

Stereo. H C J D A 38.

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

Crl. Appeal No.67578 of 2019
(Ghzanfar Ali alias Manzoor, etc. *versus* The State, etc.)

JUDGMENT

Date of hearing: **18.03.2024**

Appellants by: **M/s Muhammad Irfan Malik and Aurang Zeb Ch.,
Advocates.**

State by: **Rana Ahsan Aziz, Addl. Prosecutor General with
Mushtaq, S.I.**

Complainant by: **Mr. Faisal Maqsood Khan, Advocate (on behalf of
the widow of the deceased).**

Aalia Neelum, J:- Ghzanfar Ali alias Manzoor and Pervaiz alias Parwaz, sons of Muhammad Aslam, and Waris Ali, son of Nawana, all Muslim Sheikh by caste, residents of Jailani Morr, Police Station Warburton, District Nankana Sahib, the appellants were involved in case F.I.R. No.202 of 2019, dated 23.03.2019, registered under Sections 302, 353, 186, 148, 149 PPC and section 7 of the Anti-Terrorism Act, 1997, at Police Station, Sharqpur Sharif, District Sheikhpura and were tried by the learned Judge, Anti-Terrorism Court-II, Lahore. The trial court seized with the matter in terms of the judgment dated 28.10.2019, convicted each of the appellants, and sentenced them to suffer **01-year rigorous imprisonment under Section 186 PPC** along with a fine of Rs.10,000/- each and in default in payment thereof, each would further undergo 06-months simple imprisonment. The appellants were also convicted **under section 353 PPC** and sentenced to undergo **02-year rigorous imprisonment**, along with a fine of Rs.10,000/- each. In default in payment thereof, each would further undergo 06-months simple imprisonment. The appellants were further convicted and sentenced to undergo **imprisonment for life each under Section 302-B PPC read with Section 149 PPC**, with the direction to pay Rs.1,00,000/-

each as compensation to the legal heirs of the deceased and in default of payment of compensation, same would be recovered from each of them as arrears of land revenue. The appellants were also convicted **under section 7(a) of the Anti-Terrorism Act, 1997**, and sentenced to undergo **imprisonment for life each**. All the sentences awarded to the appellants would run concurrently. The benefit of Section 382-B Cr.P.C. was also extended in favor of the appellants.

2. Feeling aggrieved by the trial court's judgment, the appellants, Ghazanfar Ali alias Manzoor, Pervaiz alias Parwaz, and Waris Ali, have assailed their convictions by filing instant Criminal Appeal No.67578 of 2019.

3. The prosecution story as alleged in the F.I.R (Ex.PH/1) lodged on the complaint (Ex.PH) of Saif Ullah A.S.I (PW-12)-the complainant is that on 23.03.2019, he (PW-12) alongwith Muhammad Akmal 2129/C (PW-13), Zaheer Abbas 2138/C while armed with official rifles SMG, while boarding on official vehicle bearing registration No.SAG-16, driven by Muhammad Khalid 182/C (PW-9), was patrolling and was coming from Mundianwala towards Sharqpur; when they reached near Fehmeer Pharmaceutical Company, they saw five unknown bandits armed with firearms weapons blocked the road by planting a tree; they were standing there, and the road was also barricaded; their faces were visible in the light of the vehicle's headlights. On seeing the police party, the accused fled towards "Bagh Amrud," and they took cover and opened fire on the police vehicle indiscriminately. The police did not get a chance to retaliate. However, the police party made a few fire shots in self-defense. Meanwhile, one of the robbers' fire shots hit Zaheer Abbas, 2138/Constable, crossing the "Tarpaul" of the vehicle on the back and exiting from the side of the chest. The robbers managed to escape towards the garden by taking advantage of the darkness and opening fire. The police party shifted the injured constable to THQ Hospital, where Mushtaq Ahmad ASI, alongwith Ali Baqar 1551/C and Niaz Ahmad 1354/C, also reached on another official vehicle. The injured Zaheer Abbas, 2138/C, succumbed to the injuries there. The complainant (PW-12), alongwith driver Muhammad Khalid 182/C (PW-9), could identify the accused if

brought before them. After that, the complainant (PW-12) drafted a complaint (Ex.PH) and sent the same to the police station through Ali Baqar 1551/C for registration of formal F.I.R (Ex.PH/1).

4. After the registration of the case, the investigation of this case was entrusted to Shehbaz Ali Inspector (PW-15)-the investigating officer, who being investigating officer, inspected the place of occurrence and prepared rough site plan (Ex.PX); he (PW-15)-the investigating officer also took into possession blood through cotton and one led bullet from inside the vehicle and made them into sealed parcels; the investigating officer (PW-15) took into possession the official vehicle (P-11), "Chappa" of Shesham (P-12) and iron saw (P-13); the PFSA team collected one crime empty of 12-bore, one live bullet of 9-MM, one crime empty of 9-MM, 6-crime empties of 303 rifle, prepared 09 sealed parcels of said articles and handed over the said parcels to Niaz Ahmad constable, who produced the said parcels before the investigating officer (PW-15); the investigating officer (PW-15) took the aforesaid articles into possession through recovery memos (Ex.PQ, Ex.PP, Ex.PT, Ex.PR, Ex.PS and Ex.PK); the investigating officer (PW-15), after drafting application for postmortem (Ex.PD), application for issuance of docket for postmortem, preparing injury statement (Ex.PE) and inquest report (Ex.PF), sent the dead body of deceased Zaheer Abbas to mortuary of DHQ Sheikhpura through Niaz Ahmad and Muhammad Akmal/C (PW-13); on the same day, Niaz Ahmad produced before him (PW-15), last worn clothes i.e. blood stained pent (P-1) and shirt (P-2), which he (PW-15) took into possession through recovery memo (Ex.PJ) and also recorded statements of witnesses under section 161 of Cr.P.C.; he (PW-15)-the investigating officer handed over all the recovered articles to Moharrar for safe custody and also recorded his statement under section 161 of Cr.P.C.; the dead body of the deceased was handed over to the legal heirs of deceased and receipt of dead body (Ex.PB) was also prepared and signed by the PWs; after that, the investigating officer (PW-15) remained in search of accused persons; on 26.03.2019, Moharrar handed over to him (PW-15) sealed parcel for onward transmission to the office of PFSA, Lahore, which he deposited there, intact; he

