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

Crl. Appeal No.17661 of 2019
(Allah Rakha, etc, *versus* The State, etc.)

Crl. Rev. No.18883 of 2019
(Muhammad Afzal *versus* Muhammad Javed, etc.)

JUDGMENT

Date of hearing: 23.09.2024.

Appellants by: Mr. Mehram Ali Bali, Advocate
Appellant No.1-Allah Rakha in person.

State by: Rana Ahsan Aziz, Additional Prosecutor General.

Complainant by: Nemo.

Aalia Neelum, C.J.- Allah Rakha alias Mithu, son of Sardar and Muhammad Javed son of Mushtaq, both Jatt by Caste, residents of Chak No.442/J.B, Tehsil and District Jhang, the appellants, were involved in case F.I.R. No.248 of 2014, dated 25.06.2014, registered under Sections 302, 324, 337-F(v), 34 PPC, at Police Station, Mochiwala, District Jhang, and were tried by the learned Additional Sessions Judge, Jhang. The trial court seized with the matter in terms of the judgment dated 28.02.2019 convicted the appellants under section 302(b) PPC and sentenced them to undergo **imprisonment for life** as Tazir with the direction to pay Rs.5,00,000/- each as compensation under section 544-A Cr.P.C. to the legal heirs of the deceased, Muhammad Irfan alias Khan and in case of default in payment thereof, each of them would further undergo six months S.I. The benefit of section 382-B Cr.P.C. was also extended in favour of the appellants.

2. Feeling aggrieved by the trial court's judgment, Allah Rakha alias Mithu and Muhammad Javed, the appellants have assailed their convictions by filing **Crl. Appeal No.17661 of 2019**. It is pertinent to mention here that the complainant also filed **Crl. Rev. No.18883 of 2019** qua enhancement of sentence awarded to the appellants. The matters arising from the same trial court judgment are being disposed of through consolidated judgment.

3. The prosecution story as alleged in the F.I.R (Ex. PA/1) lodged on the complaint (Ex. PA) of Muhammad Afzal (PW-1)-the complainant is that on 25.06.2014, marriage ceremony of Zawar Hussain was scheduled and in connection of which, the complainant (PW-1) along with his brothers, Muhammad Irfan alias Khan (since dead) and Shahbaz (injured PW) were present there. On the same day, at about 5/6 p.m. evening, the appellants, along with their co-accused persons, equipped with their respective weapons, came there and raised lalkara, that Muhammad Irfan alias Khan should have been taught a lesson for abducting the woman. After that, the accused persons started aerial firing; the accused, Allah Rakha, fired at Muhammad Irfan alias Khan, which hit the front of his chest, whereas the accused, Javed alias Jajju, fired at Muhammad Irfan alias Khan (since dead), which landed at right armpit of Muhammad Irfan alias Khan. After that, the accused, Javed, made a fire shot, which hit the left buttock of Shahbaz Ahmad (injured PW). The accused, Allah Rakha alias Mithu, also received injuries from the firing of his co-accused.

The motive behind the occurrence was that one year prior to the alleged occurrence, Muhammad Irfan alias Khan (since dead) got married to a woman of the accused persons without the consent of the accused persons.

4. Upon receiving the information of the occurrence, Muhammad Nawaz S.I. (PW-11) reached the place of occurrence, where the complainant (PW-1), submitted an application (Ex. PA) to Muhammad Nawaz S.I. (PW-11) for registration of F.I.R; after that, on completion of police karawai, Muhammad

Nawaz S.I. (PW-11) sent the same to the Police Station through Imdad Hussain 538/C (not cited as a witness), whereupon formal F.I.R. (Exh. PA/1) was chalked out by Muhammad Arif, Head Constable (PW-5).

5. After registration of the case, the investigation of this case was conducted by Muhammad Nawaz, S.I. (PW-11), who, having found the appellants guilty, prepared a challan under section 173 Cr.P.C. and sent the same to the court of competent jurisdiction. On 02.02.2018, the trial court formally charge-sheeted the appellants, to which they pleaded not guilty and claimed trial. In support of its version, the prosecution produced as many as thirteen (13) witnesses.

