

**HCJDA.38**  
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No.2227 of 2014**

Syed Saqlain Shah Vs. The State

**&**

**Criminal Revision No.24 of 2015**

Imran Haider Vs. Syed Saqlain Shah etc.

**JUDGMENT**

Date of hearing:	<b>17.11.2020.</b>
Appellant, as well as, respondent No.1 in Crl. Revision No.24 of 2015 by:	M/s Ch. Imran Raza Chadhar and Ch. Qasim Raza Chadhar Advocates.
State by:	Ch. Muhammad Ishaq, Additional Prosecutor General.
Complainant, as well as, petitioner in Crl. Revision No.24 of 2015 by:	Mr. Sajid Hussain Butt Advocate.

**Malik Shahzad Ahmad Khan, J:-** This judgment shall dispose of ***Criminal Appeal No.2227 of 2014***, filed by Syed Saqlain Shah (appellant) against his conviction and sentence, as well as ***Criminal Revision No.24 of 2015***, filed by Imran Haider petitioner/complainant for enhancement of sentence from imprisonment for life to death awarded to Syed Saqlain Shah (respondent No.1 of the said criminal revision), as both these matters have arisen out of the same judgment dated 28.11.2014, passed by learned Additional Sessions Judge, Ferozewala.

2. Syed Saqlain Shah (appellant) along with Muhammad Saleem alias Kali Gujjar (co-accused since acquitted), Syed Raza

Shah (co-accused since acquitted) and Mst. Umm-i-Naila alias Laila (co-accused since acquitted) was tried in case F.I.R. No.1130/2010 dated 16.12.2010, registered at police station Ferozewala District Sheikhpura in respect of offences under sections 302/148/149 PPC. After conclusion of the trial, the learned trial Court *vide* its judgment dated 28.11.2014, has convicted and sentenced the appellant as under: -

*Under section 302(b) PPC to imprisonment for life. The appellant was also directed to pay an amount of Rs.2,00,000/- (Rupees two hundred thousand only), as compensation to the legal heirs of Kamran Haider (deceased) under section 544-A Cr.P.C and in case of default to further undergo six months simple imprisonment.*

*Benefit of section 382-B Cr.P.C was also extended to the appellant.*

However, *vide* the same impugned judgment Muhammad Saleem alias Kali Gujjar, Syed Raza Shah and Mst. Umm-i-Naila alias Laila (co-accused) were acquitted by the learned trial Court while extending them the benefit of doubt.

3. Brief facts of the case as given by the complainant Imran Haider (PW-7) in the FIR (Ex.PG/1) are that on 16.12.2010, at about 9.00 a.m, his brother namely Kamran Haider (deceased) received a call on his mobile phone. On the query of the complainant, Kamran Haider (deceased) told that Mst. Umm-i-Naila alias Laila (co-accused since acquitted) had called him for meeting. The complainant suspected something wrong, therefore, he (complainant) along with his younger brother Farhan Haider followed Kamran Haider (deceased) on their motorcycle. Kamran Haider (deceased) proceeded towards Gujranwala on G.T. road on his motorcycle Honda-CG-125 (black colour) bearing registration No.LEV-09/ 4030 and when he reached on G.T. Road Total Petrol Pump near Rice Farm, Kala Shah Kaku, Saqlain Shah (appellant), Kali Gujjar (co-accused since acquitted), Mst. Umm-i-Naila alias Laila (co-accused since acquitted), Raza Ali Shah (co-accused since

acquitted) and Riaz Shah (co-accused since P.O), along with one unknown accused person emerged at the spot and intercepted him. Saqlain Shah (appellant) and Muhammad Saleem alias Kali Gujjar (co-accused since acquitted) thereafter, made indiscriminate firing with their respective pistols at Kamran Haider (deceased), which landed on the different parts of his body, who after sustaining serious injuries fell down on the ground. Upon seeing the whole occurrence, the complainant along with Farhan Haider (PW) stepped forward on which, the accused persons while making firing and raising '*Lalkaras*' fled away from the spot while saying that they had taken the revenge of their insult. The occurrence was also witnessed by Abdul Rehman (given up PW), Durrab Hussain (PW.8) and Ahmad Subhani (given up PW). Kamran Haider succumbed to the injuries at the spot, hence the abovementioned FIR.

