

JUDGMENT SHEET  
**IN THE LAHORE HIGH COURT,**  
**BAHAWALPUR BENCH, BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

**Criminal Appeal No. 685-J of 2017**  
*(Muhammad Irfan @ Fani Vs. The State etc.)*

**Criminal Appeal No. 679-J of 2017**  
*(Qamar Hussain @ Qamri Vs. The State etc.)*  
&

**Criminal Revision No. 311 of 2017**  
*(Abdul Razzaq Vs. The State etc.)*

Date of hearing:	<u>19.09.2024</u>
Appellant (s) by:	<u>Mr. Mazhar Mahmood, Advocate/Defence counsel at State Expense in Crl. Appeal No. 685-J of 2018 and Crl. Appeal No. 679-J of 2017..</u>
Complainant/petitioner by:	<u>Syed Jaffar Tayyar Bukhari, Advocate for the complainant/petitioner in Crl. Revision No. 311 of 2017.</u>
State by:	<u>Mr. Zafar Iqbal Soomro, DDPP.</u>

**SARDAR MUHAMMAD SARFRAZ DOGAR, J.:-** This judgment shall dispose of Criminal Appeal No. 685-J of 2017 filed by Muhammad Irfan *alias* Fani, Criminal Appeal No. 679-J of 2017 filed by Qamar Hussain *alias* Qamri, appellants against their conviction and sentence and Criminal Revision No. 311 of 2017 filed by complainant Abdul Razzaq for enhancement of sentence awarded to Muhammad Irfan @ Fani and Qamar Hussain @ Qamri, respondents, originating from the judgment dated 26.5.2017, passed by the learned Additional Sessions Judge, Dunyapur District Lodhran, arising out of case FIR No. 100/2013 dated 08.03.2013 registered under sections 302, 324, 337-A(ii), 337-F(i), 427, 148 and 149 P.P.C. at Police Station Dunyapur District Lodhran. After full dressed trial, the learned trial Court through the said judgment while acquitting co-accused namely Zeeshan and Abdul Islam *alias* Puno, proceeded to convict and sentence

both the appellants in the following terms:-

**1. Muhammad Irfan @ Fani (appellant in Criminal Appeal No. 685-J of 2017.**

Under Section 302 (b) read with Section 149 PPC to undergo imprisonment for life as well as to pay Rs. 1,00,000/- as compensation to the legal heirs of deceased Ayaz Shah as required under section 544-A, Cr.P.C. and in default whereof to further undergo six months S.I.

Under Section 324 PPC to undergo imprisonment for five years alongwith fine of Rs. 50,000/- and in case of non-payment of fine to further undergo three months S.I.

**2. Qamar Hussain *alias* Qamri (appellant in Criminal Appeal No. 679-J of 2017.**

Under Section 302 (b) read with Section 149 PPC to undergo imprisonment for life as well as to pay Rs. 1,00,000/- as compensation to the legal heirs of deceased Ayaz Shah as required under section 544-A, Cr.P.C. and in default whereof to further undergo six months S.I.

All the sentences awarded to both the convicts Muhammad Irfan @ Fani and Qamar Hussain @ Qamri were directed to run concurrently. Benefit of Section 382-B, Cr.P.C. was also extended to both of them.

2. Briefly the charge against the appellants is that on 8.3.2013 at about 9.15 a.m. in the area of Chak No. 342/W.B. within the precincts of Police Station City Dunyapur, the appellants namely, Qamar Hussain *alias* Qamri and Muhammad Irfan *alias* Fani, alongwith their co-accused, Muhammad Nouman *alias* Nomi, Adnan Moba, Suleman, Zeeshan, Sikandar Wadali, Punno, Gulzar and two unknown accused persons while armed with firearm weapons had allegedly committed the murder of Ayaz Shah (deceased) by causing firearm injuries on his person besides causing injuries on the persons of Muhammad Nadeem and Akbar Shah injured PWs in the backdrop of a motive according to which the accused were belonging to a Qabza group. One day prior to the occurrence, they had come to possess over the complainant's plot when an altercation took place between the accused and the sons of the complainant. Due to the said grudge, the accused persons committed the murder of Ayaz Shah and caused injuries on the persons of Muhammad Nadeem and Akbar Shah.