6. After the closure of prosecution evidence, the appellants were examined under Section 342 of Cr.P.C., wherein neither they opted to appear as their own witnesses in terms of Section 340 (2) Cr.P.C. nor to produce evidence in their defence. In response to a particular question that why this case was against them and why the PWs had deposed against them, the appellants made the following depositions: -

“Sometime prior to the occurrence Irfan deceased kidnapped Gul Naz and took her to Faisalabad. I got returned Gul Naz from Irfan deceased through punchait due to the grudge the complainant booked me in this false case. All the PWs are inter-se related and deposed against me with malafide intention.”

7. After recording evidence and evaluating the evidence available on record in the light of the arguments advanced by both sides, the trial court found the prosecution version proved beyond any shadow of reasonable doubt, which resulted in the appellants' conviction in the afore-stated terms.

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

9. In the instance case, the occurrence occurred on 25.06.2014 at 05/06:00 p.m. in Chak No.442/J.B. situated within the jurisdiction of Police Station, Mochiwala, District Jhang, which is 14 miles from the place of occurrence. Muhammad Afzal (PW-1)-the complainant, brother of Muhammad Irfan (the deceased) and Shahbaz Ali (PW-2)-injured, reported the incident through written application (Ex. PA) to Muhammad Nawaz, S.I. (PW-11)-the investigating officer at Chak No.442/J.B at 08:15 p.m., whereupon Muhammad Nawaz S.I. (PW-11) incorporated police proceedings at the end of written complaint (Ex. PA) and sent the same through Imdad Hussain 538/C (not cited as witness) to the police station, based on which, formal F.I.R. (Exh. PA/1) was chalked out on the same day at 09:00 p.m. by Muhammad Arif 980/HC (PW-5). Muhammad Afzal (PW-1)-the complainant deposed during his examination-in-chief that: -

“I was about to move to police station but the police reached at the spot. After taking down the application Exh. P-A I presented the same before the police. Exh. P-A bear my thumb impression. The contents of the application are true.”

Whereas, during cross-examination, he (PW-1)-the complainant, deposed that-

“I got written the application for registration of case from Safdar but he is not the witness of the case. Safdar did not make any statement to the I.O.”

Shahbaz Ali (PW-2)-the injured witness deposed during cross-examination that: -

“When police reached at the place of occurrence first of all my elder brother presented application to police at the place of occurrence.”

Riaz Ahmad (PW-3)-the eye witness deposed during cross-examination that: -

“Afzal got drafted application for registration of case prior to the arrival of police. Pen and papers were brought by Safdar for drafting application for registration of case. Safdar is not related to me however he is related to the complainant party. ----- The house of Safdar is situated at a distance of 1 k.m from the place of occurrence.”

It is the prosecution's case that after the occurrence, Muhammad Afzal (PW-1), the complainant, was about to move to the police station, but the police arrived. It is relevant to mention that the occurrence occurred at 05/06:00 p.m. and was reported to the police at 08:15 p.m. on 25.06.2014. Shahbaz Ali (PW-2)-the injured witness remained at the place of the incident for about two hours, but none of the prosecution witnesses made a complaint about the incident nor shifted him to the hospital in the injured condition. Therefore, non-shifting the injured to the hospital for medical treatment for about two hours was unnatural conduct. Besides, it is an admitted fact that Muhammad Afzal (PW-1)-the complainant got, drafted the application for registration of the case from one “Safdar”. Non-mentioning this fact in the application/complaint (Ex. PA) indicates that the complainant (PW-1) had not stated the complete truth and that the F.I.R. came into existence after due deliberations and consultations. When and where was the complaint (Ex. PA) prepared? The complaint's author should have stated that he prepared the complaint under the instructions of the complainant. It is also not a case of the prosecution that the complainant (PW-1) asked "Safdar" to prepare a complaint. Accordingly, the complaint was prepared by "Safdar," which was shown to the complainant and read over to him, which was thumb marked by him. Even the complainant had not explained the preparation of the complaint in the complaint and his statement before the trial court; therefore, in these circumstances, the chance of consultations and deliberations on the part of the complainant cannot be ruled out. Even the complainant did not give any explanation regarding a delay in lodging the report and about the preparation of the complaint in the complaint as well as in his statement before the learned trial

court; therefore, in these circumstances, the chance of consultations and deliberations on the part of the complainant cannot be ruled out. It creates the first dent in the prosecution case.

