

Stereo. HC JD A 38.
Judgment Sheet

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

Criminal Appeal No. 698-J of 2020
(Zahoor Hussain Vs. The State)

J U D G M E N T

Date of hearing: 25.06.2025.

Appellant by: Mr. Muhammad Farooq, Advocate.

State by: Mr. Umar Farooq Khan, Additional
Prosecutor General .

SADIO MAHMUD KHURRAM, J. – Zahoor Hussain son of Manzoor Hussain (convict) was tried alongwith Zakia Bibi(since acquitted), the co-accused of the convict by the learned Additional Sessions Judge, Bhakkar, in case F.I.R No. 464 of 2018 dated 09.10.2018 registered in respect of offences under sections 302 and 109 P.P.C. at the Police Station Saddar Bhakkar District Bhakkar for committing the *Qatl-i-Amd* of Nazar Hussain son of Ranjhu (deceased) and Waqar son of Nazar Hussain (deceased). The learned trial court vide judgment dated 28.02.2019, convicted Zahoor Hussain son of Manzoor Hussain (convict) and sentenced him as infra:

Zahoor Hussain son of Manzoor Hussain :

Imrisonment for Life on two counts under section 302(b) PPC as Tazir for committing Qatl-i-Amd of Nazar Hussain son of Ranjhu (deceased) and Waqar Hussain son of Nazar Hussain (deceased) and directed to pay Rs.500,000/- as compensation under section 544-A, Cr.P.C. to the legal heirs of each of the deceased and in case of default, the convict was ordered to further undergo six months of simple imprisonment for each default.

Zakia Bibi, the co-accused of the convict, was however acquitted by the learned trial court.

2. Feeling aggrieved, Zahoor Hussain son of Manzoor Hussain (convict) lodged the instant Criminal Appeal No.698-J of 2020 assailing his conviction and sentence.

3. Precisely, the necessary facts of the prosecution case, as stated by Ehsan Ullah (PW-17), the eye witness of the case, are as under: -

“Stated that I used to run a peter workshop in Dera Ismail Khan while Nazar Hussain deceased my brother was used to run a shop of spare parts in Dera Ismail Khan City. On 09.10.2018 at sham waila after closing our shops we were coming back towards our house from Dera Ismail Khan on motorcycles. Nazar Hussain my brother was on motorcycle No. 7759/BKK driven by him and Waqar his minor son was sitting behind on rear seat of said motorcycle. While 1, Aman Ullah and Allah Ditta PWs were on another motorcycle. Nazar Husain deceased my brother and Waqar my nephew were going ahead from us on motorcycle at some distance. On the same day at about 06:25 p.m when we reached at Jhanda Ramp Kotla Dera road, in the meantime Zahoor Hussain accused present in the court armed with pistol emerged from left side suddenly. Within our view Zahoor Hussain stopped the motorcycle of Nazar Hussain and made fire shots of his pistol upon Nazar Hussain and Wagar. First fire shot was received to Waqar in front of his mouth and outer side of his left thigh. Waqar fell down. In the

meantime Nazar Hussain tried to run away towards right side of the road then Zahoor Hussain accused fired with his pistol on back of his head. Zahoor Hussain also repeated the fire shot hitting him on his head. In this process Zahoor Hussain accused made fire with the pistol on Nazar Hussain deceased which hit him on his left shin After receiving the fire shot Nazar Hussain also fell on the road towards right side. I, Allah Ditta and Aman Ullah witnessed the occurrence in the light of motorcycle. Zahoor Hussain accused fled the scene on motorcycle. We took care of Nazar Hussain and Waqar Hussain and Nazar Hussain succumbed to the injuries at the spot while Waqar was in critical condition and he was shifted to DHQ Hospital Bhakkar on private vehicle but later said Waqar was also succumbed to the injuries. Motive behind the occurrence is that Zahoor Hussain developed illicit relations with the wife of his uncle Nazar Hussain deceased. Nazar Hussain deceased was hurdle in the way of their illicit relations because said Zahoor Hussain wanted to marry with Zakia Bibi his co accused. Due to this reason Zahoor Hussain and Mst Zakia Bibi made a plan for committing the murder of Nazar Hussain. So in compliance of their illicit task and design Zahoor Hussain committed the murder of his real uncle Nazar Hussain and his minor son Waqar barbarically and brutally.

