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Judgment Sheet
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
Criminal Appeal No.23157/2019
Anjum Latif versus The State, etc.
Criminal Appeal No.24016/2019
Amjad Latif, etc. versus The State, etc.
Murder Reference No.88/2019
The State, etc. versus Anjum Latif

JUDGMENT

Date of hearing	09.03.2022
Appellants Anjum Latif and Amjad Latif represented by:	Mr. Shahid Azeem, Advocate
State represented by:	Ms. Maida Sobia, Deputy Prosecutor General
Complainant represented by:	Rai Bashir Ahmad, Advocate

SARDAR AHMED NAEEM, J:- Anjum Latif and Amjad Latif appellants alogwith Aman Ullah, Azhar Shamim, Muhammad Ejaz, Muhammad Imtiaz and Aftab Ali (co-accused) were tried by the learned Addl. Sessions Judge, Sargodha in case FIR No.494/2012 dated 13.11.2012 for offences under Sections 302/337-A(i), 337-L(2), 337-F(iv)/148/149 PPC, registered at Police Station City Sargodha. At the conclusion of the trial, vide judgment dated 10.04.2019, the learned trial Court acquitted Amanullah alias Toni, Muhammad Ejaz, Muhammad Imtiaz and Aftab Ali co-accused. Whereas, convicted and sentenced Anjum Latif and Amjad Latif appellants as under:

Anjum Latif

Under Section 302(b) PPC: Sentenced to death as Tazir with the direction to pay compensation of Rs.2,00,000/- (rupees two lac) to the legal heirs of the deceased as compensation under section 544-A Cr.P.C., in default thereof, to further undergo six months S.I. The amount of compensation was recoverable from the arrears of the estate etc.

Amjad Latif

- i. Under Section 337-A(i) PPC: To pay Rs.25,000/- as Daman.**
- ii. Under Section 337-L(ii) PPC: To pay Rs.25,000/- as Daman.**

Azhar

i. Under Section 337-A(i) PPC: To pay Rs.25,000/- as Daman.

ii. Under Section 337-L(ii) PPC: To pay Rs.25,000/- as Daman.

2. Anjum Latif appellant filed **Crl. Appeal No.23157/2019**. Whereas, Amjad Latif appellant filed **Crl. Appeal No.24016/2019** challenging their convictions and sentences awarded by the learned trial Court. **Murder Reference No.88 of 2019** is also before us for confirmation or otherwise of the death sentence awarded to the appellant Anjum Latif. Through this single judgment, we propose to decide all these matters.

3. The prosecution story, in brief, as narrated in the FIR lodged by Ali Imran, complainant was that on 13.11.2012 at about 6.30 a.m., Anjum Latif appellant armed with Pistol alongwith his co-accused Aman Ullah, Amjad Latif, Azhar and three unknown persons armed with Pistols and iron rods came at the spot and caused injuries with their respective weapons to Muhammad Yaseen, Nadeem and Irfan hitting on different parts of their bodies. The accused persons fled away from the spot after enacting the episode.

4. After usual investigation, challan was submitted in Court. The learned trial Court framed charges against the accused persons to which, they pleaded not guilty and claimed trial. Hence, the prosecution evidence was summoned.

5. The prosecution in order to prove its case, produced as many as thirteen PWs in all.

6. Muhammad Younas ASI (P.W.1) recorded formal FIR Ex.PA on receipt of complaint Ex.PA/ 1.

7. Doctor Muhammad Younas Siddiqui SMO Civil Hospital, Sargodha (P.W.4) conducted post-mortem examination on the dead body of Muhammad Yasin deceased on 04.11.2012 and found following injury on his person:-

1. A fire arm wound of entry on the left side of head $1\frac{1}{2} \times 1\frac{1}{2}$ cm with blackening around the wound 3 cm above left ear.

In his opinion, cause of death was injury No.1, which caused trauma to the vital organ brain and haemorrhage leading to shock, cardiopulmonary arrest and death. Injury No.1 was ante mortem inflicted by fire arm and sufficient to cause death in ordinary course of nature. Probable time that elapsed between injury and death was within two hours and between death and post mortem was five to six hours.

8. Doctor Azmat Rafique Medical Officer DHQ, Hospital (P.W.10) on 13.11.2012 at about 6:50 a.m, conducted medical examination of Muhammad Umar Farooq injured and found following injuries on his dead body:-

1. A lacerated wound 2 cm x $1\frac{1}{2}$ cm on the back of the head.
2. An abrasion 1 cm x $1\frac{1}{2}$ cm on right scapula.
3. Contused swelling 5 cm x 4 cm on back of right shoulder.
4. A contusion mark 15 cm x 8 cm on back and middle of the chest.
5. A contused mark 7 cm x 5 cm on the left scapula.

