JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT.

Murder Reference No.288/2019

Criminal Appeal No.54462/2019
(Muhammad Shahzad, etc. v. The State etc.)
Criminal Appeal No.54463/2019
(Muhammad Imran v. The State etc.)
Criminal Appeal No.56789/2019.
(Muhammad Naveed v. The State etc.)
Criminal Appeal No.54461/2019.
(Muhammad Yaseen v. The State etc.)
Criminal Revision No.56788/2019
(Muhammad Yaseen etc. v. The State etc.)

Date of Hearing	**24.05.2022.**
Appellants by	**Ms. Nighat Saeed Mughal and Ms. Sughra Gulzar**, Advocates for the appellants. **Ms. Nighat Saeed Mughal**, Advocate for the appellant in Crl. Appeal No.54463/2019.
Respondents By	**Syed Karamat Ali Naqvi and Syed Afzal Shah Bukhari**, Advocates for the complainant. **Ch. Sarfraz Ahmad Khatana**, Deputy Prosecutor General, along with Muhammad Tahir, SI, Police Station Pattoki.

MUHAMMAD AMEER BHATTI, CJ:- Muhammad Hanif, Muhammad Ramzan, Muhammad Shehzad, Muhammad Imran, Muhammad Rizwan, Muhammad Naveed, Muhammad Ibraheem and Muhammad Shoban, were tried by the learned Additional Sessions Judge, Pattoki (Kasur), in case FIR No.496, dated 20.07.2015, in respect of offences under Sections 302, 148, 149, P.P.C. read with Sections 337-F(iii)/L(ii), P.P.C. (added later-on, on declaration of injuries of Shazia Bibi-injured), Police Station City Pattoki, District Kasur. The accused were convicted and sentenced vide judgment dated 28.06.2019, as under:-

i) Muhammad Imran-appellant was sentenced to death with direction to pay compensation of Rs.300,000/- to the heirs of deceased under section 544-A, Cr.P.C. or in default of payment thereof to undergo simple imprisonment for six months; and

ii) *Muhammad Shehzad, Muhammad Rizwan and Muhammad Naveed were sentenced to life imprisonment with direction to pay compensation of Rs.100,000/- each to the heirs of deceased under section 544-A, Cr.P.C. or in default of payment thereof to undergo simple imprisonment for six months. They were extended the benefit of section 382-b, Cr.P.C.*

However, through the same judgment Muhammad Hanif alias Arif, Muhammad Ramzan, Muhammad Ibraheem and Muhammad Shoban co-accused were acquitted.

Against the aforesaid judgment, conviction and sentences, Muhammad Shehzad, Muhammad Rizwan and Muhammad Naveed-appellants have filed Criminal Appeal No.54462/2019; Muhammad Imran-appellant has filed Criminal Appeal No.54463/2019 and; Muhammad Naveed-appellant has also filed Criminal Appeal No.56789/2019. Whereas Muhammad Yaseen-complainant filed Criminal Appeal No.54461/2019 challenging acquittal of Muhammad Hanif, Muhammad Ramzan, Muhammad Ibraheem and Muhammad Shoban and also filed Criminal Revision No.56788/2019 with the prayer to enhance the sentence of life imprisonment awarded to Muhammad Shehzad, Muhammad Rizwan and Muhammad Naveed to death sentence u/s 302(b), P.P.C. All these matter have been heard by us along with

Murder Reference No. 288 of 2019 sent by the learned trial court u/s 374 Cr.P.C. seeking confirmation of the sentence of death passed by it against Muhammad Imran convict-appellant or otherwise. We propose to decide all these matters jointly through this consolidated judgment.

