scrutinize DNA evidence is regarded as an expert whose opinion is admissible in Court. Subsection (3) of Section 9 of the Punjab Forensic Science Agency Act, 2007, reaffirms this legal position when it enacts that "*a person appointed in the Agency as an expert shall be deemed as an expert appointed under Section 510 of the Code of Criminal Procedure, 1898] and a person specially skilled in a forensic material under Article 59 of the Qanun-e-Shahadat, 1984 (P.O. X of 1984).*" A combined reading of all these provisions shows that the report of the Punjab Forensic Science Agency regarding DNA analysis is per se admissible in evidence under Section 510, Cr.P.C. Since DNA analysis report is reckoned as a form of expert evidence in criminal cases, it cannot be treated as primary evidence and can be relied upon only for purposes of corroboration. This implies that no case can be decided exclusively on its basis. Credibility of the DNA test *inter-alia* depends on the standards employed for collection and transmission of samples to the laboratory. Safe custody of the samples is pivotal. Thus, in every case the prosecution must establish that the chain of custody **was unbroken, unsuspicious, indubitable, safe and secure**.

Any break in the said chain or lapse in the control of the sample would make the DNA test report unreliable. In the cases of "*Mst. SAKINA RAMZAN versus State*" (**2021 SCMR 451**), "*Ikramullah v. The State"* (**2015 SCMR 1002**), "*The State through Regional Director ANF v. Imam Bakhsh and others"* (**2018 SCMR 2039**) and "*Khair-ul-Bashar v. The State"* (**2019 SCMR 930**) the august Supreme Court of Pakistan refused to rely on the report of the Government Analyst and set aside conviction when the prosecution could not establish safe transmission of the samples from the place of recovery to the laboratory. In the present case, the prosecution failed to prove the safe transmission of the *swabs taken from the vagina* of Hafiza Madiha (PW-3) to the Punjab Forensic Science Agency, Lahore, making the value of the report of the Punjab Forensic Science Agency, Lahore (Exh.PC) of no worth. As mentioned above, there is a discrepancy as to the date when Hafiza Madiha (PW-3) came to the police station after escaping from illegal confinement, with Hafiza Madiha (PW-3) claiming that she had returned only on the morning of **08.09.2021**, whereas Shaukat Ali, SI (CW-9) , the Investigating Officer of the case claiming that Hafiza Madiha (PW-3) had come to the police station on **07.09.2021** and also had got recorded her statement on the said date. The discrepancy in the prosecution's case with regard to the medical examination of Hafiza Madiha (PW-3) is all the more serious and grave. Asmat Mukhtiar 184/LC (CW-8) stated that it was on **07.09.2021**, that she had taken Hafiza Madiha (PW-3) to the RHC, Madrissa to be examined and Dr. Rabia Iram (CW-7) had examined her on the said date and had also handed over to her two sealed parcels said to contain the swabs taken from the body of Hafiza Madiha (PW-3). In her

statement recorded by the learned trial court,Asmat Mukhtiar 184/LC (CW-8), stated as under:-

> " States that on **07.09.2021**, I was posted at police station Madrissa. On the same day, Shaukat Ali, SI/1.O handed over to me Hafiza Madiha D/O Bashir Ahmad at 11:55AM for her medical examination. I took Hafiza Madiha at RHC Madrissa and get her medically examined. Dr. Rabia Iram, WMO, RHC Madrissa, after medical examination of Hafiza Madiha, handed **over to me two sealed parcels of swabs**. Upon return to police station, I handed over said sealed parcels of swabs and report of medical examination to Shaukat Ali, SI/I.O" (emphasis supplied)

Contradicting the statement of Asmat Mukhtiar 184/LC (CW-8) that it was on **07.09.2021**, that she was handed over two sealed parcels said to contain the swabs taken from the body of Hafiza Madiha (PW-3),Dr. Rabia Iram (CW-7) stated that she had examined Hafiza Madiha (PW-3) on **08.09.2021 at 02.00 a.m.** In her statement recorded by the learned trial court, Dr. Rabia Iram (CW-7) stated as under:-

> " States that on **08.09.2021 at about 02:00am**, I was posted as WMO at RHC, Madrissas I medically examined Madiha D/O Bashir Ahmad, aged about 16-years, caste Joiya, R/O Mouza Jodheka, brought by Asmat Mukhtar, 184/LC"(emphasis supplied)

The bare perusal of the above referred statements of Dr. Rabia Iram (CW-7) and Aslam Mukhtiar 184/LC (CW-8) makes it abundantly clear that if Dr. Rabia Iram (CW-7) had examined Hafiza Madiha (PW-3) on **08.09.2021 at 02.00 a.m.** then how could Asmat Mukhtiar 184/LC (CW-8) been handed over two sealed parcels said to contain the swabs taken from the body of Hafiza Madiha (PW-3) on **07.09.2021**. Moreover, as mentioned above, according to Hafiza Madiha (PW-