On the same day, he also medically examined Muhammad Nadeem injured and observed following injuries on his person:-

1. A lacerated wound 1 x $1\frac{1}{2}$ cm on top of head with swelling 5 cm x 4 cm.
2. An abrasion 1 cm x $\frac{1}{2}$ cm on front of right wrist joint.
3. An abrasion 2 cm x 2 cm on the back of chest.
4. A swelling 6 cm x 5 cm on top of right shoulder.
5. A swelling 5 cm x 4 cm on the outer side of right arm.
6. An abrasion 2 cm x 1 cm on back of left fore-arm.

On the same day, he also medically examined Muhammad Irfan injured and observed following injuries:-

1. An incised wound 2.5 cm x $1\frac{1}{2}$ on front of head muscle deep.
2. An abrasion 1 x $1\frac{1}{2}$ cm on right side of nose with swelling 4 cm x 3 cm.

3. A swelling 7 cm x 6 cm on outer side of left shoulder.
4. A swelling 8 cm x 5 cm on the inner side of left forearm.

On the same day, he medically examined Muhammad Yaseen and observed following injury on his person:-

1. A fire arm wound of entry 1/2 x 1/2 cm on left side of head 3 cm above the left ear with blackening.
9. Muhammad Imran (P.W.5) identified the dead body of Muhammad Yaseen deceased. Muhammad Hafeez draftsman (P.W.6) visited the place of occurrence on 17.11.2012. He prepared site plan of the place of occurrence and produced before the Investigating Officer on 21.11.2012.
10. Muhammad Irfan (P.W.7) and Nadeem (P.W.8) were injured-eye witnesses of the occurrence. They were deaf and dumb, therefore, their statements were recorded with the help of Muhammad Ashraf interpreter.
11. Ali Imran (P.W.9) was complainant of the case. He supported the prosecution story as mentioned in the FIR.
12. Aziz Ullah S.I.(P.W.11) conducted investigation of the case.
13. Muhammad Akram H.C. (P.W.12) escorted the dead body of Muhammad Yaseen deceased to the mortuary.
14. Muhammad Ashraf (P.W.13) Interpreter as teacher/superintendent Deaf and Dumb school appeared and stated that he joined the investigation of this case and got recorded the statements of Irfan and Nadeem deaf and dumb PWs to police. He further stated that he had experience of 22/23 years in the School of Deaf and Dumb. He also made his statement in this context before the I.O. on 09.12.2012. Rest of the PWs were of formal nature, therefore, need not to be reproduced.
15. The prosecution gave up Shahbaz S.I., Muhammad Sagheer, Muhammad Zahid, Muhammad Asghar and Muhammad Shabbir as being unnecessary and Umar Farooq as he had gone abroad and after tendering in evidence the report of PFSA, Lahore as Ex.PV and that of Serologist Ex.PW and closed its case.

16. After recording prosecution evidence, statements of accused persons were recorded under section 342 Cr.P.C. Responding to a question "why this case against you and why the PWs deposed against you, Anjum Latif appellant stated as under:

"The complainant got registered this case against me by suppressing the real facts. In fact the complainant party was the aggressor and to conceal their aggression they falsely got registered this case. Moreover, using the undue political influence this false case was registered. The complainant was not present at the alleged place of occurrence. The complainant and the PWs are related interest and are interested witness and have deposed falsely."

The other co-accused made a similar statement as mentioned above.

17. The appellants and their co-accused neither appeared as their own witnesses under Section 340 (2) Cr.P.C nor produced any evidence in defence. However, Anjum Latif appellant tendered in defence evidence a certified copy of Writ Petition No.1852/2014 titled Amjad Latif Vs. DPO Sargodha as Ex.DA.

18. Learned counsel for the appellants, inter-alia, contended that the occurrence took place on a thorough fare in a market but no independent witness was cited by the prosecution; that all the PWs were closely related to the deceased and, thus, were interested witnesses; that the statements of the eye witnesses were replete with contradictions/discrepancies; that the motive was not proved; that the recoveries were effected from the appellants simultaneously, on the same day from their house; that the safe dispatched of crime empties to Punjab Forensic Science Agency was not proved, thus, the report of Punjab Forensic Science Agency was inconsequential; that the postmortem was conducted after six hours of the occurrence, which suggested deliberation and consultation; that one of the injured, namely, Omer Daraz was not examined at trial; that Muhammad Irfan and Nadeem injured-eye witnesses were deaf and dumb and their statements were not recorded in accordance with law, thus, inadmissible; that scaled