After the occurrence police reached at the spot and I made my statement Ex.PE to Thanadar and I put my signature below my statement Ex.PE/2. After the occurrence because I was in perplexed condition, so could not nominate the accused Zahoor Hussain in my statement Ex.PE but on the same time and place I recorded my supplementary statement Ex.PP to IO regarding the nomination of accused Zahoor Hussain. On the same night Mukhtiar Hussain and Fiaz Hussain PWS also met to 10 at the spot in my presence and they also stated before 10 that they had seen accused Zahoor Hussain while riding on motorcycle on link road towards south. On following day i.e 10.10.2018 Abdul Ghafoor and Allah Ditta PWs also met me at my house and they stated before me that Zahoor Hussain accused confessed his guilt before them. So I took the above said PWs before 10

at police station Saddar Bhakkar and presented written application Ex.PQ for nomination of accused Zakia Bibi widow of Nazar Husain deceased. On the same day IO also recorded the statements of Abdul Ghafoor and Allah Ditta PWs regarding the extra judicial confession of accused. IO also recorded my statement under section 161 Cr.PC in this behalf. On 31.10.2018 I joined the investigation with the IO. Zahoor Hussain was on physical remand and he was under interrogation by the IO at police station Saddar Bhakkar. In my presence as well in the presence of Ghazanfer Abbas 780/C Zahoor Hussain accused made disclosure that he can get recovered the mobile phone of Nazar Hussain deceased. On the basis of his disclosure he led to the place of recovery and got recovered the mobile phone Nokia Company Model RM-1136 P-17 black in colour from iron box under the cot which was lying in the chobara/room of Muhammad Iqbal Dhap after breaking the lock of stairs. Said mobile phone was wrapped in green coloured shopper and IO took it into possession alongwith broken lock P-18 vide recovery memo Ex.PK attested by me and Ghazanfer Abbas constable. IO recorded my statement in this regard.”

4. After the formal investigation of the case report under section 173 of the Code of Criminal Procedure, 1898 was submitted before the learned trial court and the accused were sent to face trial. The learned trial court framed the charge against the accused on 19.12.2018, to which the accused pleaded not guilty and claimed trial.

5. The prosecution, in order to prove its case, got statements of as many as **twenty-one** witnesses recorded. The ocular account of the case was furnished by Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19). Fiaz Hussain (PW-10) and Mukhtiar Hussain (PW-11) stated that on 09.10.2018 at 06.30 p.m they had also seen the appellant on a motorcycle after the incident. Allah

Ditta (PW-15) and Abdul Ghafoor (PW-16) stated that on 10.10.2018, the appellant confessed to his guilt in their presence, while in the custody of the police. Nazar Hussain 55/C (PW-2) stated that on 09.10.2018, he escorted the dead body of Nazar Hussain (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. Inayat Ullah Moharrir (PW-3) stated that on 09.10.2018, the Investigating Officer of the case handed over to him two sealed parcels said to contain blood stained earth and one sealed parcel said to contain empty shells of bullets and on 17.10.2018, he handed over the said parcels to the Investigating Officer of the case for their onward transmission to the office of the Punjab Forensic Science Agency, Lahore and on 04.11.2018, the Investigating Officer of the case handed over to him a sealed parcel said to contain a pistol and on 06.11.2018 he handed over the said parcel to Ameer Hussain, ASI (PW-5), for its onward transmission to the office of the Punjab Forensic Science Agency, Lahore . Shah Jahangir, ASI (PW-4) stated that on 09.10.2018, he got recorded the formal F.I.R. (Exh.PF). Sami Ullah 769/C (PW-6) stated that on 09.10.2018, he escorted the dead body of Waqar (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. Muhammad Shafique Khan, draftsman (PW-7) prepared the scaled site plan of the place of occurrence (Exh.PH).Muhammad Hayat Khan, SI (PW-20), the Investigating Officer of the case, investigated the case from 09.10.2018 till 07.12.2018, arrested the appellant namely Zahoor Hussain on 26.10.2018 and detailed the facts of the investigation as conducted by him in his statement before the learned trial court.

6. The prosecution also got Dr. Amir Sohail (PW-1) examined, who on 09.10.2018 was posted as Medical Officer at DHQ hospital Bhakkar and on the same day conducted the post mortem examination of the dead body of Nazar Hussain son of Ranjhu (deceased). Dr. Amir Sohail (PW-1), on conducting the post mortem examination of the dead body of Nazar Hussain son of Ranjhu (deceased) observed as under: -

“Injury No. 1-a

A fire arm wound of entry 1/2 cm x 1/2 cm on back of head, 05 cm from posterior hair line, 12 cm from right ear.

Injury No.1-b.

Exit wound of 1-A of 01 cm x 01 cm on right eyebrow, brain matter was coming out of it, margins were everted

Injury No.2-a.

A fire arm entry wound of 1/2 cm x 1/2 cm on right side of head, 03 cm fram right ear.

Injury No.2-b.

Exit wound of 2-A was on forehead of 01 cm x 01 cm, 02 cm from right eyebrow. Margins were outward.

Injury No.3-a.

A fire arm entry wound of 1.5 cm x 1.5 cm on anterolateral side of left leg. 07 cm from left medial melleolus.

Injury No.3-b.

Exit wound of injury 03-A was on medial side of left leg 02 cm x 0.5 cm of size, 04 cm from left medial melleolus, with outward margins.

.....

According to my opinion cause of death is injury No.01 and 02 which resulted into massive brain damage and death. These are ante mortem in nature and can cause death in normal course of life.”