10. There is another aspect of the case; the legal position is well settled, and the evidence of an injured witness must be given due weightage of being a stamped witness. Thus, his presence cannot be doubted. The statement of the injured PW is generally considered to be very reliable, and it is unlikely that he would spare the actual assailant to implicate someone else falsely. Testimony of an injured witness has its relevancy and efficacy as he has sustained injuries at the time and place of occurrence. This lends support to his testimony that he was present during the occurrence. Testimony of an injured witness is accorded a special status in law, and such a witness would not let his actual assailant go unpunished merely to implicate a third person falsely for the commission of the offence. Thus, the evidence of the injured witness must be relied upon unless there are convincing grounds for the rejection of his evidence. On the touchstone of the position of law noted above, I shall now discuss the evidence of the material witnesses. As per the prosecution case, the occurrence was witnessed by Muhammad Afzal (PW-1)-the complainant; Shahbaz Ali (PW-2)-the injured; and Riaz Ahmad (PW-3)-the eye witness. Admittedly, during the incident, Shahbaz Ali (PW-2) received firearm injuries, and the matter was reported to the police at 08:15 p.m. Muhammad Nawaz S.I. (PW-11)-the investigating officer deposed during cross-examination that: -

“The Imdad Hussain constable who had taken the complaint for lodging of F.I.R came to the place of occurrence after two hours of sending Shahbaz pw to hospital.”

Admittedly, Shahbaz Ali (PW-2)-the injured, remained lying at the place of occurrence in injured condition, and both, i.e., Muhammad Afzal (PW-1)-the complainant, and Riaz Ahmad (PW-3) have not tried to shift him to the

hospital for medical treatment. Muhammad Afzal (PW-1)-the complainant admitted during cross-examination that: -

“Shahbaz remained lying in injured condition for about 2 hours at the place of occurrence.”

Shahbaz Ali (PW-2)-injured PW, deposed during his examination-in-chief; after the incident, he was shifted to District Headquarter Hospital, Jhang, by 1122 ambulance service; from there, he was taken to RHC Mochiwala. After medical treatment, he (PW-2) was referred to the District Headquarters Hospital, Jhang. From District Headquarters Hospital, Jhang, he was shifted/referred to Allied Hospital Faisalabad. Then, he (PW-2) was shifted to District Headquarters Hospital Faisalabad, where he (PW-2) was operated. Whereas, on perusal of the medico-legal examination report of Shahbaz Ali (PW-2)-injured, it reveals that he was medically examined at 02:40 a.m. on 26.06.2014 with the history mentioned in the column of “Brief History” of MLC that “fight at the marriage in Chak No.442/J.B. and firing as told by the victim” brought by Muhammad Hussain 1572/C. Coming to the evidence of Shahbaz Ali (PW-2), a careful perusal of his evidence would clearly show that it is replete with inherent improbabilities and full of severe contradictions and meaningful improvements. After giving the narrative of the occurrence, he detailed what happened after the occurrence; the witness goes on to state that after the occurrence, he was shifted to the hospital by the 1122 ambulance service, and his statement under Section 161 of Cr.P.C. was recorded by the investigating officer 22 days after the occurrence. Shahbaz Ali (PW-2) deposed during the examination-in-chief that: -

“The accused made incriminate firing. On hearing the fire report Riaz s/o Dalmeer and Amin s/o Mukhtar alongwith many other residence of vicinity attracted to the spot and witnessed the occurrence. I was shifted to District Headquarter hospital Jhang by 1122 ambulance service. From there I was taken to RHC Mochiwala. From where after medico legal examination I was again referred to

District Headquarter Hospital Jhang. From District Headquarter Hospital Jhang I was shifted/referred to Allied Hospital Faisalabad. Then I was shifted to District Headquarter Hospital Faisalabad where I was operated. -----I remained admitted in hospital for about 22 days. My statement u/s 161 Cr.P.C. was recorded by the police at District Headquarter Hospital Jhang.”