3. After usual investigation report under section 173, Cr.P.C. was submitted in the Court. After codal formalities, under the relevant provisions of the Criminal Procedure Code, learned trial court framed the charge against the appellants to which they pleaded not guilty and claimed a trial. Thereafter, the prosecution in order to prove the guilt of the appellants ventured to produce as many as twenty one PWs in support of its case while the learned trial Court examined 4 CWs in order to reach just conclusion of the trial.

4. In their statements recorded under section 342, Cr.P.C., the appellants had denied and controverted all the allegations of fact levelled against them by the prosecution and they also professed their innocence. However, they had not opted to make statements on oath under section 340 (2), Cr.P.C., whereas, Qamar Hussain *alias* Qamri appellant produced his defence evidence as Ex. DQ and attested copy of judgment dated 3.4.2017 passed by learned Additional Sessions Judge, Lodhran in case FIR No. 209/13, Police Station City Dunyapur.

5. Upon conclusion of the trial, the learned trial court after finding the prosecution's case against the appellants to have been proved beyond reasonable doubt while acquitting co-accused namely Zeeshan and Abdul Islam *alias* Puno, proceeded to convict and sentence both the appellants as mentioned and detailed above. Hence, all these matters before this Court.

6. Arguments heard. Record perused.

7. It divulges from the record that the occurrence which formed basis of the instant case took place on 08.03.2013 at about 9.15 a.m. in a vicinity known as Chak No. 342/W.B. situated five miles towards West from Police Station City Dunyapur District Lodhran. During this incident, after receipt of firearm injuries, Muhammad Nadeem (PW2) and Akbar Shah (PW3) got injured, whereas Ayaz Shah lost his life. The accusation of committing the crime in question was pointed towards nine nominated accused persons including both the

appellants Qamar Hussain @ Qamri and Muhammad Irfan @ Fani and two unknown accused persons. A bird's eye view of the record reveals that the detail of the occurrence was conveyed to police through the complaint (Ex. PA) made by Abdul Razzaq complainant (PW1) on 8.3.2013 at 9.45 a.m. at THQ Hospital Dunyapur which was transcribed into FIR by Muzaffar Hussain, S.I. (PW21) on the same day at 9.55 a.m. From above, apparently it follows that the matter was promptly reported to the police. No doubt the prompt reporting of the crime to the police provides strength to the case of the prosecution as generally it excludes the possibility of fabrication of facts and false implication of innocent persons. However, since the menace of padding through the stoppage of station diary (Rozenamcha) etc. has penetrated deep into police working, hence, the Courts have to be vigilant while giving a finding regarding the time of the registration of crime report. Reliance is placed upon "Ata Muhammad and another vs. The State" (1995 SCMR 599), wherein, the Hon'ble Supreme Court of Pakistan has visualized the tendency on the part of the police in showing that the FIR was got recorded with promptitude. The relevant extract is reproduced as under:

*"We know by our experience that time of recording of F.I.R. is not always genuine. The police, after learning about the commission of the crime keeps the space in the daily diary (Roznamcha) and a page in the F.I.R. Register blank for incorporating therein the gist of the information, the factum of registration of the case and the detailed report subsequently, in the light of preliminary investigation made by it.*

Therefore, instead of blindly following the time of the report of the matter to the police as mentioned in the first information report, the Courts have to evaluate other attending circumstances as well in this regard.