The prosecution also got Dr. Ihsan Ullah (PW-12) examined, who on 09.10.2018 was posted as Medical Officer at DHQ hospital Bhakkar and on the same day

conducted the post mortem examination of the dead body of Waqar son of Nazar Hussain (deceased). Dr. Amir Sohail (PW-1), on conducting the post mortem examination of the dead body of Waqar son of Nazar Hussain (deceased) observed as under: -

“Injury No. 1.

A fire arm wound of entry 1.5 cm x 1 cm on right side of mouth, 09 cm from lower ear lobe. On dissecting this injury penetrated through skull, damaging intra cranial structures and exit was on right back of head, 08 cm from right upper ear lobe, skull bone shattered.

Injury No.2-a.

A fire arm wound of entry measuring 1.5 cm x 1 cm on outer side of left thigh with inverted margins, 23 cm from left iliac crest (anterior) and 26 cm from left knee joint. Burning present.

Injury No.2-b.

A fire arm wound of exit 1.5 cm x 1.5 on inner side of left thigh at knee joint. Margins outward.
.....

According to my opinion cause of death is injury No.01 which resulted into massive brain damage and death. This is ante mortem in nature and can cause death in normal course of life.”

7. On 04.02.2019, the learned Assistant District Public Prosecutor gave up the prosecution witnesses namely Mukhtar Hussain 654/C and Qaisar Imran 77/C as being unnecessary. On 20.02.2019, the learned Assistant District Public Prosecutor closed the prosecution evidence after tendering in evidence the report of Punjab Forensic Science Agency, Lahore (Exh.PAA and Exh.PBB).

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

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

10. The primary contention of the learned counsel for the appellant was that the whole case was fabricated and false. The learned counsel for the appellant argued that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence to prove the same. The learned counsel for the appellant further contended that the statements of the eye witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) were not worthy of any reliance. The learned counsel for the appellant also argued that nothing was recovered from the possession of the appellant. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the appellant beyond the shadow of doubt.

11. On the other hand, the learned Additional Prosecutor General contended that the prosecution had proved its case beyond shadow of doubt by producing independent witnesses. The learned Additional Prosecutor General further argued that both the deceased died as a result of injuries suffered at the hands of the

appellant. The learned Additional Prosecutor General further contended that the medical evidence also corroborated the statements of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19). The learned Additional Prosecutor General contended that there was no occasion for the prosecution witnesses, who were related to the deceased, to substitute the real offenders with the innocent in this case. The learned Additional Prosecutor General prayed for the rejection of the appeal as lodged by the appellant.

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

13. A perusal of the prosecution evidence reveals that the whole prosecution case as against the appellant namely Nazar Hussain is based on the statements of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19). At the very outset it has been noted that when Ehsan Ullah (PW-17) got his oral statement (Exh.PE) recorded to Muhammad Nawaz, SI (PW-9), reporting the incident for the first time, Ehsan Ullah (PW-17) specifically mentioned in the same that the **accused were unknown** to him and the witnesses and that the number of the accused was **also four**, who all were armed with various weapons and who inflicted specific injuries to both the deceased with their weapons. Even when the formal F.I.R. (Exh.PF) was got recorded by Shah Jahangir , ASI (PW-4), still it was mentioned in the same that the accused were **unknown** to the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) and that the number of the accused was also **four**, who all were armed with various weapons and who inflicted specific injuries

to both the deceased with their weapons. Muhammad Nawaz, SI (PW-9) who recorded the oral statement (Exh.PE) of the prosecution witness namely Ehsan Ullah (PW-17) admitted during his cross-examination that he had correctly recorded the said statement (Exh.PE) and had not added anything on his own to the same. Muhammad Nawaz, SI (PW-9) admitted during cross-examination as under:-

“ I recorded the statement of complainant Ex.PE without any omission, addition or deletion. In statement Ex.PE complainant stated that **four unknown accused persons** committed the murder of Nazar Hussain and Waqar while armed with pistols. In Ex.PE complainant gave the description of unknown accused persons as درمیانے قد اور جوان عمریں Complainant stated in said statement they saw said accused persons in the light of motorcycles and they can identify them if said accused persons appear before complainant and witnesses. Complainant stated in said statement that said accused persons managed to escape on the motorcycles parked at the side of road while brandishing their weapons. Accused Zahoor Hussain was not nominated in Ex.PE.”

More importantly, Muhammad Nawaz, SI (PW-9) also prepared the inquest report (Exh.PC) related to Nazar Hussain (deceased) and the inquest report (Exh.PN) related to Waqar (deceased) and a perusal of both the said inquest reports (Exh.PC and Exh.PN) reveals that in the column related to the recording of the brief facts of the incident it had been again mentioned that that the accused were **unknown** to the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) and that the number of the accused was also **four**, who all were armed with various weapons and who inflicted specific injuries to both the deceased with their weapons. Subsequently, the prosecution witness namely Ehsan