Contrary to the above deposition, Shahbaz Ali (PW-2) deposed during cross-examination that: -

“My examination-in-chief was recorded on 03.02.2018 before this court.-----Pw volunteered that after recording my statement u/s 161 Cr.P.C. I was shifted to hospital.-----Soon after reaching the police party 1122 ambulance service reached at the spot. My statement was not recorded at hospital. I did not get record in my examination-in-chief recorded on 03.02.2018 that my statement u/s 161 Cr.P.C. was recorded at District Headquarter Hospital Jhang.-----My statement u/s 161 Cr.P.C. was recorded when I was still lying on the ground. I made statement before DSP in which I informed that I was shifted to District Headquarter Hospital Jhang by 1122 service and from there to RHC Mochiwala.-----After about 1 month of the occurrence I joined the investigation before the DSP. Pw volunteered that I remained admit in hospital for about 22 days.-----Pw volunteered that I was shifted to hospital. When police reached at the place of occurrence Ameen was present there.-----The police after receiving the application for registration of case proceeded towards me and recorded my statement.”

Muhammad Nawaz, S.I. (PW-11)-the investigating officer deposed during the examination-in-chief that: -

“I prepared the injury statement Exh.P-H with regard to Shahbaz Ahmed injured. I recorded his statement u/s 161 Cr.P.C. and sent him to hospital through 1122 ambulance with Muhammad Hussain 1572/C-1 for medico legal examination. -----I was present at the place of occurrence and after 12:00 (midnight) the next day started. So, on 26.06.2014 Muhammad Hussain 1572/C presented to me the MLC No.297/14 of Shahbaz injured which I annexed with the police.” He (PW-11)-the investigating officer deposed during cross-examination that, **“I did not go to the hospital for recording statement of Shahbaz pw. Pw volunteered that I recorded his statement at the place of occurrence. Soon after recording statement of Shahbaz I sent him to hospital.”**

As per the prosecution case, Shahbaz Ali (PW-2), the injured witness, stated that soon after the occurrence, he was shifted to the hospital for medical treatment, and he made a contradictory statement about the recording of his statement by the investigating officer. Dr. Ashiq Hussain (PW-8) deposed during the examination-in-chief that: -

“On 26.06.2014 I was posted as M.O RHC Mochiwala. On the same day, Shahbaz Ahmed s/o Inayat Ali caste Jutt aged about 32 years was brought at RHC by Muhammad Hussain 1572/C for medico legal examination. It was a case having history of fight at marriage in Chak No.442/JB with history of firing as told by the victim.”

On perusal of the medico-legal examination certificate (Ex. PH), it reveals that the injured arrived at 02:40 a.m. on 26.06.2014 after registration of FIR, and its reference was given in the column “No. & date of Police docket/Court Order.” The witness does not provide any explanation as to why he did not ask Muhammad Afzal (PW-1)-the complainant, and Riaz Ahmad (PW-3) to shift him to the hospital, particularly when he was injured. I find it difficult to believe that although such a severe occurrence had taken place, resulting in gunshot injuries to

the deceased and injured P.W., the informant took no steps to inform anybody, and nobody came to the scene of the occurrence. Such unnatural conduct can only be consistent with the fact that prosecution witnesses i.e. Muhammad Afzal (PW-1)-the complainant and Riaz Ahmad (PW-3) were not present at the place of occurrence. The informant also does not give any explanation as to why he took six hours and twenty-five minutes from the time of the recording of the FIR to reach the hospital for medical treatment. Besides Shahbaz Ali (PW-2), who deposed during the examination-in-chief that:

"I remained admitted in hospital for about 22 days. My statement u/s 161 Cr.P.C. was recorded by the police at District Headquarter Hospital Jhang."

The statement of the prosecution witness should be recorded as promptly as possible, without giving him any opportunity to improve upon and subtract from what he saw. Since the delay is likely to give an opportunity to a witness to concoct a different version. However, the testimony of the injured witness creates doubt about the date and place of recording his statement under section 161 of Cr.P.C. The testimony of a witness had proved fatal and sounded the death knell for the prosecution case. Considered against this background, the argument of the learned counsel for the appellants that the evidence of eyewitnesses was inconsistent with the medical evidence appears to be well found. The medical evidence, therefore, clearly falsifies the prosecution's case regarding how the deceased and injured witness were hit. There is another vital defect in the prosecution case; according to the prosecution, the appellants had fired shots from eight (8) feet. According to the site plan, Irfan alias Khan, deceased, is at point "1," Shahbaz Ali (PW-2) at point "2," and the appellants, along with other accused, are at point (3). The distance between points "1 and 2" and point "3" is 5 feet and 8 feet, respectively. The unscaled site plan (Ex. PQ) and scaled site plan (Ex. PK), which was prepared at the pointing of the prosecution witnesses. At the same time, the medical evidence states that there is blackening and burning on all

the injuries, indicating that the fire shots were made from very close range. The injured witness gave false evidence to strengthen the case of the prosecution. The oral testimony is contrary to the documentary evidence in the shape of an unscaled site plan (Ex. PQ) and scaled site plan (Ex. PK). Muhammad Afzal (PW-1)-the complainant deposed during cross-examination that: -

