

Form No.HCJD/C-121

**JUDGMENT SHEET**

**IN THE LAHORE HIGH COURT, LAHORE**

**(JUDICIAL DEPARTMENT)**

(i) Criminal Appeal No.38881 of 2019.  
Amir Shahzad  
Vs  
The State, etc.

(ii) Criminal Revision No.43848 of 2019.  
Muhammad Iqbal  
Vs  
The State, etc.

**JUDGMENT**

DATE OF HEARING: 25.01.2024.

APPELLANT BY: Mr. Shahid Azeem, Advocate.

STATE BY: Mr. Fakhar Abbas, Deputy Prosecutor General.

Complainant BY: Mr. Abdul Ghafoor Sheikh, Advocate.

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**MUHAMMAD AMJAD RAFIQ, J:** - Amir Shahzad, appellant and his father Muhammad Yousaf along with co-accused Allah Ditta were tried, by the learned Additional Sessions Judge Shorkot, District Jhang, on the charge of committing murder of Muhammad Abid (son of his maternal aunt) aged 11/12 years, in case FIR No. 248 dated 29.08.2018 for offences under sections 302/34 PPC registered at Police Station Warayam, District Jhang and at the conclusion of trial vide judgment dated 30.05.2019, while acquitting Allah Ditta and Muhammad Yousaf, appellant Amir Shahzad was convicted under section 302(b) PPC and sentenced to imprisonment for life along with compensation of Rs.300,000/- in case of default to further undergo simple imprisonment for six months. Benefit of section 382-B Cr.P.C, was extended. Through Criminal Appeal No.38881 of 2019, he has assailed above conviction and sentence, whereas, Criminal Revision

No.43848 of 2019 has been filed by Muhammad Iqbal, complainant seeking enhancement of his sentence.

2. The prosecution case set out in the FIR (Ex.PA) by Muhammad Iqbal Khan complainant (PW-8) contains narration that on 28.08.2018 he (the complainant) along with Ishfaq Ahmed Khan had come to the house of Basheer Ahmad (PW-9) and were talking to each other. At about 07:30 p.m., from the house of father of appellant, Muhammad Yousaf co-accused (since acquitted) they heard hues and cries. The ran near to the said house and saw Amir Shahzad, appellant, Muhammad Yousaf (his father) and Allah Ditta co-accused (since acquitted) quarreling and abusing Muhammad Abid, nephew of the complainant. Amir Shahzad, appellant while armed with fire arm weapon made a straight fire which hit Muhammad Abid on his chest on the right side, who fell down. The accused then managed their escape by brandishing their weapons. Muhammad Abid succumbed to the injuries.

Motive was said to be a quarrel that took place between womenfolk of accused and complainant party which was reacted by Amir Shahzad, while extending threats.

3. Following night when date stood changed as 29.08.2018, Ijaz Hussain SI/Investigating Officer (PW-10) after receiving information about the occurrence reached at the crime scene, where Muhammad Iqbal complainant filed application (Ex.PA/1) for registration of formal FIR; he inspected the dead body of the deceased Muhammad Abid, prepared injury statement (Ex.PE), inquest report (Ex.PF) and thereafter dispatched the dead body through Imran Ali 729/C for autopsy; he secured blood stained earth, recorded statements of witnesses u/s 161 Cr.P.C and prepared rough site plan (Ex.PK); on 02.12.2018 he arrested Muhammad Yousaf and Amir Shahzad accused; during investigation on the lead of appellant gun 12-bore stood recovered lying in his residential house, which was taken into possession through recovery memo (Ex.PJ). Challan was drafted against three accused and sent the same to the Court for trial.