The motive behind the occurrence was that Umm-i-Naila alias Laila (co-accused since acquitted) wanted to marry with Kamran Haider (deceased) and family members of said co-accused also visited the complainant's house for 2/3 times for the said purpose but the complainant's family members did not agree with the proposal. The complainant's family got contracted marriage of Kamran Haider deceased at some other place and due to the said grudge, the accused persons, in furtherance of their common object, committed the murder of Kamran Haider (deceased).

4. The appellant was arrested in this case by the police and after completion of investigation the challan was prepared and submitted before the learned trial court. The learned trial Court, after observing legal formalities, as provided under the Code of Criminal Procedure, 1898 framed charge against the appellant and his co-accused on 26.10.2011 to which they pleaded not guilty and claimed trial. In order to prove its case the prosecution produced ten witnesses. Aftab Ahmad, DSP and Abdul Aziz, 982/C were examined as Court witnesses (CW.1 and CW.2, respectively). Prosecution also produced documentary evidence in the shape of

Ex.PA to Ex.PT during the trial. The statements of the appellant and his co-accused under section 342 Cr.P.C were recorded, wherein they refuted the allegations levelled against them and professed their innocence.

5. The learned trial Court *vide* the impugned judgment dated 28.11.2014, found the appellant guilty, convicted and sentenced him as mentioned and detailed above.

6. It is contended by learned counsel for the appellant that the appellant is absolutely innocent and he has wrongly been convicted and sentenced by the learned trial Court; that both the eye-witnesses of the prosecution are chance witnesses because their houses were situated at the distances of 10/15-KMs and 20/25-KMs from the place of occurrence; that the prosecution eye-witnesses could not justify their presence at the spot at the relevant time through any cogent reason, therefore, their evidence is not worthy of reliance; that there is a delay of 24-hours in conducting postmortem examination of Kamran Haider (deceased) which also shows that the prosecution witnesses were not present at the spot at the time of occurrence; that the motive alleged against the appellant has also not been proved in this case by the prosecution and the same has rightly been disbelieved by the learned trial Court; that the recovery of weapon of offence and positive report of the Punjab Forensic Science Agency, Lahore (Ex.PT) is of no avail to the complainant party because the empties and pistol were deposited together in the office of Punjab Forensic Science Agency, Lahore; that the witness, namely, Shahzada Qeqous (837/C) who deposited the pistol and empties in the office of Punjab Forensic Science Agency, Lahore, did not appear in the witness box; that the appellant and Muhammad Saleem alias Kali Gujjar, co-accused were attributed a joint role of firing at the deceased but the said Muhammad Saleem alias Kali Gujjar, co-accused has been acquitted by the learned trial Court and criminal appeal filed against his acquittal i.e. Crl. Appeal No.39 of 2015, has also been dismissed by this Court *vide* order dated 20.11.2019, therefore, the prosecution evidence which has

been disbelieved against the above mentioned co-accused, cannot be believed against the appellant without independent corroboration, which is very much lacking in this case; that the prosecution miserably failed to prove its case against the appellant beyond the shadow of doubt, therefore, this appeal may be accepted and the appellant may be acquitted from the charge.