**“I got prepared the site plan of the place of occurrence. I got written the names of accused persons to the I.O at the time of preparation of unscaled site plan confronted with Exh.PQ where the names of accused are not written.-----
-----The I.O prepared the site plan correctly.”**

Riaz Ahmad (PW-3)-the eye witness deposed during cross-examination that: -

“At the time of preparation of unscaled site plan I was present there. I pointed out to the I.O the place of presence of accused at the time of occurrence at the time of preparation of unscaled site plan. I did not point out the place of presence of accused on soling. The accused persons were present towards West from the cot of Irfan deceased.”

Although the site plan is not a substantive piece of evidence in *Article 22 of the Qanune-e-Shahdat Order 1984 as held in the case of Mst. Shamim Akhtar v. Fiaz Akhter and two others (PLD 1992 SC 211)*, but it reflects the view of the crime scene, and the same can be used to contradict or disbelieve eyewitnesses. During the incident, Allah Rakha, the accused-appellant, also received injuries; however, the injuries sustained by Allah Rakha, the accused-appellant, were concealed by the prosecution. Muhammad Afzal (PW-1)-the complainant deposed during cross-examination that: -

“All the accused fled away from the place of occurrence. Allah Rakha accused in injured condition also ran away to his Haveli which was situated at a distance of 4 acre and there fell down. Police picked the accused Allah Rakha on the day of occurrence from his Haveli. However, it is not my knowledge whether he

was arrested or not. I did not accompany Shahbaz injured to the hospital. -----Our injured Shahbaz was shifted to hospital first and later on Allah Rakha accused was shifted to hospital. After about 30 minutes of his arrival the I.O had gone to the Haveli of the accused.--- -----Shahbaz and other accused in private complaint filed by the accused of F.I.R. they were summoned by the court and they are facing trial in the said complaint. "

Dr. Ashiq Hussain (PW-8) deposed during the examination-in-chief that: -

"On the same day at 2:30 a.m I also examined, Allah Rakha s/o Sardar Caste Jutt aged about 26 years R/o Chak No.442/JB Police Station Mochiwala who was brought at RHC Mochiwala by Muhammad Hussain 1572/C for medico legal examination, with history of fight at marriage in Chak No.442/J.B."

Allah Rakha, the accused-appellant, was medically examined before Shahbaz Ali (PW-2), the injured witness. Muhammad Nawaz, S.I. (PW-11)-the investigating officer deposed during the cross-examination that: -

"I do not remember if I got recorded regarding preparation of injury statement of Allah Rakha, handing him with the injury statement to Muhammad Hussain 1572/C for his medical examination in my examination-in-chief or not. -----Muhammad Hussain 1572/C also produced before me the MLC of Allah Rakha. The MLC number of Shahbaz is 296/14, again said the MLC of Shahbaz is 297/14.----- The MLC No.296/14 pertains to Allah Rakha accused."

Muhammad Afzal (PW-1)-the complainant deposed during cross-examination that: -

"During fight Allah Rakha also received fire injury."

So, the injuries on the person of Allah Rakha, the accused-appellant, negate the mode and manner of the occurrence. In such circumstances, it could not be ruled out that the witnesses had suppressed the original occurrence and had thus not presented the actual version. All these circumstances make the presence of the eyewitnesses, i.e., Muhammad Afzal (PW-1)-the complainant, and Riaz Ahmad (PW-3)-the eyewitness, at the spot doubtful.

11. Another aspect of the case makes the presence of the eyewitnesses at the spot doubtful. The postmortem report (Exh. PM) of Muhammad Irfan alias Khan (the deceased) reveals that death took place at 07:30 p.m. on 25.06.2014, the dead body was brought to the dead house at 05:20 a.m. on 26.06.2014, complete police documents were received at 05:25 a.m., and the autopsy was conducted at 05:30 a.m. on 26.06.2014. Muhammad Afzal (PW-1)-the complainant deposed during cross-examination that: -

“Q. Is it correct that the deceased met his death at 07:30 p.m.
Ans. After the pause of more than 30 second the witness replied that I am illiterate.”