4. The accused persons were charge sheeted, to which they pleaded not guilty and claimed to be tried. During trial the prosecution examined Muhammad Iqbal Khan complainant (PW-8) (step uncle of deceased) and Basheer Ahmad (PW-9) in support of ocular account; Ijaz Hussain Sub-Inspector Investigating Officer as PW-10; Dr. Safdar Abbas (PW-3), who conducted post mortem examination of Muhammad Abid; rest of the witnesses were more or less formal in nature and they made statements about their respective roles during the course of investigation. After close of prosecution evidence accused persons were examined under section 342 Cr.P.C. wherein they have controverted all the allegations levelled against them and pleaded their innocence, however, in response to a question that why this case against you and why PWs deposed against you? the appellant replied as under: -

*“All the PWs are related inter-se and inimical to me and my family upon dispute of land. I am innocent. Deceased was my khalazad brother and I have no previous any kind of enmity with him. I.O also admitted during cross examination that I have no enmity with the deceased previously and this fact was proved during investigation. In fact, complainant and PWs were not present at the spot, when occurrence took place. Complainant and PW Ishfaq are resident of Tehsil 18-Hazari which is as at a distance of 50/60 K.m. from the place of occurrence. This distance was disclosed by complainant himself during cross examination. No plausible specific reason had come on the record during investigation that why they were present near the place of occurrence at time of occurrence. Basheer PW is not resident of the vicinity where occurrence took place and this fact is visible from un-scaled site plan and scaled site plans of the place of occurrence, because in the four sides of the place of occurrence the house of Basheer PW was not shown by the I.O and Draftsman. Occurrence took place unintentionally, for the reason mother and sister of the deceased who are legal heirs of the deceased have forgiven me and my co-accused in the name of Almighty Allah. I.O also in league with the complainant does not delete the offence and wrongly challaned me in murder case despite the fact that all above said situation of occurrence had taken place unintentionally. I am innocent. I may be acquitted from the charge.”*

The appellant did not opt to lead any evidence in his defence or make statement under Section 340(2) of Cr.P.C. On conclusion of trial above conviction and sentence was recorded and passed against Amir

Shahzad, appellant whereas Allah Ditta and Muhammad Yousaf co-accused were acquitted.

5. The learned counsel for the appellant argued that totally a false prosecution was initiated against the appellant which is reflected from the facts that FIR was registered with a delay of more than five hours and postmortem examination of the deceased after thirteen hours, complainant and Ashfaq Ahmad Khan were not the resident of place of occurrence and status of Basheer Ahmed as witness is also under challenge because his house is not cited in the site plan, recovery of gun 12 bore is also inconsequential because no crime empty was collected from the place of occurrence. He also alleges contradiction in ocular and medical account for a favour to appellant if acquitted.

6. The learned Deputy Prosecutor General assisted by learned counsel for the complainant however, defended the impugned judgment by arguing that complainant or the witnesses had no animosity towards the accused/appellant to falsely implicate him and mere on the basis of ocular account accused/appellant can be convicted because if other types of evidence are not qualified to be weighed on standard of proof i.e., beyond reasonable doubt, then they can be valued on basis of a floating standard of proof to take a support for the ocular account in this case and net result is proving of case beyond reasonable doubt by the prosecution. Further states that though three accused were nominated in the FIR but fire was attributed to the present appellant and gun 12 bore also stood recovered from him which is corroborative evidence. Further adds that doctor has clearly observed injury caused by firearm weapon on the locale as deposed by the witnesses, therefore, facts in issue in this case that deceased had died of firearm injury which was caused by the accused/appellant and that too with a gun stood proved and nothing else is required to prove guilt of the appellant.

7. I have heard the respective arguments and examined the evidence with the help of proponent and opponent.

8. Before commenting upon the evidence of prosecution, it is essential to highlight that deceased was a boy of 11/12 years of age

who had no enmity with anybody including the appellant who was his Khalazad. Complainant was his step uncle whereas mother and sister of the deceased had not supported the prosecution case and at one occasion entered appearance before the trial court, though they were not examined as prosecution or defence witnesses yet their deposition without cross examination was made part of record. They stated that appellant was having a gun and deceased wanted to snatch it but during scuffle gun went off; both ladies ruled out presence of complainant and witnesses namely Ashfaq and Basheer at the relevant time. It has further been observed that accused/appellant has also not taken any specific plea like one stated by the mother and sister of deceased, however, during cross examination at one occasion and in statement under section 342 Cr.P.C. only a little touch of fact that occurrence happened unintentionally. Such situation, in no case shifts the burden on him nor it can be considered as any specific plea. Thus, case shall be examined in the light of evidence produced by the prosecution.