(PW-15)-the investigating officer joined PWs Saif Ullah, Muhammad Khalid, Muhammad Akmal and Zaka Ullah Moharrar in investigation and recorded their statements under section 161 of Cr.P.C.; on 27.03.2019, he (PW-15)-the investigating officer recorded statement of Moharrar Zaka Ullah under section 161 of Cr.P.C. regarding sending of one led bullet, blood stained uniform, blood stained cotton and official vehicle to PFSA, Lahore for analysis; on 10.04.2019, the investigating officer (PW-15) joined Abdul Ali Yousaf, Arif SI, Mukhtar Ahmad ASI, Abdul Jabbar ASI, Ali Ahmad ASI and Abu Bakar constable in investigation and recorded their statements in connection with case FIR No.220/19 P.S. Sharqpur Sharif; on 23.04.2019, the Investigating Officer (PW-15) summoned Ashiq Hussain Patwari (PW-2), who prepared the scaled site plan of the place of occurrence (Ex.PA & Ex.PA/1); after that, the investigating officer (PW-15) obtained non-bailable warrants of arrest of accused Waris Ali (Ex.PL), Allah Ditta (Ex.PM), Ghaznfar and Pervaiz; on 02.05.2019, he (PW-15)-the investigating officer prepared Saqat challan against accused Nawaz alias Riaz; on 05.05.2019, the investigating officer (PW-15) arrested Ghaznfar and Pervaiz (appellants No.1 & 2), muffled their faces and got them sent to judicial lockup on 06.05.2019 for their identification parade; on 07.05.2019, he (PW-15) filed application for fixation of date of identification parade proceedings to Magistrate, who fixed the date as 09.05.2019; on 09.05.2019, identification parade of accused Ghaznfar and Pervaiz (the appellants No.1 & 2) was conducted in District Jail Sheikhpura, wherein the PWs correctly identified them; the investigating officer (PW-15) joined the PWs in investigation, recorded their statements about the identification parade and also received certified copy of identification parade proceedings; on 13.05.2019, the investigating officer (PW-15) after obtaining physical remand of accused Ghaznfar Ali and Pervaiz (the appellants No.1 & 2), interrogated them and on 14.05.2019, accused/appellants made separate disclosures regarding commission of different occurrences including the occurrence in hand and also disclosed the names of their co-accused; on 16.05.2019, he (PW-15)-the investigating officer produced both the accused in THQ Hospital for their medical examination; during investigation on 24.05.2019 accused Ghaznfar (the appellant No.1) made

disclosure and got recovered weapon of offence i.e. rifle-303 (P-3) alongwith 01-crime empty (P-4) and 2-live bullets (P-5/1-2), which were secured into possession by the investigating officer (PW-15) through recovery memo (Ex.PU); the investigating officer (PW-15) also prepared rough site plan of place of recovery (Ex.PU/1) and drafted a separate complaint for registration of case under section 13/20/65 A.O and sent the same to the police; on the same day i.e. 24.05.2019 accused Pervaiz (the appellant No.2) made disclosure and got recovered weapon of offence i.e. rifle-303 (P-6) alongwith 01-crime empty (P-7) and 2-live bullets (P-8/1-2), which were secured into possession by the investigating officer (PW-15) through recovery memo (Ex.PV); the investigating officer (PW-15) also prepared rough site plan of place of recovery (Ex.PV/1) and drafted a separate complaint for registration of case under section 13/20/65 A.O and sent the same to the police; on 29.05.2019 he (PW-15)-the investigating officer got sent the accused persons Ghazanfar and Pervaiz (appellants No.1 & 2) to judicial lockup and prepared incomplete challan against them on 30.05.2019; after that, on 17.06.2019, Awais Moharrar (PW-6) handed over the parcels of recovered firearms, crime empties and live bullets to him (PW-15) for onward transmission to the office of PFSA, Lahore, which he (PW-15) deposited over there on the same day, intact; on 24.06.2019, the investigating officer (PW-15) recorded statement of Mushtaq Ahmad ASI regarding execution of non-bailable warrant of accused Waris and Allah Ditta; on 25.06.2019, he (PW-15)-the investigating officer obtained proclamations of accused Waris (Ex.PN) and Allah Ditta (Ex.PO); on 26.06.2019, Mushtaq Ahmad ASI returned the proclamations with his reports (Ex.PN/1 and Ex.PO/1); on 25.07.2019, he (PW-15)-the investigating officer arrested accused Waris Ali (the appellant No.3) and muffled his face and sent him to judicial lockup on 26.07.2019 for identification parade; on 27.07.2019, he (PW-15) filed application for fixation of date of identification parade proceedings to Magistrate; on 27.07.2019, identification parade of accused Waris Ali (the appellant No.3) was conducted in District Jail Sheikhpura, wherein the PWs correctly identified him; the investigating officer (PW-15) joined the PWs in investigation, recorded their statements about the identification parade and also received certified copy of identification parade