However, it is the prosecution's case that the incident occurred at 5/6:00 p.m. on 25.06.2014. As per the postmortem report (Exh. PM), the probable time that elapsed between injuries and death was immediate, whereas between death and postmortem was within 10 hours. The injury statement (Ex. PN) for conducting the postmortem examination on the dead body of Muhammad Irfan alias Khan (the deceased) reveals that the same was received by the medical officer on 26.06.2014 at 05:10 a.m. As per the prosecution case, the FIR was registered at 09:00 p.m. However, no plausible explanation has been rendered as to why the postmortem examination of the dead body of the deceased was delayed by 08 hours and 30 minutes from the time of registration of the case. It is admitted that the FIR was registered at 09:00 p.m., but the reference to the same has not been given in the inquest report (Ex. PP). In the inquest report (Ex. PP), in the

column related to the brief history of the case, the investigating officer has mentioned: -

”نecش محمد عرفان عرف خان زمین پر شمالا جنوبا پڑی ہے۔ جس کا ملاحظہ جسم کر کے نقشہ مضروبی نقشہ صورتحال کی تکمیل کی گئی ہے۔ نعش کے پوسٹمارٹم کروانے پر ریاض حسین 446/C کو مامور کیا گیا ہے۔ کاغذات ہمراہ دیئے گئے ہیں۔ گواہان شناخت ہمراہ بھجوائے جا رہے ہیں۔ بعد از پوسٹمارٹم وجہ موت سے آگاہ فرمایا جاوے۔“

Dr. Shafqat Mumtaz (PW-9) deposed during the examination-in-chief that: -

“I handed over well stitched body carbon copy of PMR No.34/14 and last worn clothes of deceased and police papers to Riaz Hussain 446/C. Exh.P-M is correct copy of postmortem report issued by me. Exh.P-M/1-2 are sketch of injuries. I also endorsed injury statement Exh.P-N and inquest report Exh.P-P.”

There was no reason for the prosecution not to send the copy of the FIR alongwith above said documents for conducting the postmortem examination on the dead body of Muhammad Irfan alias Khan to Dr. Shafqat Mumtaz (PW-9). In addition, in column No.4 of the inquest report (Ex. PP) prepared by Muhammad Nawaz S.I. (PW-11), the investigating officer, the names of the witnesses who identified the dead body were mentioned as “Abdul Majeed s/o Ch. Muhammad Din and Muhammad Naseer s/o Abdul Haq.” Suleman and Baba Jafar were mentioned on the last page of the inquest report (Ex. PP). The names of the prosecution witnesses and the complainant have not been mentioned in the inquest report (Ex. PP). This outrightly suggests that the complainant (PW-1) and Riaz Ahmad (PW-3), were not present at the time the inquest report in this case was prepared. These circumstances, to my mind, suggest that the FIR was ante timed. Muhammad Afzal (PW-1)-the complainant deposed during cross-examination that: -

“Abdul Majeed s/o Umar Din and Naseer s/o Abdul received the dead body from hospital after autopsy. -----Naseer Pw is also resident of same Chak. Abdul Majeed is resident of

Chak No.443. Baber Jafer is resident of Chak No.441.”

Muhammad Nawaz S.I. (PW-11)-the investigating officer deposed during cross-examination that: -

“The Imdad Hussain constable who had taken the complaint for lodging of F.I.R. came to the place of occurrence after two hours of sending Shahbaz pw to hospital. ----- The injury statement of Shahbaz is before me which bears case F.I.R No etc.”

All the above-said facts throw a cloud of doubt that the F.I.R. was recorded with a delay, and the FIR has not been recorded when it is claimed to have been recorded. Considering all these facts, I have no hesitation in concluding that the prosecution has not been able to prove on record that the incident was reported when it was claimed to have been recorded.

