

Stereo H C J D A 38.
Judgment Sheet
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Criminal Appeal No.56573/2019

Aman Ullah Shah etc. versus The State, etc.

Criminal Revision No.56778/2019

Amjad Ali versus The State, etc.

Murder Reference No.203 of 2019

The State, etc. versus Aman Ullah Shah

JUDGMENT

<i>Date of hearing</i>	28.03.2022
<i>Appellants (Aman Ullah Shah and Naseer Ahmad) represented by:</i>	Mr. Muhammad Ahsan Bhoon, Advocate
<i>The State represented by:</i>	Ms. Maida Sobia, Deputy Prosecutor General.
<i>Complainant by:</i>	Mr. Muhammad Anwar Bhaur Advocate

SARDAR AHMED NAEEM, J:- *Aman Ullah Shah and Naseer Ullah Shah appellants alongwith Akram Shah, Imran Shah, Muhammad Shah, Ahmed Ali Shah, Mansha Shah, Dildar Shah, Muhammad Shah, Akbar Shah, Shahzad alias Kala, Javed Shah, Fayyaz Shah and Panah Ullah Shah co-accused (since acquitted) were tried by the learned Addl. Sessions Judge, Samundari, District Faisalabad, in case FIR No.465/2008 dated 06.09.2008 for offences under Sections 302/324/337-U/337-F(v)/337-A(i)/337-A(ii)/337-F(i)/337-L(2)/148/149 PPC registered at Police Station Sadar, Samundri, District Faisalabad. At the conclusion of the trial, vide judgment dated 18.07.2019, the learned trial Court acquitted Imran Shah, Muhammad Shah, Ahmed Ali Shah, Mansha Shah, Dildar Shah, Akbar Shah, Akram Shah, Nisar Shah, Shahzad alias Kala, Javed Shah, Fayyaz Shah and Panah Ullah Shah co-accused. Whereas, convicted and*

sentenced the appellants Aman Ullah Shah and Naseer Ullah Shah as under:-

Aman Ullah Shah:

Under Section 302(b) PPC: Death as tazir sentence with compensation of Rs.2,00,000/-, to be paid to the legal heirs of the deceased as compensation under section 544-A Cr.P.C., in default thereof, to further undergo six months S.I.

Naseer Ullah Shah:

- (i) Under Section 324 PPC: Seven years R.I. alongwith fine of Rs.10,000/-. In case of non payment of fine, to undergo one month S.I. He was also directed to pay a sum of Rs.20,000/- as Daman to Muhammad Shafi as the said injury was established as Jurh Ghayr Jaifah Hashimah under Section 337-F(v) PPC.**
- (ii) Under Section 324 PPC: Seven years R.I. alongwith fine of Rs.10,000/-. In case of non payment of fine, to undergo one month S.I. He was also directed to pay four twentieth of Diyat for the Financial year 2008-2009, which was Rs.11026801/- vide notification No.F.8(3)IF,IOV.191-536 dated 01.07.2008 as Arsh.**
- (iii) Under Section 324 PPC: Seven years R.I. alongwith fine of Rs.10,000/-. In case of non payment of fine, to undergo one month S.I. He was also directed to pay four twentieth of Diyat for the Financial year 2008-2009, which was Rs.11026801/- vide notification No.F.8(3)IF,IV.191-536 dated 01.07.2008 as Arsh.**
- (iv) Under Section 324 PPC: Seven years R.I. alongwith fine of Rs.10,000/-. In case of non payment of fine, to undergo one month S.I. He was also directed to pay Rs.5,000/- as Daman to Mst. Abida Naseem as the said injury was established as Shujjah Khafifah under Section 337-A(i)PPC.**
- (v) Under Section 324 PPC: Seven years R.I. with fine of Rs.10,000/-. In case of non payment of fine, to undergo one month S.I. He was also directed to pay Rs.25,000/- as Daman to Muhammad Yaseen as the said injury established as Jurah Ghayr Jaifaiah Munaqqlan under Section 337-F(vi) PPC and he will also pay one third of Diyat for the Financial year 2008-2009, which is Rs.11026801/- vide notification No.F.8(3)IF, IV. 191-536 dated 01.07.2008, as Arsh, as the said injury was also established as Jurah Jaifah under Section 337-D PPC.**

Benefit of Section 382-B Cr.P.C. was also given to the convict Naseer Ullah Shah and all the above said sentences were ordered to run concurrently. He was also directed to remain in jail as simple imprisonment till the payment of Arsh and Daman to the above mentioned injured persons.

2. Aman Ullah Shah and Naseer Ullah Shah appellants filed Crl. Appeal No.56573/2019 against conviction and sentences awarded to them by the learned trial Court whereas Amjad Ali complainant filed Crl. Revision No.56778/2019 for enhancement of sentence awarded to Naseer Ullah Shah accused. Murder Reference No.203 of 2019 is also before us for confirmation or otherwise of the death sentence awarded to the appellant Aman Ullah Shah. Through this single judgment, we propose to decide all these above mentioned matters.

3. The prosecution story, in brief, as narrated in the FIR lodged by Amjad Ali complainant was that on 06.09.2008 at about 3.30 p.m., Aman Ullah Shah and Naseer Ullah appellants alongwith their co-accused while armed with deadly weapons and sotas came at the spot. Aman Ullah Shah appellant fired at Arshad Ali injured hitting his chest, who after receiving fire shot fell down on the ground. Naseer Ullah appellant fired at Muhammad Shafi, Zaheer Abbas, Bashir Ahmad, Abida Naseem and Muhammad Yaseen injured. The other co-accused inflicted sota blows hitting Parveen Akhtar and Ishaq. The accused persons while raising lalkaras fled away from the spot. The injured persons were removed to the hospital and Arshad Ali injured succumbed to the injuries. Hence the present FIR.

