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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Bench
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Syed Hasan Azhar Rizvi
Ms. Justice Musarrat Hilali

(AFR) Note

Criminal Appeal No. 57/2019
(Against the judgment dated 21.03.2013 of the Lahore High Court, Lahore passed in Crl. Appeal No. 92/2018 ad MR No. 53/2008))

Ghulam Rasool ***...Appellant***

Versus

The State ***...Respondents***

For the Appellant: Mr. Munir Ahmed Bhatti, ASC

For the Complainant: Mr. Shah Khawar, ASC

For the State: Mr. Irfan Zia, DPG Punjab

Date of Hearing: 19.03.2024

ORDER

Jamal Khan Mandokhail, J.- Brief facts of the case are that an FIR No. 51/2000 dated 02.03.2000 was registered by one Haji Muhammad Ishaq, ("complainant") under sections 302, 201, 109 and 34 Pakistan Penal Code (PPC) at Police Station, Samundri, District Faisalabad against the appellant and three unknown persons. It is alleged that the appellant made firing upon Farman Ali who fell down and thereafter, the other co-accused also made firing as a result whereof, Farman Ali succumbed to his injuries. The appellant absconded whereas, out of the unknown persons, one Muhammad Shafiq was arrested. He faced trial and was acquitted of the charge by the Trial Court.

2. The appellant was subsequently arrested on 25 May 2006. During the investigation, upon a disclosure of the appellant, a 30. bore pistol allegedly used in the commission of the offence was recovered on his pointation. After completion of the investigation, a

report under section 173 of the Code of Criminal Procedure (Cr.PC) was submitted before the Court of Additional Sessions Judge, Faisalabad (Trial Court). After conclusion of the trial, the appellant was convicted under section 302(b) PPC and was sentenced him to death by the Trial Court, *vide* judgment dated 26.04.2008. An appeal filed by the appellant was dismissed by the High Court, maintaining the judgment of the Trial Court and answered the Murder Reference in affirmative through the impugned judgment. Feeling aggrieved, a petition for leave to appeal was filed, wherein leave was granted.

3. Arguments heard and have perused the record. In order to prove its case, out of the two eye-witnesses, the prosecution has produced only Muhammad Asghar, who recorded his statement before the Trial Court as PW-9 whereas, the other eye-witness, namely Muhammad Idrees was given up. Similarly, the complainant of the case could not be examined, because of his murder. Investigating Officer (IO) recorded his statement before the Trial Court as PW-10 and stated that on 2nd March 2000, he was present at Bypass Chowk, Chak No. 466/GB Samundri, where the complainant appeared and informed him about the incident. His statement was reduced into writing, which was read over and explained to him, who signed it. The IO contended that the said written complaint was sent to the police station through Safdar Ali, Constable for registration of a formal FIR, EX-PG, and thereafter he went to the place of the occurrence. The said Safdar Ali was not produced before the Trial Court to prove the contention of the IO. On the other hand, PW-9 the sole eye-witness stated that after the occurrence, the police arrived at the spot and recorded his statement. The witness did not mention the departure of the

complainant from the place of the occurrence, his meeting with the IO at bypass. Because of non-appearance of the complainant for the reason mentioned above before the Trial Court, the statement of the IO with regard to appearance of the complainant before him at bypass Chowk, recording his statement, signing it as a complaint and registration of the FIR, has no corroboration. If for the sake of arguments, it is believed that the FIR was registered on the basis of the complaint, it was admittedly lodged after a considerable delay, without an explanation in this behalf. Under such circumstances, the motive assigned by the complainant to the appellant and his intention described in the FIR has not been established.

4. According to the eye-witness and as per the FIR, the appellant made four firing shots upon the person of the deceased who fell down, whereafter, the other three unknown accused also made firing upon the deceased. Be that as it may, it is not clear that out of the four shots fired by the appellant, how many bullets hit the deceased. Similarly, it is also not explained that how many bullets were fired by each of the three accused and how many of them had hit the deceased. The Medical Officer who appeared as PW-7, described that in all, the deceased received six injuries out of which, injury No. 1 was a result of a blunt weapon, whilst, rest of the five injuries were a result of fire arms weapon. Admittedly, no empty was recovered from the place of the occurrence, therefore, in the given circumstances, it cannot be said with certainty that out of all the four assailants, whose fire shots resulted into fatal injury(s), causing death of the deceased. The statement of the doctor that injury No. 1 was a result of blunt weapon, shows that there might have been a scuffle between the

deceased and the accused resulting into retaliation and outrage. The prosecution's case rests only upon the sole statement of the eye-witness, but he did not disclose that the act done by the appellant and the three accused persons was preplanned to commit murder.

