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**JUDGMENT SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Murder Reference No.371 of 2018
(The State *versus* Qaisar Abbas)

Crl. Appeal No.250896 of 2018
(Qaisar Abbas *versus* The State etc.)

JUDGMENT

Date of hearing: 02.10.2024.

Appellant by: Ms. Rida Noor, Advocate.

Mr. Sohail Majeed Khan, Advocate (Defence
counsel).

State by: Rai Akhtar Hussain, Additional Prosecutor
General.

Complainant by: Mr. Mumtaz Ahmad Mangat, Advocate.

AALIA NEELUM, C.J.:- The appellant-Qaisar Abbas, son of Riaz Ahmad, Caste Jatt Warraich, resident of Saroki, Tehsil and District Gujrat, has assailed his conviction and sentence recorded by the learned Addl. Sessions Judge, Gujrat vide judgment dated 14.11.2018, in a State case F.I.R No.593/2015, dated 26.08.2015, offence under Section 302 PPC, registered at the police station, Kunjah, District Gujrat, whereby the learned trial court convicted the appellant-Qaisar Abbas, under Section 302 (b) PPC and sentenced to death with the direction to pay Rs.5,00,000/- as compensation to the legal heirs of the deceased under Section 544-A of Cr.P.C, and in case of default in payment thereof, he would further undergo 06-months S.I.

2. Feeling aggrieved by the judgment of the learned trial court, the appellant-Qaisar Abbas, has assailed his conviction and sentence by filing an appeal bearing **Crl. Appeal No.250896 of 2018**. The learned trial court also referred **M.R. No.371 of 2018** (The State. Vs. Qaisar Abbas) to confirm

the death sentence awarded to the appellant-Qaisar Abbas, as both the matters arising from the same judgment of the learned trial court are being disposed of through this consolidated judgment.

3. Briefly, the prosecution story as alleged in the F.I.R (Ex. PA) lodged on the statement (Ex. PP) of Khurram Shahzad, deceased (complainant) is that Khurram Shahzad, deceased (complainant), along with his brother, Naveed had come to the house of their sister namely, Mst. Salma Bibi, the wife of Ansar Ali, Caste Jatt Warraich, and a resident of village Sarokey, wanted to see their sister. On the night of 25/26.08.2015, at about 11:00 p.m., the complainant (since dead) was talking with his friend, Qaisar Abbas, the accused, and hot words were exchanged between them; after that, the accused, Qaisar Abbas, took away a pistol from his “dab” and stated to the complainant (since dead) that he would not let him alive. On hue and cry of the complainant (since dead), his brother, namely Naveed, and his sister, Salma, reached there. Qaisar Abbas, the accused fired straight at the complainant, hitting him on the right side of his chest, and the complainant (since dead) fell, and after that, the accused fled away. After that, the complainant (since dead) was brought to A.B.S hospital, Gujrat, in an injured condition; then he was shifted to Mayo Hospital, Lahore, where he (the complainant, since dead) succumbed to the injury and offence under Section 324 PPC, was substituted with an offence under Section 302 PPC.

4. After recording the statement (Ex. PP) of the complainant (since dead), a formal FIR (Ex. PA) was chalked out by Muhammad Qasim, T/ASI (PW-1). After the registration of the case, the investigation of this case was first entrusted to Faique Abbaqs, S.I (PW-5). After that, the investigation of this case was entrusted to Faiz Ahmad, S.I. (PW-12), who found the accused/appellant guilty, prepared a report under Section 173, Cr.P.C. while placing the names of the accused in column No.3 of the Challan and sent the same to the court of competent jurisdiction. The learned trial court formally charge-sheeted the appellant on 04.02.2016, to which he pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as twelve (12) witnesses. The appellant was

also examined in terms of Section 342 Cr.P.C., wherein he neither opted to appear as his own witness in terms of Section 340(2) Cr.P.C. nor produced any defence evidence. In response to a particular question of why this case was against him and why the PWs deposed against him, the appellant made the following deposition: -

“The story of prosecution is totally false and fabricated one. It was a night occurrence, in fact, deceased of instant case was drunk when he left the house of his sister Salma Bibi and was armed with pistol. He entered in the house of a neighbourer at late night for his nefarious and ferocious designs, due to which, he received injury by any unknown person when he was all alone. This fact is further supported from Medicolegal certificate of then injured/deceased, Khurram Shahzad. Doctor recorded the statement of Salma Bibi which fortified the above mentioned fact regarding leaving the house in drunk and receiving firearm injury. The PWs are closely related with the deceased. I have been falsely implicated just to usurp my landed property. FIR was delayed one which was registered with premeditation and pre consultation with the connivance of the doctor and police. Then injured was not fit for statement but with malafide intention and connivance of Faiq Abbas, S.I and doctor his statement was posed to be recorded by then injured which is totally wrong just to strengthen the false version of the prosecution;. No person of locality i.e. village of occurrence endorsed the false version of prosecution. So much so, the brother of deceased Rana Muhammad Saeed and mother Zohra Bibi have not endorsed the version of Salma Bibi and others. I am innocent. I have been falsely implicated and have no concerned with the occurrence.”