site plan was prepared at the instance of Zahid and Sagheer PWs, not examined during trial; that the eye witnesses were examined after the lapse of about twenty five days on 09.12.2012 but no plausible explanation was forthcoming on record for such belated statements; that Arshad alias Matool and owner of Moosa Mobile Shop claimed themselves to be the eye witnesses of the occurrence, interrogated-examined by the Investigating Officer but not produced by the prosecution as witness; that co-accused of the appellants including Amanullah alias Toni, Muhammad Ejaz, Muhammad Imtiaz and Aftab were acquitted on the same set of evidence and no independent corroboration was forthcoming on record to sustain conviction of the appellants; that case of the prosecution was replete with doubts and every doubt even slightest is always resolved in favour of the accused, thus, the appellants are entitled to acquittal.

19. Learned Deputy Prosecutor General assisted by the learned counsel for the complainant argued that the parties were known to each other, the appellants along-with their co-accused were nominated in the FIR registered with promptitude, which excludes the possibility of deliberation/consultation; that the eye witnesses have rendered straight forward account of occurrence and had no axe to grind against the appellants; that the medical evidence lent further corroboration to the prosecution story; that the motive was proved; that the deceased sustained firearm injury at the hands of the appellant, namely, Amjad Latif, proved fatal; that the discrepancies hinted at by the learned counsel for the appellants were minor and negligible and do not effect the case of prosecution in any manner; that the deaf and dumb witnesses were examined through interpreter which is sufficient compliance of the law on the subject; that positive report of Punjab Forensic Science Agency also lend further corroboration to the complainant's version; that the prosecution proved its case against the appellants to the hilt, thus, the appeals deserve dismissal;

20. We have considered the points raised at the bar and have perused record with able assistance of the learned counsel for the parties.

21. The appellants were earlier convicted by the learned trial Court vide judgment dated 07.12.2015 and appeals (Criminal Appeal No.3851/2015 and Criminal Appeal No.37/2016) filed by the appellants were disposed of by this Court and the judgment of the trial Court was set aside vide judgment dated 08.11.2018, whereby the case was remanded to the learned trial Court with the direction to re-write the judgment after affording an opportunity of hearing to learned counsel of both sides and while taking into consideration all aspects of the case pertaining to the charge framed, in accordance with law and while giving convincing and elaborate reasoning, which satisfy the judicial conscience in the interest of safe administration of criminal justice. Murder Reference No.7 of 2016 was also answered in the negative. After remand, the learned trial Court vide judgment dated 10.4.2019 acquitted co-accused of the appellants including Aman Ullah, Muhammad Ijaz, Muhammad Imtiaz and Aftab Ali. Whereas, the appellants were held guilty, convicted and sentenced as detailed above.

22. On the fateful day and at the time of occurrence, the deceased, namely, Muhammad Yaseen along-with his sons including Ali Imran, Nadeem and Muhammad Irfan were going to parking stand situated in Block No.6. All of them were shopkeepers. The appellants had also their shops in the same street. It was the case of the prosecution that Anjum Lateef, Aman Ullah, Amjad Latif along-with other co-accused emerged at the crime scene on a car. Whereas, Hassan Ijaz and Imtiaz reached at the spot on a motorbike. Amjad Latif appellant fired at the deceased hitting his right temporal region. Amjad Latif appellant had beaten Nadeem PW. This occurrence was also witnessed by Zahid and Sagheer PWs.

23. *An altercation between Muhammad Irfan (PW-7) and the accused 2-3 days prior to the occurrence was the reason for the outbreak of this episode.*

24. *After the occurrence, the deceased then injured was shifted to hospital. Meanwhile, the police party reached there. However, the deceased succumbed to the injury. During this occurrence, the deceased sustained only one injury attributed to Amjad Latif appellant and said single injury is also borne out from the postmortem report Exh.PB. As mentioned above, the occurrence took place at 6:30 p.m but the postmortem was conducted on the following day at 1:30 a.m (at night). The medical officer admitted during the cross-examination that he neither mentioned CNIC numbers nor relations of the persons, who accompanied/identified the deceased at the time of post-mortem. He also gone on to add that he received the dead body at 1:15 a.m and conducted postmortem at 1:30 a.m on the same day. He also admitted that the dead body was received at mortuary after completion of police papers.*

25. *The occurrence took place on 13.11.2012 at 6:30 p.m in Methai Wali Gali Block No.6-Sargodha. The place of occurrence was a thorough fare and surrounded by thickly populated area including shops. The record divulged that two shopkeepers from the same market including Arshad alias Matool and proprietor of Moosa Mobile Shop joined the investigation, claimed themselves to be eye witnesses of the occurrence and supported the version of the appellants-accused were interrogated/examined during the investigation but none of them was produced at trial being witness. The record further suggested that hundreds of people joined the investigation in support of the defence version and also admitted by the Investigating Officer during his cross-examination.*

26. *The eye witnesses were closely related to each other and the deceased. The eye-injured witnesses including Ali Imran,*

Muhammad Irfan, Muhammad Nadeem were real sons of the deceased. Whereas, Zahid PW was 'behnoi' of above witnesses and Sagheer PW was their 'phupha'. However, Omer Daraz PW was their employee and not produced during trial.

