

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN.**  
(JUDICIAL DEPARTMENT)

**01. Criminal Appeal No.592/2023**

Fakhar Iqbal Shah      Versus      The State, etc.

**02. Criminal Revision No.241/2023**

Siffat ul Hassan Shah      Versus      The State, etc.

**JUDGMENT**

**DATE OF HEARING: 01.10.2024.**

**APPELLANT BY:**      Syed Zia Haider Zaidi, Advocate.

**STATE BY:**              Mr. Muhammad Ali Shahab, Deputy  
Prosecutor General.

**COMPLAINANT BY:** Ch. Umar Hayat & Muhammad Luqman,  
Advocates.

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**MUHAMMAD AMJAD RAFIQ, J:-** Accused/appellant  
Fakhar Iqbal Shah was convicted in a trial concluded by learned  
Additional Sessions Judge, Khanewal, in case FIR bearing No.241  
dated 26.05.2022 registered under sections 302, 148, 149 PPC at  
Police Station Kacha Khu, District Khanewal, vide impugned  
judgment dated 30.05.2023, and sentenced as under:-

*“Imprisonment for life, as Ta’zir under Section 302(b) PPC, for  
committing murder of Qaim Ali deceased alongwith compensation of  
Rs.400,000/- under section 544-A of Cr.P.C. to the legal heirs of  
deceased and in default thereof to further undergo simple  
imprisonment for six months”*

Benefit of section 382-B Cr.P.C. was extended to the  
convict/appellant.

Whereas co-accused Muhammad Iqbal Shah & Shehzad Anjum Shah stood acquitted of the charge. Against said conviction and sentence, the appellant has filed criminal appeal bearing No. 592/2023, whereas, the complainant has preferred criminal revision No.241/2023 for enhancement of sentence. Both these matters are being decided through this single judgment.

02. Qaim Ali, a servant of Syed Siffat-ul-Hassan Shah, complainant PW-6 was murdered on firing by five accused namely Fakhar Iqbal Shah (appellant), Muhammad Iqbal Shah, Shahzad Anjum, Shujaat Haider Shah and Jahanzeb alias Papi Shah. One fire of Kalashnikov was attributed to the appellant which hit on the left side of head near left ear of the deceased. Firing of remaining accused with Kalashnikov, Gun 12 bore & Pistols remained ineffective. It was an occurrence of 26.05.2022 at 12.30 p.m., committed in the street leading to central Chowk of Chak No. 39/10-R, Kacha Khu, District Khanewal. It was told that Qaim Ali was not ready to leave the employment of complainant despite threats by the accused thus on such motive he was murdered. Earlier on the day accused once again extended him severe threats to life, and for reporting this aggression complainant along with deceased were going to police station Kacha Khu when occurrence took place.

03. Police found Shujaat Haider Shah and Jahanzeb alias Papi Shah innocent during investigation and their discharge from the case was recommended, but Magistrate did not agree to it, therefore, their names were placed in column No.2 of report under section 173 Cr.P.C. Learned trial court however, conducted the trial of three accused excluding Shujaat Haider Shah and Jahanzeb alias Papi Shah. Out of whom only Fakhar Iqbal Shah, the appellant was convicted and sentenced to imprisonment for life as stated above.

04. In this case a cross version also stood recorded and police to the extent of firing by complainant party added offence under section 337-H (2) PPC, therefore from the evidence in this case it is an

admitted position that complainant party and accused party (except two accused) were found present at the place of occurrence, therefore, case needs a narrow appreciation of facts relating to position of parties at the place of occurrence with their respective roles.

05. The story cracked by the witnesses about murder of Qaim Ali weaves a scene which shows passing of the complainant, witnesses and deceased through a street heading towards central chowk of Chak No. 39/10-R in order to move to Police Station Kacha Khu when all of a sudden, the occurrence broke out. Such situation is portrayed through the site plan prepared by the police. Scaled site plan though available in the file as Exh. PV but draftsman did not enter appearance in the dock and it was claimed by Muhammad Kashif Nawaz TSI PW-10 that he was dead. Prosecution did not seek a lawful tendering of such site plan in evidence; therefore, it cannot be read into the evidence. Thus, it is essential to see in depth view of unscaled site plan to appreciate the facts spur out from the evidence.

**---Site plan facts---**

06. According to site plan complainant party was heading towards north and they were quite at a distance from Central Chowk of Chak No. 39/10-R where deceased received firearm injury in the street, but as per FIR police station was towards South-west from the place of occurrence. Moving to opposite direction does not cater any support to the facts that they were actually going to police station to complain about the day time threats of Iqbal Shah accused.