proceedings; on 31.07.2019, Muhammad Awais Moharrar (PW-6) handed over to him (PW-15) one sealed parcel of led bullet for depositing the same to the office of PFSA, Lahore, which he (PW-15) deposited over there on 01.08.2019, intact; on 09.08.2019, the investigating officer (PW-15) obtained physical remand of accused Waris Ali (the appellant No.3); on 10.08.2019, he (PW-15)-the investigating officer produced the accused Waris Ali in DHQ Hospital Sheikhpura for his medical examination; during investigation on 16.08.2019 accused Waris Ali (the appellant No.3) made disclosure and got recovered weapon of offence i.e. rifle 7-MM (P-9) alongwith 3-live bullets (P-10/1-3), which were secured into possession by the investigating officer (PW-15) through recovery memo (Ex.PW); the investigating officer (PW-15) also prepared rough site plan of place of recovery (Ex.PW/1) and drafted a separate complaint for registration of case under section 13/20/65 A.O and sent the same to the police; after that, on 19.08.2019 he (PW-15)-the investigating officer got sent the accused Waris Ali (appellant No.3) to judicial lockup; on 26.08.2019, Shahid Hussain Moharrar (PW-16) handed over to him (PW-15) sealed parcels said to contain rifle 7-MM and live bullets for its onward transmission to the office of PFSA, Lahore, which he (PW-15) deposited over there, intact; on 28.08.2019, he (PW-15)-the investigating officer got declared accused Allah Ditta P.O and after preparing challan on 29.08.2019, submitted the same before the Court.

5. After investigation, Shehbaz Ali, Inspector (PW-15), prepared a challan and sent the same to the court of competent jurisdiction while placing the names of all accused persons in Column No.3 of the challan. On 23.09.2019, the trial court formally charge-sheeted the appellants, to which they pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as eighteen (18) witnesses.

6. The prosecution case rests on the oral evidence of Saif Ullah S.I (PW-12)-the complainant, Muhammad Khalid 182/DC (PW-9), and Muhammad Akmal 2129/C (PW-13). Dr. Zahoor Ahmad, District Medico Legal Officer (PW-4), deposed that on 23.03.2019, he, the member of the board, conducted

postmortem examination on the body of the deceased, Zaheer Abbas 2138/C, and found the following injuries on his person: -

INJURIES.

- 1 An irregular shaped firearm wound of entry 1.7 x 1 c.m on back of right side of chest, 26 c.m below the dip of shoulder and 6 c.m from midline, making an exit wound 1.7 x 0.5 c.m, slit like on front of right side of chest, 8.5 c.m from nipple at 11 O Clock position. On dissection skin, muscles, blood vessels, diaphragm, liver, right lung were found damaged. Right chest cavity was full of clotted blood. One metallic piece recovered by extending the exit wound by postmortem incision, signed and handed over to police.**
- 2 An abrasion 2.5 x 1.7 c.m on front of right side of chest, 7 c.m from nipple at 1 O Clock position.**

After conducting the postmortem examination, the board unanimously rendered the following opinion: -

OPINION

“We were of unanimous opinion that death occurred due to severe hemorrhage, shock and injury to vital organ. Injury No.1 individually was sufficient to cause death of a human being in an ordinary course of nature. The probable time that elapsed between injury and death was about 01 hour, and the time that elapsed between death and postmortem was 06 to 12 hours.”

Ex.PC is the correct carbon copy of the postmortem report, whereas Ex.PC/1 and Ex.PC/2 are pictorial diagrams of injuries.

The statements of the remaining prosecution witnesses are formal.

7. The learned Deputy Prosecutor General gave up PWs, Zulfiqar Ali 1085/C, Dr. Asad, Ali Ahmad TASI, Muhammad Saleem 981/C, Muhammad Azeem 679/C, Muhammad Afzal ASI, Abdul Yousaf Inspector, Arif Mahmood SI, Abdul Jabbar ASI, Dr. Adnan Murtaza, Qaisar Abbas, Dr. Adil Shahzad, Dr. Muhammad Shafiq, Dr. Touseef Ahmad, Dr. Niaz Ahmad, Safar 702/C, Irfan

1827/C, Javed 474/C and Adil Subjani 2163/C being unnecessary and closed the prosecution evidence after tendering the report of DNA (Ex. PBB), Firearms and Toolmarks Examination Reports (Ex. PCC, Ex. PDD and Ex. PFF).

8. After the closure of prosecution evidence, the appellants were examined under Section 342 of Cr.P.C., wherein neither they opted to appear as their own witnesses in terms of Section 340 (2) Cr.P.C. nor opted to produce any evidence in their defense, except Ghazanfar Ali (the appellant No.1), who tendered a copy of FIR No.220/2019 (Mark-A) and copies of writ petition No.19212/2019 and writ petition No.45101/2019 (Ex. DC & Ex. DD respectively) in his defense. In response to a particular question about why this case was against them and why the PWs had deposed against them, Ghazanfar Ali alias Manzoor (appellant No.1) made the following deposition: -

“I was involved in this case alongwith my family members due to enmity of my uncle deceased Nawaz alias Nawaz who had contracted second marriage with one Musarrat. My uncle was murdered in fake police encounter and police just to save the skin involved me in this false case. In fact I was lifted by the police on 29/30.07.2019 and later on involved me in this false case. Nothing has been recovered from me. All the PWs are official witnesses in this case. No independent piece of evidence is available on record in order to connect me with the commission of offence or to verify the prosecution case.”