2. The Prosecution story as narrated in the FIR **(Ex.PF/A)** chalked-out on the complaint **(Ex.PF)** of the complainant-Muhammad Yaseen **(PW-8)** is detailed in Paragraph No.1 of the impugned judgment, which is reproduced as under in verbatim:-

> "Briefly sated facts necessary to be dilated upon for culminating the fate of this as per complaint Exh.PF are that on 19.07.2015 on Sunday, complainant alongwith his brother Intizar Hussain, Amanat Ali & Farooq Ahmed, (sons of Bashir Ahmed), Nazir & Qurban (sons of Haider), Rani Bibi and Shehnaz Bibi came at Jaguwala Chak No.4 in order to attend "Punchayat" because wife of complainant's brother Intizar Hussain, after quarrelling had come in the house of her parents at Jaguwala Chak No.4. A "Punchayat" was convened at the Dera of Sharif Lumberdar in this regard. The respectable of said "Punchayat" decided that Shazia Bibi will be sent with Intizar Hussain after 3/4 days and also demanded Rs.13,000/- as expenditures which were paid by the complainant on the spot and were returning back towards Kangan Pur on Carry "Dabba". When they reached Meer Kot Canal near Chunian then Shazia Bibi on the asking of his brother Shehzad made a phone call to the brother of complainant namely Intizar Hussain by saying that her parents have agreed to send her with him today and asked them to come back to took her alongwith children with them. On which, they again reached at the "Dera" of said Muhammad Sharif. Said Muhammad Sharif and his son Sarfraz also went with them in the house of in-laws of the brother of complainant. The wife of brother of complainant namely Shazia Bibi alongwith children were sent with

them with their consent in carry “Dabba”. At about 06:30 p.m. when complainant party reached at a distance of 50/60 feet from the house of accused persons then suddenly accused persons namely Shehzad, Imran, Shoban, Hanif, Ramzan, Rizwan, Ibraheem and Naveed alongwith four unknown accused persons armed with their respective weapons “Churras”, “Sotas” and “Dandas” emerged from the sugarcane crop in front of the Carry “Dabba”. An unknown accused to whom they can identify raised Lalkara to the effect that Intizar Hussain and the members of “Punchayat” who had come with him would not be left alive. On which, all the said accused persons de-boarded the complainant party from Carry “Dabba” and grappled with them and the accused persons after dragging the complainant’s brother took him in sugarcane crop, two unknown accused persons caught hold the legs of the brother of complainant brother and an unknown accused caught hold him from his head and got him lying on the ground. Accused Imran made a blow with his ‘Churra’ and cut the throat of the brother of complainant, accused Shehzad made a ‘Churra’ blow which hit underneath the right armpit of the brother of complainant, accused Shoban made a “Churra” blow which hit on the right flank of brother of complainant, accused Hanif made a ‘Churra” blow on the forehead of the brother of complainant, accused Rizwan made a “Churra’ blow which hit on the front side of the belly of the brother of complainant, accused Ibraheem made a ‘Churra’ blow which hit between his chest and belly, accused Naveed made a ‘Churra’ blow which hit on the belly of brother of complainant. Later on accused Muhammad Ramzan and Muhammad Imran after leaving the brother of complainant caught hold the wife of the brother of complainant namely Shazia Bib. Accused Muhammad Ramzan after caught holding Shazia Bibi from her hair made a ‘Churra’ blow which hit in front of her chest between the breasts. Accused Hanif threw down Shazia Bibi on the ground by saying that our honour has been at stake due to her act and made ‘Churra’ blows which hit on her right breast and right armpit. Whereas remaining accused persons and unknown accused persons started beating the complainant party with their “Dandas” and “Sotas”. Complainant party concealed themselves in sugarcane crop to save their lives. The whole occurrence was witnessed by the complainant and his companions.

> The motive behind the occurrence was that the brother of the complainant had contracted love marriage six years prior of the occurrence due to which accused party had grudge against the complainant party and committed this occurrence.".