3), it was only on the night of **08.09.2021**, that she got an opportunity to escape and after leaving the place of her detention, she went to a shop **in the morning** and it was the said shopkeeper who then informed the police and thereafter it was the police who brought Hafiza Madiha (PW-3) to the police station and in this manner, if the statement of Hafiza Madiha (PW-3) is to be believed, then Dr. Rabia Iram (CW-7) could not have examined Hafiza Madiha (PW-3) on **08.09.2021 at 02.00 a.m.** as by then Hafiza Madiha (PW-3) had not even been brought to the police station. In this manner, not only the very fact as to whether Hafiza Madiha (PW-3) was ever medically examined could not be proved but also the consequential taking of the vaginal swabs from the body of Hafiza Madiha (PW-3) and the safe custody and the safe transmission of the swabs taken from the vagina of Hafiza Madiha (PW-3) to the Punjab Forensic Science Agency, Lahore is also not proved and in the absence of that evidence, no reliance can be place on the report of Punjab Forensic Science Agency, Lahore (Exh.PC).This portion of the prosecution evidence proves that there are missing links in the chain relating to the submission of the swabs taken from the body of Hafiza Madiha (PW-3) . The break in the chain of custody of the swabs taken from the vagina of Hafiza Madiha (PW-3) casts doubts and impairs and vitiates the conclusiveness and reliability of the report of the Punjab Forensic Science Agency, Lahore (Exh.PC) and on this score, the report of Punjab Forensic Science Agency, Lahore (Exh.PC) regarding forensic DNA Analysis is of no legal worth. The august Supreme Court of Pakistan has observed in the case of "*Azeem Khan and another Vs. Mujahid Hussain and others"* (**PLJ 2016 SC 123**) that the report of Punjab Forensic Science Agency, Lahore with regard to DNA analysis cannot be implicitly relied upon and has held as under:-

> "*In the recent past many scandals in USA, UK and other countries have surfaced where desired DNA test reports were procured by the investigative by contaminating the samples. Such contamination has also been reported in some cases while the samples remained in the laboratories. Many inquires were held on this issue and stringent law has been made by many States to prevent the contamination of samples outside and inside the laboratories. Proper procedure has been laid down for securing and carefully putting into parcel the suspected materials to co-relate with the samples of the parents to establish paternity or maternity. Similarly, stringent check and procedure has been provided to avoid and prevent cross contamination of the two samples because if both come in contact with each others then, it will give false positive appearance and the expert is thus misled. It has also been discovered that credentials of many experts, claiming possessed of higher qualification in this particular field, were found fake and they were thus, removed from service. The DNA Wikipedia on web is an unrebutted testimony to these facts.*
>
> *28. In any case, it is an expert opinion and even if it is admitted into the evidence and relied upon, would in no manner be sufficient to connect the necks of the appellants with the commission of the crime when the bulk of other evidence has been held by us unbelievable thus, no reliance can be placed on it to award a capital sentence. Moreover, to ensure fair-play and transparency, the samples in the laboratories from the parents should have been taken in the presence of some independent authority like a Magistrate and also the recovered samples from the crime scene in the same way to dispel the chances of fabrication of evidence through corrupt practices and the transition of the samples to the laboratory should have also been made in a safe and secure manner. But all these safeguards were kept aside."*

26. The learned Deputy Prosecutor General and the learned counsel for the complainant, have submitted that the recovery of the Repeater gun (P-5) from the appellant namely Sardar Ahmad alias Sardari offered sufficient corroboration of the statements of the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3). Regarding the recovery of the Repeater gun (P-5) from the appellant namely Sardar Ahmad alias Sardari, 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 *Repeater gun (P-5)* from the appellant namely Sardar Ahmad alias Sardari which was in clear violation of section 103 Code of Criminal Procedure, 1898. Tasawar (CW-1) admitted during the cross-examination , as under:-

> " No adjoining person of the place of recovery was assositaed in the recovery proceedings"

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 *Repeater gun (P-5)* from the appellant namely Sardar Ahmad alias Sardari, being evidence that 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."*

Moreover Tasawar (CW-1), admitted that the *Repeater gun (P-5)* was recovered from the house of Ghulam Haider (since acquitted), which house was at a distance of 25 kilometres from the house of appellant. Shaukat Ali, SI (CW-9) ,Investigating Officer of the case , during cross examination ,admitted as under :-

> "Volunteered that recovery was effected from the house of Ghulam Haider
>
> …..