4. After usual investigation, charge was framed by the learned trial Court against the accused persons to which, they pleaded not guilty and claimed trial, hence the prosecution evidence was invited.

5. The prosecution, in order to prove its case, produced as many as nineteen witnesses.

6. Muhammad Iqbal S.I. (P.W.1) deposed that on 06.09.2008, Amjad Ali complainant appeared before him and got recorded his statement. He recorded his formal police proceedings Ex.PA and sent the same for registration of case to the police station.

7. Subah Sadiq (P.W.4) was witness of identification of the dead body of Arshad Ali, deceased.

8. Muhammad Younis Constable (P.W.6) escorted the dead body of Arshad Ali, deceased.

9. Akbar Ali Nizami Draftsman (P.W.7) visited the place of occurrence and prepared scaled site plan Ex.PD.

10. Dr. Samia Liaqat Ali Rana Women Medical Officer (P.W.8) conducted medical examination of Mst. Abida injured and found following injuries on her person:-

- 1. A firearm entrance wound 0.75 cm x 0.75 x deep going (DNP) on right side of the head 6 cm above from right ear.**

The injury was kept under observation. Probable duration between injury and examination was about 3 hours. After receipt of Radiologist report, the injury was declared Shajja Khafifah. Ex.PE was the correct carbon copy of her medico legal report and Ex.PE1 on the back was her opinion after the receipt of report of Radiologist.

On the same day, she also examined Mst. Parveen and found following injuries on her person:-

- 1. A lacerated wound 0.4 cm x 0.4 cm bone not exposed on left side of head, 6 cm above from the left ear. Advised X-Ray**
- 2. Swelling 4 cm x 5 cm on back mid of the head.**
- 3. Contused swelling 4 cm x 3 cm on back of thumb of left land. All the injuries were kept under observation.**

The probable duration between injures and examination was within three to four hours. After receipt of report of Radiologist from DHQ hospital Faisalabad injuries No.1 and 2 were declared as Shajja Khafifah. Injury No.3 was declared miscellaneous. Injury No.1 caused by blunt weapon. Ex.PF was correct carbon copy of her medico legal certificate whereas Ex.PF/ 1 was her opinion upon back side of Ex.PF after receipt of the Radiologist.

Doctor Shahid Nadeem Medical Officer (P.W.9) conducted medical examination of Muhammad Ishaq and observed following injuries on his person:-

Injuries:

- 1- A lacerated wound 4 Cm x 1 Cm with bone exposed on the left side of head, close to front hair margin with bleeding round about.***
- 2- Contused swelling 5 Cm x 1 Cm on the back of right shoulder.***
- 3- Contusion 1 x 0.5 Cm on the right upper back of chest.***

The patient was conscious. BP and pulse was normal. Injury No.1 was kept under observation and X-Ray skull was advised. Injuries No.2 and 3 declared as US 337L2 PPC. Probable duration of injuries was about one hour. After receipt of report No.2379 dated 11.09.2008 of Radiologist, no bone injury seen in skull vault, so injury No.1 (KUO) was declared as Shajja Madiiah.

On the same day at 4.00 p.m. he examined Muhammad Yaseen injured and found following injuries:-

Injuries:

- 1. A multiple firearm wound of entry with inverted margins, 5 in numbers, four of them, 1 Cm x 1 Cm and 5th one 1.5 Cm x 1 Cm on the front of left shoulder, deep going up to injury No.1(b) which is a firearm wound of exit 1 Cm x 1 Cm on the inner side of left shoulder and again entering in the upper outer left chest cavity measuring 0.75 Cm x 0.75 Cm. with massive bleeding round about with corresponding injury holes on blood stained Qameez.*

The patient was conscious but in shock. General physical condition was very serious. Injury No.01 was kept under observation clinically and radiologically and X-Ray left shoulder and chest was advised. Probable duration of injury was about half to one hour. The kind of weapon was firearm. On the receipt of report of Radiologist DHQ Hospital, Faisalabad vide No.3399 dated 13.9.2008 of X-Ray left shoulder, multiple radiopaque metallic foreign body seen in soft tissue around the left shoulder joint comminuted fracture left humerus proximal part along-with dislocation of left shoulder joint seen.

On the same day, he also examined Muhammad Shafi injured and found following injuries on his person:-

Injuries:

- 1. Three firearm wounds of entry each 1 Cm x 1 Cm on the outer side of left foot with inverted margins burnt deep going upto injury No.1(b) which are three firearm wounds of exit each measuring 1.25 Cm x 1 Cm with everted margins on the inner side of left foot with massive bleedings round about.*

The patient was conscious. B/P and Pulse was normal. Injury No.1 was kept under observation and X-Ray of left foot was

advised. Probable duration of injury was about half to one hour. The kind of weapon used was firearm. On the receipt of report No.2380 dated 11.09.2008 of Radiologist DHQ hospital Faisalabad, multiple radiopaque metallic foreign bodies seen in soft tissues of left foot.