5. After recording evidence and evaluating the evidence available on record, considering arguments advanced from both sides, the learned trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellant's conviction as well as awarding of sentence to him in the afore-stated terms.

6. We have heard the arguments advanced by the learned counsel for the parties and have minutely perused the record on the file.

7. The occurrence occurred on the intervening night of 25.08.2015 and 26.08.2015 at 11:00 p.m. in Saroki, situated within the jurisdiction of

Police Station Kunjah, District Gujrat, which is 3-1/2 kilometers only from the place of occurrence. Whereas F.I.R. (Ex. PA) was registered on 26.08.2015 at 04:30 a.m., on the verbal statement-Fard bayan of Khurram Shahzad, then injured, at ABS Hospital, Gujrat, on which F.I.R. (Ex. PA) was registered under section 324 PPC. After that, Khurram Shahzad succumbed to the injuries at Mayo Hospital, Lahore, on 27.08.2015 at 06:05 a.m., and an offence under Section 302 PPC was substituted. It was argued by learned D.P.G. that the F.I.R. of the incident was lodged under section 324 P.P.C. on the intervening night of 25.08.2015 and 26.08.2015 at 4:30 a.m. The deceased, Khurram Shahzad, soon after the incident, was taken to ABS Hospital, Gujrat, where he was given medical treatment by Dr. Iqbal Hussain (PW-6) on 26-08-2015 in the night. His dying declaration was also recorded by Faique Abbas S.I. (PW-5), and the signature of Dr. Iqbal Hussain (PW-6) has been marked as (Ex.P.E/2) in which he categorically stated that accused Qaiser Abbas had shot him with pistol 30 bore and his sister Salma Bibi (PW-7) and brother Naveed (PW-11) brought him to the hospital. Faique Abbas S.I. (PW-5) deposed during the examination-in-chief that: -

“---On 26.08.2015, I was posted as ASI of police station Kunjah. On receiving information that one person has sustained a firearm injury and has been removed to ABS Hospital Gujrat, I promptly reached in hospital, made an application Ex.P.E to medical officer for recording statement of injured Khuram Shahzad s/o Abdul Khaliq. My signatures over Ex.P.E is Ex.P.E/1, prepared injury statement Ex.P.F which bears my signatures Ex.P.F/1--- On 26.08.2015, I recorded the statement of Khuram Shahzad (deceased) at ABS Hospital, Gujrat, which is Exh.P.P which bears signatures and thumb impression of Khuram Shahzad. I identified the signatures and thumb impression of Khuram Shahzad. His signatures and thumb impression is Exh.P.P/1 abd Exh.,P.P/2”

Faique Abbas S.I. (PW-5) deposed during the cross-examination that: -

“---I do not conversant with Khuram Shahzad prior to allegedly recording his statement. I have not seen any I.D card of Khuram Shahzad. I have not got attested the alleged statement of Khuram Shahzad by any doctor. I have also not annexed any video clip along with the alleged statement of Khuram Shahzad---”

Dr. Iqbal Hussain (PW-6) deposed during the examination-in-chief that: -

“---Faique Abbas ASI also moved an application Ex.P.E for recording the statement of the injured. I examined the patient. Patient is well oriented and fit for statement. Application for recording statement of injured bears my signatures Ex.P.E/2. After conducting medical examination I issued MLC Ex.P.I which bears my signatures Ex.P.1/1”.