7. On the other hand, it is argued by the learned Additional Prosecutor General for the State assisted by learned counsel for the complainant that the prosecution has proved its case against the appellant beyond the shadow of any doubt, therefore, he was rightly convicted and sentenced by the learned trial Court; that the prosecution eye-witnesses were cross-examined at length but their evidence could not be shaken; that the occurrence in this case took place in the broad daylight and as such there was no chance of any misidentification of the appellant; that the appellant alongwith Muhammad Saleem alias Kali Gujjar, co-accused was given specific role of making fire shots at Kamran Haider, deceased and the said role is fully supported by the medical evidence; that the prosecution case against the appellant has further been corroborated by the recovery of pistol (P-5) from the possession of the appellant and the positive report of Punjab Forensic Science Agency, Lahore (Ex.PT); that motive against the appellant has also been proved by the trustworthy and reliable prosecution evidence and the same was wrongly disbelieved by the learned trial Court; that the acquittal of Muhammad Saleem alias Kali Gujjar, co-accused is of no avail to the appellant because the said co-accused was declared innocent by the police and nothing incriminating was recovered from his possession whereas the appellant was found guilty by the police and pistol (P-5) has also been recovered from his possession and as such his case is distinguishable from the case of Muhammad Saleem alias Kali Gujjar, co-accused (since acquitted), therefore, his criminal appeal may be dismissed. While arguing Criminal Revision No.24 of 2015 for enhancement of sentence of Syed Saqlain Shah (convict), it is argued by learned counsel for the

complainant that there was no mitigating circumstance in this case, therefore, Syed Saqlain Shah may be awarded the normal penalty of death.

8. Arguments heard and record perused.

9. The detail of the prosecution case as set forth in the FIR (Ex.PG/1) and in the complaint (Ex.PG), has already been given in paragraph No.3 of this judgment, therefore, there is no need to repeat the same.

10. In order to prove its ocular account, the prosecution has produced in the witness box Imran Haider, complainant (PW.7) and Durrab Hussain (PW.8). The occurrence in this case took place near Total Petrol Pump situated at G.T. Road Kala Shah Kaku. Both the above mentioned eye-witnesses are not residents of the place of occurrence. Imran Haider, complainant (PW.7) has stated during his cross-examination that Durrab Hussain (PW.8) is resident of Wandala Dayal Shah Ferozewala which was situated at a distance of 20/25-KMs from the place of occurrence. He further stated that he himself was resident of Ferozewala and distance between Ferozewala and the place of occurrence was about 15-KMs. In order to justify his presence at the spot at the relevant time, Imran Haider, complainant (PW.7) stated that on the day of occurrence, Kamran Haider, deceased received a phone call and on inquiry of Imran Haider, complainant (PW.7), he (deceased) informed that Mst. Umm-i-Naila alias Laila, co-accused had called him and he was going to meet her. On the said information, the complainant suspected something wrong and followed his brother Kamran Haider, deceased. No telephone number of Mst. Umm-i-Naila alias Laila, co-accused has been mentioned in the FIR (Ex.PG/1) or in the statement of any prosecution witness recorded by the police or by the learned trial Court. Likewise, no phone number of Kamran Haider (deceased) has been mentioned in the FIR or in the evidence of any prosecution witness recorded by the police or by the learned trial Court. Furthermore, no call data record of the phone numbers

of the deceased and Mst. Umm-i-Naila alias Laila, co-accused has been collected in this case by the police to support the above mentioned story of the complainant that he suspected something wrong due to phone call of Mst. Umm-i-Naila alias Laila, co-accused, therefore, he followed his brother, namely, Kamran Haider (deceased) on the day of occurrence and reached at the spot where he witnessed the occurrence. Similarly, Durrab Hussain (PW.8) has made this excuse for establishing his presence at the spot at the relevant time that he came to the spot which was situated in another town at a distance of 15-KMs from his town, in order to get petrol for his motorcycle but he conceded during his cross-examination that many other petrol pumps were situated near his house. He did not mention any valid reason for not getting petrol from the petrol pump situated near his house and for travelling all the way to another town which was situated at 15/20-KMs from his town to get the petrol for his motorcycle. The relevant part of his statement during cross-examination reads as under:-