8. It is doubtful that the FIR was got registered with such promptitude as claimed by the prosecution as the mode and manner of registering the FIR at the time given in the FIR is negated by the other facts and circumstances of the case which are evident from the statements of the prosecution witnesses and the documents adduced

during the trial in this regard. In the instant case the time qua reporting the matter to the Investigating Officer (PW21) as suggested in the complaint (Ex. PA) as well as in the bottom of FIR, i.e. 9.45 a.m. has been contradicted by Muzaffar Hussain, S.I. (PW21), who during the cross-examination in this regard has deposed as under:-

*"I sent the written complaint for the registration of FIR at Police Station at 9.15 a.m. I had prepared the injury statement of Ayaz Shah at about 9.20 a.m. and inquest report was prepared by me at 9.30 a.m.*

Apart from the above contradiction in the time of reporting the matter, Muhammad Javaid 606/C, who had taken the application (Ex. PA) to the Police Station for registration of case was not produced in order to prove the factum of taking the complaint (Ex. PA) at the time as has been mentioned in (Ex. PA) and at the bottom of the FIR, thus, an adverse inference under illustration (g) to Article 129 of the Qanun-e-Shahadat Order, 1984 could easily be drawn that in case he was produced he would not have supported the prosecution version to this extent. Reliance is placed on "Muhammad Rafique and others Vs. The State and others" (2010 SCMR 385), wherein the Hon'ble Supreme Court of Pakistan has observed as under:-

*"It is well-settled that if any party withholds the best piece of evidence then it can fairly be presumed that the party had some sinister motive behind it. The presumption under Article 129 (g) of Qanun-e-Shahadat Order can fairly be drawn that if P.W. Amir Ali would have been examined, his evidence would have been unfavourable to the prosecution."*

Even otherwise, FIR was not exhibited in evidence during the trial, and it is well settled law that document which has not been exhibited, cannot be taken into consideration. Reliance is placed on "Mazhar Iqbal vs. The State and another" (2022 MLD 752) [Islamabad], & "Muhammad Asif and others vs. The State and others" (2016 P.Cr.L.J. 1758). Hence, the FIR cannot be taken into consideration as a corroborative piece of evidence to the ocular account and the prosecution evidence has to be seen with utmost

care and caution.

9. Another intriguing aspect of the matter is that although the deceased had died at 9.50 a.m. and dead body of Muhammad Ayaz deceased was received in the dead house at 10.30 a.m. but autopsy on the dead body of the deceased was conducted with the delay of about 03 hours and 25 minutes at 1.15 p.m. and the reason is apparent from the report itself that the documents from the police were received at 12.30 p.m. and such delay is generally suggestive of a real possibility that time had been consumed by the police in procuring and planting eye-witnesses and in cooking up a story for the prosecution before preparing police papers necessary for getting a post-mortem examination of the dead body conducted. The delay in conducting post-mortem examination also indicates about the non-availability of so-called eye-witnesses at the scene of occurrence at the relevant time as has been held by the Hon'ble Supreme Court of Pakistan in the cases of "Irshad Ahmed vs. The State" (2011 SCMR 1190) and "Nazeer Ahmed vs. The State" (2016 SCMR 1628).

10. The medical evidence was furnished by Dr. Muhammad Saeed, S.M.O. THQ Hospital, Dunyapur who on 8.3.2013 conducted the postmortem examination on the dead body of Ayaz Shah deceased and found the following injuries on his person:-

- (i) *A lacerated, circular wound 1.5 cm x 1.5 cm on front lateral aspect of Left shoulder joint, red in colour. Margins were inverted, blackening around wound margins was present. Wound was 15-cm above left nipple, 13 cm from base of neck. This was wound of entry of firearm. On dissection bullet track went medially to injury No. 2.*
- (ii) *A lacerated, circular wound 2.5 cm x 2 cm, 3 cm lateral to base of neck, on left side. Red in colour. Margins were everted, no blackening present. This was wound of Exit of firearm for injury No. 1.*
- (iii) *A lacerated, circular wound 1.5 cm x 1.5 cm in front of left of chest, 8 cm from left nipple, 6 cm from midline. Red in colour, margins were inverted, blackening around wound margins was present. This was wound of entry of firearm. On dissection track went posteriorly crossing 2<sup>nd</sup> inter costal space, rupturing pleura, lung left atrium. Bullet was recovered from a cut given on posterior wall.*
- (iv) *A lacerated, circular wound 1.5 cm x 1.5 cm on upper end of right upper arm on front side, 14 cm from top of shoulder, 16 cm from right elbow. Margins were inverted blackening present. This was wound of*