The testimony of Faique Abbas S.I. (PW-5), Dr. Iqbal Hussain (PW-6), and Naveed (PW-11) was belied by medical as well as documentary evidence. On perusing the medical examination certificate (Ex. PI/1), we found that Khurram Shahzad (then injured) was brought to the hospital by Javeed Iqbal 4007/C (PW-4) at 1:40 a.m., and immediately, medical treatment was provided. The column “General Physical Examination/Symptoms” mentions that “Semi-conscious BP 90/60 Plus 97/min,” and medical treatment was provided against police docket No. 38. Dr. Iqbal Hussain (PW-6) deposed during the cross-examination that: -

“---It is correct that whenever any injured is brought to hospital and if he is in his senses, we record his statement in brief history otherwise statement of any person accompanied by said injured is recorded. It is correct that in MLR of the injured Khuram Shahzad statement of his sister Mst. Salma Bibi has been recorded---It is correct that I recorded the statement of the sister of injured Khuram Shahzad because of the fact that injured was not in a fit condition to give his statement”

In the column concerning “brief history,” it was noted that the statement of Salma Bibi (PW-7), the sister of Khuram Shahzad, was recorded, which is reproduced as under: -

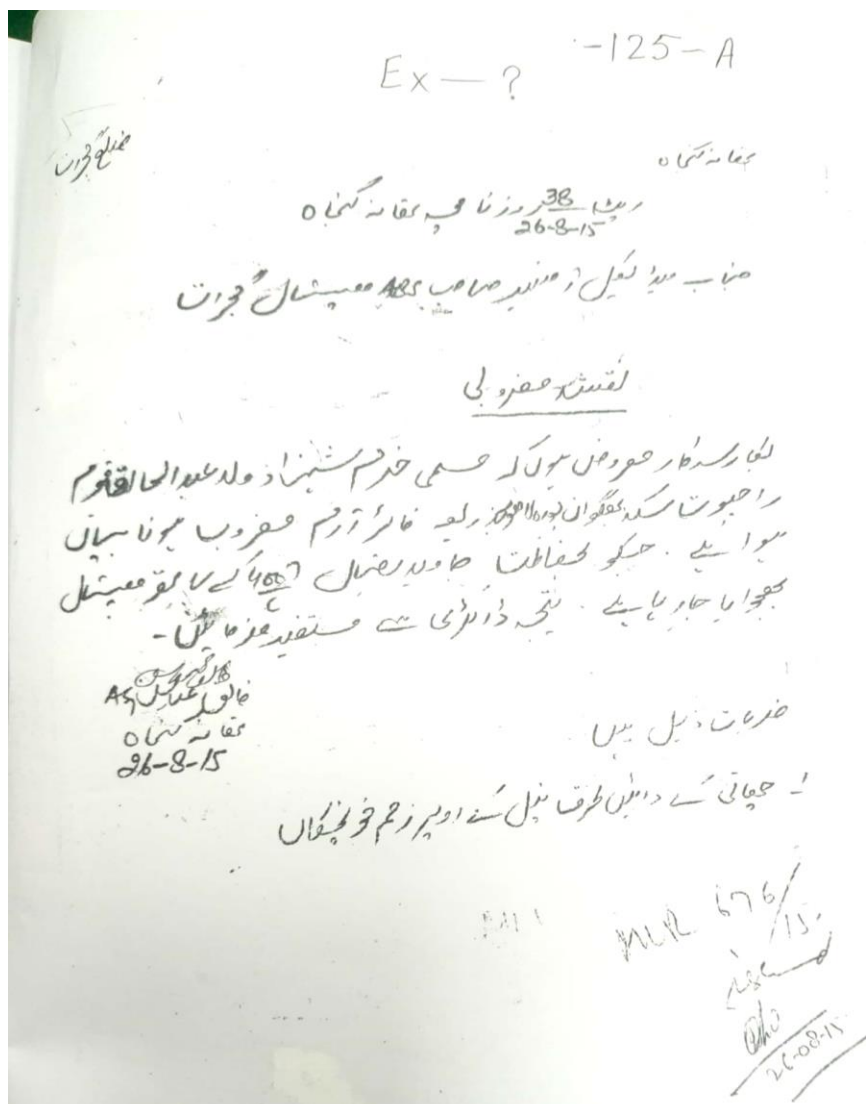
"مضروب کی بہن کے بیان کے مطابق مضروب نے شراب پی ہوئی تھی اور گھر سے پستول لے کر نکلا پڑوسی کے گھر گیا اور لڑائی ہوئی فائر لگا"

Javed Iqbal 4007/C (PW-4) has not deposed that he accompanied the injured for medical examination to ABS Hospital, Gujrat; rather, he stated that after the medical examination, he produced MLC (Ex. PI/1) of the injured Khurram Shahzad before the investigating officer. Faique Abbas S.I. (PW-5) deposed during the cross-examination that: -