Ullah (PW-17) got his supplementary statement (Exh.PP) recorded, wherein he changed the whole narrative of his earlier statement (Exh.PE), however, still, Ehsan Ullah (PW-17) admitted during cross-examination that according to his statement (Exh.PE), the **accused were unknown** to him and the witnesses and that the number of the accused was **also four**, who all were armed with various weapons and who inflicted specific injuries to both the deceased with their weapons. Ehsan Ullah (PW-17) admitted during cross-examination, as under: -

“ In Ex PE I submitted that occurrence was committed by **four unknown accused** persons armed with pistols having middle height and young age and i submitted in said statement that at 06:25 P.M on Jhanda Ramp said accused persons stopped Nazar Hussain and his son, Volunteer submitted that at the time of occurrence I clearly saw accused Zahoor Hussain when he made fire shots upon deceased persons Waqar Husain and Nazar Hussain, infact at that time two other motorcycles one having two riders and the second having one rider passed on said road at the time of occurrence due to which I thought that said three persons are the companions of accused Zahoor Hussain, I was also worried due to said occurrence, due to which in my statement Ex.PE I mentioned four accused persons. On the same day I rectified it through my supplementary statement. It is incorrect that volunteer part if (sic) false and improvement. **In Ex.PE I stated that four unknown accused persons made fire shots which hit at the mouth and left thigh of Waqar Hussain and hit on the back side of head and left shin of Nazar Hussain.** Volunteer submitted that I have given explanation above in this regard. It is incorrect that volunteer part is false. I submitted in Ex.PE that **I and witnesses saw the unknown accused persons** in the light of motorcycle and **we can identify them in case of their appearance before us.** I submitted in Ex.PE that **four unknown accused persons managed to escape on two motorcycles** parked near the road while brandishing their weapons. In Ex.PE I did not mention any motive of

the occurrence. **In Ex.PE accused Zahoor Hussain was not nominated.”**
(emphasis supplied)

The above referred portion of the cross-examination of Ehsan Ullah (PW-17) reveals that he very candidly admitted that when he had got recorded his oral statement (Exh.PE) he had stated in the same the **accused were unknown** to him and the witnesses and that the number of the accused was **also four**, who all were armed with various weapons and who inflicted specific injuries to both the deceased with their weapons. This explanation of Ehsan Ullah (PW-17) that he could not narrate the correct facts of the incident in his oral statement (Exh.PE) due to confusion is not supported by any circumstance. As mentioned above, Muhammad Nawaz, SI (PW-9) recorded not only the oral statement (Exh.PE) of Ehsan Ullah (PW-17) but he also prepared the inquest report (Exh.PC) related to Nazar Hussain (deceased) and the inquest report (Exh.PN) related to Waqar (deceased). As mentioned above, it is a fact that in the said inquest reports (Exh.PC and Exh.PN) it had been again mentioned that that the accused were unknown to the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) and that the number of the accused was also four, who all were armed with various weapons and who inflicted specific injuries to both the deceased with their weapons. The post mortem examination of the dead body of Waqar was conducted by the Medical Officer at **11.00 p.m on 09.10.2018** and therefore till that time, Ehsan Ullah (PW-17) had not made any supplementary statement (Exh.PP) nor the prosecution witnesses namely Aman Ullah (PW-18) and Allah Ditta (PW-19) had got recorded their statements till then, otherwise the facts as narrated in the supplementary statement (Exh.PP) of Ehsan Ullah (PW-17) would have been mentioned in both the inquest reports (Exh.PC and Exh.PN).

Even Muhammad Hayat Khan, SI (PW-20), the other Investigating Officer of the case admitted that when he started the investigation of the case and arrived at the place of the incident, till then the information of Ehsan Ullah (PW-17) was that **four unknown accused** persons had committed the incident. During cross-examination, Muhammad Hayat Khan, SI (PW-20), stated as under:-

“ I received information of occurrence at Bhakkar at about 08:45 P.M. I reached at place of occurrence **at about 09:30 P.M.** Patrolling police was present at the place of occurrence when I reached there and local police had left for DHQ Hospital Bhakkar. I did not reach there at the place of occurrence in the presence of Muhammad Nawaz Sl. I received file from constable Bashir 153/C at spot. Bashir 153/C reached there after my arrival. I perused Ex.PE and FIR of the occurrence before starting investigation. **In FIR and in Ex.PE four unknown accused persons were nominated.** In FIR and in Ex.PE neither accused Zahoor Hussain is nominated nor motive was given.” (emphasis supplied)

In this manner, it is more than apparent that the accused who had committed the occurrence were never identified by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) nor the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) had witnessed the incident and that the oral statement (Exh.PE) of Ehsan Ullah (PW-17) was recorded correctly, however subsequently the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) changed the whole narrative, denuding the hollowness of the statements made by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) before the learned trial court .