According to prosecution story, fire was made by Fakhar Iqbal Shah, appellant from northern side, which is reflected from point No. 2, hitting the deceased at point No. 1 (south-west) which is an impossible angle because there was an intervening wall of 5/6 feet on northern side whereas 2 feet high wall on eastern side, it could only hit the deceased if bullet takes a swing of around 10 feet from point No.4 to point No. 1, which is an impossibility.

Accused Fakhar Iqbal Shah was at point No. 2, whereas other four accused duly armed with rifle, Gun and pistols were at point No. 3 but spent shells were found present at point No. 4 which is just in front of point No. 1 where the deadbody was lying. There is no mention of inter se distance between point No. 1 & point No. 4 in the site plan but distance of accused (at point No. 2 & 3) from point No. 1 (where dead body was lying) is mentioned as 10 Karms (55 feet), same would obviously be read for point No. 4 as well; therefore, availability of spent shells at a distance of 10 Karms from the point where accused made firing is an impossible situation.

Prosecution claimed that accused received fire in the street and died there and then, but as per site plan his deadbody was found present in the nearby courtyard of baithak of one Muhammad Aslam Juggi (point No.1 in site plan) which is accessible from said street only on crossing a two-feet high wall on western side as highlighted above. It is near to impossibility that after receiving fire by the deceased in the street, his body tossed to nearby courtyard. Deadbody of deceased is also visible lying in the courtyard from the pictures produced by the prosecution and the defence. No splash of blood on western side wall, nor even explanation how deadbody reached to that place which raises a question that had no answer. Investigating officer PW-10 also collected blood from one place (point No.1) and admitted during cross examination as under;

“It is correct that it has been mentioned in Exh. PU that deceased Qaim Ali after receiving injuries fell down on point No.1 and succumbed to the injuries on same place.”

07. Blood so collected was deposited in the PFSA on 16.08.2022 after about 3 months which fact is reflected from PFSA Report Exh. PW as well as from the statements of Ghulam Sarwar 779/HC, Moharrir PW-4 & Muhammad Kashif Nawaz, investigating officer PW-10. It was because at the time of collection of blood police was not sure about the place where actually deceased received the fire because dead body was lying contra to claim of witnesses and in the

memo of collection of blood there was an overwriting/cutting of word “Mitti/soil with Cotton/rooi” probably due to reason that courtyard of baithak was soiled and not soling. PW-10 investigating officer faced the cross examination with respect to cutting/overwriting on the memo showing collection of blood, which is as under;

“It is incorrect to suggest that in Ex.PP the word “Rooi/cotton” was overwriting by rubbing the word “mitti/soil”. It is incorrect to suggest that the Exh.PP, the word “mitti/soil” is also rubbing in third line”

Such facts are visible on naked eye view of Ex.PP, and run against the claim of prosecution about place of occurrence. Malafide of investigating officer PW-10 is also reflected from the fact that though on 16.08.2022 he was not posted in the police station Kacha Khu yet he took the samples of blood-stained earth for its deposit in the PFSA and this fact he admitted during cross examination as under;

“It is correct that I was not posted at P.S Kacha Khu on 16.08.2022. It is incorrect that I was not authorized to collect the samples for onward transmission to PFSA.”

It shows that he conducted defective investigation and did not dispatch the samples in time, that was the reason no other police officer was ready to take responsibility of depositing of parcels in the PFSA.

08. Prosecution has not opted to produce the first responder and most relevant witness i.e., employees of Ambulance Service 1122. Though prosecution obtained a written report and in pictures produced by prosecution and defence presence of officer with uniform of such Service is visible yet his statement to any effect is not available on the record nor he entered appearance in the dock.

#### **---Medical evidence---**

09. Appearance of deadbody and examination of clothes by the doctor shows that white dots were on whole body and clothes were mud stained, though place of occurrence was a street with no mud but no explanation of such facts is on the record.