9. Ocular account was led by Muhammad Iqbal Complainant PW-8 & Basheer Ahmad PW-9 who deposed before the Court about role of present appellant that he caused a firearm injury on the chest of deceased. They claimed their presence in the house of PW-9 adjacent to the house of accused and viewed the occurrence while glancing over to the house of accused/appellant because the intervening wall was four feet high. It is in the evidence that complainant was not the resident of place of occurrence rather his house was at a distance 50/55 kilometer away at 18-Hazari, Jhang. Delay of five hours for lodging the crime report is reflective of the fact that he was not present at the place of occurrence. Though he admitted that Mumtaz, father of deceased was mentally and physically fit person and he informed him yet did not arrive at the place of occurrence until next morning that too in the hospital. He claimed his presence in the house of Basheer PW-9 his brother-in-law but did not state the reason for his presence and also could not justifiably establish the house of Basheer near to the crime scene, though claimed that it was situated at a distance of one acre from the place of occurrence. It is essential to note that occurrence took place

in the house of appellant and site plan shows house of Abid deceased adjacent to it from the back on southern side but no house of Basheer PW-9 is cited in the unscaled or scaled site plan. His claim for house of Basheer is further doubted when he deposed that he did not help the investigating officer to prepare the unscaled site plan and similarly, Raja Usman Draftsman PW-4 had also conceded as follows;

“I was not shown the house of Basheer Ahmad son of Peer Khan Baloch near the place of occurrence therefore, I have not mentioned his house in the site plan.”

PW-4 further fortified that PWs and complainant had not shown to me anything for sitting in the house. Therefore, he had not shown the same in the site plan. He verified that house of deceased was adjacent to house of accused as follows;

“The boundary wall of the house was four feet high. Point No. 3 prepared by me is a place showing the availability of complainant and PWs which is residential house of deceased Abid”

Considering this fact, if any anything unusual was happened, the first to respond should have been the mother or any other living in the house of deceased, but she did not volunteer to become complainant or witness in this case. Basheer PW-9 who was reportedly the brother-in-law of the complainant has claimed that deceased and his family members were living in his house in the days of occurrence, if it was the situation, then in scaled or unscaled site plan his house must have been swapped with the house of deceased Abid.

10. Though complainant PW-8 claimed that police were informed about the occurrence by him but as a matter of fact, police have already received information which fact was conceded by Muhammad Khan 1171/HC PW-1 as follows;

“Prior to registration of complaint, the information of this occurrence was received to me. I cannot tell the name of the person who informed me about the occurrence.”

Similarly, Basheer Ahmad PW-9 deposed during cross examination as under;

“I did not inform the police about the occurrence. PW Volunteered that someone else informed the police. It did not come to my knowledge as to who informed the police. In my presence the complainant did not inform the police.”

Complainant even did not accompany the police with dead body to the hospital and deposed like as under;

“I did not accompany the police to the Hospital with the dead body. PW volunteered that subsequently I also came to Hospital. After 1/2 hours I reached the Hospital.”

He further conceded that people came from 18-Hazari also reached to the Hospital. Thus, it is apparent from the above facts that complainant PW-8 was not present at the place of occurrence at relevant time. Mother or others were not ready to report the matter; therefore, police waited for the person who could lead the drive for implication of the accused/appellant in the story concocted through FIR; thus, PW-8 was called from 18-Hazari to become complainant. By all means complainant being not resident of the area was a chance witness who could not justify his presence at the place of occurrence. He was a step uncle of the deceased and it is shrouded in mystery that what grudge he nourished against the accused/appellant to involve him in this case to cash the murder of deceased, which occurrence was not supported by any other from the locality.