14. It is also a fact that the ocular account of the incident was narrated by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19). The relationship of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) with each other and with the deceased is admitted on record. Nazar Hussain (deceased) was the brother of prosecution witnesses namely Ehsan Ullah (PW-17) and Aman Ullah (PW-18) and the cousin of the prosecution witness namely Allah Ditta (PW-19), whereas Waqar (deceased) was the son of Nazar Hussain (deceased). It is also a fact admitted that the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) were not the residents of the place of occurrence, as the occurrence had taken place on a road known as "*Jhanda Ramp Kotla Dera Road*". According to the statements of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19), on the night of occurrence they were returning from Dera Ismail Khan after closing their shops and were proceeding to their houses when the incident took place on the road known as "*Jhanda Ramp Kotla Dera Road*". Ehsan Ullah (PW-17) admitted during cross-examination that his house was at a distance of 17 kilometres from his shop, whereas the road known as "*Jhanda Ramp Kotla Dera Road*" was between his house and his shop. Ehsan Ullah (PW-17) stated during cross-examination, as under:-

“Aman Ullah is my brother and Allah Ditta PW is my nephew. Our houses are situated at the distance of **17 kilometer from our shops** situated at Qureshi morr Dera Ismail Khan. Kotla Dera road where occurrence took place is main road which connects Dera Ismail Khan with Bhakkar and traffic used to run there 24 hours” (emphasis supplied)

Prosecution witness namely Aman Ullah (PW-18) gave the distance between his house and the place of the occurrence as three kilometres. Aman Ullah (PW-18) stated during cross-examination, as under: -

“Dera Ismail Khan is situated at the distance of about 15 kilometer from my house. **Place of occurrence is situated at the distance of three kilometer from our house.**”

Prosecution witness namely Allah Ditta (PW-19) gave the distance between his house and the place of the occurrence as three kilometres. Aman Ullah (PW-18) stated during cross-examination, as under:-

“My house is situated near the house of complainant and deceased. Place of occurrence is situated at the distance of about 03 km from my house.”

In this manner, the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) can be validly termed as “*chance witnesses*” and therefore were under a bounden duty to provide a convincing reason for their presence at the place of occurrence, at the time of occurrence and were also under a duty to prove their presence by producing some physical proof of the same. We have noted with grave concern that the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) failed miserably to provide any consistent evidence as to the reason for their arrival at the place of occurrence and their presence at the place of occurrence when the same was taking place. The perusal of the statements of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) reveals that the reason given by them for following the deceased to the place of occurrence was that they all were returning to their houses from their shops

however the shops of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) were never either shown to the Investigating Officer of the case nor were visited by the Investigating Officer of the case to verify their existence. No person appeared during the investigation of the case or before the learned trial court to prove the existence of any shops of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19), from which shops they were returning when they happened to arrive at the place of the occurrence. As mentioned above, neither the place of occurrence was near the houses nor the shops of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) nor the claimed existence of the shops of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) was proved. In this manner, the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) were badly exposed with regard to that there did not exist any reason for their arrival at the place of occurrence, at the time of occurrence. The prosecution witness namely Ehsan Ullah (PW-17), even admitted that he had not mentioned the reason for the presence of the prosecution witnesses namely Aman Ullah (PW-18) and Allah Ditta (PW-19) in his statement given to the police. Ehsan Ullah (PW-17) admitted during cross-examination as under:-

“I did not mention in my statements Ex.PE and Ex.PP the reason regarding the presence of witnesses Aman Ullah and Allah Ditta and deceased Waqar Hussain with us at D.I Khan at the day of occurrence.”

Even the prosecution witness namely Allah Ditta (PW-19) admitted during cross-examination, as under:-

“In my statement to the police I did not submit that why on 09.10.2018 I and Waqar and Aman Ullah PW were present at Dera Ismail Khan.”

The proven failure of the prosecution witnesses namely Ehsan Ullah (PW-17) , Aman Ullah (PW-18) and Allah Ditta (PW-19) to provide a reason for their arrival at the place of occurrence, on the night of the incident has repercussions, proving that there was no reason actually for the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to had followed the deceased to the place of occurrence. The very inception of the prosecution case is thus put in doubt due to the said abject failure of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19).

15. We have also noted that though it was claimed by the prosecution witnesses namely Ehsan Ullah (PW-17) , Aman Ullah (PW-18) and Allah Ditta (PW-19) that they had gone to the place of occurrence on one motorcycle, however, during the course of the investigation as well as before the learned trial court, the said motorcycle, allegedly used by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to arrive at the place of occurrence, was not produced. The prosecution witness namely Ehsan Ullah (PW-17), in his statement before the learned trial court, stated as under:-

“Police did not take into possession my motorcycle on which I and witnesses were travelling”