10. Inquest report, consists of four pages, is not an original document, rather on carbon copy some of the columns left blank in original were filled with live writing which indicates that whole information was not added in such report at one point of time giving birth to suspicion of consultation and deliberation. In such report neither the distance of police station from where deadbody was found is mentioned nor articles carried by the deceased at the time of death. Age of deceased, and condition of mouth & face is also not mentioned in column No. 8 & 9 of the report. Column No. 12 relating to weapon of offence was also kept blank as well as column No. 22 & 23, and necessary information is also missing in column No. 24. Despite these apparent flaws, interestingly challan was passed by the prosecution agency and prosecutor who conducted prosecution did not attend such facts too, so much so learned lower court also allowed to tender such defective report in the evidence which was not admissible at all. As per law documentary evidence is proved through primary evidence by producing original document itself, or by secondary evidence through tendering of its copy but that too after satisfying the court about loss of original, but it has not been done in this case. This is the basic document which help to formalize the position of deadbody, its presence, condition and articles lying around it, which facts later speak out by the witness in support thereof. This document also provides a line of inquiry to police for detection of mode of crime and also identifying the offenders with ensued arrest.

11. Locale of injury on left side of head just behind left ear is also stands in contradiction to prosecution story according to which deceased was facing towards accused persons. 10 spent shells of rifle and seven of pistol collected by the police from the spot clearly shows that number of fires made by accused persons remained ineffective because neither they hit witnesses nor to deceased except one as stated above. Size of wound was also observed by the doctor as of 5 cm x 8 cm which is not possible with a riffled weapon and that too from a range of 55 feet. Exit wound was also not observed by the doctor,

therefore, exploration of forensic literature on the subject is essential. A book titled “SIMPSON’S FORENSIC MEDICINE” by Bernard Knight in Tenth Edition (Chapter-8, Firearm and Explosive Injuries) explains the nature and function of rifled weapons as under;

“These comprise revolvers, ‘automatic pistols’, rifles, and many types of military weapons. All differ from shot gun in that they fire one projectile at a time through a barrel that has spiral grooves cut into the metal, the intervening projections being called ‘lands’. These grip the bullet and impart a gyroscopic spin which assists in maintaining an accurate trajectory.”

In the same book at page 110 & 111 it is mentioned as follows;

“Due to higher velocities and the greatest mass of the bullet, many rifled wounds will traverse the body, causing both an entrance and an exit wound. Exceptions will be where bone is struck, obstructing the bullet or fragmenting it. Small calibre bullets as .22, unless from a high velocity weapon, may often fail to exit from the body.”

Non-availability of exit wound in this case could be the result as highlighted above by Simpson. Now the reason for size of injury is as follows;

“At extreme ranges, the gyroscopic track is lost and the missile begins to wobble and even turn end-over end. This causes a larger, more irregular wound and the bullet may even strike side-ways, leaving a linear wound.”

This could happen in this case as well; probably fire was made from extreme range beyond 55 feet and bullet while wobbling hit the temporal bone of the deceased. In this way claim of presence of accused at a distance of 55 feet cannot be honoured, particularly when investigating officer opined that during the occurrence both the parties resorted to aerial firing.

12. It was an occurrence at about 12.30 p.m. on 26.05.2022, doctor observed time elapsed between injury and death 15-30 minutes, Police station was at a distance of 12 miles FIR was registered at 1.15 p.m. not on oral assertion of complainant but on the written complaint (**verified by PW-2**), wherein it is mentioned that witnesses were left at guard of deadbody which means that at the time of registration of FIR deadbody was at the place of occurrence, but postmortem report



reveals receiving of deadbody in dead house at 1.00 p.m. whereas PW-10 Muhammad Kashif Nawaz SI states that on 26.05.2022 Umar Saeed 420/C handed over him police file of this case for investigation and he proceeded to the place of occurrence where deadbody was available. After collecting blood underneath the deadbody, he prepared papers for postmortem and dispatched the deadbody to RHS Kacha Khu in the company of Nafees Abass and Zameer ul Hassan through Muhammad Farooq 908/C. During cross examination he told the time of shifting of deadbody as 1:45 p.m. but said Muhammad Farooq 908/C when appeared as PW-9 stated reaching of RHC at 1:45 p.m. Thus, receiving of deadbody in deadhouse at 1.00 p.m. which was also endorsed by the Dr Muhammad Naeem Anwar PW-1 leaves many questions and doubts on the facts knitted by the prosecution.

13. Defence disputed the time of occurrence as well by referring the cross examination of Abdul Mujeeb ASI PW-12 who after arresting the accused persons concluded the investigation with the help of DSP. While responding to a question during cross examination he deposed as under;

“It is correct that on 23.08.2022 I collected the report from office of rescue 1122 and 15 (Exh.PH) also. It is correct that according to report of rescue 1122 that information was received to rescue 1122 at 12.13 p.m. (noon). According to that report already & shifted to RHC Kacha Khu, Khanewal, mentioned. In column of remarks in report 15, it has been mentioned that some people are fighting there and doing firing there.”