“---The information of the alleged occurrence was received at Kunjah on the mid night of 26/27.05, again stated 08th

month of 2015 at about 11/12'o clock through mobile phone---I did not enter in the relevant about the person through whom I received the information—The person who gave telephonic information did not mention the name of any accused and manner of occurrence. I did not mention about the receipt of alleged occurrence in the relevant register---On injury statement, the factum of being injured was told by some person, again stated that it was told by the concerned injured---Rupt No.38 dated 26.08.015 is not attached with the record---It is correct that the F.I.R of alleged occurrence was registered with the delay of about five to six hours---”

On perusal of the injury statement (Ex. PF) (available on page No. 125-A of the paper book), it reveals that the same was prepared at police station Kunjah, District Gujrat, and the injured was referred to hospital through Javeed Iqbal 4007/C (PW-4). The scanned copy of the injury statement is reproduced as follows: -



Faique Abbas, S.I (PW-5)-the investigating officer deposed during cross-examination that: -

“---It is correct that as per column No.1 of inquest report Ex.P.L, the dead body of deceased Khuram Shahzad was recovered from village Sarookey---”

The dying declaration (Ex-PP) contains the signatures of Dr. Iqbal Hussain (PW-6), but this witness admitted during the cross-examination that Khurram Shahzad was in a Semi-conscious condition and not fit to make a statement. Dr. Iqbal's admission is very material and creates doubt about the truthfulness of the dying declaration. These circumstances show that there was no occasion to record the dying declaration, which demolishes the whole story of the dying declaration. The time of the dying declaration and the medico-legal examination are relevant facts. Under Article 46 of the Qanun-e-Shahadat Order, 1984, the sanctity of a dying declaration must be evaluated with great care and caution, and the evidence of a dying declaration must be appreciated with due diligence. A dying declaration is a question of fact that has to be determined by the facts of each case. A case must be considered in all its physical environment and circumstances to discover the truth or falsity of a dying declaration. The courts below have to be extremely careful when they deal with a dying declaration, as the maker is not available for cross-examination, which poses great difficulty to the accused person. A mechanical approach of relying upon a dying declaration just because it is there is extremely dangerous. The courts insist that the dying declaration should be of such nature as to inspire the full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Usually, therefore, the court looks up to the medical opinion to satisfy whether the deceased was in a fit mental condition to make the dying declaration. Dr. Iqbal Hussain (PW-6) mentioned in MLC (Ex. PI/1) that the time of the medico-legal examination is 1:40 a.m. on 26.08.2015, after two hours and forty minutes and Faique Abbas S.I. (PW-5) recorded verbal statement-Fard bayan (Ex.

PP) of Khurram Shahzad, then injured, at ABS Hospital, Gujrat, at 04:30 a.m. on 26.08.2015. As soon as the injured is brought, the doctor takes automatic steps for first aid, and since the doctor sent Khurram Shahzad, who was then injured, for a chest x-ray, the radiologist and surgeon's opinion. Dr. Iqbal Hussain (PW-6) deposed during the cross-examination that: -

“---It is correct that I advised for x-ray and opinion of radiologist and surgeon. It is correct that opinion of Surgeon and radiologist is not part of MLR”

Dr. Muhammad Ali (PW-10), who conducted a postmortem on the dead body of Khurram Shahzad, observed that the drain tube incision and stitch wound on the right iliac fossa oblique measuring 5x1 cm marks were present. It suggests that Khurram Shahzad went through the surgical process. When the doctor referred the injured (Khurram Shahzad) for a surgeon's opinion, and provided medical treatment, it can not be said that he was in a condition to give a statement. In the inquest report (Ex.PL), in the column of brief history, it is mentioned that the injured Khurram Shahzad was referred to Mayo Hospital from ABS Hospital. Saqib Nazir 378/C (PW-3) deposed during his examination-in-chief that he escorted the dead body of Khurram Shahzad to A.B.S. Hospital, Gujrat. Still, he had not deposed wherefrom he escorted the dead body of Khurram Shahzad to A.B.S. Hospital, Gujrat. In the column of brief history of inquest report (Ex. PL), it was mentioned as under: -