27. It is settled by now that statement of a witness related to deceased should be corroborated rather the statement of a worst enemy could be relied upon, if it inspires confidence and intrinsic worth of a statement is not shaken. It may be observed that mere relationship of the witnesses with the deceased is not a ground for discarding their statements when otherwise, confidence inspiring and finds corroboration from the independent witnesses.

28. At this stage, it may also be mentioned that Muhammad Irfan and Nadeem PWs were deaf and dumb. They claimed to have been examined by the Investigating Officer after two days of the occurrence but no such statement was available on record. Their statements under section 161, Cr.P.C were recorded on 09.12.2012 after about twenty five days of the occurrence. No plausible explanation was forthcoming on record for belated recording of their statements. A similar question came up before the Hon'ble Supreme Court of Pakistan in "Syed Saeed Muhammad Shah and another v. The State" (1993 SCMR 550), the relevant observations of their lordships appearing in para-28, read as under:

"28. ...In this case unsatisfactory explanation which is not substantiated can be equated with no explanation. In the case Sikandar v. The State (PLD 1963 SC 17) there was controversy as to when police statement of eye-witness was recorded and in that regard there was choice between version of eye-witness and investigating officer. It was held that controversy is to be resolved on the basis of rule that benefit of doubt must be given to the accused hence evidence of that eye-witness was viewed with doubt. In the case of Ismail and others v. The State (1983 PCr.LJ 823) evidence of witnesses was ruled out of consideration on the ground that their police statements were recorded after 8 days and prosecution offered no explanation. In the case of Sirajuddin v. Kala and another (PLD 1964 SC 26), evidence of witness was held to be not reliable for the reason of patent doubt as to the time as he first appeared before the police for his statement."

The above view was reiterated by the apex Court in “Muhammad Asif v. The State” (2017 SCMR 486) and “Rahat Ali v. The State” (2010 SCMR 584)

29. *The witnesses including Muhammad Irfan and Nadeem also claimed to have sustained injuries at the hands of the accused including the appellant, namely, Amjad Latif and his co-accused. They were medically examined by Dr. Azmat Rafique (PW.10), who observed six injuries on the person of PW, namely, Nadeem and ExhPP reflected that four injuries were sustained by Muhammad Irfan PW. All the injuries were abrasions, contusions and swellings, simple in nature. They also claimed to have severely beaten by the appellants along-with their co-accused but no such torture/beating is borne out from the available record. The injured-eye witnesses were at variance regarding material points. Muhammad Irfan (PW-7) described that Anjum Lateef appellant fired at the deceased hitting on his right temporal region which is contradicted by medical evidence. Whereas, Nadeem (PW-8) admitted that at the time of occurrence, his brother Ali Imran (complainant) was not with them.*

As mentioned above, the eye witnesses including Muhammad Irfan and Nadeem were deaf and dumb. Their statements were recorded with the help of interpreter, namely, Muhammad Ashraf Instructor Deaf and Dumb School with the help of Surrya Nasreen Senior Headmistress of the same school. He was also examined during the investigation under section 161, Cr.P.C as reflected by Exh.DC and that the statement of the said eye-injured witnesses were also recorded with his help. All three were examined on 09.12.2012. Nothing can be gathered from the available record if both the injured were incapable to make statements till 09.12.2012 and for what reasons their statements under section 161, Cr.P.C were recorded after twenty five days of the occurrence.

There is no statutory provision which specifically deals with the opportunity of recording evidence of a witness who is deaf and dumb, however, Article 3 of the Qanun-e-Shahadat, 1984 contemplates that all persons are competent to testify, unless they are prevented from understanding the questions put to them or from giving rational answers to those questions. Further Article 59 of the Qanun-e-Shahadat, 1984 read with section 543, Cr.P.C are relevant but they also do not directly deal with the mode of recording evidence of a deaf and dumb witness. As regards the precedent law in Pakistan, the question had been dealt with by the Hon'ble Supreme Court in judgment reported as Muhammad Mansha versus The State (2019 SCMR 64), wherein their lordships observed that the trial Court should determine the level of said witness's comprehension before recording his evidence and that section 543, Cr.P.C required that an interpreter shall be bound to state true dictation of such evidence or statement. The apex Court further observed that the trial Court should also administer oath to the person translating and in view of such violation of criminal procedural law, the conviction could not be sustained.