11. Basheer Ahmad, PW-9 claimed that deceased was his Bhanja who was living in his house with mother and sister and during cross examination deposed that I.O. Ijaz remained busy in proceedings at the place of occurrence but he did not know that he prepared the site plan or not. He further deposed as under;

“After the occurrence a draftsman also came at the place of occurrence. I showed said draftsman the house of Abid deceased and my house.”

Above fact clearly speaks that house of deceased was not the same as that of Basheer PW-9, and it is further reflected from a misstated fact by PW-9 carrying a connotation about his separate house as under;

“Toward north of the Abadi I have a house. PW volunteered that said house was prepared by me after the occurrence when the

accused used to disturb/tease me. My said house is at a distance of one acre from the Abadi where the occurrence took place.”

House of PW-9 was not adjacent to the place of occurrence and this fact can further be calculated in the sense that both PW-8 & PW-9 have made dishonest improvement in their statements while recording their examination in chief before the Court. PW-8 stated as under;

“On 28.08.2018 I alongwith Ashfaq Ahmad Khan had come in the house of my brother in law (Behnoi) namely Basheer Ahmad to see him. We were sitting in his house and talking to each other. At about 7.30 P.M we heard hue and cry in the house of accused Yousaf Khan son of Shameer Khan (present in the court on bail). **I, Ashfaq Ahmad Khan and Basheer Ahmad bent forward and saw in the house of accused Yousaf Khan** that accused Yousaf Khan and Allah Dita present on bail and Amir Shahzad present in custody were quarreling with my nephew Muhammad Abid (since deceased) and were abusing him.”

**(Emphasis supplied)**

PW-9 also deposed in the same terms as above, which is in contradiction to their earlier stance before the police. According to which, *after hearing hues and cries, they while running to the house of Muhammad Yousaf accused (father of appellant) reached there.* It was, of course, in response to a real fact emerged during investigation that in fact house of deceased and accused were adjacent to each other and there was no house of Basheer Ahmad PW-9 near to the place of occurrence and in order to show that deceased was living in his house was an exaggeration to claim his presence near to the place of occurrence. A serious cloud was cast on the claim of PW-9 about his presence at the place of occurrence when he deposed during cross examination as under: -

“I went to the Tehsil Headquarter Hospital, Shorkot subsequently through motor cycle. Complainant did not go with me there. It is not in my knowledge that I went first or complainant went first to the Hospital. I reached the hospital in the morning.”

If he was the maternal uncle of the deceased, it was not expected from him to stay behind which is against the normal human conduct particularly when throughout his evidence he did not say anything for his business to secure the crime scene or for any other function. It too was not the case because if he was there, he must have secured the cot



upon which the body was put and cartridge casing which he claimed as had seen falling on the ground after fire. This witness also toed the line of PW-8 with respect to situation of deceased after receiving fire shot, like wriggling, no attempt to stop oozing of blood, putting on cot, not staining of his clothes with blood of deceased etc., and it was like verbatim showing a tutored impression. Thus, his testimony was not confidence inspiring so as to rely on.

12. The occurrence took place on 28.08.2018 at 07:30 p.m. but matter was reported to the police on 29.08.2018 at 12:50 a.m. i.e., more than five hours and twenty minutes whereas postmortem examination of the deceased was conducted after thirteen hours. Dr. Safdar Abbas Senior Medical Officer (PW-3) appeared for medical evidence and stated that he conducted postmortem examination of the deceased Muhammad Abid on 29.08.2018 at 09:00 a.m. whereas police papers were received to him at 05:00 a.m.; this delay from 5.00 a.m. to 9.00 a.m. had not been explained by him; however, this fact was deposed by Imran Ali 729/C (PW-2) otherwise, who was the witness of escorting the dead body for the purpose of postmortem, that he handed-over police papers with dead body to the doctor at 08:00 a.m. Thus, attempt of doctor to cover the delay remained unsuccessful. Doctor, however, has observed only one entry wound on the dead body as under: -

**Injury No.1.**

A firearm entrance wound 4cm x 2cm X going right side of chest, 12 cm from right nipple. Wound was oval in shape. Margins of wound were inverted. Blackening was present, fractures of clavicle and ribs (02-03) were present. Right lung was injured. Major vessels of right chest were found injured. Chest cavity was filled with clotted blood.

