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**JUDGMENT SHEET**

**LAHORE HIGH COURT, LAHORE**

**JUDICIAL DEPARTMENT**

**Criminal Appeal No.245/2016**

Asif alias Asad & three others vs The State & another  
&

**Criminal Appeal No.409/2016**

Jamshaid Ahmad vs. The State & another

**JUDGMENT**

Date of hearing:	<b><u>04.03.2024</u></b>
Appellants by:	Mr. Ijaz Ahmad Janjua, Advocate for and with Asif alias Asad, Irshad, Muhammad Riaz and Shaukat Ali (appellants in Crl. Appeal No.245/2016 on bail). Rana Khalid Mehmood, Advocate, <i>vice</i> counsel for and with Jamshaid Ahmad (appellant in Crl. Appeal No.409/2016 on bail).
Complainant by:	Mr. Ehtesham-ul-Haq, Advocate.
State by:	Mr. Haroon Rasheed and Ms. Nuzhat Bashir, Deputy Prosecutors General.

**Farooq Haider, J:-** This single judgment will dispose of **Crl. Appeal No.245/2016** filed by Asif alias Asad, Irshad, Muhammad Riaz and Shaukat Ali (appellants/convicts) against their “conviction & sentence” and **Criminal Appeal No.409/2016** preferred by Jamshaid Ahmed (appellant/convict) against his “conviction & sentence” as these both have arisen out of one and the same impugned judgment dated: 30.01.2016 passed by learned Additional Sessions Judge, Gujranwala/trial court.

2. Asif alias Asad, Irshad, Muhammad Riaz, Shaukat Ali and Jamshaid Ahmad (appellants in aforementioned appeals, hereinafter to be referred as appellants) along with Muhammad Aslam, Basharat Ali, Muhammad Javed, Nasir Mehmood and Arshad Ali (since acquitted), Sajid (since proclaimed offender) and Asad Ali (who became proclaimed offender during trial after framing of charge) being involved in case arising out of FIR No.332/2011 dated: 17.07.2011 registered under Sections: 302, 109, 148, 149 PPC at Police

Station: Wahando, District Gujranwala were tried and trial court *vide* impugned judgment dated: 30.01.2016 while acquitting aforementioned co-accused persons namely Muhammad Aslam, Basharat Ali, Muhammad Javed, Nasir Mehmood and Arshad Ali of all the charges, has convicted and sentenced the appellants as under:-

<u>Convictions</u>	<u>Sentences</u>
Under Section: 148 PPC	<b>“Three years”</b> Rigorous Imprisonment each with fine of Rs.50,000/- each and in case of non-payment of fine, to further undergo Simple Imprisonment for four months each.  Benefit of Section: 382-B Cr.P.C. was also extended in favour of all the five appellants.

3. Machinery of law was set into motion by Karamat Ali (complainant/PW-5) by moving application (Ex.PD) to Muhammad Nawaz, ASI/D.O.(PW-9) in Police Station: Wahando, District Gujranwala while mentioning therein that he is resident of Shadi Khan Wala and is a cultivator by profession; on 16.07.2011, petty quarrel of brother of complainant namely Amanat Ali took place with Sajid, Asif alias Asad, residents of the *deh*, who had extended threat that they will teach him a lesson due to quarrel; on 17.07.2011 at about 7:30 a.m., complainant and his brother Amanat Ali were proceeding to their fields for working, when they were at a little distance from fields, accused persons namely Sajid armed with .44-bore rifle, Asif alias Asad (both sons of Liaqat Ali) armed with Kalashnikov, Asad Ali son of Basharat armed with Kalashnikov, Riaz son of Mehar Din armed with .223 bore rifle, Irshad alias Mehar Din armed with .8mm rifle, Shaukat Ali son of Mehar Din armed with Kalashnikov, Javed son of Ashiq armed with Kalashnikov, Jamshaid son of Mehar Sadiq armed with Kalashnikov, who had already waylaid in furtherance of their common object, started raising *lalkaras* to teach a lesson for quarrelling and said that they should not be left alive; Sajid son of Liaqat Ali made straight fire shot with rifle at Amanat Ali, which landed at front of his neck, who fell on the ground and died at the spot; the complainant saved his life while laying in the watercourse (کھال); co-accused persons remained firing with their respective weapons; occurrence was witnessed by Muhammad Azam,

Nawaz and Zulifqar Ali, who were working in nearby fields; occurrence was committed at the abetment/conspiracy of Basharat Ali, Muhammad Arshad, Muhammad Aslam, Nasir Mehmood and conspiracy hatched by them was heard by Mustafa and Iftikhar Ahmad a few days before the occurrence. Motive behind the occurrence was landed dispute.