“It is correct that I have no house, business place or business concern near the place of occurrence. It is correct that in my statement u/s 161 Cr.P.C Ex.DB and in examination in chief, the only purpose was mentioned i.e., getting petrol from the petrol pump. The witness volunteered that I mentioned before the I.O that I along with Ahmad Subhani went there to see the plot in a SA garden but the I.O did not record said portion of my statement. It is incorrect to suggest that my volunteered portion is dishonest improvement just to extent undue favour to the complainant party. It is correct that in my statements u/s 161 Cr.P.C Ex.DB and Ex.DC and in my examination in chief that fact has not been mentioned. The witness volunteered that I had disclosed that fact to the I.O. It is incorrect to suggest that my volunteered portion is incorrect and false. It is correct that there is PSO petrol located at Match factory just to near my house. It is correct that petrol can also be obtained from PSO petrol pump. It is correct that there is another PSO petrol pump from the first PSO

petrol pump which is near Ferozewala bus stop. I cannot say that there is an Attock petrol pump at Rana Town bus stop. It is incorrect to suggest that I am suppressing this fact with malafide. There might be a shell Sitara petrol pump near Toll plaza Kala Shah Kaku. It is correct that from all of the aforementioned petrol pumps petrol could be obtained. There might be seven petrol pumps on the opposite side of road.”

Although, Durrab Hussain (PW.8) made dishonest improvement during his cross-examination that he told the investigating officer that he alongwith Ahmad Subhani went to the place of occurrence to see a plot in S.A Garden Housing Scheme but he conceded that the said reason was not mentioned in his statements recorded under section 161 Cr.P.C. Ex.DB or Ex.DC or even in his examination-in-chief. It is, therefore, evident that Durrab Hussain (PW.8) made dishonest improvement during his cross-examination by giving another reason for his presence at the spot at the relevant time by stating for the first time in the Court that he went to the place of occurrence to see a plot in S.A. Garden Housing Scheme. He could not give any valid reason for not getting petrol from petrol pumps situated near his house. It does not appeal to a prudent mind that instead of getting petrol from the petrol pumps situated near his house, in his own town, he would go all the way to another town situated at a distance of 15-KMs just to get petrol for his motorcycle. Both the above mentioned eye witnesses could not justify the reason given by them for their presence at the spot at the time of occurrence. They are therefore, chance witnesses and as such their evidence is not free from doubt. The Hon’ble Supreme Court of Pakistan in the case of “Mst. Sughra Begum and another Vs. Qaiser Pervez and others” (2015 SCMR 1142) at Para No.14, observed regarding the chance witnesses as under:-

“14. A chance witness, in legal parlance is the one who claims that he was present on the crime spot at the fateful time, albeit, his presence there was a sheer chance as in the ordinary course of



business, place of residence and normal course of events, he was not supposed to be present on the spot but at a place where he resides, carries on business or runs day to day life affairs. It is in this context that the testimony of chance witness, ordinarily, is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In normal course, the presumption under the law would operate about his absence from the crime spot. True that in rare cases, the testimony of chance witness may be relied upon, provided some convincing explanations appealing to prudent mind for his presence on the crime spot are put forth, when the occurrence took place otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt.”

Likewise, in the case of “Sufyan Nawaz and another Vs. The State and others” (2020 SCMR 192) at Para No.5, the Apex Court of the country was pleased to observe as under:-

“.....He admitted that in his statement before police, he had not assigned any reason for coming to village on the day of occurrence. In these circumstances, complainant Muhammad Arshad (PW.7) is, by all means, a chance witness and his presence at the spot at the relevant time is not free from doubt.”

Similar view was taken in the case of “Muhammad Irshad Vs. Allah Ditta and others” (2017 SCMR 142). Relevant part of the said judgment at Para No.2 reads as under:-

“.....Muhammad Irshad complainant (PW8) and Rab Nawaz (PW9) were chance witnesses and the stated reason for their presence with the deceased at the relevant time had never been established before the trial court through any independent evidence.....”

As the above mentioned prosecution eye-witnesses are chance witnesses and they could not prove the reason of their presence at the spot at the time of occurrence, therefore, their very presence at the spot at the relevant time becomes doubtful.