Thus, death of deceased at the place of occurrence, shifting of deadbody by police on the day of occurrence at relevant time becomes highly doubtful.

14. Another alarming fact gets notice of this court that PW-1 doctor did not declare cause of death at the time of postmortem examination rather on 22.09.2022 after about four months on the request of police this lacuna was filled out. There was no exit wound in this case; entry wound on left temporal side resulted into presence of bullet inside the cranial cavity but doctor was unable to explain the point from where it



was extracted and also what was the trajectory because it was distant fire without blackening around it as per prosecution story. Bullet recovered from the cranial cavity was not sent to PFSA for examination, even no X-ray or MRI was produced by the prosecution to prove that bullet was inside the brain. Thus, cause of death and circumstances in which death occurred is also doubtful in this case, that was the reason inquest report was also defective. The overall perusal of medical evidence shows that it stands in contradiction with ocular account, therefore, cannot be relied upon in support of prosecution story. Reliance is on case reported as “RIASAT ALI and another versus The STATE and another” (2024 SCMR 1224).

**---Cross version analysis---**

15. In this case a cross version was recorded and held intact to the extent of ineffective firing by the complainant party, sequence of facts portrays that spent shells collected from the place of occurrence at point No. 4 were probably of the weapons used by the complainant party because point No. 4 in the site plan (place where spent shells were found) is near to the place where the complainant and witnesses were present i.e., Point No. 5 and this fact was conceded by the investigating officer when appeared as PW-10 as under;

“It is correct that as per Exh. PU site plan recovery of empty is shown more nearer where the Pws were present then that of the position of accused persons at point No.2 & 3.”

Cross version carries the narrative that Qaim Ali was hit by the firing of complainant party, and report under section 173 Cr.P.C. also states that Qaim Ali started firing first and accused persons retaliated. Another investigating officer Abdul Mujeeb ASI PW-12 when appeared in the dock concedes as under;

It is correct that on 28.08.2022, it was version of the accused persons that at the time of death of Qaim Ali (since deceased), he was armed with rifle and pistol. It is correct that it was the version of the accused party that complainant party was coming behind Qaim Ali (since deceased) who received firearm injury from the hands of complainant party. It is correct on 28.08.2022, 31 persons appeared in support of accused party and they all professed that

accused were not involved in the occurrence. It is correct that persons who appeared in support of accused party stated that the deceased was murdered by the firing of complainant party. It is correct that it is mentioned in daily diary dated: 28.08.2022 that during inspection of site, which *empties of bullet 30 bore and empties of Kalashnikov were taken into possession by the police which were lying scattered near the deadbody of the deceased.* It is correct that where the deadbody of deceased Qaim Ali was lying, distance of dead body and position of accused persons was 50-55 feet. *The rifle and pistol of the deceased were picked up by the complainant party.*

(Emphasis supplied)

Thus, showing the empties/spent shells near the deadbody means that they were found scattered at point No. 1, courtyard of baithak of Aslam Juggi, where the accused never approached which shows that Qaim Ali deceased and complainant party was firing at accused party while taking shelter of 5/6 feet high northern wall and accused party was also retaliating when one of the fires hit the deceased. It can be presumed that in order to make fire at accused party, deceased might have tilted his head on the right from behind the northern wall when a blind bullet from accused side hit him. Position of deceased if was so, as assumed, the fire would definitely hit on left side of head, but how or whose fire hit him cannot be assessed through guess work. As observed above, it was a distant fire without producing blackening around the wound, therefore, complainant party who was hiding behind the northern wall cannot view who actually had made that fire.

### **---Recovery of Rifle---**

16. Rifle planted on the appellant was his licensed weapon but despite that it did not match with the spent shells collected from the place of occurrence. Rifle was also not identified by the witnesses as the same used in the occurrence. Practice of marking an article like rifle as 'P' on the recovery memo is not mere a formality rather being real evidence it must be shown to the witnesses to identify or comment upon it so as to facilitate the inspection of Court that this was the weapon used by the accused for commission of offence. Proviso two to Article 71 of Qanun-e-Shahadat Order, 1984 says as under;

“Provided further that, if oral evidence refers to the existence or **condition of any material thing other than a document**, the Court may, if it thinks fit, require the production of such material thing for its inspection:

(Emphasis supplied)

This proviso obviously creates an exception to direct evidence and requires that if oral evidence refers to the existence or condition of any material thing other than document which of course includes weapons, stolen articles, implements, instruments, substance, vehicles and depending upon the nature of offence committed some of the spot recoveries like cigarette butts, packets, pen, mobile, bottles, crockery, utensils, stoves, gas cylinders etc., must be produced for the inspection of court. The words “for its inspection” referred in above proviso has wide connotation which requires a detailed examination of such article/material thing by the court and while relying upon such recovery court should also give its findings about such article. Rule 14-F of Chapter 24-B, Volume III of the Lahore High Court Rules and Orders mandates as under:-

“Clothes, weapons, money, ornaments, food and every article which forms a part of the circumstantial evidence should be produced in Court and their connection with the case and identity should be proved by witnesses”.