Pervaiz alias Parwaz (the appellant No.2) made the following deposition: -

“I was involved in this case alongwith my family members due to enmity of my uncle deceased Nawaz alias Nawaz who had contracted second marriage with one Musarrat. My uncle was murdered in fake police encounter and police just to save the skin involved me in this false case. In fact I was lifted by the police on 29/30.07.2019 and later on involved me in this false case. Nothing has been recovered from me. All the PWs are official witnesses in this case. No independent piece of evidence is available on record in order to connect me with the commission of offence or to verify the prosecution case.”

Whereas Waris Ali (appellant No.3) made the following deposition: -

“I was involved in this case due to fake encounter of my brother Nawaz alias Nawazu by the police. I am resident of district Nanaka Sahib. My relative namely Ishfaq is police tout. I have enmity with said Ishfaq. Due to enmity I was involved falsely by the police. In fact I was lifted by the police on 26.07.2019 and later on involved me in this false case. Nothing has been recovered from me. All the PWs are official witnesses in this case. No independent piece of evidence is available on record in order to connect me with the commission of offence or to verify the prosecution case.”

9. After evaluating the evidence available on record in the light of arguments advanced from both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, resulting in the appellants' conviction in the afore-stated terms.

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

11. The entire prosecution case against the appellants, Ghazanfar alias Manzoor, Pervaiz Alias Parwaz, and Waris Ali, rests on the oral evidence of Muhammad Khalid 182/DC (PW-9), Saif Ullah S.I. (PW-12)-complainant, and Muhammad Akmal 2129/C (PW-13) who claimed to be eyewitnesses to the incident which took place about 03:10 a.m. on 23.03.2019 wherein Zaheer Abbas 2138/Constable received firearm injury on his back and exited from the right side of his chest after passing through a sheet (Tarpaul) of the official vehicle. Zaheer Abbas 2138/Constable (then injured) was shifted to the THQ Hospital Sharaqpur Sharif. Later on, Zaheer Abbas, 2138/Constable, was referred to Mayo Hospital, Lahore, where he succumbed to the injuries. As per the prosecution case narrated in the written complaint (Ex.PH) and FIR (Ex.PH/1), five unknown bandits armed with firearm weapons blocked the road by planting a tree. They were standing there, and the road was also barricaded. Their faces were visible in the light of the vehicle's headlights. On seeing the police party, the accused fled towards “Bagh Amrud.” They took cover and

opened fire on the police vehicle indiscriminately, and the police did not get a chance to retaliate. However, the police party made a few fire shots in self-defense. Meanwhile, one of the robbers' fire shot hit Zaheer Abbas, 2138/Constable, crossing the "Tarpaul" of the vehicle on the back and exiting from the side of the chest. The robbers managed to escape towards the garden by taking advantage of the darkness and opening fire. The narration of allegations in the written complaint (Ex.PH) and FIR (Ex.PH/1), and later on deposed by Muhammad Khalid 182/DC (PW-9), Saif Ullah S.I. (PW-12)-complainant, and Muhammad Akmal 2129/C (PW-13) reveals that unknown accused persons committed the incident wherein, Zaheer Abbas, 2138/Constable lost his life. The learned Additional Prosecutor General submitted that the prosecution witnesses identified the appellants during the identification parade on 09.05.2019 and 29.07.2019, respectively. It cannot be disputed that in cases relating to unknown accused/robbers, the prosecution witnesses' identification of the accused is the main evidence. The prosecution has to satisfy itself that the witnesses were in a position to identify the culprits, and before the identification parade, they were not known to them. If the witnesses nominated the unknown accused before the identification parade, the identification of the unknown accused during identification proceedings by the witnesses should not be accepted. In the cases of unknown accused, any claim that the witnesses identified the culprits for the offence has to be examined by the Court carefully and diligently concerning the circumstances of the particular case. Shehbaz Ali Inspector (PW-15)-the investigating officer deposed during examination-in-chief that: -

“On 05.05.2019 I arrested accused Ghaznfar and Pervaiz and muffled their faces and locked them in the lockup of Police Station. On 06.05.2019 both the above said accused were sent to judicial lockup for identification parade. On 07.05.2019 I filed application for fixation of date of identification parade proceedings to Magistrate who fixed the date as 09.05.2019. On 09.05.2019 identification parade of accused Ghazanfar and Pervaiz was conducted in District Jail Sheikhupura in which PWs correctly identified them.-----On 25.07.2019 I arrested accused

Waris Ali and muffled his face. On 26.07.2019, I sent the accused to judicial remand for identification parade. On 27.07.2019 I filed application before the area Magistrate for fixation of date of identification parade. On 29.07.2019 identification parade of accused Waris Ali held at District Jail, Sheikhpura in which PWs Saif Ullah, Muhammad Khalid and Muhammad Akmal correctly identified the accused.”

During cross-examination, Shehbaz Ali Inspector (PW-15)-the investigating officer, deposed that: -

“The accused were searched from the vicinity and periphery of the place of occurrence. Complainant and PWs disclosed to me the names of accused persons.”

Muhammad Khalid 182/DC (PW-9) deposed during examination-in-chief that: -

“On inquiry by local police it came to the knowledge that Waris Ali, Pervez, Ghazanfar present before the Court, Imran, Allah Ditta and Nawaz alias Riaz used to commit dacoity in this area, hence they were nominated in this case.”

Muhammad Khalid 182/DC (PW-9) admitted during cross-examination that he (PW-9) nominated the accused, but he could not make a satisfactory reply about the source of information. The relevant portion of the testimony of Muhammad Khalid 182/DC (PW-9) is reproduced hereunder: -

“On 26.03.2019 the accused were nominated. I do not remember upon whose information the accused were nominated. In my presence none had named the accused. Again stated that the I.O had named the accused persons.”