5. As far as recovery of the pistol on the pointation of the accused is concerned, no forensic report was obtained, because of the fact that no empty was recovered from the place of the occurrence. The prosecution has failed to prove that the pistol recovered on the pointation of the appellant was actually the same, which he used in the commission of the offence, therefore, the High Court has rightly disbelieved the recovery. Facts and circumstances of the case, lead us to a conclusion that the occurrence had taken place all of a sudden without there being any proof of premeditation. It was a free fight, without proof of the motive alleged in the FIR. On the basis of the available material, it is the prosecution's case that all the accused committed firing upon the deceased. Under such circumstances, the role of the appellant cannot be differentiated from that of the others. One of the co-accused, has already been acquitted by the Trial Court on the same set of evidence. It would, therefore, not be safe to single out the appellant and hold him alone responsible for the commission of the offence. However, the prosecution has succeeded in proving its case against the appellant under section 302(b) read with section 34, PPC for the act done by him along with the co-accused. In such view of the matter, awarding capital punishment to the appellant was unjustified. On the basis of the mitigating circumstances discussed herein above, the fora below were required to exercise their discretion by awarding lesser

punishment as provided by section 302(2), PPC, but they did not exercise their jurisdiction.

6. Even otherwise, the appellant was arrested in the month of May 2006 and it took two years to complete his trial. The appeal filed before the High Court in the year 2008 remained pending for more than five years till its dismissal. The petition for leave to appeal filed against the impugned judgment before this Court in the year 2013 was fixed for hearing for the first time on 28th January 2019, when leave was granted. Thereafter, the case came up for hearing on 15th November 2021 and lastly on 19th March 2024 when the arguments of the learned counsel for the parties were heard. The appellant remained in prison since May 2006 and was incarcerated in death cell w.e.f. 2013 till date, almost for more than eleven years. Section 302(b), PPC provides a punishment for death or imprisonment for life. The total period of detention of the appellant in prison is about 18 years, without earning a single day of remission, because of awarding death sentence. If remissions are counted towards his sentence, the appellant has served almost an imprisonment for life. The delay in conclusion of judicial proceedings was on account of the system in vogue and for no fault of the appellant. After serving a sentence for life, including eleven years detention in death cell, executing his death penalty at this stage would not only be harsh, but would also be contrary to the principle of life expectancy[1]. Under such circumstances, the appellant cannot be sentenced twice for one and the same offence, hence punishment for death awarded to the appellant cannot sustain.[2]

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[1] Ghulam Shabbir v. The State (Crl.R.P. 103/2017)
https://www.supremecourt.gov.pk/downloads_judgements/crl.r.p._103_2017.pdf

[2] PLD 2013 SC 793

Thus, in view of the above, the appeal is dismissed. The conviction awarded to the appellant under section 302(b), PPC is maintained, however, the sentence of death awarded to the appellant is altered to that of imprisonment for life, with benefit of section 382-B, Cr.PC.

Sd/—

I am appending my dissenting note containing detailed reasons

Sd/—

Sd/—

Announced in Open Court on 16.09.24 Sd/—

At Islamabad

Not approved for reporting

Rizwan

JUDGMENT

Syed Hasan Azhar Rizvi, J:- I have had the privilege of going through the judgment (**"majority judgment"**) authored by my learned Colleague Mr. Jamal Khan Mandokhail, J. With great respect, I do not find myself in agreement to it for the facts and reasons mentioned herein.

1. Facts in the brief are that an FIR No.51/2000 dated 02.03.2000 was registered by Muhammad Ishaq (complainant) under section 302, 201, 109 and 34 PPC against the appellant and 3 unknown persons at the Police Station Samundari, District Faisalabad. The allegations are that appellant made firing upon the Farman Ali who fell down and thereafter the other co-accused also made firing and Farman Ali succumbed to injuries. In order to hide the dead body the appellant along with other co-accused put the dead body in the jeep and absconded. The appellant absconded whereas out of the unknown persons one Muhammad Shafiq was arrested and faced trial and was acquitted of the charge.