3. All the accused/appellants, on commencement of trial, when formally charged pleaded innocence and claimed trial. Thirteen prosecution witnesses were produced to prove the guilt of the accused. Dr. Sadia Ashraf WMO **(PW-3)** and Dr. Dildar Mehboob **(PW-4)** provided medical evidence; Shabbir Hussain, S.I. **(PW-12)** and Muhammad Iqbal, S.I. **(PW-13)** conducted investigation of this case, whereas Muhammad Yaseen, complainant **(PW-8)**, Shehnaz Bibi, **(PW-9)**, Nazir Ahmed, **(PW-10)** furnished the ocular account. Muhammad Nawaz **(PW-11)** is the recovery witness of "Churras". Additionally, CW-1 Tayyab Mehmood, Record Keeper of THQ Hospital, Pattoki, also was examined to produce the record of mortuary pertaining to the year 2015.

Given-up PWs were namely Amanat Ali son of Bashir Ahmed, Rani Bib wife of Qurban and Sardar Muhammad Yaseen son of Dais Muhammad being unnecessary, and further, PW namely Shazia Bibi widow of Intizar Hussain was given-up as won over being related to the accused party reflecting from the statement of learned ADPP. The learned DDPP by tendering documentary evidence, report of PFSA **(Ex.PT & Ex.PU),** closed the prosecution evidence.

4. Upon the completion of the prosecution's evidence, the accused while recording their statements u/s 342, Cr.P.C. controverted the prosecution's allegations, however, despite consent failed to produce any evidence or appeared themselves u/s 340(2), Cr.P.C. to refute the prosecution's story and on culmination of trial proceedings recorded the conviction and sentence, mentioned in detail in paragraph one of this judgment.

5. The learned counsel representing the appellants in all three appeals, filed against their conviction and sentence, contended that while passing the impugned judgment the learned trial Court has not taken into consideration that the prosecution's story is a result of manipulations and consultation as admitted by the injured eye-witness namely Shehnaz Bibi while appearing as PW-9 that the complainant-Muhammad Yaseen (PW-8) moved application (Exh.PF) after consultation with all of them. It is further contended that six hours delay in the registration of FIR whereas distance from place of occurrence to Police Station was 05-Km, was also established from record; that the learned trial Court also overlooked the delay of 20-hours in conducting postmortem of deceased-Intizar Hussain, which facilitated/extended an opportunity to the complainant to lodge a false case against the appellants, as it was a blind murder, thus, the possibility of fabrication on the part of the complainant cannot be ignored; that the learned trial Court proceeded to convict and sentence the appellants while relying on

the statements of PW-8, PW-9 & PW-10, who were closely related to the deceased being real brothers and sister-in-law (*Bhabi),* respectively, and their testimony could not be relied upon until and unless the same was supported by the other relevant factors; that the learned trial Court has brushed aside the defence plea that the appellants were not present at the spot and they were involved falsely merely on the basis of suspicion and hearsay evidence as they knew nothing about this blind murder; that the medical evidence contradicts the ocular version of the prosecution case; that the prosecution miserably failed to prove the factum of guilt against the appellants for the main reason that no independent witness was produced, in particular, Sharif Lumberdar and his son Sarfraz, therefore, the prosecution failed to prove the motive as well as occurrence; that the impugned judgment is the result of misreading and non-reading of material pieces of evidence inasmuch as material contradictions amongst the statements of the prosecution witnesses have been ignored; that the co-accused of the appellants namely Muhammad Shoban and Muhammad Ibraheem with specific role of inflicting *Churra* blows, in investigation, were found innocent, consequence whereof, challan/report u/s 173, Cr.P.C was submitted showing their names in column No.2, who although faced trial because of summoning them by the learned trial Court on application/complaint, yet they along with Muhammad Hanif and Muhammad Ramzan, who were also shown

to have given *Churra* blows, were acquitted of the charge on the basis of the same set of evidence, in such eventuality, appellants' conviction is not justified, hence, claimed acquittal by setting-aside the impugned judgment.