12. As far as motive is concerned, it is a double-edged sword that cuts both sides/ways. In the instant case, Muhammad Afzal (PW-1)-the complainant, brother of Muhammad Irfan (the deceased) and Shahbaz Ali (PW-2)-injured, deposed during examination-in-chief that: -

"Motive behind the occurrence was that one year prior to the occurrence, daughter of Mushtaq s/o Hakim Ali was eloped with Muhammad Irfan and she contacted marriage with Muhammad Irfan with her free will and against the wishes of her parents/family. Due to this grudge the accused with common intention committed the Qatl-e-Amd of Muhammad Irfan and made murders assault of Shahbaz Ahmed. Due to the effort of elders said girl was returned to her parents as a compromise has been effected between the parties and after one month the lady was divorced by the deceased. The accused present in court committed the occurrence on the instance of Mushtaq, Ali Muhammad, Ishaq, Ashfaq and Abbas."

Whereas, Muhammad Afzal (PW-1)-the complainant, deposed during cross-examination that: -

“One year prior to the occurrence Gulnaz left her house on her own and came to the house of Irfan and she was not abducted by anyone. Gulnaz was returned back through Punchait. Irfan divorced her. Gulnaz is alive.”

The deposition of Muhammad Afzal (PW-1)-the complainant, reveals that a compromise was effected between the parties, and no one abducted Gulnaz; instead, she left by herself. Therefore, this court is not satisfied that the prosecution has established a sufficient motive for the accused to commit the alleged crime. Therefore, the evidence led by the prosecution in connection with the motive is insufficient for relying on the testimonies of the witnesses. Now, it is trite law that enmity is a double-edged weapon. The existence of a motive on the part of the accused may be a reason for committing the crime, yet the Court has to be cognizant of the fact that this may, in a given case, lead to the false implication of the appellants. Motive is a double-edged weapon for the occurrence and false implications. There are always different motives in the person's mind for making false accusations. The motive for the commission of the crime by the accused was not proved through cogent and convincing evidence. In the circumstances, I cannot avoid the conclusion that the alleged motive was an afterthought and has not been proved by any credible evidence.

13. The report of Forensic Science Laboratory, Punjab, Lahore (Ex. PT) is only to the effect that the weapon allegedly recovered from the accused/appellant No. 1-Allah Rakha was in mechanical operating condition. So, the recovery of the weapon from the accused/appellant No. 1-Allah Rakha is of no consequence. Accordingly, the accused/appellant No. 1-Allah Rakha deserves to be given the benefit of the doubt, and findings in this regard are to be set aside, and the same are set aside.

14. As it is difficult to rely upon the testimonies of Muhammad Afzal (PW-1), the complainant, Shahbaz Ali (PW-2), and Riaz Ahmad (PW-3), and for other reasons enumerated hereinbefore, I am persuaded to hold that the prosecution had not been able to prove its case against the appellants beyond

shadow of doubt as there were many dents in the prosecution story. The conviction and sentence the learned trial court recorded cannot be sustained. Reliance has been placed on the case reported as “Muhammad Akram v. The State” (2009 SCMR 230), wherein the Hon’ble Supreme Court of Pakistan has held that even a single circumstance creating reasonable doubts in a prudent mind about the guilt of the accused makes him entitled to the benefit, not as a matter of grace and concession but as a matter of right.

15. The upshot of the above discussion is that the prosecution had badly failed to bring home a charge against the appellants beyond any reasonable doubt; therefore, in the interest of the safe administration of Criminal Justice, Criminal Appeal No.17661 of 2019 filed by Allah Rakha alias Mithu and Muhammad Javed, appellants is accepted in toto. The conviction and sentence awarded by the learned Additional Sessions Judge, Jhang vide judgment dated 28.02.2019 is set aside, and the appellants are acquitted of the charge. The appellant-Muhammad Javed s/o Mushtaq is directed to be released forthwith if not required in any other criminal case. Meanwhile, the appellant, Allah Rakha, is present on bail. His sureties stand discharged from the liability.

16. So far as Criminal Revision No.18883 of 2019 filed by the complainant, Muhammad Afzal, for enhancement of compensation as well as sentence of the respondent Nos.1 & 2 awarded by the trial court is concerned, for the reasons afore-stated, the same is devoid of any legal force, which is accordingly dismissed.

(AALIA NEELUM)
CHIEF JUSTICE

*This judgment was dictated,
pronounced on 23.09.2024, and
signed after completion on
15.10.2024.*
Ikram*

Approved for reporting

Chief Justice