11. It is further noteworthy that as per prosecution case, the occurrence in this case took place on 16.12.2010 at 9:00 A.M. but as per statement of Dr. Khalid Bashir (PW.4), the postmortem examination on the body of Kamran Haider deceased was conducted on 17.12.2010 at 9:15 A.M. i.e. with the delay of more than 24-hours from the occurrence. Although, Imran Haider, complainant (PW.7) stated during his cross-examination that the above mentioned delay in conducting the postmortem examination on the body of deceased had occurred due to non-availability of the Medical Officer but no such statement has been made by Dr. Khalid Bashir (PW.4) that on 16.12.2010, no Medical Officer was available in the concerned mortuary. The said witness rather stated that the dead body was brought on 16.12.2010 at about 12:15 P.M. without police papers and police papers were brought on 17.12.2010 at 9:15 A.M. and then he conducted the postmortem examination on the body of the deceased. The above mentioned delay in conducting the postmortem examination on the body of the deceased is suggestive of the fact that the prosecution eye-witnesses were not present at the spot at the relevant time and the said delay was consumed in procuring the attendance of fake eye-witnesses. In the case of “Zafar Vs. The State and others” (2018 SCMR 326), the Hon’ble Supreme Court observed that delay of 11-hours in conducting the postmortem examination shows that prosecution eye-witnesses were not present at the spot at the time of occurrence, therefore, the said delay was utilized for showing fake eye-witnesses in the police papers. Likewise, in the case of “Muhammad Ilyas Vs. Muhammad Abid alias Billa and others” (2017 SCMR 54), the Apex Court of the Country was pleased to observe that delay of nine-hours in conducting postmortem examination suggests that prosecution eye-witnesses were not

present at the spot at the time of occurrence, therefore, the said delay was used in procuring the attendance of fake eye-witnesses. I am, therefore, of the considered view that the prosecution eye-witnesses were not present at the spot at the time of occurrence which resulted in the delay of postmortem examination of the deceased.

12. As per prosecution case, the motive behind the occurrence was that family members of Mst. Umm-i-Naila alias Laila, co-accused wanted to marry her with Kamran Haider, deceased and for the said purpose, her family members visited the house of the complainant party 2/3 times but the family members of the complainant party did not agree with the said proposal and due to the above mentioned reason, the appellant and his co-accused committed the murder of Kamran Haider, deceased. I have noted that Imran Haider, complainant (PW.7) conceded that Kamran Haider, deceased was already married prior to the occurrence. He also conceded that even Mst. Umm-i-Naila alias Laila, co-accused was also married prior to the occurrence with Syed Saqlain Shah, appellant. He further conceded that no particular date, time, month and year of the alleged marriage offer made by Mst. Umm-i-Naila alias Laila, co-accused or her family members with the deceased has been mentioned in the FIR. He also conceded that he did not produce any elder of his family regarding the offer and refusal of marriage proposal given by Mst. Umm-i-Naila alias Laila, co-accused with the deceased during the investigation of this case. It is further noteworthy that the motive was alleged against Mst. Umm-i-Naila alias Laila, co-accused and she has been acquitted by the learned trial Court and appeal filed against her acquittal i.e. Crl. Appeal No.39 of 2015 has already been dismissed by this Court vide order dated 20.11.2019 due to non-prosecution and restoration application filed by the complainant has also been dismissed being time barred vide order dated 09.06.2020. The motive was alleged against Mst. Umm-i-Naila alias Laila, co-accused and no motive whatsoever has been alleged by the prosecution against the

appellant. Keeping in view all the above mentioned facts, the prosecution could not prove any motive against the appellant and the same was rightly disbelieved by the learned trial Court in Para No.32 of the impugned judgment.