جس پر فائق عباس ASI صاحب نے مقدمہ بجرم 324 ت پ درج کروا کر ابتدائی تفتیش عمل میں لائی جو ABS ہسپتال والوں نے مضروب خرم شہزاد کو برائے علاج معالجہ میو ہسپتال لاہور ریفر کر دیا جو امروز بحوالہ ریٹ نمبر 5 مورخہ 15-08-27 بوقت 8/26 بجے دن فائق عباس ASI صاحب کو رانا محمد عثمان نے اطلاع دی کہ مضروب خرم شہزاد زخموں کی تاب نہ لاتے ہوئے جانبحق ہو گیا ہے جو مقدمہ ہذا میں جرم 324 ت پ کو 302 ت پ میں ترمیم کیا گیا ہے فائق عباس ASI صاحب مقتول کی نعش کو میو ہسپتال لاہور سے ABS ہسپتال گجرات لے کر آئے ہیں تفتیش مقدمہ ہذا میرے سپرد ہوئی ہے درخواست پوسٹمارٹم و نقشہ مضروبی نقشہ صورت احوال مرتب کر کے ثاقب نزیر C/378 کو نعش مقتول کا پوسٹمارٹم کروانے پر مامور کیا گیا ہے میں معہ محمد افضل C/280 نزیر احمد C/217 اصغر علی C/431 جو کہ اطلاع وقوعہ پا کر ہسپتال آئے تھے بغرض تفتیش مقدمہ و تالاش ملزم موقعہ ساروکی کا روانہ ہوتا ہوں حالات مقدمہ افسران بالا کے گوش گزار ہوئے ہیں

Immediately after providing first aid, Dr. Iqbal Hussain (PW-6) must have conducted a medico-legal examination, first. The time is 1:40 a.m. on 26.08.2015, written on the MLC (Ex. PI/1). After that, the injured was sent for surgery, and the prosecution did not produce the surgical unit/department record. The prosecution failed to establish where Khurram Shahzad took his last breath. So, the time of writing the dying declaration is wrong. It appears that the dying declaration was recorded much later, and the doctor concerned unmindfully mentioned that the injured was fit to make a statement on the application for recording the statement of the injured (Ex. PD). Why he (PW-5) has not written said fact on the dying declaration, is surprising and raising eyebrows. The dying declaration and injury report were recorded at the same time. **Due to the nature of the injury and abnormal pulse rate, a semi-conscious injured person is not expected to be able to depose the dying declaration.** Thus, the dying declaration appears to be highly doubtful. However, during cross-examination, he admitted that the sister's statement of the injured Khurram Shahzad was recorded because the injured Khurram Shahzad was not in a fit condition to give his statement. Thus, the conduct of the medical officer concerned is highly questionable. The prosecution witnesses have not deposed that Khurram Shehzad was shifted to Mayo Hospital Lahore for medical treatment, when and who took/shifted him to Mayo Hospital Lahore. Dr. Iqbal Hussain (PW-6) also did not depose in his examination-in-chief that he referred Khurram Shehzad to Mayo Hospital Lahore for medical treatment. It is also not mentioned in the MLC (Ex. PI/1) that Khuram Shehzad was referred injured to Mayo Hospital Lahore for medical management. Salma BiBi (PW-7) and Naveed (PW-11), sister and brother of Khurram Shahzad, also did not depose in their examination-in-chief that they shifted the injured to Mayo Hospital Lahore for medical treatment where he lost his life. During cross-examination, Salma BiBi (PW-7) deposed that she remained for about two and a half hours in the hospital, the time so becomes about 1:40 a.m. on 26.08.2015. What happened from 1:40 a.m. on 26.08.2015 till 06:05 a.m., on 27.08.2015 i.e. the time when Khurram Shahzad expired, which is the time and date mentioned by Dr. Muhammad Ali (PW-10), on the post-mortem

examination report, the prosecution story is silent. A similar statement is given by Naveed (PW-11); apart from this, the prosecution story is silent as to when Khurram Shahzad breathed his last and who brought his dead body to ABS Hospital Gujarat. Faique Abbas, S.I./I.O. (PW-5) does not depose in his statement that he brought the dead body of Khurram Shahzad to ABS Hospital Gujarat from Mayo Hospital, Lahore, while Faiz Ahmed S.I./I.O. (PW-12) mentioned in the column of the brief history of inquest report (Ex. PL) that Faique Abbas, S.I./I.O. (PW-5) brought the dead body of Khurram Shahzad from Mayo Hospital Lahore to A.B.S. Hospital, Gujrat.

8. In the FIR (Ex. PA), there is a mention that on the hue and cry of the complainant, Khurram Shahzad (since dead), his brother, namely Naveed, and his sister, Salma Bibi, reached the place of occurrence. Qaisar Abbas fired straight at the complainant, hitting him on the right side of his chest. The names of the witnesses were mentioned in the FIR (Ex. PA). Salma Bibi (PW-7) deposed during the cross-examination that: -