No exit wound was observed by the doctor; when cross-examined on this point, he conceded that there was one entry wound on the dead body of the deceased without any exit and no any kind of foreign body was recovered from the dead body of the deceased despite exploring. He also observed blackening around the wound but non-availability of exit wound questions the manner of injury, though he explained that some time foreign body reaches in vertebra or spinal cord yet it cannot be dissected unless dead body is divided into two parts which act, they

do not perform for the dignity/respect of the dead body. Said observation of the doctor was attended in the light of precedents and forensic literature and found some related explanation in a case reported as “*Nirmal Singh And Anr vs State Of Bihar*” (AIR 2005 SUPREME COURT 1265) which also deals with situation of lost bullet in the body; it has been held as under: -

From the evidence of PW-9. Dr. R.N. Kumar, it appears that X-ray reports disclosed the presence of a metallic substance and pursuant thereto on further probing a bullet was found on opening of 5th Lumbar vertebra. In the opinion of PW-9, the weapon used was a fire-arm and the cause of death was shock and haemorrhage. Obviously, this opinion is based on the finding that a bullet was found embedded in the 5th Lumbar vertebra of the dead body of the deceased.

It will thus be seen that the medical evidence does support the case of the prosecution the deceased suffered a fire-arm injury and the evidence which conclusively proved this fact was the recovery of a bullet from the body of the deceased, which had got embedded in the 5th Lumbar vertebra and therefore, could not be detected by the medical team in the hospital at Chapra. With the aid of modern equipment, the bullet was found in the body of the deceased.”

In another case reported as “*MUHAMMAD AHMAD and another versus THE STATE and others*” (1997 SCMR 89), it has been held that the authorities on Medical Jurisprudence and the Forensic Ballistics are, however, agreed that a bullet fired from a fire-arm may take any unpredictable course on impact with bones, tissues etc. Taylor in his Principles and Practice of Medical Jurisprudence, Volume I at page 446 observed as follows:

"The deflection of projectiles may occur not merely when they came in contact with bone, but when they meet skin, muscles, tendons or, membranes; the bullet then takes its course in the spaces between these different structures. A bullet which entered at the ankle has been known to make its exit at the knee; and another, which entered at the back of the left shoulder, passed around the inside of the scapula and was found below the right ear. This deflection of bullet by slight obstacles has been ascribed partly to the obliquity with which it strikes, and partly to the rotary motion in its axis. The same deviation has been found to occur when the bullet was fired near or at a distance provided that it was fired from an old fashioned fire-arm, or was a rounded missile. The modern small-bore rifle bullet has a much greater tendency to preserve its course, though there are many published cases which indicate that deflections are frequent."

Modi has also expressed the view that in some cases, it is difficult to determine the direction from which the weapon was fired "as the bullet is so often deflected by the tissues that its course is very irregular".

13. Though spontaneous migration of a retained bullet is rare, yet during a study, a spontaneous migration of bullet from arm to forearm was observed in a case of a 24-year-old male. This study was published in 'Journal of Ultrasound' (a journal of the Italian Society of Ultrasonology of medicine and biology), Published online 2013 Oct 19. Similarly, in an article by Saptarshi Biswas, Catherine Price, and Sunil Abrol, published in 'Case Reports in Critical Care' (Published online 2014 Jan 28) (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4009998/>) on following subject;

"An Elusive Bullet in the Gastrointestinal Tract: A Rare Case of Bullet Embolism in the Gastrointestinal Tract and a Review of Relevant Literature"

Which shows that bullet can be lost in the body cavity anywhere; it reads like as under;

"In the first case, a spent bullet from an entry point in the back was recovered from the oral cavity, while the second described a missile from a chest wound that halted within the lungs and was coughed up by the victim. One must also consider that "lost" bullets may have actually passed uneventfully through the gastrointestinal tract, as reported by Morrow et al.