On the same day, he examined Zaheer Abbas injured and found following injury:-

- 1. A firearm wound of entry 1.5 cm x 1 cm with missing of third lower incisor tooth and upper right first incisor with their bleedings sockets. Injury No.1 was kept under observation and was referred to Dental Surgeon for assessment of nature of injury and X-Ray of face was also advised.***

The patient was conscious. B.P and pulse was normal. Probable duration of injury was about one hour. The kind of weapon used, the possibility of suffering injury No.1 by firearm was there. On 17.09.2008, on the receipt of report of Radiologist, DHQ Hospital Faisalabad vide No.2395 dated 12.09.2008, no injury seen in facial bones according to the report of Dental Surgeon dated 16.09.2008. The injury was due to external blow or trauma, so, injury No.1 kept under observation was declared under Section 337-U PPC was declared under Section 337-U PPC. The reports of Dental Surgeon and Radiologist were handed over to the party in original Ex.PK and Ex.PK/1 were correct carbon copies of MLC 901/08 and its pictorial diagram.

On the same day, he examined Bashir Ahmad injured and found following injury:

Injury:-

- 1. A lacerated wound .75 Cm. x 5 Cm on the inner middle inner upper lip with partial fracture of left upper left incisor and trimming of the second left upper incisor*

and lower right first incisor and left first incisor are also shaky.

The patient was conscious and B.P. pulse was normal. Injury No.1 was KUO and was referred to Dental Surgeon for assessment of nature of injury and X-Ray face was also advised. Probable duration of injury was two to three hours. The kind of weapon used was possibility of suffering injury No.1 by firearm was there.

On the same day, he also examined Amjad and observed following injuries:-

Injuries:

- 1. Contused swelling 2 Cm x 2 Cm on the left top of head.*
- 2. Abrasion 2 Cm x 1 Cm on the outer front of left upper arm.*
- 3. Contused swelling 4 Cm x 2 Cm on the back of left upper arm just above the elbow.*
- 4. Contusion 2 Cm x 5 Cm on the back of left upper forearm.*
- 5. Two abrasions .3 Cm x .1 Cm each with contused swelling 2 Cm x 2 Cm on the back base of left little finger.*
- 6. Contused swelling 2 Cm x 2 Cm on the back of right forearm.*
- 7. Two abrasions .5 Cm x .5 Cm each on the front of left thigh.*

The patient was conscious, B.P and pulse was normal, B/P pulse was normal. Injury No.1 was declared as Shaja Khafifah. Injuries No.2, 3, 4 and 6 were declared u/s 337-L, PPC, injury No.7 was declared Jurh Ghyar Jaifah Damiyah. Injury No.5 was KUO and X-Ray of left hand was advised. Probable duration of injury was two to three hours. The kind of weapon used was blunt.

Doctor Muhammad Saleem, Radiologist (P.W.10) *deposed that on 13.09.2008 Muhammad Yaseen came to him for X-Ray at DHQ Hospital, Faisalabad and following X-Rays done and their report was written as under:-*

1. **X-Ray left shoulder: Multiple radioopaque metallic foreign bodies seen in soft tissues around left shoulder joint. Comminuted fracture left humerus proximal part along with dislocation of left shoulder joint.**
2. **X-Ray Chest. Fracture 5th rib seen anteriorly and posteriorly on left side chest ribcage. Multiple radiopaque metallic foreign bodies seen in soft tissues left side chest wall. Fluid seen in left plural cavity also. Surgical emphysema seen in left side chest wall. Chip fractures left scapula seen.**

On 11.09.2008 Muhammad Shafi s/o Khewa, P.S Saddar, Samundari came to Radiology department DHQ hospital, Faisalabad for X-Rays. His X-Rays were done and the report was written as under:-

1- X-Ray left foot—Multiple radiopaque metallic foreign bodies seen in soft tissue of left foot. Fracture of medial cuneiform, first, second, third and fourth metatarsal bone comminuted fracture and proximal flanges of first, fourth and fifth toe fractures also seen.

11. Amjad Ali (P.W.13) was complainant of the case. He supported the prosecution version as mentioned in the FIR. Zaheer Abbas (P.W.14) was injured-eye witness of the occurrence. He supported the statement of the complainant.

12. Muhammad Afzaal S.I. (P.W.15) investigated the case. Muhammad Shahbaz ASI (P.W.16) stated that on 06.09.2008, he received complaint Ex.PA/1 sent by Muhammad Iqbal S.I. for registration of the case, on the basis of which he formally chalked out FIR Ex.PW without any addition or omission on his part.

13. Bashir Ahmad (P.W.17) was also injured witness of the occurrence. He supported the prosecution version. He was also witness of recovery of 12 bore gun effected from Aman Ullah Shah appellant which was taken into possession vide Memo Ex.PT. He was also witness of recovery of sota effected from Naseer Ullah appellant, taken into possession vide Memo Ex.PU.

14. Muhammad Ishaq (P.W.18) was another injured witness of the occurrence. He corroborated the statement of the complainant. Rest of the PWs were of formal nature, therefore, need not to be discussed.

15. The prosecution while giving up Mst. Abida Naseem, Mst.

Parveen, Nazir Ahmad, Muhammad Sardar, Muhammad Ishaq, Muhammad Yaseen and Muhammad Shafi being unnecessary, tendered report of Chemical Examiner Ex.PX, report of Serologist Ex.PV and Forensic Science Laboratory, closed its case.