30. As mentioned above, to record statement of a deaf and dumb witness, there is no specific provision in Qanoon-e- Shahdat, 1984. However, there is specific/provision in Indian Evidence Act, 1872, which deals with the statement of dumb person. The said section is reproduced for ready reference:

(i) "119. Dumb witness-----. A witness who is unable to speak may give his evidence in any other manner in which he can make it intelligible as by writing or by signs; but such writing must be written and the signs made in open Court. Evidence so given shall be deemed to be oral evidence.

31. In case titled State of Rajasthan Vs. Darshan Singh @ Darshan Lal, Supreme Court of India held that object of enacting the provisions of section 119 of the Evidence Act reveals that deaf

and dumb persons were earlier contemplated in law as idiots. However, such a view has subsequently been changed for the reason that modern science revealed that persons affected with such calamities are generally found more intelligent and to be susceptible to far higher culture than one was once supposed. When a deaf and dumb person is examined in the Court, it has to exercise due caution and take care to ascertain before he is examined that he possesses the requisite amount of intelligence and that he understands the nature of his oath. On being satisfied on this, the witness may be administered oath by appropriate means and that also be with the assistance of an interpreter. However, in case a person can read and write, it is most desirable to adopt that method being more satisfactory than any sign language. The law required that there must be record of signs and not interpretation of signs.

32. *Now, we would prefer to separate the terms “deaf” and “dumb”. Not all deaf are dumb, and not all dumb are deaf.*

Dumb in the sense “lacking the power of speech” is perceived as insulting when describing human (but not animals), probably DUMB also means stupid; “dull witted”. The noun dummy in the sense means “person who lacks the power of speech”.

Dumb is the old English word that means “mute”, “speechless” and itself came from an even older word “dheubh” meaning “confusion” “stupefaction” and dizziness. Today, dumb still means “unable to speak” but it does not have anything to do with intelligence.

As adjective, the difference between deaf and dumb is that deaf is not having the faculty of hearing, or only partially able to hear while dumb is unable to speak; lacking power of speech.

33. *The language of deaf and dumb is called sign language, and languages that use the visual/manual modality to convey the meaning. There is no universal sign language. There are more*

than three hundred different sign languages in use around the world. They vary from nation to nation. Along-with British sign language, there are several sign languages used by English speaking countries including USA (American sign language), Australia (Australian sign language). Ireland (Irish sign language) which is derived from French sign language but shares similarities with British Sign language. One of the most widely used sign languages around the world is Chinese sign language(CSL or ZGS), which has upto twenty million users. While indo Pakistani sign language has about eighteen million users across South Asia.

34. *Let's have a look to find sign languages, their stories and their finger alphabets. The journey to communicating globally begins here. Sign language is a visual means of communicating through hand signals, gestures, facial expression and body language. Most people start their sign language journey by learning A-Z or alphabets equivalent in sign form. Use of the hands to represent individual letters of a written alphabet is called "finger spelling"*

For example, most sign languages have a specific sign for the word "tree" but may not have a specific sign for oak, so O.A.K would be finger spelled to convey that specific meaning. According to world Federation of Deaf, there are more than seventy million deaf people worldwide. The convention on the rights of persons with disabilities recognizes and promotes the use of sign languages. It makes clear that sign languages are equal in status to spoken language. UN General Assembly has proclaimed 23rd September as international day of sign languages in order to raise awareness of importance of sign languages in the full realization of the human rights of people who are deaf.

35. *Languages, are more than words, like all other languages, communication by way of signs has some inherent limitations, since it may be difficult to comprehend what the user is attempting*

to convey but a deaf person need not be prevented from being a credible and reliable witness merely due to his/her physical disability. Such a person though unable to speak may convey himself through writing if literate or through signs and gestures if he is unable to read and write. The emphasized body language and facial expression enabled the audience to comprehend the intended message.