2. The appellant was arrested on 25.05.2006 and after a full-fledged trial he was convicted and sentenced to death penalty by the Trial Court. The death sentence was subsequently confirmed by the High Court, and his appeal against the conviction was dismissed.

3. While the majority judgment acknowledges that the prosecution successfully proved its case against the appellant, it has, in consideration of the following mitigating circumstances, altered the death sentence to life imprisonment:-

i) That FIR was lodged after a considerable delay.

ii) That it remains uncertain how many shots were fired by each of the four assailants, and it is unclear whose shot caused the deaths of the victims.

iii) That the incident occurred spontaneously, with no evidence of premeditation, and it was deemed a free fight without any discernible motive.

iv) That co-accused Muhammad Shafiq has been acquitted.

v) That there were considerable delays in the conclusion of trial and hearing of appeal consequently the appellant remained in custody w.e.f. May 2006 till date.

I find myself unable to concur with any of these considerations.

4. The incident in the present case occurred on 02.03.2000 at 03:30 p.m. The complainant, Haji Muhammad Ishaq (who was murdered on 10.05.2002 by the present appellant), promptly reported the matter at 4:10 p.m., and a formal FIR was registered shortly after, at 4:30 p.m at P.S City Samundari, District Faisalabad. Considering the distance between police station and place of occurrence it can safely be concluded that there was no delay in the registration of the FIR.

5. In the present case, the complainant, Muhammad Ishaq (since dead), along with Muhammad Asghar (PW-9) and Muhammad Idrees (given up PW because of relocating abroad), were the primary eye-witnesses. However, the complainant Muhammad Ishaq and his son Mushtaq Ahmed were subsequently murdered by the appellant and Muhammad Idress was given up as PW because he was living abroad/outside the Pakistan.

6. The relevant portion of the ocular account furnished by Muhammad Asghar (PW-9) is reproduced hereinbelow:-

> *"Stated that about 7½ years back, at about 3.30 p.m, I alongwith Muhammad Ishaq, Muhammad Idrees and Farman Ali was present in the Bazar in front of outer door of the house of Baoo Arian. A Jeep white in colour No.2007 Karachi came from the eastern side. Four persons including accused Ghulam Rasool present in the Court and one Shafique alighted from the jeep. Ghulam Rasool was armed with pistol and the other three accused had guns. Accused Ghulam Rasool made Lalkara to Farman to the effect that he would be taught a lesson for pursuing the cases and made four fire shots with his pistol, upon the person of Farman, which landed on different parts of his body. Farman fell down and succumbed to the Injuries. The other accused continued firing with their weapons. The accused persons put the dead body of Farman In their jeep and went towards Tandlianwala side. The occurrence was witnessed by me as well as Muhammad Idrees and Muhammad Ishaq. The police arrived at the spot and recorded my statement. After three days of the occurrence, the dead body of Farman was found at SAIM NALA Chak No.136/G.B. Ishaq PW was lateron murdered by accused Ghulam Rasool after two years and 2.1/2 months alongwith his son Mushtaq. (under objection)."*

Muhammad Asghar (PW-9), being a resident of the same locality, is a natural eye-witness to the occurrence, as he lived in close proximity to the place of incident. Muhammad Asghar (PW-9) was subjected to extensive cross-examination; however, nothing emerged during this process that could favor the appellant. His testimony is direct, consistent, and inspires confidence

7. The ocular account was corroborated by the medical evidence furnished by the Dr. Sadiq Ali (PW-7) who conducted the postmortem examination on the dead body of Farman Ali. At this juncture it is pertinent to highlight that after mercilessly shooting Farman Ali to death, appellant put the dead body in jeep and absconded towards Tandlianwala. The dead body of the deceased was found after three days from the *Saim Nala* Chak No. 136/G.B.

8. Dr. Sadiq Ali (PW-7), after conducting the post mortem examination and tabled following injuries on the dead body:-

> 1. A lacerated wound 4cm x 1 cm bone deep on the left side of forehead.
>
> 2. A firearm wound of entry about 2cm x 1 cm on the right cheek, 2 cm below the right eye, no blackening and scorching was seen.