16. After close of prosecution case statements of appellants were recorded under section 342 Cr.P.C. They pleaded innocence and denied the prosecution allegations. Aman Ullah Shah appellant in reply to the question “why this case against you and why the Pws deposed against you, answered as under:-

“It is a false case. The story has been concocted and fabricated on the behest of Ismail Bhatti and PW Subhan Sadiq Bhatti. The complainant party waylaid and initiated trouble. They injured my father Muhammad Shah and Muhammad Akram my cousin (tayazad). It was my first plea that I was sleeping in my house, there was noise that my father has been murdered and I came out with a gun. On seeing me, Amjad Ali complainant fired at me thrice with pistol but I luckily escaped. A large crowd had already gathered there, some of whom were armed with fire arms and firing was also taken place. I fired with my gun to scare off the assailants of my father. Many persons appeared in support of my plea during entire investigation. During entire investigation police did not probe into the facts of my first plea as required by law and my lawful responsibilities. The I.O. never wrote in his case diaries or opined that my first plea was false. It was one sided, partial and dishonest investigation under the influence of Ismail Bhatti, etc.. The village population was sharply divided between Bhattis and Syeds. During investigation, section 109 PPC was deleted and as many as nine accused out of 14 nominated in the FIR were found innocent. Their names are:-

Amjad Ali Shah, Mansha Shah, Dildar Shah, Akbar Shah, Nisar Shah, Shehzad alias Kala Shah, Javed Shah, Fiaz Shah and Pannah Ali Shah.

Although all of us are innocent. The prosecution with dishonest intention and malifides suppressed the injuries of Muhammad Shah and Akram Shah in league with the I.O.

Naseer Ullah Shah appellant adopted the statement of Aman Ullah Shah appellant and claimed to be innocent.

17. The appellants produced Muhammad Afzal H.C. (D.W.1) and Muhammad Shah as D.W.2. in their defence evidence. However, did not appear as their own witnesses under section

340(2), Cr.P.C.

18. Learned counsel for the appellants submitted that the occurrence took place on a thorough fare but no independent witness was cited by the prosecution; that the best evidence in this case has been withheld, thus, necessary inference under Article 129(g) of the Qanun-i-Shahadat, 1984 must be raised; that conduct of the witnesses at the crime scene was unnatural; that the postmortem examination was conducted with the lapse of 18-24 hours, which suggests consultation and deliberation; that the prosecution evidence was not in line with the medical evidence; that the motive was not proved; that prosecution evidence was replete with discrepancies/contradictions; that the recovered weapon was found in working order and as such, inconsequential; that majority of the co-accused of the appellants were acquitted on the same set of evidence and as no independent corroboration was forthcoming on record, thus, conviction of the appellants cannot be sustained. Concluding his arguments, learned counsel for the appellants added that prosecution miserably failed to prove its case against the appellant beyond reasonable shadow of doubt and every doubt even slightest is always resolved in favour of the accused, thus, the appellants be acquitted in this case.

19. Conversely, learned Deputy Prosecutor General assisted by the learned counsel for the complainant controverted the submissions put forth by the learned counsel for the appellants. It was argued that it was a daylight occurrence, the parties were residing in the same village, known to each other and there was no question of mistaken identity; that the witnesses have attributed specific roles to the appellants, supported by the medical evidence as well as the recovery; that the motive was also proved and the discrepancies hinted at by the learned counsel for the appellants are negligible and do not adversely affect the case of prosecution in any manner; that the prosecution story is also corroborated by the medical evidence; that the

prosecution has proved its case against the appellants to the hilt, therefore, the appeal is liable to be dismissed.

It may be mentioned that earlier this case was decided by the learned trial Court vide judgment dated 29.8.2013. The appellants filed criminal appeal No.293-J of 2013. Whereas, the complainant filed Crl. Revision No.773-2013 and the learned trial Court submitted Murder Reference No.279-2013. All the above cases were decided by the Hon'ble Lahore High Court vide judgment dated 16.4.2019 and the matter was remanded to the learned trial Court to re-write the judgment.

After remand, the judgment was re-written by the learned trial Court, vide judgment dated 18.7.2019, whereby the appellants were held guilty, convicted and sentenced as mentioned above.

20. We have given anxious considerations to the arguments advanced by the learned counsel for the parties and have perused the record.

21. During this occurrence, Arshad Ali, the deceased lost his life. Whereas, Shafi, Zaheer Abbas, Bashir Ahmad, Abida Nasreen, Perveen Akhtar, Nazir Ahmad and Ishaq sustained injuries.

22. The occurrence took place on 06.9.2008 at about 3:30 p.m in front of shop owned/run by the complainant within the area of Chak No.463-GB. It was seven miles away from the police station. The incident was reported at 4:45 p.m. The complainant Amjad Ali entered in the witness box as PW.13, injured witness Zaheer Abbas was examined as PW.14. He also supported the version of the complainant.

23. The gist of the prosecution story was that on the day and time of occurrence, the complainant was sitting in his shop along-with Muhammad Aslam and Muhammad Arshad. The accused including Akram Shah son of Manzoor Shah, Imran son of Sultan Shah (since acquitted) and the appellant Naseer Ullah Shah passed their shop and ridiculed them. The brother of the

complainant, Muhammad Aslam forbade them, which culminated into altercation and the said accused left the crime scene by extending threats of teaching the complainant party a lesson. Meanwhile, Zaheer Abbas (PW.14) came to the shop of the complainant to purchase the grocery. Meanwhile, all the accused nominated in the FIR, while armed with their respective weapons emerged at the crime scene. We would not go into details regarding attribution and respective roles of the acquitted co-accused. However, the appellants, both, were armed with 12 bore guns. A fire shot of Aman Ullah hit the chest of the deceased. Whereas, fire shot attributed to Naseer Ullah Shah hit the injured Zaheer Abbas (PW.14). On hearing alarm, Perveen Akhtar, Abida Nasreen, Muhammad Yaseen, Muhammad Shafi, Bashir Ahmad, Muhammad Ishaq PWs attracted to the spot. Then Naseer Ullah Shah appellant fired which hit Muhammad Shafi, Bashir Ahmad, Abida Nasreen, Muhammad Yaseen, Perveen Akhtar and Muhammad Ishaq.