> The house of Ghulam Haider was locked. Sardar alias Sardari, accused himself procured key of the lock. Police did not lodge any FIR against Ghulam Hyder regarding illicit weapon. **Distance between the house of Ghulam Haider and house of Sardar alias Sardari, accused is about 25 kilometers**." (emphasis supplied)

In this manner, the prosecution could not prove that the Repeater gun (P-5) was recovered from a place which was under the exclusive possession of the appellant. Therefore, the recovery of the *Repeater gun (P-5)* 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 *Repeater gun (P-5)* is not proved and the same cannot be used as a circumstance against the appellant. Even otherwise as we have disbelieved the ocular account in this case, hence the evidence of recovery would have no consequence. It is an admitted rule of appreciation of evidence that recovery is only a supportive piece of evidence and if the ocular account is found to be unreliable, then the recovery has no evidentiary value.

27. The learned Deputy Prosecutor General and the learned counsel for the complainant have also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence as stated by the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) was that Mst. Perveen Bibi ,the sister of the appellant namely Sardar Ahmad alias Sardari was abducted by Shafqat, the brother of the deceased and the appellant namely Sardar Ahmad alias Sardari committed the *Qatl-i-Amd* of the deceased due to the said grudge. A perusal of the statements of the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) reveals that they failed to

prove the motive of the occurrence as narrated by them in their statements before the learned trial court. The prosecution witness namely Bashir Ahmad (PW-1) admitted during cross-examination that the case that his son namely Shafqat and Mst. Perveen Bibi never joined the investigation of the case and more importantly, the appellant had no grievance against the deceased as such. The prosecution witness namely Bashir Ahmad (PW-1) during cross-examination, admitted as under:-

> " Shafqat contracted marriage with Mst. Parveen Bibi without my consent. Jahangir, deceased had also no hand in said marriage. My daughter Hafiza Madiha also had no role in marriage of Mst. Parveen Bibi with Shafqat. **Accused had no grudge against me, Jahangir deceased and Hafiza Madiha** pertaining to said marriage.
>
> ……..
>
> In my presence, Shafqat and Parveen Bibi did not give any statement in this case.
>
> …….
>
> From the date, my son Shafqat contracted love marriage wth sister of Sardar Ahmad, accused **for two years**, no altercation took place between accused and us." (emphasis supplied)

The other prosecution witness namely Hafiz Muhammad Irfan (PW-2) also stated that Shafqat never joined the investigation of the case and admitted during cross-examination, as under:-

> "Shafqat and Asia Parveen did not join investigation of this case and did not give any statement"

Shaukat Ali, SI (CW-9),the Investigating Officer of the case also stated that Shafqat never joined the investigation of the case and admitted during cross-examination, as under:-

> "Shafqat, brother of deceased and Parveen, his wife did not join investigation regarding motive of occurrence."

Hafiza Madiha (PW-3) was confronted with her previous statement (Exh.DB) that she had not mentioned the motive of the incident in the said statement and the learned trial court observed as under:-

> " I had mentioned in my statement U/S 161 Cr.P.C. that Mst. Parveen bibi contracted marriage with my brother Shafqat Mahmood with her free will, my father oustd my brother Shafqat from house, he offered special oath but **accused bore grudge. (Confronted with Exh.DB, where it is not so mentioned)** " (emphasis supplied)

The above referred portions of the statements of the prosecution witnesses namely Bashir Ahmad (PW-1) Hafiz Muhammad Irfan (PW-2) and Hafiza Madiha (PW-3) clearly prove that the prosecution witnesses failed to provide evidence enabling us to determine the truthfulness of the motive alleged. The prosecution witnesses failed to prove 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. There is a haunting silence 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 supportive piece of evidence and if the ocular account is found to be unreliable then motive alone cannot be made 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.*"

28. Considering all the above circumstances, we entertain serious doubt in our minds regarding the involvement of Sardar Ahmad alias Sardari son of Noor Ahmad (appellant) 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 held 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 this Court has 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 Ayub Masih 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."*

29. For what has been discussed above, Criminal Appeal No.265-J of 2023 lodged by Sardar Ahmad alias Sardari son of Noor Ahmad (appellant) is **allowed**. The conviction and sentence of Sardar Ahmad alias Sardari son of Noor Ahmad (appellant) awarded by the learned trial court through the impugned judgment dated 31.05.2023 are hereby set-aside. Sardar Ahmad alias Sardari son of Noor Ahmad (appellant) is ordered to be acquitted by extending him the benefit of doubt. The appellant namely Sardar Ahmad alias Sardari son of Noor Ahmad is in custody and he is directed to be released forthwith if not required in any other case.

30. Consequently, the **Murder Reference No. 20 of 2023** is answered in **Negative** and the sentence of death awarded to Sardar Ahmad alias Sardari son of Noor Ahmad, is **Not Confirmed**.

(RAJA GHAZANFAR ALI KHAN)
JUDGE

(SADIQ MAHMUD KHURRAM)
JUDGE

Raheel

Approved for reporting

Judge