4. After completion of investigation, report under Section: 173 Cr.P.C. was submitted in the Court; appellants along with co-accused were formally charge sheeted but they pleaded not guilty and claimed trial whereupon prosecution evidence was summoned; prosecution during trial examined twelve (12) witnesses, out of which, medical evidence was furnished by Dr. Salman Kazmi, Medical Officer (PW-1), ocular account was furnished by Karamat Ali (complainant/PW-5) and Zulifqar Ali (PW-6), Istikhar Ahmad (PW-7) and Ghulam Mustafa (PW-8) are witnesses of abetment/conspiracy whereas detail of investigation of the case was deposed by Ghulam Ali, Inspector/Investigating Officer (PW-11); prosecution after giving up Muhammad Azam, Basharat Ali and Muhammad Nawaz (PWs) as being unnecessary and tendering report of Chemical Examiner (Ex.PN), report of Serologist (Ex.PO) and report of Punjab Forensic Science Agency (Ex.PP) closed its evidence; after recording of prosecution evidence, accused persons (appellants) were examined under Section: 342 Cr.P.C. but they refuted the allegations levelled against them; they neither opted to appear as their own witnesses under Section: 340(2) Cr.P.C. nor produced any evidence in their defence.

Trial Court after conclusion of trial has convicted and sentenced the appellants as mentioned above through the impugned judgment dated: 30.01.2016.

5. Learned counsel for the appellants, while opening the arguments, submit that conviction recorded against and sentence awarded to the appellants through impugned judgment are against the 'law and facts' and result of non-reading/misreading of evidence; further submit that prosecution has failed to prove its case against the appellants through cogent and reliable evidence. In such perspective, learned counsel finally prays for acquittal of the appellants.

6. Conversely, learned Deputy Prosecutors General and learned counsel for the complainant submit that prosecution has proved its case against the appellants up to hilt, therefore, their appeals are liable to be dismissed.

7. **Arguments advanced pro and contra have been heard and available record perused.**

8. As per own case of prosecution, Sajid (co-accused/still proclaimed offender) fired shot and caused single/fatal firearm injury to Amanat Ali (deceased of the case), however, present appellants neither caused any injury to the deceased or anybody else in the case nor even attempted to do so rather allegation of ineffective firing has been alleged against them. Section 148 PPC speaks regarding punishment for rioting armed with deadly weapon and same is hereby reproduced:-

*“148. Rioting armed with deadly weapon.- Whoever is guilty of rioting, being armed with deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”*

*(emphasis added)*

whereas “rioting” has been defined under Section: 146 PPC, which is also reproduced for ready reference:-

*“146. Rioting.- Whenever force or violence is used by an unlawful assembly, or by any member thereof in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.”*

*(emphasis added)*

and “unlawful assembly” has been defined under Section: 141 PPC, which reads as follows:-

*“141. Unlawful assembly.- An assembly of five or more persons is designated an “unlawful assembly” if the common object of the persons composing that assembly is;*

*First. To overawe by criminal force, or show of criminal force, the Central or any Provincial Government or Legislature, or any public servant in the exercise of the lawful power of such public servant; or*

*Second. To resist the execution of any law, or of any legal process; or*

*Third. To commit any mischief or criminal trespass, or other offence, or*

*Fourth. By means of criminal force, or show of criminal force to any person to take or obtain possession of any property or to deprive any person of the enjoyment of a right of way, of the use of water or*

*other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or*

*Fifth. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.*

***Explanation.** An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”*

*(emphasis added)*

Perusal of the aforementioned provisions of law makes it crystal clear that if “rioting” is committed by the accused persons while armed with deadly weapons then they are to be punished under Section: 148 PPC and as per Section: 146 PPC, “rioting” is use of force or violence by an unlawful assembly or by any member thereof in **prosecution of the common object** of said assembly and it is equally important to mention here that as per Section: 141 PPC, assembly is designated as “unlawful assembly” if same has been constituted for achieving “common object” mentioned in five clauses mentioned therein; Hence, “common object” is necessary ingredient for invoking Section: 148 PPC; in this regard, case of “**LIAQUAT versus THE STATE**” (PLD 1996 Supreme Court 219) can be advantageously referred and its relevant portion from Page No. 222 is hereby reproduced: -

*“A plain reading of these provisions will show that an accused cannot be convicted under section 148, P.P.C. unless he is found to be member of unlawful assembly using force or violence in prosecution of the **common object** of such assembly.”*

*(emphasis added)*

cases of “**ABUL HUSSAIN AND OTHERS versus The STATE**” (1968 P Cr.L J 300), “**THE STATE through Advocate-General, Balochistan, Quetta versus Jamadar MUHAMMAD KHAN and another**” (2005 P Cr. L J 1442), “**NAZIR AHMED and others versus THE STATE and others**” (PLD 2005 Karachi 18) and “**HABIB AHMAD and others versus THE STATE**” (2020 P Cr. L J 1185) [Lahore] can also be safely referred on the subject.