6. On the other hand, the learned counsels for the appellant/complainant in appeal challenging acquittal of respondents No.2 to 5 and revision petition seeking an enhancement of the sentence of the respondents No.2 to 4 (appellants in Crl. Appeal No.54462/2019), assisted by the learned Deputy Prosecutor General, supported the impugned judgment and contended that the prosecution proved its case including motive against the appellants beyond any shadow of doubt; that the FIR was registered with promptitude and the said fact rules-out any possibility of consultation as alleged by the appellants; that the medical evidence is completely in line with the ocular account furnished by PW-8, PW-9 & PW-10; that the learned trial Court convicted and sentenced the appellants on the basis of confidence inspiring evidence produced by the prosecution witnesses, who were subjected to lengthy cross-examination but they remained consistent/firm and deposed in line with the version of the prosecution without pointing-out anything contrary to the story in FIR as well as the report under Section 173, Cr.P.C.; that there is nothing on record to even prima facie suggest that aforesaid PWs were behaving under malice; that the PWs had no previous enmity

to falsely depose against the appellant and keeping in view the number of injuries the other enemies could also be involved if the complainant party had any intention to falsely implicate the innocent persons as well and; that the prosecution evidence cannot be shattered for the reason that the PWs furnishing ocular account were closely related with the deceased; hence the three appeals may be dismissed and the sentence recorded by the learned trial court may be maintained. Lastly, the learned counsels prayed for enhancement of sentence of respondents No.2 to 4 while accepting Crl. Revision No.56788/2019 and, in consequence whereof, Crl. Appeal No.54461/2019 filed against acquittal of respondents No.2 to 5 therein, may be accepted and they be punished accordingly.

7. We have heard the learned counsels for the parties as well as the learned Deputy Prosecutor General and perused the record in the light of respective contentions of the parties.

8. The developed jurisprudence in criminal side demands construction of a case by the prosecution upon four pillars of evidence, which consist of:

(i) ocular account;

(ii) motive;

(iii) medical; and

(iv) recovery

and to establish the guilt of the accused production of substantive piece of evidence in all its disciplines is necessary, and the lack

thereof always damages the prosecution's case in securing conviction. The ocular evidence as we have inferred from reading of plethora of judgments of this Court as well as honourable Supreme Court is the most important/significant pillar of the prosecution's case, which shall be proved without any shadow of doubt because its trustworthiness/accuracy/purity/credibility and it being confidence inspiring, is enough to award conviction. Reliance is placed on "*Muhammad Anwar v. The State"* (**1997 P.Cr.L.J. 321),** "*Imtiaz alias Taji and another v. The State and others" (***2020 SCMR 287),** "*Muhammad Mansha v. The State"* (**2018 SCMR 772)**, "*Muhammad Arshad v. The State"* (**2020 SCMR 2025)** and "*Zahid v. The State"* (**2022 SCMR 50).** The relevant portions from the said pronouncements laying down the principles of ocular account are reproduced hereunder for facility of reference:-

> "1997 P.Cr.L.J. 321, supra,
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> *The touchstone in assessing and evaluating the evidence of eye-witnesses two important factors should be seriously taken into consideration i.e. (1) Whether in the circumstances of the case it was possible for the eye-witnesses to be present at the scene or their explanation for their presence at the place of occurrence could be accepted and (2) whether there was anything inherently improbable or unreliable in their evidence. The ocular evidence would carry convincing weight and create unswerving confidence, which was corroborated by the medical evidence and the motive relating to the occurrence. Such type of evidence is further strengthened if the F.I.R. was promptly lodged without giving any time for fabrication or inventing totally false story. It is true that there is no inflexible role that the statement of an interested or an inimical witness can never be accepted without corroboration. It is also true that*