Wound of exit. A lacerated wound 3cm x 2 cm, margins were everted on the left cheek, 4 cm below the left eye.

3. A firearm wound of entry 2cm x 1 cm oval in shape on the right cheek, 1 cm front of right ear, no blackening or scorching was seen.

Wound of exit. A lacerated wound 4cm x 5 cm, on the back of head, everted margin, 11 cm back to the right ear.

4. A firearm wound of entry 2cm x 2 cm on the outer-surface of left upper arm, no blackening, bone under lying of the injury was fracture.

Wound of exit. A lacerated wound 3cm x 2cm margins everted on the inner side of left upper arm.

5. A firearm wound of entry 3 cm x 2 cm on left of front chest In the line of anterior axillary fold, 20 cm below the top of left shoulder, no blackening and scorching was seen.

Wound of exit. A lacerated wound 4 cm x 2 cm on the back of abdomen on the right side, about 20 cm below the right shoulder bone.

6. Firearm wound of entry 3 cm x 2 cm on the left front of abdomen, in the mid axillary line, 10 cm below the left nipple, no blackening was seen.

Wound of exit. Lacerated wound 4 cm x 3 cm, margins everted In the apigestrium."

Based on the post-mortem report following opinion was rendered by the Dr. Sadiq Ali (PW-7):-

Opinion:

By doing external as well as internal post mortem examination, the PW-7 was of the opinion that all the injuries were ante mortem. Injury No.1 was inflicted by blunt weapon, while other injuries were inflicted by firearm weapon. Injury Nos.2, 3, 5 and 6 were dangerous and grievous in nature. In ordinary course above mentioned four injuries could cause death individually and collectively. Injuries No.1 and 4 were simple.

Thus, ocular account furnished by the eye-witness stands fully corroborated by the medical evidence.

9. Perusal of the evidence further demonstrates that incident in the present case cannot be characterized as a free fight or unpremeditated murder because firstly Farman Ali (deceased) was shot to death, then his dead body was thrown in a *nala*. Moreover, when the FIR in the present case was registered by complainant Muhammad Ishaq, the appellant not only murdered

him in a brutal and gruesome manner but also assassinated son Mushtaq Ali in the same incident.

10. Regarding the question of whether the prosecution's inability to establish a motive may be considered a mitigating factor justifying a reduction of the death penalty to life imprisonment, it is now firmly established in the law that the absence of motive, failure to prove motive, or a motive that remains unclear or not alleged does not constitute a mitigating circumstance.

11. Similar view was taken by the Supreme Court in case of *Moazam Shah Vs Mohsin Shah* **(PLD 2001 SC 458)** wherein it was ruled that:-

> "Motive by itself neither proves nor disproves any assertion conclusively. Motive does help in determining the guilt of a person particularly of investigation, but it remains invisible to all in many cases except the offenders. When there is clear proof that person has committed the crime, motive or previous ill will becomes immaterial and is not necessary to sustain a conviction."

Moreover, in the case of *Ghalib Hussain vs Muhammad Arif* **(2002 SCMR 29)** this view was affirmed and held that:-

> "In this context it has been held time and again by this Court that motive by itself neither proves nor disproves any assertion conclusively."

A similar issue arose in the case of *Nazakat v. Hazrat Jamal and another* **(PLD 2007 SC 453),** where the Supreme Court, after considering the established legal principles on this matter, observed that:

> 13. At the very outset, it is pertinent to note that before the learned High Court, learned counsel appearing for respondent Hazrat Jamal did not dispute the conviction but confined his arguments to the quantum of sentence only. The main reasons which weighed with the learned Division Bench of the High Court in reducing the sentence to imprisonment for life was that neither the motive was established by the prosecution nor it was known as to what happened just before the incident which remained shrouded in mystery. We are afraid this being the old plea is discarded by this Court as a mitigating circumstance to reduce the normal penalty of death to imprisonment for