“---It is correct that I got recorded in my statement before the police that I was sitting inside the house whereas accused Qaiser Abbas and deceased Khuram Shahzad were sitting outside the house. I got recorded in my statement before police that after hearing noise I went out the house---I did not get record in my statement before the police that any altercation was happened in between my brother Khuram Shahzad and accused Qaiser Abbas within the area of Sarokey. I got recorded in my statement in the court that deceased Khuram Shahzad and accused Qaiser Abbas were sitting in the haveli---it is correct that there is small path and a “Nala” in front of our house. Door of our house opens in the street. It is correct that no witness from the surrounding houses is in this case. My brother Naveed PW arrived in the village one day prior to the occurrence---I do not know that normally there is tradition in the villages that people sleep after offering Esha prayer. I do not know that whether deceased Khuram Shahzad and accused Qaiser Abbas were sitting on the ground, or on the cots or on the chairs. I do not know how much time it will take of the journey from our village to the hospital. I do not know the distance in between police station Kunjah and our village---”

Naveed (PW-11) deposed during the cross-examination that: -

“—I and Khuram Shahzad came from Lahore to Sarookey on the same day i.e. on 25.08.2015. Occurrence was happened on 26.08.2015---The injured was shifted to Hospital by “1122”. I off and on visit the house of my sister Salma Bibi---I do not know that whether accusing Qaiser Abbas and deceased were sitting on the ground, on cots or on the chairs---”

The dying declaration (Ex. PP) of Khurram Shahzad reveals that he went to the Haveli of Qaiser Abbas, the accused, where the incident took place. In the dying declaration (Ex. PP) of Khurram Shahzad, it was mentioned as under: -

بیان کیا کہ میں لاہور کا رہائشی ہوں۔ میں محنت مزدوری کرتا ہوں۔ میں اور میرا بھائی نوید اپنی ہمشیرہ مسماۃ سلمیٰ بی بی زوجہ عنصر علی قوم جٹ وڑائچ سکنہ ساروکی کو ملنے کے لئے اپنی ہمشیرہ کے گھر ساروکی آئے ہوئے تھے شب درمیانی مورخہ 15-8-25/26 بوقت قریب - 11 بجے رات میں اپنے دوست قیصر علی ولد ریاض احمد قوم جٹ وڑائچ ساروکی کی حویلی میں بجلی کی روشنی میں بیٹھ کر باتیں کر رہے تھے کہ دوران گفتگو میری اور قیصر کی آپس میں کسی بات پر تلخ کلامی ہو گئی۔ قیصر علی نے مجھے زور زور سے گالیاں دینا شروع کر دیں اور اپنے ڈب میں سے پسٹل 30 بور نکال لیا اور کہا کہ آج تمہیں زندہ نہیں جانے دوں گا۔ میں نے بچانو کی خاطر شور وادیا کیا تو مجھے شور کی آواز سن کر میرا بھائی نوید اور ہمشیرہ مسماۃ سلمیٰ بی بی بھی حویلی میں آگئے۔۔۔۔۔ مجھ پر پسٹل 30 بور سے سیدھا فائر کر دیا جو مجھے دائیں طرف سامنے چھاتی پر لگا میں مضروب ہو کر گر پڑا۔

The presence of the witnesses at the Haveli at about 11:00 P.M. and near the place of occurrence is highly improbable. Faique Abbas S.I. (PW-5) deposed during the cross-examination that: -

“---It is correct that information about alleged occurrence was not given by Salma Bibi and Naveed PWs of the instant case. It is correct that any figure of concerned locality did not support the version of prosecution’s case. The information of the alleged occurrence was received at Kunjah on the mid night of 26/27.05, again stated 08th month of 2015at about 11/12’o clock through mobile phone---I did not enter in the relevant about the person through whom I received the information---The person who gave telephonic information did not mention the name of any accused and manner of occurrence. I did not mention about the receipt of alleged occurrence in the relevant register. On injury statement, the factum of being injured was told by some person, again stated that it was told by the concerned injured---It is correct that I went through the medical certificate of then injured and perused the same