interest and truth some times are so intermingled that those might go together and corroborated, therefore, is not always to be considered as a sine qua non for the acceptance of the evidence of such interested witnesses. The creditable value is to be attached even to such witnesses if their evidence is found free from doubt, infirmity or the possibility of the implication of wrong persons is excluded. Rule of prudence in such circumstances requires to find out whether a witness had seen the occurrence, could identify the culprits and was reliable enough to be believed without corroboration. It is also well-understood that the evidence of an interested witness was not like the evidence of an approver, which would need corroboration and abundant caution before its acceptance. The rule of caution cannot be confined to a water-tight compartment nor it can be kept in a straightjacket. In nutshell every case is to be evaluated and considered on its own merits because in human affairs, the facts and circumstances differ from place to place and mostly from time to time.

2020 SCMR 287, supra,

The ocular account in this case was furnished by Tariq Ejaz (PW-10) and Meer Tahir (PW-11). Tariq Ejaz (PW-10) is the complainant of the case and is the real son of deceased Ejaz Ahmad. He has given sufficient explanation for his presence at the spot at the relevant time.

2018 SCMR 772, supra,

Once the Court comes to the conclusion that the eye-witnesses had made dishonest improvements in their statements then it is not safe to place reliance on their statements. It is also settled by this Court that when ever a witness made dishonest improvement in his version in order to bring his case in line with the medical evidence or in order to strengthen the prosecution case then his testimony is not worthy of credence. The witnesses in this case have also made dishonest improvement in order to bring the case in line with the medical evidence (as observed by the learned High Court), in that eventuality conviction was not sustainable on the testimony of the said witnesses.

2020 SCMR 2025, supra,

The ocular account in this case is supported by 02 injured PWs, the statements of the prosecution witnesses coincide with each other on salient features of prosecution version. The ocular account is corroborated by the medical evidence, recovery of hatchet further lends support to the prosecution case and during the course of investigation, the petitioner was found involved and his name was placed in column No.03 of the report under section 173, Cr.P.C.

2022 SCMR 50, supra,

The whole prosecution case qua ocular account hinges upon the testimonies of these two witnesses. Amongst these two witnesses Mst. Shahida Bibi happens to be the victim of the occurrence. While making her statement in Court, she has narrated the whole occurrence in a very mature and natural manner touching the contents of the crime report on all aspects without any disconnection.

9. We have examined the evidence of the prosecution in terms of established principles of criminal jurisprudence and do not find the prosecution witnesses' testimony credible, free of doubt, infirmity and exclusion of possibility of implication of wrong persons for the following reasons:--

i) All the three eye witnesses (PW-8, PW-9 & PW-10) were categorical/unanimous about returning of Mst. Shazia Bibi to her parents' home along with her three children and obviously spent considerable time with them in peaceful manner.

ii) They were also consistent about sending/permitting of Mst. Shazia Bibi to go with her husband (deceased) and their three children by the accused party (brothers of Shazia Bibi) without creating any hindrance.

iii) PWs/witnesses did not claim absence of the accused persons at the time of departure of Mst. Shazia Bibi along with her children from her parents' house.

iv) Testimony of all the PWs is silent about happening of any unpleasant act/action at the time of departure of Mst. Shazia Bibi along with her husband (deceased).

v) The silence of PWs' testimony confirms the presence of the accused persons/appellants at the time of departure of Mst. Shazia Bibi with her husband from her parents' house on carry-dabba, how the accused persons could reach at the place of occurrence before them (complainant party) which was admittedly 50/60 feet away from the house of the accused party.

vi) Neither any other vehicle was recovered from the place of occurrence nor its availability was alleged, therefore, the story articulated in the FIR does not appeal to be plausible and inherently improbable-unreliable, hence, creates doubt about its reality.

vii) Allegedly, all the three witnesses had attended the convened *Punchayat* but did not utter a single word either about any vengeful attitude of the accused party or nurturing of motive, in the *Punchayat* proceedings.