Similarly, Saif Ullah S.I. (PW-12)-complainant deposed during examination-in-chief that: -

“On 26.03.2019 I got recorded my supplementary statement in which I nominated six accused persons namely Waris, Pervaiz alias Parwaz, Ghaznfar, Allah Ditta, Imran and Nawaz alias Riaz.”

Saif Ullah S.I. (PW-12)-complainant also deposed during cross-examination that: -

“Some spy had informed the names and parentages of the accused persons.”

Muhammad Akmal 2129/C (PW-13) deposed during examination-in-chief that: -

“I nominated six accused persons namely Waris, Pervaiz alias Parwaz, Ghaznfar, Allah Ditta, Imran and Nawaz alias Riaz. I.O recorded my statement u/s 161 Cr.P.C.”

Muhammad Akmal 2129/C (PW-13) also deposed during cross-examination that: -

“I had named the accused in my statement however, I had not recorded the description of accused persons in my statement recorded on 26.03.2019. I had not recorded the names of accused in my statement dated 30.03.2019.-----I came to know about the accused persons from my own sources. We came to know about the accused persons after one day of the occurrence.”

The deposition of Muhammad Khalid 182/DC (PW-9), Saif Ullah S.I. (PW-12)-complainant, Muhammad Akmal 2129/C (PW-13), and Shehbaz Ali Inspector (PW-15)-the investigating officer, reveals that the appellants were named as accused on 26.03.2019 before the proceedings of identification parade. Shehbaz Ali Inspector (PW-15)-the investigating officer also obtained non-bailable warrants of arrest of the appellants. On perusal of the non-bailable warrant of arrest Ex-PL, it reveals that the same was issued on 02.05.2019 by mentioning the name, parentage, caste, and address of the appellant, Waris Ali. Muhammad Mushtaq ASI (PW-10) also deposed during examination-in-chief that: -

“Stated that on 02.05.2019 I was posted at Police Station Sharqpur Sharif, Sheikhupura. On the same day, non bailable warrants of arrest of accused Waris Ali Ex.PL and Allah Ditta Ex.PM were handed over to me by the I.O for execution.”

The description of the unknown accused persons was not at all mentioned in the FIR, nor was their description made in the statements of the prosecution witnesses. In the circumstances, we have found that improvement/contradiction in the prosecution evidence was brought to the record by the defence. Muhammad Khalid 182/DC (PW-9) deposed during cross-examination that: -

“I had recorded the physical features height, weight, colour complexion and age etc. in my statement u/s 161 Cr.P.C. Confronted with Ex.DA where it is not so recorded.”

Before discussing further evidence on record, it is necessary to note that the defence taken by the appellants at the first point of time is set out in Ex.PZ, and Ex.PAA, and later in Mark-A, Ex.DC, and Ex.DD, wherein the defence of the appellants is one of the entire denials of the prosecution case about the date of their arrest, and they have taken a specific stand that they were in the illegal custody of the law-enforcing agency. Admittedly, Farhat Bibi, mother of the appellants, Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz filed W.P. No.19219 of 2019 titled “Farhat Bibi. Vs. Inspector General of Police Punjab Lahore, etc.” on 01.04.2019 before Lahore High Court, Lahore under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 for the recovery of Ghazanfar Ali alias Manzoor (the appellant No. 1), Parwaz Ali (the appellant No.2), and her other sons and daughters from the illegal and unlawful detention of police officials, which were taken into custody by the police officers on 29.03.2019 and apprehension of fake police encounter was also shown. After that, the Single Bench of this Court, vide order dated 01.04.2019, directed respondents to produce the alleged detainees before this Court on 03.04.2019. After that, the case was listed for 03.04.2019, 09.04.2019, 22.04.2019, and 30.04.2019, but the alleged detainees were not produced, and time was sought for their recovery. Ultimately, vide order dated 10.05.2019 (Ex. DC), the court was informed about the arrest of the appellants, Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz, alleged detainees on 05.05.2019, in case FIR No.202/2019, registered at Police Station Sharaqpur Sharif, District

Sheikhupura. Mst. Farhat Bibi also filed another W.P. No.45101 of 2019 titled “Mst. Farhat Bibi. Vs. Inspector General of Police and others” on 24.07.2019 for the recovery of his brother-in-law (دیور), Waris Ali (the appellant No.3) and his family members, who were stated to be taken into custody by the police officers. The order dated 26.07.2019 (Ex. DD) passed by Single Bench of Lahore High Court, Lahore, reveals that the S.H.O Police Station Sharqpur Sharif furnished a report that the appellant-Waris Ali had been arrested on 25.07.2019 in case FIR No.202/2019 registered at P.S. Sharqpur Sharif. Shahbaz Ali Inspector (PW-15)-the investigating officer pleaded ignorance during his testimony about the filling of a habeas petition/constitutional petition No. 19212/2019 on 01.04.2019 by the mother of Ghazanfar Ali alias Manzoor (the appellant No. 1), Parwaz Ali (the appellant No.2). On perusal of writ petition No.19212 of 2019 it reveals that Farhat Bibi, mother of the appellants No.1 and 2, impleaded SHO police station Sharaqpur, and DPO District Sheikhupura as respondents. It is out of our imagination that the SHO police station Sharaqpur was unaware that the High Court had directed police officers to recover and produce appellants No.1 and 2, along with their family members, before the court. Whereas, during the pendency of W.P. No.19219 of 2019 titled “Farhat Bibi. Vs. Inspector General of Police Punjab Lahore, etc.” from 01.04.2019 till 10.05.2019, FIR No.220 dated 30.03.2019, registered under section 302, 395, 511 PPC 13-2A/20/65 PAO at Police Station Sharqpur Sharif, District Sheikhupura, about the murder of Muhammad Nawaz alias Riaz, on the complaint of Abdullah Ali Yousaf Inspector (given up being unnecessary) by his co-accused persons Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz, (appellants No.1 & 2) etc. The police officers, including Abdullah Inspector (given up being unnecessary), appeared before Lahore High Court, Lahore, during proceedings of W.P. No.19219 of 2019, but they did not take the plea that the appellants were also required to police in FIR No.202 dated 23.03.2019 and the detainees Ghazanfar Ali alias Manzoor, Pervaiz alias Parwaz, and Waris etc. were also named in instant case during investigation on 26.03.2019 and they are required to police. Shahbaz Ali Inspector (PW-15)-the investigating officer deposed during cross-examination that: -