> life particularly when the prosecution has proved its case beyond any shadow of doubt.
> Reference can be made to the case of Muhammad Akbar and another v. The State PLD 2004 SC 44, wherein it was held by this Court that when prosecution proves its case through reliable and trustworthy evidence beyond any doubt inadequacy or weakness of motive or where motive was alleged but not proved, would become immaterial and would not adversely affect prosecution case and normal penalty of death can be imposed on the assailants if there were no mitigating or extenuating circumstances for lesser penalty. It has also been held in this case that "motive shrouded in mystery" by itself is not a mitigating circumstance for awarding lesser sentence and this theory has, been discarded. In the case of Muhammad Amin alias Irfan and another v. The State 2004 SCMR 1676 also this Court while discarding the motive held that lack of motive or weakness thereof is immaterial to withhold the normal penalty of death in murder cases when trustworthy evidence had squarely brought home the guilt against the accused beyond any doubt."

In the case of *Muhammad Latif v. The State* **(PLD 2008 SC 503)** it has been affirmed that:-

> "Therefore, the old rule of failure of prosecution to prove the motive, took the change through the judgments of the superior courts with the passage of time. Now-a-days, lack, absence, inadequacy, weakness, or the motive, if any, set up by the prosecution and failure to prove it or the motive is shrouded in mystery, are not the grounds to withhold penalty of death or to order the sentence of life imprisonment, if the prosecution has succeeded to prove its case beyond any doubt or suspicion with regard to the commission of the offence."

12. Thus, law is clear on this matter that the death penalty cannot be withheld solely because the prosecution fails to allege or establish a motive. The underlying reason behind this is that true motive for an offence is typically known only to the accused, rather than to the complainant, informant, or any other witnesses, unless it is explicitly or implicitly conveyed. Witnesses may describe the actions of accused during the commission of the offence. Others may try to infer or label the motive based on their observations or the information available to them, but the actual motive remains solely with the accused.

13. As far as acquittal of the Muhammad Shafiq (co-accused) is concerned, it is pertinent to highlight that his case is entirely distinguishable from the appellant. Muhammad Shafiq was

neither specifically named in the FIR nor any specific injuries were attributed to him, whereas the appellant was specifically nominated and role of inflicting firearm injuries was assigned to him. The role assigned to Muhammad Shafiq was not substantiated by the medical evidence, in contrast to the appellant's role, which is fully supported by such evidence. Additionally, no motive was established against Muhammad Shafiq, whereas a specific motive was alleged in relation to the appellant. Consequently, as Muhammad Shafiq's case is fundamentally distinct from that of the appellant, his acquittal holds no bearing on the appellant's case.

14. At this juncture, it is important to note that present appellant committed murder of Muhammad Ishaq, the complainant of present case and his son Mushtaq Ahmed on 10.05.2002. Consequently, FIR No. 127, dated 10.05.2002, was registered at the same police station. Following a full-fledged trial in that case (FIR No. 127, dated 10.05.2002), the appellant was convicted and sentenced to death by the trial court. The death sentence awarded to the appellant was upheld and confirmed by the High Court. The appellant's appeal against the said decision of High Court (Crl. Appeal No. 56/2019) has also been consolidated with this appeal. We cannot lose sight of the fact that appellant is a habitual criminal/murderer. He firstly murdered Farman Ali (deceased in present case) thereafter he killed Muhammad Ishaq who was pursuing the case of Farman Ali. Not only this, but appellant also went further to murder the son of the complainant Muhammad Ishaq namely Mushtaq Ahmed. Thus, actions of appellant reveal a complete disregard for human life and an effort

to prevent any legal repercussions by silencing individuals who are critical to the prosecution.

15. An important question that needs determination is that whether a delay in trial or deciding the appeal in the cases of death sentence constitutes a mitigating circumstance to award a lesser punishment. A similar question came up before the Supreme Court of Pakistan in the case of *Muhammad Hassan vs. The State* **(1973 SCMR 344)** wherein it has been observed that:-