viii) It does not appeal to an ordinary man of prudence that if real brother of two young/strong men/witnesses was being slaughtered/attacked with Chhuras and they did not jump/make any effort to rescue him as none of the witnesses sustain any injury which is enough to hold/infer that either they were not present and the

story was concocted after recovery of the dead-body or it was the height of callousness on their behalf.

ix) It is quite strange and astonishing that none of witnesses made any effort even after occurrence to take/shift promptly the injured persons whatever condition may be to Hospital despite having, as alleged, their own vehicle (Carry-Daba).

x) Admission of PW-10 in cross-examination about his reaching at the spot after police is very significant.

xi) PW-4 Dr. Dildar Mehmood, Medical Officer, categorically admitted in his testimony about conducting of post-mortem at about 3:10 PM on 20.07.2015 although dead-body was received on 19.07.2015 at 10:30 PM because the police provided the complete documents (FIR and other police documents) necessary to conduct autopsy on 20.07.2015 at 3:00 PM; meaning thereby, FIR was lodged with delay of more than 18/20 hours, hence, facts and time mentioned in the FIR were not genuine. It is routine of police to keep the space in the daily diary and page in the FIR register book and after completing the preliminary investigation with connivance of the family of the deceased involves the accused party otherwise there was no justification for providing the FIR and other documents (police papers) with delay of 15/16 hours for conducting the postmortem. Twenty hours delay in conducting the post-mortem examination is sufficiently enough to draw an inference that neither the FIR was recorded nor relevant police papers were ready till that time and

conducting post-mortem with such delay was fatal as held in case reported as, ***Ata Muhammad and another vs. The State*** **(1995 SCMR 599)** wherein it was held 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. Furthermore, in this case the F.I.R. was lodged by Bati eye-witnesses himself. So, his previous statement recorded in the F.I.R. does not come from any distinct source. It is well settled that a witness cannot corroborate himself by repeating the version before different persons on different occasions. The evidence at the trial cannot be corroborated or reinforced by proving that the witness had made a similar statement to a third party on a previous occasion. Mere repetition of a story will not give it any force or prove its truth."*

xii) The testimony of Investigating Officer/PW-12 also falsifies the prosecution story regarding prompt registration of case as he admitted in his cross-examination regarding shifting time of dead-body from the place of occurrence at about 01:00/01:30 a.m. (night) through Tractor-Trolley despite having Carry-Dabba. It is also cleared from his testimony about approaching of the police by the complainant to inform about occurrence through application at 12:15 a.m. (night). He further deposed that,

> "*It is correct that neither complainant nor any of the witness deposed before me that they tried to rescue deceased Intizar Hussain when accused persons were inflicting injuries on his body. Neither the complainant nor any of the witness deposed before me that why they did not informed the police. Complainant and witness even not*

> *imparted any reasoning to me that why they did not took the then injured Intizar Hussain, Shazia Bibi and Shenaz Bibi to any hospital, inspite of the fact that as per their version they had a carry Daba with them at that time*."

Therefore, the evidence on this aspect of the case is artificial, hence, disbelieved.

xiii) Police file is also silent about recording of any statement of a person from the locality regarding occurrence, holding of any Punchayat and presence of complainant party at the place of occurrence. Even during trial none of the participants of the Punchayat was produced.

xiv) Another aspect which is pertinent to mention here is that son of Sharif Lumberdar namely Sarfraz had subsequently been nominated by the complainant through his supplementary statement on 24.08.2015 as one of the unknown person along with Muhammad Hayat son of Muhammad Hanif. But their names were not mentioned in column No.3 of report under Section 173, Cr.P.C. PW-9-Mst. Shehnaz Bibi, admitted that till that day, she got no information about the three unknown accused persons.

xv) As per story of the prosecution, three unknown persons played an active role to get the deceased out of Carry-Dabba, dragging him to the place of occurrence and firmly holding the deceased (aged 30-32 years) from his legs and head. If these unknown persons had not taken the initiative of playing a vital role, at least main injury No.1 slitting of throat, could not be effected/inflicted.