*entry. On dissection, upper and of right humerous was fractured, track went down. Bullet recovered from posterior side of lower end of right upper arm.*

- (v) A lacerated, circular wound 1.5 cm x 1.5 cm in epigastric area, 6 cm below lower end of right chest, 3 cm from midline on front of abdomen. Red in colour margins inverted, blackening present. This was wound of entry. On dissection, track went posteriorly rupturing peritoneum, small intestine to posterior abdominal wall from which bullet recovered after giving incision on posterior wall.*
- (vi) An elongated, lacerated wound 4 cm x 1.5 cm on lateral aspect of left lower chest. Margins inverted, blackening present. Wound was skin deep. Bullet ran out across the wound.*
- (vii) A skin deep, lacerated wound 2cm x 2 cm on left upper thigh on lateral side, 19 cm from left iliac crest, 10 cm from left inguinal crease. Wound margins inverted, blackening present. Bullet ran out across the wound.*
- (viii) A lacerated wound on underside of penis 3 cm x 1 cm. Margins inverted, blackening present, skin deep. Bullet ran out across the wound.*
- (ix) A lacerated circular wound 1.5 cm x 1.5 cm on front to medial surface of right knee. Margins inverted, blackening present. This was wound of entry track went to lower end of right femur just above knee from where bullet recovered.*
- (x) A lacerated circular wound 2.5 cm x 1.5 cm on dorsum of left hand, 1 cm from left wrist. Margins inverted, blackening present, skin deep. Bullet ran out across the wound.*

As per his opinion the death of the deceased had occurred due to injury No. 3 which was sufficient to cause death in the ordinary course of life and is ante-mortem in nature and was caused by firearm. All other injuries were contributory to injury No. 3.

11. As per prosecution allegation, Qamar Hussain @ Qamri appellant made two fire shots on the person of Ayaz Shah deceased. The first fire shot made by him had hit on the left side of chest of Ayaz Shah deceased while the second fire shot made by him with his pistol 30-bore had hit on the left shoulder of deceased. As per injuries noted by Dr. Muhammad Saeed (PW11), injuries No. 1,2 and 3 were attributed to appellant Qamar Hussain @ Qamri. Injury No. 1 on the dead body of Ayaz Shah deceased was on front lateral aspect of left shoulder joint, red in colour while injury No. 2 was on left side of neck of the deceased. Likewise, injury No. 3 in front of left chest of the deceased was an entry wound of firearm whereas injury No. 2 was an exit wound. Similarly, Muhammad Irfan @ Fani

appellant was alleged fire shots on the person of deceased Ayaz Shah as well as on the person of injured Nadeem Shah. Injury No. 5 on the person of the deceased has been attributed to him while injury No. 1 as embodied in MLC (Ex. PP) on the person of injured Nadeem Shah was also attributed to him.

12. In the backdrop of causing of above said injuries, it has been observed that although Qamar Hussain *alias* Qamri appellant was attributed injuries No. 1, 2 and 3 and according to the doctor who during the cross-examination has categorically admitted as correct that injury No. 1 cannot be caused from the front side of the deceased and the same was caused from the angular side, whereas, injuries No. 3, 4, & 5 were caused from the front side nor from the angular side. All the injuries were sustained by the deceased from the same distance. Even otherwise, Dr. Muhammad Saeed, (PW11) could not describe the direction of injury No. 5, as to whether it was from upward to downward, front to back or back to front or right to left or left to right. Even otherwise, on the clothes of the deceased burning was found by the doctor which is caused from the range upto six inches. Similarly, injury No. 1 on the person of Muhammad Nadeem Shah was an angular, whereas, the injury No. 5, on the person of Ayaz Shah deceased was caused from front side and burning was found on the clothes of Nadeem Shah deceased. According to site plan (Ex. PM) point No. 1 is the place where the deceased was fired at and points No. 4 & 5 are the places from where the appellant Qamar Hussain *alias* Qamri made firing at Ayaz Shah deceased. Similarly, point No. 7 is the place from where Muhammad Irfan @ Fani made firing at the deceased Ayaz Shah. But surprisingly, the *inter se* distance between the said places has not been mentioned in the site plan (Ex. PM). Thus, it can safely be inferred that the fire was not made from the long distance and the same was made from the close range. The inference so drawn is substantiated by the medical jurisprudence, according to which the