In this case, it has been rightly held by trial court for the valid reasons in paragraph No.17 of the judgment that prosecution could not establish common object; relevant portion of said paragraph is hereby reproduced:-

*“---yet it is an admitted fact that no fire made by the remaining accused present in the court hit the deceased or complainant, hence prosecution*

*was required to prove that they acted in prosecution of their common object. The entire evidence produced by the prosecution is scanned, which could not establish that present accused gathered at the place of occurrence for commission of murder. If they gathered for committing murder then complainant and other PWs were also at their mercy and they should not have been spared. It is also not proved that present accused made straight firing upon deceased or complainant. Besides above, deceased received only single fire shot, which prima facie **established that common object in this case is missing.***

*(emphasis added)*

Therefore, conviction of the appellants under Section: 148 PPC raises eye brows as well as is a question mark.

Apart from above, it is noteworthy here that as per own case of prosecution, Asif alias Asad, Irshad, Muhammad Riaz, Shaukat Ali, Jamshaid Ahmad, Asad Ali (since proclaimed offender) and Javed (since acquitted) have been given one and the same/identical role of making ineffective firing, however, Javed (mentioned above) has already been acquitted and his acquittal has neither been challenged by the State nor by the complainant as confirmed by learned Deputy Prosecutors General as well as by learned counsel for the complainant. Therefore, now strong and independent corroboration is required to uphold the conviction and sentence awarded to the present appellants. It is relevant to mention here that for the genuine reasons mentioned in paragraph No.15 of the impugned judgment, trial court has held that prosecution remained fail to prove the motive against present appellants; said paragraph is hereby reproduced:-

*“15. As far as motive part of the occurrence is concerned, it is admitted by the complainant that accused present in the court are neither vendors not vendees of the land in dispute. It is also an admitted fact that complainant did not produce any witness of prior occurrence, which allegedly took place on 16.07.2011 between deceased and Sajid etc. No overwhelming evidence regarding motive part has been brought on record. **Hence it is concluded that prosecution has not proved motive part of the occurrence against present accused persons.**”*

*(emphasis added)*

Though learned Deputy Prosecutors General as well as learned counsel for the complainant emphasis that corroboration is available in the form of recoveries effected from Irshad, Shaukat Ali and Jamshaid Ahmad (appellants), however, it is worth mentioning here that Kalashnikov (P.4) recovered from Shaukat Ali (appellant) and Kalashnikov (P.6) recovered

from Jamshaid Ahmad (appellant) were sent to Punjab Forensic Science Agency, Lahore and as per report of said agency (Exh.PP), said both weapons were though in working condition yet empties secured from the place of occurrence and sent to Punjab Forensic Science Agency for comparison, did not match with said weapons. In such perspective, report of Punjab Forensic Science Agency regarding mere working capability of said weapons cannot provide any corroboration to the case of prosecution against both these appellants i.e. Shaukat Ali and Jamshaid Ahmad; in this regard, cases of “**MUHAMMAD MANSHA versus The STATE**” (2018 SCMR 772) and “**IMTIAZ alias TAJI and another versus The STATE and others**” (2020 SCMR 287) can be safely referred.

Now coming to the case of Irshad (appellant), as per application for registration of case (Ex.PD) and FIR (Exh.PD/1), he was armed with .8mm rifle which he allegedly used in the occurrence and same is the position/stance in the statements of Karamat Ali (complainant/PW-5) and Zulifqar Ali (eye witness/PW-6) recorded during trial of the case, however, .8mm rifle was not recovered from him rather as per case of prosecution, .12-bore shotgun was recovered from him. So, at the maximum, it can be said that firearm weapon .12-bore shotgun was recovered from Irsahd (appellant) but since use of .12-bore shotgun was not claimed in the application moved for registration of the case (Exh.PD) and in the FIR (Exh.PD/1) as well as in the statements of complainant and eye witness recorded during trial of the case, therefore, recovery of said gun is of no avail to the prosecution for the purpose of having corroboration. Though according to the report of Punjab Forensic Science Agency (Ex.PP), two out of four empties of .12-bore shotgun cartridge cases sent to Punjab Forensic Science Agency have matched with the aforesaid shotgun yet it is own case of prosecution that Irshad (appellant) was arrested in this case on 21.07.2011; in this regard relevant portion of the statement of Ghulam Ali, Inspector/Investigating Officer of the case (PW-11) is hereby reproduced:-