“As per story of FIR the occurrence in which Nawaz alias Riaz accused was murdered is annexed with the challan. Again stated that place of occurrence of case FIR No.220/2019 is different from the place of occurrence of this FIR i.e. 202/2019.-----It is not in my knowledge that accused Nawaz, Ghaznfar, Pervaiz, Serfaraz and Amjad were arrested on night falling 29/30.03.2019 from Mouza Dhool and Hakeem Garhi Sharqpur Sharif.-----It is not in my knowledge that mother of accused Ghaznfar and Pervaiz filed habeas/writ petition No.19212/19 on 01.04.2019 before the Hon’ble Lahore High Court, Lahore. I alongwith two constables produced accused Waris in Hon’ble Lahore High Court, Lahore on 26.07.2019.”

12. As per the prosecution version, prosecution witnesses, i.e., Muhammad Khalid 182/D.C (PW-9), Saif Ullah S.I. (PW-12), and Muhammad Akmal 2129/C (PW-13), had identified the appellants-Ghazanfar Ali alias Manzoor, Pervaiz alias Parwaz and Waris Ali during the identification parade held on 09.05.2019 and 29.07.2019 respectively under the supervision of Hafiz Muhammad Saleem Tahir Magistrate Ist Class, Sheikhpura (PW-18). The deposition of Hafiz Muhammad Saleem Tahir Magistrate Ist Class (PW-18) and the proceedings of the test identification parade (Ex. PZ & Ex. PAA) reveal that prosecution witnesses i.e. Muhammad Khalid 182/D.C (PW-9), Saif Ullah S.I. (PW-12), and Muhammad Akmal 2129/C (PW-13) had identified the appellants-Ghazanfar Ali alias Manzoor, Pervaiz alias Parwaz and Waris Ali in identification parade. Hafiz Muhammad Saleem Tahir Magistrate 1st Class (PW-18) has deposed explicitly in his examination-in-chief that: -

“After sitting the suspect at position No.2 the witness namely Muhammad Akmal 2129/C was called who correctly identified the accused Ghaznfar alias Manzoor by describing his role. The objection of accused was also noted down that he remained in different Police Stations for about 30 days in this regard his mother filed Writ Petition before the Hon’ble Lahore High Court, Lahore.-----All the dummies have same features as were the accused Pervaiz alias Parwaz. After sitting the suspect with the

dummies suspect was asked about the period of detention. He told that he has been detained for 30 days at different Police Stations.-----After sitting the suspect at position No.2 the witness namely Muhammad Akmal 2129/C was called who correctly identified the accused Pervaiz alias Parwaz by describing his role. The objection of accused was also noted down that he remained in different Police Stations for about 30 days in this regard his mother filed Writ Petition before the Hon'ble Lahore High Court, Lahore. -----The objection of accused was also noted down that he remained in detention at Police Station Sharqpur for about 08 days in this regard mother of his cousin filed Writ Petition before the Hon'ble Lahore High Court, Lahore. The objection of accused was also noted down that he remained in different Police Stations for about 30 days in this regard his mother filed Writ Petition before the Hon'ble Lahore High Court, Lahore."

The objections raised by the appellants, Pervaiz alias Parwaz and Waris Ali, were incorporated in the proceedings of the identification parade (Ex.PZ) held on 09.05.2019. The objection raised by Waris Ali (the appellant No.3) and recorded by Hafiz Muhammad Saleem Tahir, Magistrate Ist Class, Sheikhpura (PW-18) in the proceedings of the identification parade (Ex.PAA) on 29.07.2019, reads as under:-

"The suspect Waris Ali objected that the local police detained him for 8 days in different police station Sharqpur Shareef. My cousins were arrested by the police. In result of writ petition filed in High Court. The police arrested me and my cousins from our houses, then police encountered my uncle and than locked me and my brother in Jail. The local police falsely implicated in the instant case. Police make my pictures."

The above objection raised by Waris Ali (the appellant No.3) got support from the testimony of Abu Bakar 646/C (PW-1), which reads as under:-

"Stated that on 30.03.2019 I was posted at Police Station Sharqpur Sharif, Sheikhpura. On the

same day, Adeel Subhani and I escorted the dead body of Nawaz alias Riaz to the dead house of THQ Sharqpur Sharif alongwith police papers for postmortem examination test.”

Muhammad Boota A.S.I. (PW-11) deposed during his examination in chief that on 30.03.2019, he received a complaint, which was sent to him by Abdul Ali Yousaf Inspector (given up being unnecessary) for registration of FIR, after that he (PW-11) chalked out computer generated FIR No.220/2019 at Police Station Sharqpur Sharif, Sheikhpura (Ex. PP), (Ex. PP is also marked as Mark-A). During cross-examination, Muhammad Boota A.S.I. (PW-11) deposed that: -

“The accused persons of case FIR No.202/2019 and 220/2019 Police Station Sharqpur Sharif are the same and there is the connection between two cases.”