As mentioned above, Muhammad Nawaz, SI (PW-9) and Muhammad Hayat Khan, SI (PW-20), the Investigating Officers of the case, came to the place of occurrence after the occurrence and remained at the said place for a considerable time. During the course of their stays at the place of occurrence, Muhammad Nawaz, SI (PW-9) and Muhammad Hayat Khan, SI (PW-20), the Investigating Officers of the case, did not take into possession the motorcycle allegedly used by

the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to arrive at the place of occurrence, along with the other recoveries, though there was no occasion for the said motorcycle not to have been present at the place of occurrence or not being taken into possession by the Investigating Officers during their visits at the place of the occurrence, if the same was available. The said motorcycle, which was allegedly used by prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to arrive at the place of occurrence, was not even produced during the entire period of investigation, nor was it produced before the learned trial court. The non-production of the motorcycle used by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to arrive at the place of occurrence and the failure of prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) as well as the Investigating Officers of the case to produce the same before the learned trial court leads to only one conclusion and that being that no such motorcycle was available. Had a motorcycle been used by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to arrive at the place of occurrence, then the same must have been available at the place of occurrence, at the time of arrival of Muhammad Nawaz, SI (PW-9) and Muhammad Hayat Khan, SI (PW-20) , the Investigating Officers of the case, and the same would necessarily have been taken into possession by Muhammad Nawaz, SI (PW-9) and Muhammad Hayat Khan, SI (PW-20), the Investigating Officers of the case, but it was not and it proves that a false claim was made by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) that they had arrived at the place of occurrence on a motorcycle. In this manner, the

prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) failed miserably to prove that they had indeed arrived at the place of occurrence, at the time when the same was happening. Reliance in this regard is placed on the case of "*Muhammad Ali Vs. The State*" (**2015 SCMR 137**) wherein the august Supreme Court of Pakistan has held as under:-

"The Investigating Officer during the cross-examination has admitted that the 'Dala' was not present when he visited the spot and he had not taken into possession the said 'Dala' during investigation. So the story introduced by the eye-witnesses that they were travelling on the 'Dala' when the incident took place is not supported by any connecting material."

The eye witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) failed miserably to establish not only the reason for their presence at the place of occurrence, at the time of occurrence but also the mode through which they arrived at the place of occurrence. The prosecution was under a bounden duty to establish not only that the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) had a reason to proceed to the place of occurrence but also to prove the mode through which the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) arrived at the place of occurrence. The failure of the prosecution to prove the said facts has vitiated the trust of this Court in prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) as being truthful witnesses. In this respect, reliance is placed on the case of "*Muhammad Rafiq v. State*" (**2014 SCMR 1698**) wherein the august Supreme Court of Pakistan rejected the claim of witnesses who lived one kilometre away from the place of occurrence, but on the day of occurrence stated to be present near

the spot as they were working as labourers, inasmuch as they failed to give any detail of the projects they were working on. Reliance is also placed on the case of “Usman alias Kaloo v. State” (**2017 SCMR 622**) wherein the august Supreme Court of Pakistan held that the ocular account of the incident had been furnished by Zahoor Ahmad, Ghulam Farid and Manzoor Ahmed in the said case who were all residents of some other houses and they were not the inmates of the house wherein the occurrence had taken place and therefore the said eye-witnesses were, thus, declared as chance witnesses and not worthy of reliance. Reliance is also placed on the case of “Nasrullah alias Nasro v. The State” (**2017 SCMR 724**).

16. Another aspect of the case noted by this Court with some gravity is the fact that the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) claimed that they had identified the accused with the help of the light of the motorcycle which they were riding upon when the occurrence took place and otherwise it was dark at the time of the occurrence. Despite admitting that the occurrence had taken place when it was dark, still the source of light, the bulb of the motorcycle, which allowed the witnesses to observe the occurrence, was not produced. During the course of the investigation and even before the learned trial court, the motorcycle used by the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) to arrive at the place of occurrence and also used as a source light to witness the occurrence, was not produced, therefore, it cannot be claimed that the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) had witnessed the occurrence in the light of the said motorcycle. The non-production of any light source, available and lit at the place of occurrence, at the

time of occurrence and the failure of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) as well as the Investigating Officers 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 with the witnesses or available at the place of occurrence which could have enabled the eye witnesses to have identified the assailant and also spectate the role of the assailant as acted by him during the occurrence. The absence of any light source has put the whole prosecution case in the murk. It was admitted by the witnesses themselves that it was a dark night and as the prosecution witnesses failed to prove the availability of any light source, their statements with regard to them identifying the assailant 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 case. Reliance is placed on the case of "Gulfam and another v. The State" (2017 SCMR 1189) wherein the august Supreme Court of Pakistan observed as under: -

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

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

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

the time of occurrence. It was never found on the spot along with other recoveries though there was no occasion for the injured and the deceased to have carried it along.”

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

“7. It is also alleged by the prosecution that the witnesses had identified the culprits on torch lights. The complainant and P.Ws. did not produce the torches before the police immediately but the same were produced after 10 days of the incident.

8. Considering all aspects of the case, we are of the view that the prosecution has failed to prove the case against the respondents beyond any reasonable doubt.”

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

“It has straightaway been noticed by us that the occurrence in this case had taken place after dark and in the 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.”

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.”