*“On 21.07.11, I arrested Shaukat Ali, Irshad and Jamshaid...”*

whereas empties were admittedly sent to Punjab Forensic Science Agency on 30.07.2011 i.e. after arrest of Irshad (appellant) and in this regard

relevant portion of the statement of Nadeem Akhtar, ASI/Moharrar of the Police Station (PW-12) is hereby reproduced:-

*“On 30.07.11, I handed over the sealed parcel of crime empties to Abdul Razzaq constable 2354-C in order to deposit the same in the office of PFSA, Lahore intact.”*

Statement of Abdul Razzaq 2354-C (PW-10) can also be referred in this regard, which is reproduced as under:-

*“On 30.07.2011, said Moharrar handed over me a sealed parcel said to contain crime-empties for deposit in the office of FSL, Lahore. On the same day I deposited the parcel in the said office intact. On the same day I.O. recorded my statement U/S 161 Cr.P.C.”*

Hence, when empties were sent to Punjab Forensic Science Agency after arrest of Irshad (appellant), then report of said Agency regarding matching of empties with allegedly recovered shotgun from Irshad (appellant) is inconsequential and in this regard cases of **“MUHAMMAD ILYAS versus MUHAMMAD ABID alias BILLA and others”** (2017 SCMR 54) and **“Nawab SIRAJ ALI and others versus THE STATE through A.G. Singh”** (2023 SCMR 16) can be safely referred. Therefore, aforementioned recovery cannot provide any corroboration to the case of prosecution against said appellant.

Undeniably no weapon of offence was recovered from Asif alias Asad and Muhammad Riaz (appellants). In above scenario, it can be safely concluded that when neither common object nor motive could be established by the prosecution against the present appellants and even recovery of the weapons from Irshad, Shaukat Ali and Jamshaid Ahmed (appellants) is inconsequential, then nothing is available on record to provide any corroboration to the case of prosecution against the present appellants. By now it is well settled that, if same/identical role has been alleged against more than one accused and anyone out of them has been acquitted, then in absence of the strong corroboration, other accused persons against whom also similar allegation was levelled by the prosecution, cannot be convicted and sentenced and in this regard cases of **“Mst. SUGHRA BEGUM and another versus QAISER PERVEZ and others”** (2015 SCMR 1142), **“IMTIAZ alias TAJ versus The STATE and others”** (2018 SCMR 344), **“HAROON SHAFIQUE versus The STATE and others”** (2018 SCMR



2118), “MUNIR AHMAD and another versus The STATE and others” (2019 SCMR 79), “ALTAF HUSSAIN versus The STATE” (2019 SCMR 274), “LIAQAT ALI and others versus The STATE and others” (2021 SCMR 455), “MUHAMMAD IDREES and another versus The STATE and others” (2021 SCMR 612) and “PERVAIZ KHAN and another versus The STATE” (2022 SCMR 393) can be advantageously referred.

9. Nutshell of the above discussion is that prosecution has been failed to prove its case against the appellants beyond shadow of reasonable doubt and in such state of affairs, there is no need to discuss defence version.

10. In view of what has been discussed above, Crl. Appeal No. 245/2016, filed by Asif alias Asad, Irshad, Muhammad Riaz and Shaukat Ali (appellants) and Crl. Appeal No.409/2016 filed by Jamshaid Ahmad (appellant) are allowed/accepted; conviction recorded and sentence awarded to aforementioned appellants through impugned judgment dated: 30.01.2016 passed by learned Additional Sessions Judge, Gujranwala/trial Court, are hereby set aside. Resultantly, Asif alias Asad, Irshad, Muhammad Riaz, Shaukat Ali and Jamshaid Ahmad (appellants) are acquitted of the charge. All the appellants are on bail, as during pendency of their appeals (mentioned above), execution of their sentence was suspended *vide* order dated: 18.10.2016 passed by this Court in Crl. Misc. No.1/2016 of their respective appeals (mentioned above), therefore, their sureties stand discharged from their all liabilities.

**(Farooq Haider)**  
**Judge**

**“Approved for reporting.”**

**(Farooq Haider)**  
**Judge**

This judgment has been dictated and pronounced on 04.03.2024 whereas after its preparation and completion signed on 05.04.2023.

\*Asif\*