Already apprehension of police encounter was shown that the detenues would be murdered in a police encounter by Farhat Bibi, mother of the appellants, Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz in W.P. No.19212 of 2019, titled “Farhat Bibi. Vs. Inspector General Police Punjab, etc.” and on 30-04-2019, FIR No.220/2019 was registered at Police Station Sharqpur Sharif, District Sheikhpura about the murder of Muhammad Nawaz alias Riaz, on the complaint of Abdullah Ali Yousaf Inspector (given up being unnecessary), wherein it was alleged that on 30.03.2019 at 08:20 a.m. the robbers were busy robbing people, seeing the police vehicle, they entered the garden and started firing indiscriminately; when the firing of the accused stopped, the garden was surrounded and checked; an unknown accused was lying injured in the garden, who, on discovery, gave his name and address and named his co-accused, who was shot by his co-accused persons Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz etc. Muhammad Khalid 182/DC (PW-9) deposed during cross-examination that: -

“Nawaz, one of the accused, was murdered on 30.03.2019. ----- Nawaz accused was murdered at the same place where constable Zaheer

sustained injuries. Said Nawaz was brother of Waris accused.”

Coming to the facts of the instant case, as per the prosecution version, the prosecution took the services of an official foot tracker. Muhammad Khalid 182/D.C (PW-9) deposed that on 26.03.2019, he, alongwith Muhammad Akmal 2129/C (PW-13) and Saif Ullah A.S.I (PW-12), joined the investigation with Shahbaz Ali Inspector (PW-15)-the investigating officer. The official foot tracker (Khoji) followed the footprints (Khura) traces, which led to Madhar Sharif Graveyard Dera Mochian to locate the assailants of the occurrence on 23.03.2019. During cross-examination, Muhammad Khalid 182/D.C (PW-9) deposed that: -

“We traced the accused by following their foot traces. I also entered into the garden at 4:00 a.m. There was Barseem (Shitala) crop in the garden. Because of dew (Shabnam) their foot traces were available. Khoji (foot tracer) reached at the place of occurrence at 6/6:30 a.m. I remained at the place of occurrence and did not company the foot tracer.”

Saif Ullah S.I. (PW-12)-the complainant deposed during examination-in-chief that: -

“The official foot tracer (Khoji) followed the traces of foot prints (Khura) which led to Madhar Sharif Graveyard Dera Mochian.”

Saif Ullah S.I. (PW-12)-the complainant deposed during cross-examination that:-

“Foot tracer/Khoji reached at the place of occurrence after two hours. I alongwith so many other police officials joined foot tracer. Akmal, Khalid and I were with the Khoji/foot tracer. There were Baseem/Shitala crop about 4/5 inches high in the garden adjacent to the place of occurrence. After the garden there was an open field. We stopped after a distance of about one kilometer. I had not been told that who had informed Khoji/foot tracer about the accused persons. -----When we reached at mattle road the foot prints of the dacoits were untraceable. I alongwith PWs came back and the

foot tracer continued to search out the accused persons. I remember the names of accused persons.”

Muhammad Akmal 2129/C (PW-13) deposed in his examination-in-chief that:-

“On 26.03.2019 I joined investigation before the I.O. The official foot tracer (Khoji) followed the traces of foot prints (Khura) which led to Madhar Sharif Graveyard Dera Mochian.” During cross-examination, he (PW-13) admitted, **“I had not visited the place of occurrence on 26.03.2019.”**

Admittedly, the prosecution did not produce the official foot tracker before the trial court to substantiate the plea that foot molds were taken. Only the above-mentioned prosecution witnesses, i.e., Muhammad Khalid 182/D.C (PW-9), Saif Ullah S.I. (PW-12)-the complainant, and Muhammad Akmal 2129/C (PW-13) deposed about the fact that services of official foot tracker were obtained. Admittedly, the prosecution witnesses, i.e., Muhammad Khalid 182/D.C (PW-9), Saif Ullah S.I. (PW-12)-the complainant, and Muhammad Akmal 2129/C (PW-13), admitted that they named the accused as the culprits of the incident that took place on 23.03.2019 at 09:10 a.m. Still, they failed to disclose their source of information. After that, Shahbaz Ali Inspector (PW-15)-the investigating officer, deposed that he tried to arrest the accused persons; he (PW-15)-the investigating officer also got issued non-bailable warrants of arrest of the accused named by the prosecution witnesses i.e. Muhammad Khalid 182/D.C (PW-9), Saif Ullah S.I. (PW-12)-the complainant and Muhammad Akmal 2129/C (PW-13) but could not arrest the appellants till 05.05.2019. Whereas the order dated 10.05.2019 passed in W.P. No.19212 of 2019 (Ex. DC) reveals that the appellants Ghzanfar Ali alias Manzoor and Pervaiz alias Parwaz were arrested on 05.05.2019, whereas the order dated 26.07.2019 passed in W.P. No.45101 of 2019 (Ex. DD) reveals that the appellant, Waris Ali was arrested on 25.07.2019. Admittedly, Farhat Bibi, mother of the appellants, Ghzanfar Ali alias Manzoor and Pervaiz alias Parwaz, and sister-in-law of the appellant-Waris Ali, on missing of the appellants, approached this Court through the constitutional petitions for their recovery. It is admitted that during the pendency

of the above-mentioned writ petitions, the appellants' arrest was shown in the record in case FIR No.202/2019 (Ex.PH/1). Under the circumstances mentioned above, the identification parade lost its efficacy in the presence of the testimony of Muhammad Khalid 182/D.C (PW-9), Saif Ullah S.I. (PW-12), and Muhammad Akmal 2129/C (PW-13) that they named the appellants along with others as culprits of the incident that took place on 23.03.2019 as said identification parade was conducted after the nomination of the accused on 26.03.2019 in the case. Identifying the accused persons already known to the identifier is futile, and we cannot attach much value to such an identification parade.