kept in the case file. It is correct that as per Exh.P.I, as per statement of sister of injured, injured had drunk and he came out of his taking pistol with him, entered into the house of neighbour, quarrel took place and fire hit. It is correct that as per Exh.P.I, the medical certificate of then injured, sister of injured did not nominate accused Qaiser Abbas present in the court. When I prepared sketch of injuries Exh.P.G, no person was present. It is correct that on Exh.P.G the name of any accused could not mention. Rupt No.38 dated 26.08.2015 is not attached with the record---It is correct that medical of injured was conducted through police. As per Exh.P.G, according to the sister of then injured Salma Bibi has not deposed that she herself witnessed the occurrence nor Naveed PW witnessed the occurrence. It is correct that when I saw the then injured, he was wearing only "pent". No mobile, perse or any other articles of the then injured was not taken into possession by me. It is correct that besides the house of accused Qaiser, no Haveli of said accused was situated there. It is correct that as per statements of Salma PW and Naveed PW dated 26.08.2015, the alleged occurrence took place in the Haveli of Qaiser accused. It is correct that in the house of Qaiser accused shown in site plan Exh.P.F, the alleged occurrence or the collection of bloodstained was not found proved. It is correct that whatever was pointed by the PWs, I prepared the site plan, Exh.P.F, accordingly. It is correct that I did not show the residence of sister of the then injured or PWs near or around the haveli of Muhammad Aslam s/o Nazar Muhammad or the house of Qaiser accused in Exh.P.F. The house of complainant party was situated with the gape of three to four houses from the house of Qaiser accused shown in Exh.P.F---It is correct that the F.I.R of alleged occurrence was registered with the delay of about five to six hours---"

Faiz Ahmad S.I./I.O. (PW-12)-investigating officer deposed during cross-examination that:

"---It is correct that when the investigation of the instant case was entrusted to me I went through whole of the record. As per statement of PW Salma Bibi mentioned on Exh.P.I, Khuram Shahzad, the then injured was drunk when he went out from his house while taking pistol with him and he went to the house of neighbourer and where fight took place and fire was hit. It is correct that in said statement of PW-7 Salma Bibi there is no mentioned of accused who made fire shot. It is correct that as per column No.1 of inquest report Ex.P.L, the dead body of deceased Khuram Shahzad was recovered

from village Sarookey. It is correct that on 27.08.2015 one Rana Muhammad Usman joined investigation. Said Rana Muhammad Usman was the relative of deceased Khurram Shahzad as well as PWs Salma Bibi and Naveed. It is correct that said PW Rana Muhammad Usman did not support the statements of PWs Naveed and Salma Bibi. PW Naveed is the real brother of deceased Khuram Shahzad---

It is the prosecution's case that the incident took place in the house of Qaiser Abbas, the accused, and on the pointing of Salma Bibi (PW-7) and Naveed (PW-11), the unscaled site plan (Ex. PN) was prepared by Faiz Ahmad S.I./I.O. (PW-12)-investigating officer. Faiz Ahmad S.I./I.O. (PW-12)-investigating officer deposed during examination-in-chief that: -

“---On 29.08.2015, I summoned the brother of the complainant Naveed and Muhammad Asif Akhtar Naqash draftsman and took rough notes from the place of occurrence. Draftsman prepared scaled site plan and handed over to me three leaves Exh.P.B/1-3. I made red notes upon Exh.P.B. My red notes are Exh.P.B/4-6. I recorded the statement of draftsman u/s 161 Cr.P.C---

Faiz Ahmad S.I./I.O. (PW-12)-investigating officer deposed during cross-examination that: -

“—It is correct that I got prepared site plan Exh.P.B on the pointation of PWs Salma Bibi and Naveed which I signed on 03.09.2015. It is correct that as per site plan Exh.P.B, the occurrence took place in the Havaili of Muhammad Aslam s/o Nazar Muhammad. It is correct that as per my investigation occurrence took place in the house of above said Muhammad Aslam. It is correct that during my investigation, occurrence did not take place in the house/Havaili of Qaiser Abbas accused. It is correct that on the pointation of PWs Salma and Naveed, site plan Exh.P.B was prepared and the place of occurrence was found the house of above said Muhammad Aslam. It is correct that aforementioned Muhammad Aslam did not join investigation in support of the version of the complainant party. It is correct that said Muhammad Aslam is not the witness of said case---It is correct that the aforementioned Haveli/house, was consisted on four boundaries, having an iron gate. It is correct that I did not show the house of PWs Salma Bibi and Naveed, situated around the place of occurrence---it is correct that accused Qaiser had independent house in village Sarookey. Nothing was recovered from the house of accused Qaiser---”.