> "Sh. Shaukat Ali, learned Advocate appearing on behalf of the petitioner has not disputed before us the conviction of the petitioner for the murder of the two girls. He has, however, contended that in the facts and circumstances of the case the petitioner should not have been awarded the extreme penalty of law, namely, death. He has contended in the first instance, that having regard to the fact that a long time had elapsed between the occurrence and the sentence of death passed upon the petitioner, the High Court should not have confirmed the death sentence. He has submitted that the occurrence took place on the 3rd of November 1969, and the petitioner was convicted and sentenced to death on the 19th of May 1971, by the trial Court and his death sentence was confirmed by the High Court on the 30th of September 1972. In support of this contention he has drawn our attention to Chapter 24-B, Rule 6 of the Rules and Orders of the High Court of Judicature at Lahore, Vol. III, which says that the High Court requires explanations to be furnished in monthly Sessions Statements of any cases pending over two months...
> We do not find any substance in this contention. The afore said rules of the High Court do not authorise the High Court to commute the sentence of death to transportation for life or life imprisonment merely on account of delay in the disposal of the case the explanations required under the aforesaid rule 6 are for the purpose of securing the disposal of Sessions cases with the greatest possible expedition as indicated in Rule 1. Having regard to the large number of such cases pending before the High Court it would indeed be a dangerous proposition to lay down that mere delay in the disposal of a death sentence case would entitle the condemned person to automatically obtain commutation of his death sentence."

Moreover in the case of *Samano v. The State* **(1973 SCMR 162)** it was ruled that:-

> "I am, therefore, of the view that both the appellants have been rightly convicted and no distinction can be made between the two. As regards the sentence, it is true that the incident took place as long ago as November 1954, but the mere length of time taken in concluding the trial and in deciding the appeals filed by the appellants would not by itself constitute an extenuating circumstance justifying the imposition of the lesser penalty. The appellants acted

> in a cruel and cold-blooded manner by allowing themselves to be hired as assassins. They do not deserve any leniency in the matter of punishment. I would, therefore, maintain their sentences and dismiss both the appeals."

Similar view was also taken in the case of *Shah Muhammad v. The State* **(PLD 1973 SC 332)** as reproduced below:-

> "In this view of the matter, we have, after giving our anxious consideration to all the facts and circumstances of the case and the able arguments advanced on behalf of the appellant, come to the conclusion that this appeal must fail and accordingly dismiss it. The convictions and sentences of the appellant are upheld. The fact that more \than 4 1/2 years have elapsed since his conviction is not a circumstance, which we can take into consideration. If the delay in the execution of the sentence can by itself be a sufficient ground for commutation then the appellant can approach the Executive authorities for such commutation; but, so far as this Court is concerned, it cannot, in the facts and circumstances of this case, recommend any such action."

In the case of *Bakshish Elahi v. The State* **(1977 SCMR 389)** it was noted that:-

> "The Legislature has conferred very wide discretion on the Courts in the matter of sentences under the Penal Code, but as the discretion has to be exercised judicially, the Courts would be entitled to take into account the law and order situation, if the object of punishment or one of the objects of punishment be to deter the commission of further crimes. Now, I do not see how there can be any doubt about this question. Salmond observes in his book on Jurisprudence (Tenth Edition) at page 111 "Punishment is before all things deterrent, and the chief end of the law of crime is to make the evil doer an example and a warning to all that are likeminded with him" would agree with this passage, and the learned Single Judge yeas justified in holding that a severer sentence was necessary on account of the increase of crime, provided of course culpable homicides of the type under consideration have increased, as held by the learned Single Judge."

16. In the present case, the prosecution clearly demonstrated that the appellant, along with others, was involved in a deliberate and premeditated murder. Because of the brutality and dangerousness of the act, it is necessary to impose the strict punishment i.e. capital punishment in order to deliver justice and protect society. Mitigating the punishment based on the long trial or the time the appellant spent in custody does not change the severity of the crime. While it is unfortunate the appellant was in

custody for a long time due to delays in the trial and hearing of appeal that does not justify leniency. The length of time in custody is a result of the legal process, not an indication that the crime was any less serious. Given the clear evidence of the appellant's involvement in a brutal murder, the death penalty remains the appropriate and necessary punishment. Reducing it would undermine the justice deserved by the victims and the severity of the crime committed.

17. In light of the above discussion, I find that both the Trial court and the High Court have thoroughly examined all aspects of the case, appreciated the evidence, and have rightly imposed the death penalty as a just and appropriate sentence.

18. Consequently, this appeal is dismissed and death penalty imposed by the learned High Court is maintained.

(Syed Hasan Azhar Rizvi)

JUDGE

Islamabad
Paras Zafar, LC/-

NOT APPROVED FOR REPORTING