36. *In Meesala Ramakrishan versus State of A.P, 1994(2), R.C.R (Criminal) 675; (1994)4 (SCC 182), Indian Supreme Court has considered evidentiary value of a dying declaration recorded by means of signs and nods of a person who was not in a position to speak for any reason and held that the same amounts to verbal statement and, thus, was relevant and admissible. It was further clarified that “verbal” statement does not amount to “oral” statement. In view of provisions of section 119 of the Evidence Act, the only requirement was that the witness may give his evidence in any manner in which he could make it intelligible, as by writing or by signs and such evidence can be taken to be oral statement. Signs and gestures made by nods or head are admissible and such nods and gestures were not only admissible to possess evidentiary value, it was further observed.*

37. *The record divulged that the learned trial Court vide order dated 16.9.2014 observed that the statement of the deaf and dumb witnesses had to be recorded through Muhammad Ashraf PW, superintendent of deaf and dumb school-Sargodha. At some stage, an application was filed by the appellants for the appointment of some other interpreter but on 30.10.2014, it was resolved that the principal of deaf and dumb school-Sargodha should also remain present to help the said interpreter meaning thereby that had the interpreter been capable of explaining signs of the witnesses, there was no question to bound down the principal of deaf and dumb school, namely, Surraya Nasreen. The record is silent regarding details of the signs made by the deaf and dumb*

witnesses as well as about the interpretation of their signs made by the interpreter that, too, with the help of said principal. The summoning of the said Headmistress itself suggested that the witness/interpreter, namely, Muhammad Ashraf was not expert and fully capable to convey the signs of the injured witnesses.

At this stage, it may also be added that the interpreter, namely, Muhammad Ashraf himself was a witness and examined under section 161, Cr.P.C as reflected by Exh.DC and that statements of the injured witnesses including Muhammad Irfan and Muhammad Nadeem were recorded with the help of said interpreter. The record also revealed that he joined the investigation, was a prosecution witness and appeared as PW.13, thus, the learned trial Court should have abstained to examine the injured-deaf and dumb witnesses on the basis of his interpretation. The Kerala High Court dealing with the question of statement of deaf and dumb witness to be recorded by somebody else referring to the Calcutta High Court's case in Ah Soi (1926(27) CrLJ 805) (supra) observed as follows:

“if somebody else is available, it is better the services of a person who is witness in the case is not made use of to interpret his evidence or to converse with him. In Ah Soi v. King Emperor (AIR 1926 Calcutta 922): (1926(27) CrLJ 805), it has been held that a witness who took active part during the investigation of the case and who gave evidence before the committing Magistrate and who was willing to give evidence on the side of the prosecution in the Sessions trial should not be chosen as interpreter. The Calcutta High Court said that this is opposed to the elementary ideas of justice”

The record also suggested that Muhammad Ashraf had been teacher in the school-injured witnesses meaning thereby that the witnesses had attended the school of deaf and dumb but record is silent if they were eligible to read and write, otherwise, it would have been expedient to obtain their statements during trial in writing and learned trial Court failed to determine if the injured eye-witnesses were literate or otherwise. No doubt, language of deaf and dumb persons requires special knowledge or skill which may be acquired through specialist in the field. What may further

be added here is that expert's evidence produced in this case does not reflect that he was expert in any of the sign language or was well conversant with the signals made by the injured witnesses.

The above discussion leads us to hold that while examining a deaf and dumb witness, following steps should be taken by the learned trial Courts:

- *To ascertain whether such a witness possesses the requisite amount of intelligence;*
- *Whether he understands the nature of oath;*
- *Trial Court is also required to record his satisfaction to that effect;*
- *The trial Court is required to ascertain, if the witness either by writing or sign can make intelligible of what he has to speak;*
- *If he is able to communicate his statement perfectly by writing, it will be more satisfactory method of taking evidence;*
- *When such a witness is unable to write, then he can make sign showing what he wants to say;*
- *If it is by signs, those signs must be recorded by the learned trial Court and not only the interpretations of those signs;*
- *It is necessary to enable the appellate Court to know whether the interpretation of the sign is correct or not;*
- *It is not safe for a trial Court to embark upon the examination of a deaf and dumb person on his own without help of an expert or a person familiar with his mode of conveying ideas to others in day to day life;*
- *The interpreter should not be a interested person, who had participated in the investigation and who is a witness in the same trial;*
- *Interpreter should be a person of the same surrounding but should not have any interest in the case and he should be administered oath;*

38. *We may also mention that the place of occurrence in this case was not proved by the prosecution. As highlighted above, the*

occurrence took place in Methai Wali Gali, Block No.6-Sargodha. In order to prove this fact, prosecution produced Muhammad Hafeez draftsman as PW.6. During his cross-examination, it was admitted that there was no shop of any PW or his relative in the said street. The draftsman also admitted that he was aware of the fact that injured witnesses were deaf and dumb and explained that he had prepared the scaled site plan Exh.PF and Exh.PF/1, under instructions of Zahid and Sagheer Ullah PWs, not produced by the prosecution during trial.