17. This court has also noticed that none of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) were mentioned either in column No.4 of the inquest report (Exh.PC) related to Nazar Hussain (deceased) as being the witnesses who had identified the dead body of the deceased at the time of preparation of the inquest report (Exh.PC) related to Nazar Hussain (deceased) nor were mentioned at page 4 of the inquest report (Exh.PC) related to Nazar Hussain (deceased) as witnesses who were present at

the time of preparation of the inquest report (Exh.PC) related to Nazar Hussain (deceased) nor their names were mentioned in column No.4 and page 4 of the inquest report (Exh.PN) related to Waqar (deceased) as being the witnesses who had identified the dead body of the deceased at the time of preparation of the inquest report (Exh.PN) related to Waqar (deceased) nor were mentioned at page 4 of the inquest report (Exh.PN) related to Waqar (deceased) as witnesses who were present at the time of preparation of the inquest report (Exh.PN) related to Waqar (deceased). This fact also points towards the absence of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) at the place of occurrence, at the time of preparation of the inquest report (Exh.PC) by Muhammad Nawaz SI (PW-9), the Investigating Officer of the case and also points towards the absence of the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) in the hospital at the time of preparation of the inquest report (Exh.PN) related to Waqar (deceased) by Muhammad Nawaz SI (PW-9), the Investigating Officer of the case. I have also noted with concern that the prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) made no effort to take the deceased namely Waqar to the hospital when he was injured. The august Supreme Court of Pakistan has repeatedly observed that such conduct of the prosecution witnesses where they failed to take the deceased to the hospital in an injured condition, revealed their absence at the place of occurrence. The august Supreme Court of Pakistan in the case of "Abdul Jabbar alias Jabbari v. The State" (**2017 SCMR 1155**) has observed as under:

"The Medico-legal Certificate issued in respect of Manzoor Ahmed deceased when he was alive shows that the injured victim was brought to

the hospital not by the above mentioned eye-witnesses but by a police official which showed that in all likelihood the said eye-witnesses had been procured and planted in this case at some subsequent stage.”

The august Supreme Court of Pakistan in the case of “Zaheer Sadiq v. Muhammad Ijaz and others” (**2017 SCMR 2007**) has observed as under:

“The conduct of both these witnesses is also highly improbable as they did not try to shift Muhammad Sadiq (deceased) or Muhammad Sadiq (injured) to the hospital prior to the arrival of the Police.”

The prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) also did not accompany the dead body of Nazar Hussain to the hospital, which also shows that they were not present at the time of incident. Reliance in this regard placed on the case of Muhammad Sharifan Bibi vs. Muhammad Yasin and others (**2012 SCMR 82**) wherein the august Supreme Court of Pakistan held as under:-

“Their presence becomes further doubtful as none of them accompanied Abdul Latif deceased to the hospital for postmortem examination.”

18. The learned Additional Prosecutor General has also referred to the statement of Fiaz Hussain (PW-10) and Mukhtiar Hussain (PW-11) who stated that on 09.10.2018 at 06.30 p.m they had also seen the appellant on a motorcycle after the incident. The said statements of Fiaz Hussain (PW-10) and Mukhtiar Hussain (PW-11) do not prove any fact in issue as both the witnesses failed miserably in proving their statements. Fiaz Hussain (PW-10) and Mukhtiar Hussain (PW-11) admitted that they were brothers and closely related to the deceased and that their house was as far as 10-12 kilometres from the place where they had seen the

appellant. During cross-examination, Fiaz Hussain (PW-10), admitted as under:-

“Mukhtiar Hussain PW is my real brother. Complainant is my maternal cousin as well as brother in law/behnoi. My father Allah Ditta PW is father in law of complainant. Abdul Ghafur son of Sahado is cousin of complainant. We were watering the land of Zafar Khan as labourer. We were working there on the basis of daily base wages. We were used to receive daily wages as per the quantity of work. We have no personal agricultural land. **Our house is situated at the distance of 10/12 kilometer from place of occurrence.** Same is the distance between our work place and house ” (emphasis supplied)

Moreover, according to Fiaz Hussain (PW-10) and Mukhtiar Hussain (PW-11), the place where they had seen the appellant on a motorcycle was at a distance of 100 karams from the place of the incident and therefore their evidence that on 09.10.2018 at 06.30 p.m they had also seen the appellant on a motorcycle after the incident proves no fact in issue or even a relevant fact. During cross-examination, Fiaz Hussain (PW-10), admitted as under:-

“Place of occurrence is situated at the distance of 100 karam from the place where we saw accused Zahoor Hussain towards west.”

For the above said reasons, the statements of Fiaz Hussain (PW-10) and Mukhtiar Hussain (PW-11) are not even relevant.

19. The learned Additional Prosecutor General has admitted that the statements of Allah Ditta (PW-15) and Abdul Ghaffar (PW-16), who stated that on 10.10.2018, the appellant confessed to his guilt in their presence, while in the custody of the police, were rightly rejected by the learned trial court as being inadmissible.