13. Insofar as the recovery of pistol (P-5) from the possession of the appellant and positive report of the Punjab Forensic Science Agency, Lahore (Ex.PT) is concerned, I have noted that as per report of the Punjab Forensic Science Agency, Lahore, the empties recovered from the spot and pistol (P-5) were deposited together in the office of Punjab Forensic Science Agency, Lahore on 08.07.2014 by Shahzada Qeqous (837/C). As the empties and pistol (P-5) were deposited together in the office of Punjab Forensic Science Agency, Lahore, therefore, it means that empties and pistol (P-5) remained together at the police station. Under the circumstances, possibility cannot be ruled out that fake empties were prepared from pistol (P-5) allegedly recovered on the pointation of the appellant and the same were sent to the office of Punjab Forensic Science Agency, Lahore for their comparison with the said pistol. Although, it is argued by the learned Additional Prosecutor General assisted by learned counsel for the complainant that Mukhtar Ahmad, 983/C (PW.1), Mukhtar Ahmad, ASI (PW.6), and Ali Ashraf, S.I (PW.9) have stated that empties were sent to the office of Punjab Forensic Science Agency, Lahore on 14.01.2011 whereas the pistol was recovered on the pointation of the appellant on 06.02.2011 and the same was sent to the office of Punjab Forensic Science Agency, Lahore on 22.02.2011 but the above mentioned oral evidence of the prosecution has been excluded by the documentary evidence i.e. report of the Punjab Forensic Science Agency, Lahore (Ex.PT) which shows that the empties and pistol (P-5) were deposited together in the above mentioned office. The said report has been produced in evidence and relied upon by the prosecution itself. The Apex Court of the Country in the case of “Mushtaq and 3 others Vs. The State” (PLD 2008 Supreme Court 1) disbelieved the prosecution evidence qua the recovery of firearm

weapon and positive report of Punjab Forensic Science Agency, Lahore, when empties and firearm were deposited together in the office of Punjab Forensic Science Agency, Lahore.

Likewise, in the case of “Jehangir Vs. Nazar Farid and another” (2002 SCMR 1986), recovery of weapon of offence and positive report of Punjab Forensic Science Agency, Lahore were disbelieved on the ground that empties and rifle were kept together at the police station, therefore, possibility of preparation of fake empties cannot be ruled out under the circumstances. It is further noteworthy that as per report of the Punjab Forensic Science Agency, Lahore (Ex.PT), the empties and pistol were deposited in the said office by Shahzada Qeqous (837/C) but the said witness has not been produced in the witness box by the prosecution. Under the circumstances, the recovery of pistol (P-5) on the pointation of the appellant and positive report of the Punjab Forensic Science Agency, Lahore (Ex.PT) are of no avail to the prosecution.

14. It is further important to note that as per prosecution evidence, Syed Saqlain Shah (appellant) and Muhammad Saleem alias Kali Gujjar, co-accused were assigned a joint role of making fire shots at Kamran Haider, deceased which landed on the different parts of his body. The above mentioned Muhammad Saleem alias Kali Gujjar, co-accused has been acquitted by the learned trial Court vide the impugned judgment dated 28.11.2014 whereas Syed Saqlain Shah (appellant) has been convicted and sentenced on the basis of same prosecution evidence. Criminal Appeal No.39 of 2015 filed against the acquittal of said co-accused has already been dismissed by this Court vide order dated 20.11.2019 due to non-prosecution and restoration application filed by the complainant has also been dismissed being time barred vide order dated 09.06.2020. It is by now well settled that if the same prosecution evidence is disbelieved qua one accused then the said evidence cannot be believed against the other accused without independent corroboration which is very much lacking in this case. The learned trial Court distinguished the case of the appellant with the case of

Muhammad Saleem alias Kali Gujjar, co-accused on the ground that appellant was declared guilty during the police investigation whereas Muhammad Saleem alias Kali Gujjar, co-accused was declared innocent and on the ground that no weapon was recovered from the possession of Muhammad Saleem alias Kali Gujjar, co-accused whereas pistol (P-5) has been recovered from the possession of the appellant. Insofar as the police opinion regarding the innocence or guilt of an accused is concerned, it is by now well settled that police opinion/finding becomes irrelevant after recording of evidence of the parties by the learned trial Court. It is further noteworthy that opinion of the police is inadmissible in evidence. Reference in this context may be made to the case of “Muhammad Ahmad (Mahmood Ahmed) and another Vs. The State” (2010 SCMR 660) wherein at page No.676 the Hon’ble Supreme Court of Pakistan was pleased to observe as under:-