The reasons for the outbreak of this episode was a quarrel between Muhammad Irfan and the accused 2/3 days prior to the occurrence. The Investigating Officer had not thrashed this aspect of the matter during the investigation. In short, Muhammad Irfan as PW.4 has not uttered even a single word that he had some altercation, quarrel or dispute with any of the accused at any time prior to this occurrence, thus, the assertions of the complainant regarding motive is based on hearsay and not admissible. It is settled by now that prosecution is not bound to introduce the motive as some crimes are motiveless and that the motive is hidden deep in the mind of the perpetrator of the crime but once, it is set up and not established, then it adversely effects the case of prosecution.

39. During the investigation, the investigating Agency secured from the crime scene two crime empties, received by Ghulam Muhammad 638-C (PW.3) on 29.11.2012 from Abdul Rasheed MHC 1212 (PW.2)

40. Procedure for collection, preservation and transportation of firearms and tool marks are provided in guidelines of PFSA as:

- Every evidence exhibit must be packed separately;
- Every firearm must be packed in unloaded condition with safety on;
- There must not be live rounds in the chamber of the firearm, magazine or in the parcel;

- *Every cartridge case and bullet must be packed separately;*
- *Evidence submitted for Gun Shot Residue (GSR) analysis must be packed in hard box instead of cloth bag or paper envelope. Layers of the clothes containing GSR must not touch with the other layers.*
- *Clothes must be wrapped by placing a white paper sheet between the layers of clothes before packing it in a hard box;*
- *Nature of examination must be clearly indicated in the docket;*
- *Seals must be intact and as per mentioned in the docket;*

41. *Following inferences are drawn from the study of case laws regarding procedure of collection, preservation and transportation of firearms and Tool Marks:*

- *Investigating Officer should record the statements under section 161, Cr.P.C mentioning parcel and recovery contained in such parcel;*
- *The weapon/recovery should be placed in safe custody at “Malkhana” of the Police Station;*
- *There should be entry/report of such recovery in the “Malkhana” of the Police Station;*
- *Entry/report of such recovery in the “Malkhana” of the Police Station should be produced before the trial Court to corroborate the version of prosecution;*
- *Incharge of the “Malkhana’ should be produced and examined regarding safe custody of the recovery/weapon;*
- *Safe transmission of the recovery/weapon to the Forensic Science Laboratory should be proved; and*
- *Evidence of police official with regard to safe transmission of weapon/recovery to the Forensic Science Laboratory is to be recorded;*

42. *The report of Punjab Forensic Science Agency Exh.PW revealed that parcels containing two 30 bore caliber cartridges (Items C-1 and C-2) were submitted on 30.11.2012 but this fact does not find mention in the statement of Ghulam Muhammad 638-C (PW.3). His statement is silent as to where parcel 2 was deposited, if it was Faisalabad, Lahore or Islamabad. He testified*

regarding receipt of the said parcel from MHC on 29.11.2012 but there was no mention in his statement if it was deposited by him with the office of public analyst on the following day i.e. 30.11.2012 and if this is so, then it can safely be concluded that the prosecution failed to prove the safe transmission of the crime empties secured from the crime scene and thus, no reliance can be placed on the said report. The report regarding parcel-I was, thus, inconsequential.

43. It is also settled law that if the majority of the accused nominated in a case is acquitted on account of false implication by the eye witnesses, then, allegations qua remaining accused on the basis of same set of evidence cannot be sustained without strong/independent corroboration. In this context, we are guided by the law laid down by their lordships in the case titled “IFTIKHAR HUSSAIN and another V. STATE” (PLJ 2004 SC 552) and “SARFRAZ alias SAPPI and 2 others V. The State” (2000 SCMR 1758). Similar view was also reiterated in the subsequent judgment of the Hon’ble Supreme Court of Pakistan reported as “AKHTAR ALI and others V. THE STATE” (2008 SCMR-6).

44. The accumulative effect of the following inconsistencies and deficiencies makes the prosecution case doubtful:

- (i) The injured witnesses were deaf and dumb and their statements were not recorded during trial in accordance with law;
- (ii) That injured-eye witnesses have made dishonest improvements in their statements duly confronted with their previous statements recorded under section 161, Cr.P.C;
- (iii) All the eye-witnesses were related to the deceased and, thus, were interested;
- (iv) The occurrence took place on a thorough fare but no independent witness was cited by the prosecution;
- (v) The Investigating Officer interrogated Arshad alias Matool and owner of Moosa Mobile Shop, both, shopkeepers of local market surroundings the place of occurrence and that they professed