blackening occurs when a shot is fired from a distance of 6 to 12 inches and vanishes if the distance is more than three feet. In support of such opinion, reference can be made to "A Text Book of Forensic Medicine and Toxicology" authored by Dr. S. Siddiq Hussain, wherein he opined as under:-

"(2) **Discharge at 6-12"**. Effect of hot gases is lost. So there is no tearing of skin, wound is round and of the size of bullet, edges, inverted and surrounded by a zone of varying blackening and tattooing, there little burning only a grease ring due to oil and graphite is likely to be found. Clothing may show blast damage.

(3) **At 2-3 feet**. No burning and tattooing becomes more discreet.

(4) **Beyond 3 feet**. No blackening, burning or tattooing."

Even "Jaising P. Modi in his book Medical Jurisprudence and Toxicology 24<sup>th</sup> Edition" is found to be in consensus with above-mentioned view of Dr. S. Siddique Hussain. Last but not the least, the Hon'ble Supreme Court of Pakistan has also expressed almost similar view in the case of "Amin Ali and another v. The State" (2011 SCMR 323.).

13. Muzaffar Hussain, S.I. (PW21) has deposed during his examination-in-chief that on receiving the information of the occurrence he reached at THQ Hospital Dunyapur where he handed over the dead body of Ayaz Shah deceased to Manzoor Ahmad No. 364/C for autopsy. Regarding the preparation of injury statement and inquest Report of Ayaz Shah, Muzaffar Hussain, S.I. (PW21) during the cross-examination has stated as under:-

*"xxxxx I had prepared the injury statement of Ayaz Shah at about 09.20 a.m. and inquest report was prepared by me at 09.30 a.m."*

On the other hand, during the cross-examination Manzoor Ahmad No. 364/C while appearing in the witness box as (PW19) has taken a different stance and he has unequivocally stated that the dead body of the deceased was handed over to him at Chak No. 342/WB at about 08.30/09.00 a.m. and he had taken the dead body of the deceased from Chak No. 342/WB to Hospital on official vehicle. Likewise, in column No. 3 of the Inquest Report (Ex. PM), the time

of occurrence known to the police has been mentioned as 9.50 a.m. on 8.3.2013. Thus, the prosecution witnesses have been found in contradiction qua the place of handing over and escorting the dead body of the deceased.

14. No effort was made by the complainant to inform the police in spite of the fact that place of occurrence was at a distance of five miles towards West from Police Station City Dunyapur as per column No. 4 of the FIR. Even otherwise, the complaint (Ex. PA) about the alleged incident had been lodged at THQ Hospital Dunyapur, whereat the local police had arrived on its own after having statedly been informed of the occurrence by someone else whose name was neither disclosed nor was he produced before the learned trial Court. During the cross-examination Abdul Razzaq complainant (PW1) stated that 60/70 fire shots were made by the accused at the time of occurrence. But surprisingly, no injury was received by the complainant during the whole occurrence despite his acclaimed presence. Furthermore, during the spot inspection only seven empties were recovered from the spot by Muzaffar Hussain, S.I. (PW21) which also contradicts the stance taken by the complainant qua the making of indiscriminate firing. Similarly, in the inquest report (*Ex. PM*) in the relevant column No. 23 it has not been shown that any empty was found at the spot near the dead body of the deceased. It is also noticeable that despite their claimed presence at the scene of the crime at the relevant time the conduct of the said eyewitnesses was found irrational as they had not tried to save the life of the deceased who was seriously injured and according to Dr. Muhammad Saeed, S.M.O. THQ Hospital Dunyapur (PW11), the probable time that elapsed between injury and death was within half an hour. Had the eyewitnesses been present there they would have taken the deceased injured condition to any near hospital for providing him medical treatment to save his life. It has also been noticed that in column No. 8 of the inquest