Salma Bibi (PW-7) deposed during the cross-examination that: -

“---It is correct that there is small path and a “Nala” in front of our house. Door of our house opens in the street. It is correct that no witness from the surrounding houses is in this case. My brother Naveed PW arrived in the village one day prior to the occurrence---I do not know that normally there is tradition in the villages that people sleep after offering Esha prayer. I do not know that whether deceased Khuram Shahzad and accused Qaiser Abbas were sitting on the ground, or on the cots or on the chairs. I do not know how much time it will take of the journey from our village to the hospital. I do not know the distance in between police station Kunjah and our village---”

Naveed (PW-11) deposed during the cross-examination that: -

“---It is correct that adjacent to the house of my sister Salma Bibi there is a path and a “Nala” (drainage) in front of her house. The door of the house of Salma Bibi opens towards passage. There are two doors of the house of my sister Salma Bibi and both doors open on the side of said path---We pointed the place of occurrence to I.O as well as the point where we were sitting---”

The prosecution also has not proved the place of occurrence. Faiz Ahmad S.I./I.O. (PW-12)-investigating officer deposed during cross-examination that: -

“---It is correct that I got prepared site plan Exh.P.B on the pointation of PWs Salma Bibi and Naveed which I signed on 03.09.2015. It is correct that as per site plan Exh.P.B, the occurrence took place in the Havaili of Muhammad Aslam s/o Nazar Muhammad---It is correct that during my investigation, occurrence did not take place in the house/hevaili of Qaiser Abbas accused---”

The actual place of occurrence has not been duly proved. As regards the place of occurrence, Faiz Ahmad S.I./I.O. (PW-12)-the investigating officer, has stated that the place of occurrence is not the Haveli of Qaiser Abbas, and the same is the Haveli of Muhammad Aslam, son of Nazar Muhammad. Besides being highly interested, all the prosecution witnesses have also made irreconcilable contradictions on material points, rendering their evidence incredible. With this background, the presence of the alleged eye-witnesses on the spot seems doubtful. This is a very serious infirmity that destroys the credibility of the witnesses' evidence. If the evidence of these

witnesses is rejected as untrustworthy, nothing survives the prosecution case, and it would not be safe to rely upon such evidence.

9. The motive set up by the prosecution in the Fard Bayyan (Ex. PP) and F.I.R. (Ex.PA) and deposed about it by Salma Bibi (PW-7) and Naveed (PW-11) have been found by us to have remained un-proved. The prosecution case in this regard was vague and could hardly inspire confidence. Salma Bibi (PW-7) deposed during cross-examination that: -

“---I did not get record in my statement before the police that any altercation was happened in between my brother Khuram Shahzad and accused Qaiser Abbas within the area of Sarokey---”

10. Therefore, the evidence led by the prosecution in connection with motive is not sufficient for placing reliance on the testimonies of the witnesses for committing the occurrence. Motive is a double-edged weapon for the occurrence and for false implications. There are always different motives that operate in the mind of the person in making false accusation. In the circumstances, we cannot avoid the conclusion that the motive, as alleged, was an afterthought and has not been proved by any credible evidence.

11. We have noticed that no doubt 30-bore pistol (P-4) along with two live bullets (P-4/1-2) was allegedly recovered on the pointing of Qaiser Abbas, appellant-accused and there is no report of the Forensic Science Laboratory, Lahore, that the weapon had matched with the crime empties. As no crime was empty was recovered from the place of occurrence which could be matched with the weapon recovered. Contrary to it, the report of Forensic Science Laboratory (Ex. PS) reflects that the allegedly recovered weapon was in working condition, therefore, there is no incriminating recovery in this case available on record to connect the appellant with the commission of offence.

12. In view of the above circumstances, the conclusion we arrived at is that there is no credible evidence to establish that Salma Bibi (PW-7) and Naveed (PW-11), eyewitnesses, have brought true facts before the court. The prosecution had badly failed to lead incriminating,

corroborative/independent evidence to bring home guilt of the accused. In this background, the benefit of doubt is to be extended in favour of the accused. In the case of Muhammad Akram v. The State (2009 SCMR 230), wherein it has been held as under:-

“----Benefit of doubt---Principles---For given the benefit of doubt it is not necessary that there should be many circumstances creating doubts---Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right.”

13. The upshot of the above discussion is that the prosecution has badly failed to bring home charge against the appellant beyond any reasonable doubt, therefore, in the interest of safe administration of criminal justice, Crl. Appeal No.250896 of 2018, filed by the appellant, Qaisar Abbas is accepted in toto. The conviction and sentence awarded by the learned Additional Sessions Judge, Gujrat vide judgment dated 14.11.2018, is set aside and the appellant, is acquitted of the charge in a case F.I.R No.593/2015, dated 26.08.2015, offence under Section 302 PPC, registered at the police station, Kunjah, District Gujrat. The appellant, Qaisar Abbas son of Riaz Ahmad, who is in custody, is ordered to be released forthwith, if not required in any other case.

14. Murder Reference No.371 of 2018, forwarded by the learned trial court for confirmation of sentence of death inflicted upon the convict fails, which is answered in NEGNATIVE.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Chief Justice

Approved for Reporting.

Judge

Chief Justice