At this stage, it would be appropriate to mention that none of the injured was examined during trial except Zaheer Abbas, Bashir Ahmad and Muhammad Ishaq PWs. All the private witnesses were closely related inter-se/the deceased. The complainant was real brother of the deceased. Muhammad Ishaq, Abida Nasreen were his chacha zad and Zaheer Abbas PW was his close friend. Whereas, Bashir Ahmad PW was chacha of the complainant. Perveen Akhtar was mother and Nazeer Ahmad was father of the deceased.

24. The motive behind the occurrence was that a few moments prior to the occurrence, the accused including Naseer Ullah Shah, Akram and Imran ridiculed the complainant party which resulted into altercation between the accused and Muhammad Aslam and then, on return from their house all the accused enacted the above episode.

25. As mentioned above, the occurrence took place in front of shop run by the complainant. The injury sustained by the

deceased was assigned to Aman Ullah Shah, appellant. Whereas, Naseer Ullah Shah was saddled with the responsibility of causing fire arm injuries to the injured PWs. The complainant and Zaheer Abbas PWs claimed to have witnessed this occurrence. The record divulged that Muhammad Arshad deceased after sustaining firearm injury fell down and then lifted/shifted by the complainant and others to a rickshaw of Fazal Jatt resident of the same village but he was not interrogated during the investigation. The complainant admitted during the cross examination that while shifting the deceased to rickshaw/hospital, his clothes got blood stains but neither produced his blood stained clothes nor taken into possession by the Investigating Officer. The witnesses were at variance regarding salient features of the case. For example, the complainant stated that only 5/6 fires were made by the accused party. Whereas, Zaheer Ababs (PW.14) deposed that the accused fired about hundred shots. The complainant gone on to state that at the time of occurrence, he along-with the deceased and Muhammad Aslam was standing in front of the shop but no specific point is suggested by the scaled site plan Exh.PD. Akbar Ali Nizami, appeared as PW.7. His statement revealed that the place of occurrence was surrounded by a Chowk. He was unable to specify the direction of the arrival of the accused and leaving the crime scene. He admitted that had the said injured PWs told him, he could have shown the same in his site plan and whatever the witnesses told him, he incorporated those facts without addition or omission in his notes recorded on Exh.PD and Exh.PD/I but this fact is not confirmed by Zaheer Abbas (PW.14) who had shown his ignorance about arrival of PW.7 at the place of occurrence. The place of occurrence was seven miles away from the police station. The deceased succumbed to his injuries on his way to hospital. Amjad Ali (PW.13) brought the dead body to hospital at 3:45 p.m and at 3:50 p.m, the Medical Officer declared Muhammad Arshad as dead. At this stage, we may mention that Bashir Ahmad PW in his statement mentioned that the occurrence

took place at 2:30 p.m and no time of occurrence /death find mentioned in column No.3 of the inquest report.

26. During the occurrence, as many as seven persons sustained injuries, thus, it was a police case but they all were medically examined privately-on their own. Though Bashir Ahmad PW claimed that he was got medically examined by the police and it was also in the statement of the Investigating Officer that he dispatched all the injured to the Medical Officer for their medico legal examination. However, no plausible explanation was forthcoming on record for their medical examination without police.

27. Admittedly, the prosecution is not bound to produce all the witnesses to prove its case and even a case can be concluded/decided on the basis of solitary statement but amazingly, in this case, as mentioned above seven persons sustained injuries but all of them were given up being unnecessary except Zaheer Abbass, Bashir Ahmad and Muhammad Ishaq meaning thereby that the best evidence in this case was withheld by the prosecution and a necessary inference under Article 129(g) of Qanun-i-Shahadat, 1984 has to be raised that had the given up injured witnesses been produced at trial, they would not have supported the prosecution version.

At this stage, it may also be mentioned that this case was registered against fourteen accused. The investigating Agency did not confirm the participation of the accused, namely, Ahmad Ali Shah, Mansha, Dildar Shah, Akbar Shah, Nisar Shah, Shahzad alias Kala, Javaid, Fayyaz and Pannah Ullah Shah. They all were acquitted and the prosecution has not challenged their acquittal. It is settled by now that if the majority of the co-accused is acquitted on the same set of evidence, the conviction cannot be sustained if the strong corroboration is not forthcoming on record, If some law is needed, reliance can be placed on “Iftikhar Hussain and another versus State”(PLJ 2004 SC 552), “Sarfraz alias Sappi and 2 others versus The State”(2000 SCMR

1758) and “Akhtar Ali and others versus The State” (2008 SCMR-6).

28. Now, we would evaluate the prosecution case on the touch stone of the law declared by the apex Court in the above mentioned judgments. Motive behind the occurrence was an altercation between three accused and Muhammad Aslam (not produced) a few moments prior to the occurrence. The details of altercation cannot be had from the available material and it was not determined during the investigation, who specifically ridiculed the complainant party. Whereas, during trial, the complainant mentioned/introduced another motive that the appellants/accused committed this crime as case FIR No.362 was registered against Akram Shah etc. He admitted during the cross-examination that he got recorded his supplementary statement at 10:00 p.m on the day of occurrence and no motive was mentioned in the said supplementary statement. It is settled law that the motive is not the component of murder and some crimes are motiveless. Even otherwise, the motive is hidden deep in the mind of the perpetrators of the crimes and the prosecution is not bound to introduce any motive but once a particular, motive is set up and not established then, it militates against the prosecution. In any case, Muhammad Aslam was not examined during trial and, thus, it could safely be concluded that the prosecution failed to prove the motive.