A bullet becoming lodged in the intestine is an extremely rare event even though bullet injuries constitute the majority of perforating abdominal trauma and a large part of penetrating trauma. Although rarely reported, gastrointestinal embolization should be taken into consideration when searching for a missile in the abdomen during an exploratory laparotomy. In a case in which a bullet halts within the intestines, lack of awareness of the spatial location may result in futile seeking of the missile in the abdominal cavity.

Sometimes a penetrating bullet that punctures the abdominal cavity has enough kinetic energy to perforate the intestines and stop after striking the vertebral column, abdominal musculature, or even just beneath the skin. However, in some rare cases of low-velocity ammunition, the bullet course ends within hollow viscus such as the small or large intestine. Such cases are extremely rare and seldom reported."

All the above cited cases deal with deflection of bullet but present is the cartridge case fired from a gun; neither any wad nor any pellets were recovered though its dispersion was expected. Doctor too has conceded doctor during cross examination that he did not mention the fact of reaching the foreign body to vertebrae or spinal cord in the postmortem report. It has been observed that he did not suggest any x-ray or nor used any latest technique to track the cartridge inside the body. Thus, when there was no exit wound and no pellets were recovered from the body, the case of the prosecution becomes more doubtful with respect to injury caused by firearm weapon. In this way the circumstances create serious doubt about the medical evidence in this case. This conflict in ocular and medical suggests that witnesses have not seen the occurrence and such conflict is damaging for the prosecution. Reliance is placed on case reported as “Muhammad Shafi alias Kuddoo vs. The State and others” (2019 SCMR 1045).

14. As regards motive, it was said to be a quarrel that took place between womenfolk of accused and complainant party which was reacted by Amir Shahzad, appellant while extending threats. Complainant deposed during cross examination that he did not show the police where allegedly the women of both the parties quarrelled. While explaining the motive he inflated the version as follows;

“I got narrated that accused Amir Shahzad had abducted a female and contracted marriage with her, my sister Kalsoom and wife of Yousaf namely Bibo Mai quarreled with each other because said Bibo Mai suspected that my sister Kalsoom and deceased Abid used to arrange telephonic conversation with parents of said abducted female/wife of Amir Shahzad.”

In support of such inflated motive neither Kalsoom Bibi nor Bibo Mai appeared; similarly, the abducted wife of appellant did not turn up who was expected to be free after the arrest of accused appellant; therefore, motive was concocted and fictitious. If for the sake of arguments, it be considered the motive of occurrence, then deceased being hot suspect was not expected to visit the house of accused, and that too while wearing a shalwar only in month of August at 08:30 p.m. as observed by the doctor in post mortem report. So, apparently no reason came on the record for absence of *Qameez*/Shirt on the dead body of the

deceased who was 11/12 years of age. Thus, prosecution failed to prove the motive as well as the circumstance of death of deceased. Learned counsel for the complainant has tried to impress the Court that mother of the deceased appeared before the learned trial Court though she was not examined as PW yet her statement was recorded. Wherein though she while twisting the fact stated that it was not an intentional murder rather weapon held by the deceased went off, yet this factor can be considered against the present appellant for his involvement in killing of deceased. I have observed that appellant has not taken such plea neither during cross-examination of witnesses nor in his statement under Section 342 Cr.P.C., therefore, this fact cannot be read against the present appellant. Motive set up but could not be established by the prosecution leaving the entire episode of the tragedy in doubt. Reliance is placed on cases reported as “*PATHAN versus The STATE*” (2015 SCMR 315) and “*NAVEED alias NEEDU and others versus The STATE and others*” (2014 SCMR 1464).

15. Recovery of gun 12 bore was shown effected from the appellant surprisingly from the house of accused/appellant where the occurrence took place. Police by the time had searched that house many times but making recovery only on the lead of appellant from a room of said house is nothing but mere an eye wash to add a kind of frail evidence considering it a support to prosecution. Even otherwise no cartridge shell was secured or collected by the police from the crime scene. Learned counsel for the complainant at this moment stated that PW-8 has clearly deposed during cross-examination that he had seen falling of crime empty at the place of occurrence, which is just an exaggeration.