report (Ex. PM), the eyes of the deceased were found open, thus, if the eye-witnesses were actually present then, at least after the death as is a consistent practice of such close relatives, they would have closed eyes of the deceased on his expiry. This fact by itself indicates that none was present with the deceased till his death, otherwise, why the eyes of the deceased remained open and were not set right by any one of them. Reliance is placed on "Muhammad Asif Vs. The State" (2017 SCMR 486). In view of above, ocular account furnished by the prosecution is neither confidence inspiring nor truthful, hence, is hereby discarded.

15. Insofar as the alleged recovery of pistols 30 bore (P.14) & (P.15) at the instance of Qamar Hussain @ Qamri and Muhammad Irfan @ Fani, respectively is concerned, the same is inconsequential for the simple reason that as per reports of PFSA (Ex. PW) and (Ex. PY), the empties did not match with the pistols as such the recovery of pistols on the pointing out of the appellants has been rightly disbelieved by the learned trial court.

16. So far as the motive is concerned, according to the prosecution the accused were belonging to a Qabza group. One day prior to the occurrence, they had come to possess over the complainant's plot when an altercation took place between the accused and the complainant's sons. Due to the said grudge, the accused persons committed the murder of Ayaz Shah and caused injuries on the persons of Nadeem Shah and Akbar Shah. PW-1 Abdul Razzaq complainant during the course of investigation has categorically stated that the plot whereupon the accused were intending to possess over was in the ownership of his son Ejaz Shah, whereas, Muhammad Nadeem, (PW2) deposed during the cross-examination that he did not know the number of plot whereupon the accused persons had come to possess and the said plot is in the name of his father. Akbar Shah (PW3) on this point has stated that he does not know who was allotted the plot whereupon the accused had come to

possess over. Motive in this case is jointly attributed to all the accused persons and not specifically to the appellants to be considered against them as piece of evidence. Admittedly, on the same set of evidence the learned trial court has already acquitted the co-accused, so the same set of evidence cannot be believed to the extent of the appellants. Even otherwise, the matter of quarrel was not reported to the police. Neither any panchayat was convened to resolve the issue. In such circumstances, the motive part of the occurrence, being words of mouth, could not get corroboration from any other independent source of the evidence, which remains unproved and a shrouded mystery as well.

17. Furthermore, disappearance of a person named as a murderer/culprit after the occurrence, is but natural, whether named rightly or wrongly. Abscondence *per se* is not a proof of the guilt of an accused person. It may, however, create suspicions against him but suspicions after all are suspicions. The fact that the appellants absconded and were not traceable for considerably long period of time could also not be made sole basis for their conviction when the other evidence of the prosecution is doubtful as it is riddled with contradictions. Reliance is placed on “Muhammad Sadiq Vs. The State” (2017 SCMR 144). Even otherwise, the warrants of arrest, proclamation and reports of the process server thereon were not put to them in their statement recorded under section 342, Code of Criminal Procedure, therefore, the evidence of abscondance cannot give any support to the prosecution case. Reliance is placed on “Zafar alias The State and others” (2018 SCMR 326).

18. In the light of what has been discussed above, Criminal Appeals Nos. 685-J/2017 and 679-J/2017 filed by Muhammad Irfan @ Fani and Qamar Hussain @ Qamri, respectively are allowed and they are acquitted of the charge while giving them benefit of doubt and in consequence whereof, set aside their conviction and sentence.

They are on bail, their surety bonds are hereby discharged from the liabilities.

19. For the foregoing reasons, Criminal Revision No. 311 of 2017 seeking enhancement of sentence of Muhammad Irfan @ Fani and Qamar Hussain @ Qamri (respondents) is dismissed.

*(Sardar Muhammad Sarfraz Dogar)*  
*JUDGE*

APPROVED FOR REPORTING

JUDGE

*Maqsood/\**