29. The appellant Aman Ullah Shah was arrested in this case on 08.10.2008 and led to the recovery of crime weapon Exh.PT from his house jointly occupied by the family members. At the time of recovery, it was lying open and so did the iron box from where the 12 bore gun was recovered/taken into possession. The recovery of weapon was witnessed by Muhammad Aslam 513-HC (PW.2). An objection was raised by the accused at the time of his cross examination that he was incapable to cross examine the witness as he was not delivered the copy of his statement recorded under section 161, Cr.P.C but this important and legal

aspect was not seriously attended to by the learned trial Court. The recovered gun was dispatched to Punjab Forensic Science Agency through Ghulam Muhammad 32-C (PW.3) on 03.11.2008 and he deposited the same in the Forensic Science Laboratory on the same day but the said parcel was received in the office of Forensic Science Laboratory on 04.11.2008, thus, safe transmission of the recovered gun was not proved. Any-how, the recovered gun was found in working order, thus, recovery of 12 bore gun (P-3) was inconsequential.

30. As discussed above, Zaheer Abbas (PW.14) was friend of the complainant and claimed to have visited shop of the deceased to buy certain articles. He was fired at by Naseer Ullah Shah, the appellant and sustained firearm injury in his face but amazingly no bruise/scratch or damage to facial tissue was observed by the Medical Officer on his face. His injury as observed by the Medical Officer can advantageously be reproduced for ready reference:

- **A firearm wound of entry 1.5 C.M x 1 C.M with missing of third lower incisor tooth and upper right first incisor with their bleeding sockets. Injury No.1 was kept under observation and was referred to Dental Surgeon for assessment of nature of injury and X-ray of face was also advised.**

The probable duration of the injury was observed as one hour. The possibility of suffering injury No.1 by firearm was opined by him. On 17.9.2008, after receiving report of radiologist DHQ Hospital, no bony injury was seen in facial bones according to the report of Dental Surgeon dated 16.9.2008. However, that injury was due to external blow or trauma and as such attracted section 337(U), PPC.

31. The Medical Officer was cross-examined by the defence on this significant aspect if the injury of Zaheer Abbas (PW.14) could be sustained in such circumstances. It was admitted by the Medical Officer that if an injury on the person of Zaheer Abbas had been caused by firearm, there would have been fracture of facial bone. The relevant excerpts from the statement of Dr. Shahid Nadeem (PW.9), read as under:

“It is correct that if an injury on the person of Zaheer Abbas had been caused by fire arm, there would have been fracture of facial bone. Again said their could be possibility and no possibility of the fracture of the bone in such case. It is correct that I have used word “possibility” of suffering of injury No.1 by firearm and I mean by it that there may be possibility and there may not be possibility of the injury having been caused by the firearm. It is correct that while describing injury No.1 I have used word ‘missing’. There was no corresponding injury on the lips or the gums of injury No.1. I had examined the patient as a private case and charged the usual fee of Rs.200/- as prescribed by me. I did not inform the police as the patient himself undertook to inform the police.

32. The gunshot wound/injuries to the face can have serious aesthetic, functional and psychological consequences. There are a number of types of dental trauma that can happened to permanent teeth. These include:

Dental Trauma: is the physical injury to the tooth, gums, alveolar bones (the bone that holds the tooth socket) or the soft tissues of the lips and tongue.

Concussion: A tooth concussion is a mildest type of trauma which can be inflicted on a tooth.

(ii) **Subluxation:** Subluxation refers to the situation in which the tooth is dislocated without socket or worseness or increased mobility of tooth due to weakening of supporting structure.

Luxation: Tooth luxation occurs when trauma, such as fall, disrupts the tissues, ligaments and bone that holds a tooth in place:

- (a) **Lateral Luxation:** The displacement of the tooth as a result of nearby bone fracture;
- (b) **Intrusive Luxation:** has been defined as dislocation of a tooth in an axial direction into alveolar bone
- (c) **Extrusive Luxation:** An extrusive luxation occurs when periodontal ligament separates.

Avulsion: Avulsion refers to the situation in which the entire tooth is completely displaced from the socket.

Alveolar Fracture: Alveolar fracture may involve an isolated tooth or two, or more teeth with labial or

lingual displacement of the dento-alveolar segment, resulting in loss of the arch continuity and painful occlusal interference and

Tooth Fracture: A significant crack or breakage on the ridged exterior shell of the tooth.

33. The injured Zaheer Abbas son of Muhammad Yaseen was medically examined by Dr. Shahid Nadeem (PW.9) He observed a firearm wound of entry 1.5 cm x 1 cm with missing of third lower incisor tooth and upper right first incisor with their bleeding sockets. The possibility of suffering injury No.1 by firearm was there. No bony injury was seen in facial bones according to the report of Dental Surgeon dated 16.09.2008, who appeared as PW.12. His observations were as follows:

75432	23456
87643	234573

B-D-R present

61	12
-1	16

34. The above observation of the dental surgeon revealed that teeth No.1 and 6 were missing from the right upper and teeth No.1 and 7 were not observed in the left upper. Whereas, teeth No.1 and 2 do not find mention in the right lower and teeth No.1 and 6 were not observed in the left lower. It is mentioned in his statement that the broken down root of teeth No.1 of the right upper and teeth No.1 and 2 of the left upper were observed and BDR of tooth No.1 of the right lower and teeth No.1 and 6 of the left lower were present. The presence of BDR (broken down root) suggested that those teeth were not completely present in the gingiva (gums). The injuries sustained by Zaheer Abbas as described by PW.9 do not suggest if missing third lower incisor

tooth was on the upper or lower right or upper or lower left. No danger to the facial tissues was either observed by the Medical Officer or find mentioned in his statement and the similar was the description regarding facial tissues by Dr. Ahmad Nadeem, who appeared as PW.12. He observed mild swelling on the upper lip and the right and left upper incisors were broken at the level of gingival margin. Bashir Ahmad PW:17 was also medically examined by PW:9, who observed the following injury:

Injury:-

1. A lacerated wound .75 Cm. x 5 Cm on the inner middle inner upper lip with partial fracture of left upper left incisor and trimming of the second left upper incisor and lower right first incisor and left first incisor are also shaky

35. This fact was also not confirmed by the number of teeth present as per observation of PW.12. His statement reflected that teeth No.7 of the right lower was missing whereas, broken down root of first upper incisor and left upper teeth Nos.1, 2 and 6 were observed by him. We would observe at the cost of repetition that the description of injuries by PW.9 and the radiologist (PW.12) do not coincide with each other. However, both the Medical Officers were in unison that the injuries sustained by both the injured were result of external trauma. Their injuries were described as gun shots wounds but no damage to the facial tissue, fracture to maxilla or mandible and no laceration was found on their gums. As mentioned above, PW.9 has admitted in his cross examination that if all the injuries on the person of Zaheer Abbas had been caused by firearm there would have been fracture of facial bone and no such categorical statement regarding the same fracture sustained by Bashir Ahmad was made by PW.9, thus, we can safely conclude that cause of their injuries was external trauma, which could be result of fall, punch, accident or by any other means , thus, the

prosecution failed to prove that firearm injuries claimed to have been sustained by both the said injured were result of gun shots.

36. The prosecution also produced Muhammad Ishaq son of Muhammad Shafi as PW.18, He was also medically examined by Dr. Shahid Nadeem, who observed three injuries on his body including laceration exposed bone on the left side of head, contused swelling on the back of right shoulder and contusion on the right upper back of chest.

37. All the three injured had not specifically attributed their injuries to any of the accused not to speak of the appellants even no role of the appellants find mentioned in the statements of Zaheer Abbas, Bashir Ahmad and Muhammad Ishaq if they were fired at by the appellants or beaten by 'dandas' or through some other weapon by them. No doubt, they were medically examined by PWs.9 and 10 and their medico legal reports were available on the file but as mentioned above, they got those medico legal reports on their own which is unusual in police cases and no plausible reason was available on the file for their medical examination without intervention of police. Though all the three were injured but the tale described by them appeared to be improbable and does not appeal to a prudent mind. The statement of the prosecution witness does not inspire confidence and not in consonance with probabilities. Dealing with a similar question, the apex Court in case titled "Muhammad Saleem V. The State" (2010 SCMR 374) at page 377, observed as under:

".....General rule is that statement of a witness must be in-consonance with the probabilities fitting in the circumstances of the case and also inspires confidence in the mind of a reasonable and prudent mind. If these elements are present, then the statement of a worst enemy of the accused, can be accepted and relied upon without corroboration but if these elements are missing then the statement of a pious man can be rejected without second thought. Reference is invited to Haroon alias Harooni V. The State and another 1995 SCMR 1627. The acid test of veracity of a witness is the inherent merit of his own statement. It is not necessary that an impartial and independent witness, who is neither related to the complainant nor inimical towards the accused would

stamp his testimony necessarily to be true. The statement itself has to be scrutinized thoroughly and it is to be seen as to whether in the circumstances of the case the statement is reasonable, probable or plausible and could be relied upon. The principle, that a disinterested witness is always to be relied upon even his statement is unreasonable, improbable and not plausible or not fitting in the circumstances of the case then it would lead to a very dangerous consequences. Reference is invited to Muhammad Rafique V. State 1977 SCMR 454 and Haroon V. The State 1995 SCMR 1627”

It may also be mentioned that the injuries sustained by a witness may reflect his presence at the crime scene but on the basis of that injury it cannot be determined that the witnesses described the whole truth, half truth or that he cannot be disbelieved for sustaining such injury. A similar question came up for consideration before their lordships in “Amin Ali v. The State” (2011 SCMR 323), the relevant observations of their lordships can also be reproduced hereunder:

“12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of P.Ws. would not stamp them truthful witnesses...”

At this stage, we may mention that the complainant also got injured during this occurrence but this fact was not mentioned in the “karvai police” recorded at the foot of Exh.PA. Even his injury statement was not prepared by the police.

38. The occurrence took place at about 3:30 p.m on 06.9.2008. The postmortem of the deceased was conducted by Dr. Shehbaz Ahmad (PW.11). He observed the following injuries on his body:

1(a) A multiple firearm injury which are seven in number present on left upper side of chest, margins inverted, blackening present in area of 6 C.M x 7 C.M. A complex of exit wound on back left chest with margins everted in area of 6 C.M x 3 C.M which are there in numbers with profuse bleeding.

39. He opined that probable time that elapsed between injuries and death was sudden and between death and post mortem examination was 12 to 18 hours. He also admitted that he has not mentioned the time of death in the relevant column of postmortem report (Exh.PN) and the same also was not mentioned in column No.3 of the inquest report Exh.PQ. He further admitted that no date and time was mentioned in the column of post mortem report "examination of dead body". He conducted the postmortem examination of the deceased promptly after receiving the dead body and police papers meaning thereby that he received the police papers after the lapse of about 12-18 hours, which suggests consultation and deliberation. Even otherwise, delayed postmortem makes the prosecution case doubtful as declared by the apex Court in case titled "Irshad Ahmed versus The State" (2011 SCMR 1190) and the relevant observations of their lordships are as follows:

"3. ...We have further observed that the post-mortem examination of the deadbody of Shehzad Ahmed deceased had been conducted with a noticeable delay and such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses and in cooking up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the deadbody conducted..."