“.....It may be mentioned here, for the benefit and guidance of all concerned, that determination of guilt or innocence of the accused persons was the exclusive domain of only the Courts of law established for the purpose and the said sovereign power of the Courts could never be permitted to be exercised by the employees of the Police department or by anyone else for that matter. If the tendency of allowing such-like impressions of the Investigating Officer to creep into the evidence was not curbed then the same could lead to disastrous consequences. If an accused person could be let off or acquitted only because the Investigating Officer was of the opinion that such an accused person was innocent then why could not, on the same principle, another accused person be hanged to death only because the Investigating Officer had opined about his guilt.....”

It is, therefore, evident that the case of the appellant cannot be distinguished from the case of Muhammad Saleem alias Kali Gujjar, co-accused on the basis of police opinion.

Insofar as the recovery of weapon of offence from the possession of the appellant is concerned, even on the said ground the case of the appellant is not distinguishable from the case of Muhammad Saleem alias Kali Gujjar, co-accused because the recovery of pistol (P-5) on the pointation of the appellant and positive report of the Punjab Forensic Science Agency, Lahore (Ex.PT) have already been disbelieved due to the reasons mentioned in Paragraph No.13 of this judgment. Learned Additional Prosecutor General assisted by learned counsel for the complainant next argued that motive was alleged against the appellant and the same was not alleged against the above mentioned co-accused, therefore, case of the appellant is distinguishable from the case of Muhammad Saleem alias Kali Gujjar, co-accused but the motive alleged by the prosecution has also been disbelieved by the learned trial Court, as well as, by this Court on account of reasons mentioned in Paragraph No.12 of this judgment. Under the circumstances, the case of the appellant is not distinguishable from the case of Muhammad Saleem alias Kali Gujjar, co-accused and as such, the prosecution evidence which has been disbelieved against Muhammad Saleem alias Kali Gujjar, co-accused cannot be believed against the appellant without independent corroboration which is very much lacking in this case, therefore, the appellant is also entitled to the acquittal from the charge. In the case of Muhammad Akram Vs. The State” (2012 SCMR 440) the Apex Court of the Country at **Page-446** was pleased to observe as under:-

“.....Since the same set of evidence has been disbelieved qua the involvement of Muhammad Aslam, as such, the same evidence cannot be relied upon in order to convict the appellant on a capital charge as the statements of both the eye-witnesses do not find any corroboration from any piece of independent evidence.....”

Similar view was taken by the august Supreme Court of Pakistan in the cases reported as “Akhtar Ali and others Vs. The State” (2008

**SMCR 6)**, *“Muhammad Ali Vs. The State”* (2015 SCMR 137) and *“Ulfat Husain Vs. The State”* (2018 SCMR 313).

15. I have considered all the aspects of this case and have come to this irresistible conclusion that the prosecution could not prove its case against the appellant beyond the shadow of doubt.

16. In the light of above discussion, I **accept** **Criminal Appeal No.2227 of 2014** filed by Syed Saqlain Shah (appellant), set aside his conviction and sentence recorded by the learned Additional Sessions Judge, Ferozwala, District Sheikhupura *vide* impugned judgment dated 28.11.2014 and **acquit** him of the charge under Section 302(b) PPC by extending him the benefit of doubt. Syed Saqlain Shah (appellant) is in custody, he be released forthwith, if not required in any other case.

17. Insofar the criminal revision *i.e.*, **Crl. Revision No.24 of 2015**, filed by Imran Haider (complainant) for enhancement of sentence, awarded by the learned trial Court against Syed Saqlain Shah (appellant) from imprisonment for life to death is concerned, I have already disbelieved the prosecution evidence due to the reasons mentioned in paragraph Nos.10 to 15 of this judgment and Syed Saqlain Shah (appellant) has been acquitted from the charge, therefore, this criminal revision being devoid of any force is hereby **dismissed**.

(Malik Shahzad Ahmad Khan)  
Judge

**Approved for Reporting**

(Malik Shahzad Ahmad Khan)  
Judge

**Farman Ali**