It was a single fire shot case and as a matter of fact, a cartridge shell is not ejected automatically after a fire by gun 12 bore rather it is ejected manually to reload a new cartridge. However, it is different in case of a repeater/pump action. Pump action shotguns are one of the most popular types of shotguns, and can hold multiple rounds. They have a great round capacity that will allow you to spend more time shooting and not reloading. These guns function by manually sliding or

“pumping” the action in order to eject a spent shell and chamber a new round. As long as the shooter pumps it back completely, these shotguns are extremely reliable and do not jam very often. This makes them popular choices for hunting, home defence, and even law enforcement applications.

The 12 Bore Pump Action Gun has been specially developed for use as a security weapon. It is a single barrel breach loading weapon superior to 12 Bore DBBL. It is provided with a tubular magazine, which holds 4 nos. of 12 Bore Cartridges and is placed parallel to and below the barrel. Extraction, loading and cocking of the cartridges take place in a single 'pump action' by operating handle, sliding along the magazine. Due to rapid reloading by pump action and spread of shots, it is an ideal weapon for counter ambush tactics. Thus, if a 2nd fire is intended, then spent shell is to be ejected by operating handle, sliding along the magazine.

Some references were collected on topic “**Shotgun Basics: Identifying parts and functions**” from following site;

[https://tacticalgear.com/experts/shotgun-basics-identifying-parts-and functions.](https://tacticalgear.com/experts/shotgun-basics-identifying-parts-and-functions)

#### **Extractors and ejectors;**

Most single and double-barrel shotguns have an extractor mechanism that lifts the spent shell casing partially out of the chamber when the action is opened. This allows the shooter to easily remove and replace the shells. Many newer models (especially double-barrels) also have ejectors. When the action is opened quickly, the spent shells are completely ejected from the weapon, allowing for quicker reloads.

For further clarification, in difference between gun 12 bore and repeater/pump action, following diagrams are helpful.





The fire has not been repeated in the present case; therefore, no question of ejecting of cartridge or falling at the place of occurrence arises. However, in any case non-availability of cartridge shell makes recovery of gun inconsequential and PFSA report to the extent of functionality test is not helpful to the prosecution.

16. Another aspect of the matter is that during trial, on the same set of evidence, two co-accused stood acquitted by the learned trial court and Criminal Appeal No. 43847 of 2019 filed against their acquittal also stood dismissed on 28.11.2023 by learned Division Bench of this Court, as such, serious doubt spurred out in the prosecution case qua the participation of present accused/appellant; thus, he could not be convicted under the principle of "*falsus in uno falsus in omnibus*" (*false in one thing, false in all*). Reliance is placed on the cases reported as "Notice to Police Constable Khizar Hayat son of Hadait Ullah" (PLD 2019 SC 527) and "PERVAIZ KHAN and another versus The STATE" (2022 SCMR 393).

17. Considering all the pieces of evidence in this case and for what has been discussed above, I have no doubt to hold that here in this case the prosecution has failed miserably to establish the charge against the accused/appellant beyond any shadow of doubt. In the case "NAJAF ALI SHAH versus The STATE" (2021 SCMR 736) the Supreme Court of Pakistan has held that for giving benefit of doubt to an accused a single circumstance creating reasonable doubt in a prudent mind about guilt of accused is sufficient to make him entitled to such benefit. Here in this case as discussed above the prosecution has squarely failed to

bring home the guilt against the appellant. Consequently, the criminal appeal is allowed, the impugned judgment of conviction and sentence is set-aside and the accused/appellant is acquitted of the charge against him. He shall be released forthwith if not required in any other case. The case property, if any, be disposed of in accordance with law and the record of the learned trial court be sent back immediately.

18. For the same reasons, the criminal revision filed by the complainant fails and is dismissed.

(Muhammad Amjad Rafiq)  
Judge.

**Approved for reporting:**

Judge

This judgment has been pronounced  
on 25.01.2024, thereafter, dictated,  
prepared and signed on 12.02.2024

*Jamshaid\**