13. As far as recoveries of rifle 303 calibers (P-3), alongwith one crime empty (P-4) from the chamber and two live bullets (P-5/102) from the magazine on the pointing of Ghazanfar Ali alias Manzoor (appellant No.1), rifle 303 calibers (P-6), alongwith one crime empty (P-7) from the chamber and two live bullets (P-8/102) from the magazine on the pointing of Pervaiz alias Parwaz (appellant No.2) and positive report of FSL (Ex.PDD) are concerned, it does not support the prosecution case as parcels of crime empties and other evidence collected and secured by Waseem Abbas (PW-17)- Junior Forensic Scientist along with other team members of PFSA from the crime scene on 23.03.2019 and sent to Punjab Forensic Science Laboratory, Lahore on 26.03.2019 by Zaka Ullah ASI (PW-7) and deposited by Shahbaz Ali Inspector (PW-15)-the investigating officer on 26.03.2019. The sealed parcel of rifle 303 calibers (P-3), alongwith sealed parcel of one crime empty (P-4), recovered from the chamber on the pointing of Ghazanfar Ali alias Manzoor (appellant No.1), and sealed parcel rifle 303 calibers (P-6), alongwith sealed parcel of one crime empty (P-7), recovered from the chamber on the pointing of Pervaiz alias Parwaz (appellant No.2) on 24.05.2019 were handed over to Muhammad Awais 1604/HC (PW-6) by Shahbaz Ali Inspector (PW-15)-the investigating officer. The same parcels were handed over by Muhammad Awais 1604/HC (PW-6) to Shahbaz Ali Inspector (PW-15)-the investigating officer, on 17.06.2019 for onward transmission to the Punjab Forensic Science Laboratory, Lahore, and same, i.e.,

sealed parcel of rifle 303 calibers (P-3), alongwith sealed parcel of one crime empty (P-4), sealed parcel of rifle 303 calibers (P-6), and sealed parcel of one crime empty (P-7), were deposited by Shahbaz Ali Inspector (PW-15)-the investigating officer on the same day, i.e., 17.06.2019 with the office of the Punjab Forensic Science Laboratory, Lahore. The positive report of FSL (Ex. PDD) of Punjab Forensic Science Laboratory, Lahore, reveals that the rifles 303 calibers (P-3 and P-6) matched with the cartridges submitted on 17.06.2019, which were recovered from the chambers of rifles 303 calibers (P-3 and P-6) recovered on the pointing of Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz, the appellants. Admittedly, the crime empties sent to the Punjab Forensic Science Laboratory, Lahore on 26.03.2019, were not matched with the rifles 303 calibers (P-3 and P-6) recovered at the pointing of Ghazanfar Ali alias Manzoor and Pervaiz alias Parwaz, the appellants, so the positive report (Ex. PDD) is of no consequence.

14. The recoveries of rifle 7-MM (P-9) along with 03 live bullets (P-10/1-3) on the pointing of Waris Ali, the appellant No.3, on 16.08.2019 is of no consequence as the report of Punjab Forensic Science Laboratory, Lahore (Exh. PFF) is only to the effect that the rifle 7-MM (P-9) allegedly recovered from the accused/appellant was in mechanical operating condition. So, the recovery from Waris Ali, the appellant, is of no consequence.

15. From the detailed discussion above, we are convinced that the prosecution has failed to establish its case. The truth was seen buried under the debris, and a different story was structured perhaps to lug the appellants into trial under the serious offense. It is often said “that Foulter the crime higher the decree of proof.” we have gone through the process of keen examination of the entire material and found compelling reasons, as stated above, to disagree with the conclusion recorded by the learned Judge Anti-Terrorism Court-II, Lahore and also found that the prosecution has miserably failed to prove the guilt of the accused-appellants beyond reasonable doubt. Per the dictates of law, the benefit of every doubt will be extended in favor of the accused. In the case of **“Muhammad Akram v. The State”** (2009 SCMR 230), it is held as under: -

“The nutshell of the whole discussion is that the prosecution case is not free from doubt. It is an axiomatic principle of law that in case of doubt, the benefit thereof must accrue in favour of the accused as matter of right and not of grace. It was observed by this Court in the case of Tariq Pervez v. The State 1995 SCMR 1345 that for giving the benefit of doubt, it was not necessary that there should be many circumstances creating doubts. If there is circumstance which created reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of doubt not as a matter of grace and concession but as a matter of right.”

16. We, therefore, **accept** in toto Criminal Appeal No.67578 of 2019 filed by the appellants-Ghazanfar Ali alias Manzoor, Pervaiz alias Parwaz and Waris Ali; as a result, whereof conviction and sentence recorded by the trial Court vide judgment dated 28.10.2019 is **set-aside**, and the appellants are **acquitted** of the charge in case F.I.R. No.202/2019 dated 23.03.2019, offences under Sections 302, 353, 186, 148, 149 P.P.C and section 7 of Anti-Terrorism Act, 1997 registered at Police Station Sharqpur Sharif, District Sheikhupura. They (the appellants) are directed to be released forthwith, if not required in any other case.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for reporting

Judge

Judge

*This judgment was dictated,
pronounced on 18.03.2024,
and signed after its
completion on 28.03.2024.*

*Ikram**