Thus, in the present case Court should have given finding with respect to description of weapon, its calibre and other necessary details so as to productively use this kind of evidence as corroboration to principal facts, which has not been done. Thus, recovery of rifle cannot be relied upon or used against the accused/appellant in any manner.

17. Neither Muhammad Aslam Juggi appeared during investigation or trial nor the residents of adjacent houses were associated in to the investigation despite the fact it was daylight occurrence. Interestingly as per site plan there is a grocery store of one Niaz Utra just opposite to place where deadbody was found but he was also not the witness in this case. Existence of grocery store is an indicator that people of locality might have been available at the time of occurrence but prosecution opted not to produce any independent witness and relied

on their own team of people consisting of three brothers including complainant. Under Article 129(g) of the Qanun-e-Shahadat Order, 1984 adverse inference is drawn to the effect that had such witnesses been produced by the prosecution at the trial, they would not have supported the case of the prosecution. Reliance is placed on case reported as “RIASAT ALI and another versus The STATE and another” (2024 SCMR 1224).

18. Motive alleged by the prosecution seems dreary, neither plausible nor appealable; enmity usually exist between the parties and not with their servants/employees, particularly when there was no earlier dispute between them. It was nothing but a word of mouth, thus prosecution failed to prove the motive in this case. Reliance is placed on cases reported as “NOOR MUHAMMAD versus THE STATE and another” (2010 SCMR 97) & “PATHAN versus The STATE” (2015 SCMR 315).

19. Another aspect of the matter is that during trial, co-accused Muhammad Iqbal Shah & Shehzad Anjum Shah stood acquitted by the learned trial Court, as such, serious doubt was created upon the prosecution case qua the involvement of Fakhar Iqbal Shah present accused/appellant and he could not have been convicted under the principle of *“falsus in uno, falsus in omnibus”* (false in one thing, false in all), on the same set of evidence. Reliance is placed on the case reported as “Notice to Police Constable Khizar Hayat son of Hadait Ullah” (PLD 2019 SC 527) and “PERVAIZ KHAN and another versus The STATE” (2022 SCMR 393).

20. It is settled principle of law that conviction must be based on unimpeachable, trustworthy and reliable evidence. Any doubt arising in prosecution case is to be resolved in favour of the accused and burden of proof is always on prosecution to prove its case beyond reasonable doubt. It is also 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. In attending circumstances, prosecution has

failed to prove the charge against the accused/appellant beyond shadow of doubt and numerous doubts crept into the evidence, therefore, benefit of which is extended to the appellant not as a matter of grace but as a matter of right. Reliance is on cases reported as “MAQSOOD ALAM and another Versus The STATE and others” (2024 SCMR 156), “ABDUL QADEER Versus The STATE” (2024 SCMR 1146), “MUHAMMAD IMTIAZ BAIG and another Versus The STATE through Prosecutor General, Punjab, Lahore and another” (2024 SCMR 1191), “MUHAMMAD HASSAN and another Versus The STATE and others” (2024 SCMR 1427), “KHIAL MUHAMMAD Versus The STATE” (2024 SCMR 1490) & “MUHAMMAD IJAZ alias BILLA and another Versus The STATE and others” (2024 SCMR 1507).

21. Consequently, this (*Criminal Appeal No.241 of 2023 filed by Fakhar Iqbal Shah, appellant*) is allowed, and conviction and sentence recorded by the learned trial court against him is set-aside. Appellant, namely, Fakhar Iqbal Shah is acquitted of the charge. He be released forthwith, if not required to be detained in any other case. The case property, if any, be disposed of in accordance with law and the record of the learned trial court be sent back immediately. As the appellant has been acquitted from the charge while accepting his appeal, therefore, criminal revision No.241/2023 for enhancement of sentence is **dismissed**.

(MUHAMMAD AMJAD RAFIQ)  
JUDGE

Approved for reporting:

Judge

Signed on-----  
M. Azhar\*