20. The learned Additional Prosecutor General submitted that the recovery of the *Pistol* (P-19) and the recoveries of the mobile phone device (P-17) and a broken lock (P-18) from the appellant namely Zahoor Hussain son of Manzoor Hussain offered sufficient corroboration of the statements of the prosecution witnesses. Regarding the recovery of the *Pistol* (P-19) and the recoveries of the mobile phone device (P-17) and a broken lock (P-18) from the appellant namely Zahoor Hussain son of Manzoor Hussain, 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 *Pistol* (P-19) and the recoveries of the mobile phone device (P-17) and a broken lock (P-18) from the appellant namely Zahoor Hussain son of Manzoor Hussain which was in clear violation of section 103 Code of Criminal Procedure, 1898. Ghazanfar Abbas 780/C (PW-8) admitted during cross-examination as under:-

“ IO did not call any private person to become the witness of recovery proceedings. IO did not call any village headman, counsellor etc..”

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."

Furthermore, Muhammad Hayat Khan, SI (PW-20) also admitted that the place from where the *Pistol* (P-19) was recovered accessible to all and not in the

exclusive possession of the appellant. Muhammad Hayat Khan, SI (PW-20), the Investigating Officer of the case, admitted during cross-examination, as under:-

“Place of recovery of pistol is open place accessible to all.”

Moreover, the mobile phone device (P-17) and a broken lock (P-18) were recovered from the *Chowbara* of one Muhammad Iqbal Dhup, however the said person never appeared as a witness either before the Investigating Officer of the case or the learned trial court. Therefore, the evidence of the recovery of the Pistol (P-19) and the recoveries of the mobile phone device (P-17) and a broken lock (P-18) from the appellant namely Zahoor Hussain son of Manzoor Hussain cannot be used as incriminating evidence against the appellant, 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.”

All these facts denude the effort made by the Investigating Officer of the case to prop up the failing prosecution case by showing sham recoveries of the Pistol (P-19) and the mobile phone device (P-17) and a broken lock (P-18).

21. The learned Additional Prosecutor General has 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 Ehsan Ullah (PW-17) , Aman Ullah (PW-18) and Allah Ditta (PW-19) was that the appellant namely Zahoor Hussain had developed illicit relations with Zakiya Bibi

(since acquitted), who was the wife of Nazar Hussain (deceased) and therefore he murdered both the deceased. A perusal of the statements of the prosecution witnesses namely Ehsan Ullah (PW-17) , Aman Ullah (PW-18) and Allah Ditta (PW-19) 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 witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) admitted that they had not mentioned the existence of the motive in their previous statements recorded by the police during the investigation of the case. The prosecution witness namely Ehsan Ullah (PW-17) during cross-examination, admitted as under: -

“ In Ex.PE I did not mention any motive of the occurrence.

.....

In Ex.PP I did not give the motive of occurrence. In Ex.PE and Ex.PP I did not mention that occurrence was committed by the accused with the connivance of Zakia Bibi due to illicit relations between Zahoor Hussain and Zakia Bibi.”

The prosecution witness namely Aman Ullah (PW-18), admitted during cross-examination , as under:-

“ In my statement to the police I did not mention the motive of illicit relations between Zakia Bibi and accused Zahoor Hussain.”

The prosecution witness namely Allah Ditta (PW-19) admitted during cross-examination, as under:-

“I did not mention the motive of illicit relations between Zakia Bibi and accused Zahoor Hossain. “

The above referred portions of the statements of prosecution witnesses namely Ehsan Ullah (PW-17), Aman Ullah (PW-18) and Allah Ditta (PW-19) clearly prove that the prosecution witnesses failed to provide evidence enabling this Court

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 a 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.”

22. The only other piece of evidence left to be considered is the medical evidence with regard to the injuries observed on the dead bodies of the deceased by Dr. Amir Sohail (PW-1) and Dr. Ihsan Ullah (PW-12) but the same is of no assistance in this case as medical evidence by its nature and character, cannot recognize a culprit in case of an unobserved incidence. As all the other pieces of evidence relied upon by the prosecution in this case have been disbelieved and discarded by this Court, therefore, the appellant's conviction cannot be upheld on the basis of medical evidence alone. The august Supreme Court of Pakistan in its binding judgment titled “Hashim Qasim and another Vs. The State” (**2017 SCMR 986**) has enunciated the following principle of law:

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

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

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

23. Considering all the above circumstances, this Court entertains serious doubt regarding the involvement of Zahoor Hussain son of Manzoor Hussain (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 Zamany. 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 go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on 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."

24. For what has been discussed above, Criminal Appeal No.698-J of 2020 lodged by Zahoor Hussain son of Manzoor Hussain (appellant) is **allowed**. The conviction and sentence of Zahoor Hussain son of Manzoor Hussain (appellant)

awarded by the learned trial court through the impugned judgment dated 28.02.2019 are hereby set-aside. Zahoor Hussain son of Manzoor Hussain (appellant) is ordered to be acquitted by extending him the benefit of doubt. The appellant namely Zahoor Hussain son of Manzoor Hussain is in custody and he is directed to be released forthwith if not required in any other case.

**(SADIQ MAHMUD KHURRAM)
JUDGE**

Raheel

Approved for Reporting
Judge