- innocence of accused, but they were not examined under section 161, Cr.P.C or produced being witness during trial;*
- (vi) The prosecution miserably failed to prove motive as Muhammad Irfan PW did not utter a single word regarding his dispute/altercation with the accused 2/3 days prior to the occurrence;*
- (vii) Safe transmission of crime empties were also not proved, thus, positive report of Punjab Forensic Science Agency lends no corroboration to the prosecution story;*
- (viii) The recoveries of crime weapons from the appellants on the same day and at the same time from the same place were also open to objection;*
- (ix) The postmortem was conducted after about seven hours of the occurrence, which also reflected against the prosecution;*
- (x) The scaled site plan was prepared under instructions of Zahid and Sagheer Ullah PWs as admitted by Muhammad Hafeez draftsman but they were not examined during trial;*
- (xi) The majority of the co-accused of the appellants were acquitted on the same set of evidence and their acquittal remained unchallenged before this Court and no independent corroboration was forthcoming on record from the available material;*
- (xii) The injured eye-witnesses were examined under section 161, Cr.P.C after twenty five days of the occurrence and there was no plausible explanation for recording their statements at belated stage;*
- (xiii) The appellant, namely, Azhar was attributed role of causing injury to Umer Daraz PW, not produced during trial. He neither caused any injury to the deceased nor the injured PWs;*
45. *It is by now settled that doubt if found in the prosecution's case, the accused shall be held entitled to the benefit thereof. It is also settled principle of criminal administration of justice that if there is element of doubt, as to the guilt of accused, it must be resolved in his favour. The golden rule of benefit is initially*

a rule of prudence which cannot be ignored, while dispensing justice in accordance with law. It is based on maxim that it is better to acquit ten guilty persons rather than to convict one innocent person. For acquittal of accused in an offence, how-so heinous it may be, only a single doubt in the prosecution evidence is sufficient. Reliance, in this context, can be placed on "Mst. Nazia Anwar versus The State and others" (2018 SCMR 911) and the relevant observations of their lordships appearing in para-12 at page 922, which read as under:

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

- " (i) Ayub Masih v. The State (PLD 2002 SC 1048)**
- (ii) Muhammad Zaman v. The State and others (2014 SCMR 749)**
- (iii) Hashim Qasim v. The State (2017SCMR 986)**

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

In a recent case, titled Najaf Ali Shah Versus The State (2021 SCMR 736), the apex Court observed as under:

"9. Mere heinousness of the offence if not proved to the hilt is not a ground to avail the majesty of the Court to do complete justice. This is an established principle of law and equity that it is better that 100 guilty persons should let off but one innocent person should not suffer. As the preeminent English jurist William Blackstone wrote, "Better that then guilty persons escape, than that one innocent suffer.". Benjamin Franklin, who was one of the leading figures of early American history, went further arguing "it is better a hundred guilty persons should escape than one innocent person should suffer. All the contradictions noted by the learned High Court are sufficient to cast a shadow of doubt on the prosecution's case, which entitles the petitioner to the right of benefit of the doubt. It is a well settled principle of law that for the accused to be afforded this right of the benefit of the doubt it is not necessary that there should be many circumstances creating uncertainty and if there is only one doubt, the benefit of the same must go to the petitioner. This Court in the case of Mst. Asia Bibi v. The State (PLD 2019 SC 64) while relying on the earlier judgments of this Court has categorically held that " if a single circumstance

creates reasonable doubt in a prudent mind about the apprehension of guilt of an accused, then he/she shall be entitled to such benefit not as a matter of grace and concession, but as of right. Reference in this regard may be made to the cases of Tariq Pervaiz v. The State (1998 SCMR 1345) and Ayub Masih v. The Stat (PLD 2002 SC 1048).” The same view was reiterated in Abdul Jabbar v. State (2010 SCMR 129), when this Court observed that once a single loophole is observed in a case presented by the prosecution, such in the ocular account and medical evidence or presence of eye-witnesses being doubtful, the benefit of such loophole/lacuna in the prosecution’s case automatically goes in favour of an accused.”

46. For reasons mentioned above, the Criminal Appeal No.23157 of 2019 titled Anjum Latif versus The State, etc. and Criminal Appeal No.24016 of 2019 titled Amjad Latif versus The State, etc. are allowed. Resultantly, the judgment dated 10.4.2019 rendered by the trial Court regarding conviction and sentence of the appellants is hereby set aside. The appellants are acquitted of the charges. The Court was apprised that the appellants Amjad Latif and Azhar deposited amount of ‘Daman’ in compliance with the judgment of the learned trial Court on 08.1.2015. However, learned counsel was unable to make a categorical statement if they were released from jail or not, thus, the appellant Anjum Latif shall be released forthwith if not required in any other criminal case and if the appellants including Amjad Latif and Azhar are still in jail, they shall also be treated alike.

Murder Reference No.88 of 2019 is answered in the negative and death sentence awarded to appellant Anjum Latif is not confirmed.

The record of the learned trial Court be remitted forthwith.

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

Irfan

APPROVED FOR REPORTING

JUDGE