40. The acquittal of the co-accused of the appellants remained unchallenged till date. They were acquitted on the same set of evidence. The prosecution failed to establish the motive through convincing and cogent evidence. The recovery was also inconsequential and medical evidence was also not in line with the ocular account, thus, we have no hesitation to hold that the conviction of the appellants cannot be sustained as no independent corroboration was forthcoming on record.

41. The occurrence took place at mid-day, in front of shop situated at a Chowk. It was mentioned by Zaheer Abbas (PW.14)

that 50/100 persons were then present at the crime scene. All the witnesses were related to each other/the deceased and no independent witness was cited by the prosecution. Even some injured witnesses were not examined and given up being unnecessary.

42. The shortcomings in the case of prosecution, observed by us, can be summarized as under:

- (i) No specific time of occurrence is borne out from the available record;*
- (ii) The best evidence was withheld by the prosecution as most of the injured PWs were not examined being unnecessary;*
- (iii) The prosecution failed to prove the immediate motive as mentioned in the FIR because Muhammad Aslam was not examined;*
- (iv) The recovery of crime weapon lends no corroboration to the prosecution for the reasons mentioned in the preceding paras;*
- (v) The medical evidence was also not in line with the prosecution story as the postmortem was conducted with unexplained delay of 12-18 hours;*
- (vi) The complainant reported the incident to police but none of the injured PW was medically examined through police;*
- (vii) No time of occurrence find mentioned in Exh.PQ and the column of the postmortem report regarding specific time of death is also blank;*
- (viii) The parties were inimical to each other and fraction between 'Bhatti' and 'Syed' berotheri was there in village;*
- (ix) The witnesses have made dishonest improvements and were duly confronted with*

their previous statements for such addition or omissions;

(x) The safe transmission of the crime weapon recovered from Aman Ullah was also not established by the prosecution;

(xi) The co-accused of the appellants including Ahmad Ali Shah, Mansha, Dildar Shah, Akbar Shah, Nisar Shah, Shahzad alias Kala, Javaid, Fayyaz and Pannah Ullah Shah were declared innocent during the investigation;

(xii) Mansha and Ahmad Ali Shah were assigned abetment by Nazir and Bashir Ahmad PWs but the Investigating Officer deleted section 109 PPC during the investigation;

(xiii) The blood stained clothes of the complainant, Zaheer Abbas PW and Muhammad Aslam PW were not taken into possession;

(xiv) The scaled site plan was not prepared under the instructions of the -injured witness;

(xv) The majority of the co-accused of appellants were acquitted on the same set of evidence;

43. The resume of the above discussion is that the prosecution miserably failed to prove its case beyond reasonable shadow of doubt against the appellants. The complete tale has not been described by the witnesses and certain material facts seems to have been suppressed. The occurrence might have taken place but not in the manner as described by the prosecution.

44. It is settled principle of law that prosecution primarily is bound to establish guilt against the accused, beyond shadow of reasonable doubt by producing trustworthy, convincing and coherent evidence enabling the Court to draw the conclusion whether the prosecution has succeeded in establishing accusation or otherwise and if it comes to the conclusion that the charge was imputed against the accused and have not been proved beyond

reasonable doubt, then the accused becomes entitled to acquittal on the basis of benefit of doubt.

45. It is by now settled that benefit of doubt, if found in the prosecution's case, the accused shall be held entitled to the benefit, thereof. It is also settled principle of criminal administration of justice that if there is element of doubt, as to the guilt of accused, it must be resolved in his favour. The golden rule of benefit is initially a rule of prudence which cannot be ignored, while dispensing justice in accordance with law. It is based on maxim that it is better to acquit ten guilty persons rather than to convict one innocent person. For acquittal of accused in an offence, how-so heinous it may be, only a single doubt in the prosecution evidence is sufficient. Reliance in this respect can be made on "Mst. Nazia Anwar versus The State and others" (2018 SCMR 911) and the relevant observations of their lordships appearing in page-922 at para-12 read as under:

".....The cardinal principle in the criminal justice system in a situation like this, is to extend benefit of doubt to an accused to acquit him/her of capital charge, instead of reducing the sentence. Once doubts about the genuineness of the story lurk into the minds of the judges, the only permissible course is to acquit the accused and not go for the alternative sentence of life imprisonment. In this regard reference may be made to the following case laws:

- " (i) Ayub Masih v. The State (PLD 2002 SC 1048)**
- (ii) Muhammad Zaman v. The State and others (2014 SCMR 749)**
- (iii) Hashim Qasim v. The State (2017**

SCMR 986)

It is also well entrenched rule and principle of law that on the basis of probabilities, accused person may be extended benefit of doubt acquitting him/her of a capital charge however, such probabilities, high howsoever could not be made basis for conviction of an accused person and that too on a capital charge"

Reference in that respect may further be made on "Muhammad Mansha versus The State" (2018 SCMR 772). The relevant observation of their lordships appearing at page 778 in para-4 are as under:

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749)”

46. For reasons mentioned above, the Criminal **Appeal No.56573 of 2019** is allowed. Resultantly, the judgment 18.7.2019 rendered by the trial Court is hereby set aside. The accused are acquitted of the charges. They are in custody, be released forthwith if not required in any other case.

For the reasons recorded above, **Crl. Revision No.56778-2019** stands dismissed.

Murder Reference No.203 of 2019 is answered in the **negative** and death sentence is **not confirmed**.

(Sardar Muhammad Sarfraz Dogar)(Sardar Ahmed Naeem)
Judge Judge

Approved for reporting

Judge.

Irfan