xvi) All the more, the best evidence which could come either from the injured wife of the deceased Mst. Shazia Bibi or from the aforesaid Lumberdar, Head of Punchayat, has been withheld. Mst. Shazia Bibi got herself medically examined and her MLR was exhibited as Exh.PB, PB/1 & PC; she got recorded her statement under Section 161, Cr.P.C. on 18.08.2015 but she being the star/direct witness was not produced before the learned trial Court, leading to adverse inference against prosecution. Reference is made to *Muhammad Saleem v. Muhammad Azan and another* **(2011 SCMR 474),** wherein it has been held that:-

> "*According to the prosecution one Muhammad Hayat was also injured in the incident in question who was not produced by the prosecution without sufficient reasons highlighted by the prosecution, therefore, learned High Court was justified to presume that had the witness been produced he would not have supported prosecution case as law laid down by this Court in Muhammad Shafqat's case (1970 SCMR 713)*."

Reference has also been made to *"Ghulam Qadir and 2 others v. The State" (***2008 SCMR 1221),** relevant portion whereof is reproduced below:-

> "*It may be pertinent to mention here that Muhammad Zaman, Muhammad Akhtar and Akbar Khan employees of the Mill, stated to have sustained injuries in the occurrence, have not been produced at the trial. Best evidence has been withheld without any justifiable reason. Needless to add that if, an injured witness himself does not appear to charge an accused for his injury and the Court is not satisfied with his disability or incompetence or reasons for not appearing then the conviction for his injury cannot be recorded on the basis of other evidence under Qisas, as held by this Court in Asghar Ali alias Sabah v. The State 1992 SCMR 2088*."

10. The motive behind the occurrence as set-up by the prosecution was alleged to be that Intizar Hussain, deceased-brother of the complainant, had contracted love marriage with Shazia Bibi, daughter of accused-Muhammad Hanif, sister of Muhammad Imran and Muhammad Shehzad, about six years prior to the occurrence and due to that grudge all the accused with their common intention committed qatl-i-amd of Intizar Hussain deceased. In support of the motive, the prosecution failed to lead any independent credible evidence. On the other hand, in the testimony of PW-9 Mst. Shehnaz Bibi, she deposed in her examination-in-chief:-

> "*As the wife of Intizar Hussain Mst. Shazia Bibi had gone to her parental house on account of resentment with her husband*."

She did not allege contract of marriage as motive rather alleged differences between husband and wife as motive. Likewise, PW-10 Nazir Ahmed in his testimony alleged the same reason as deposed by his wife i.e. PW-9. Both these witnesses did not allege/plead about nourishing of grudge on account of love marriage. Even if it is accepted that said marriage was not an arranged one but she did come back to her parents' house after six years. As time cures/settles such a dispute, therefore, for that matter they accepted Mst. Shazia Bibi with her minor children and subsequently she was allowed to go with her husband in a very peaceful manner as there is nothing on record to establish showing any intention of accused party for taking of any revenge.

Motive has been elaborated upon by the honourable Supreme Court in the case of *"Pathan v. The State" (***2015 SCMR 315)** wherein it has been held that,

> "*True that, motive in legal parlance is ordinarily not considered as a principal or primary evidence in a murder case, however, in some rare cases like the present one, the motive would play a very vital and decisive role for committing a murder. As the motive has almost disappeared for want of proof and being entirely feeble, artificial and not at all appealing to a prudent mind, therefore, it has rendered the entire episode of the tragedy doubtful. On this score too the prosecution case is liable to be discarded as a whole*".
>
> In view of the above, the motive part stands unproved.

And if the motive is not proved, then ocular evidence is required to be evaluated with great caution. The case of "*Noor Muhammad v. The State and another*" (**2010 SCMR 97**) is referred. The relevant portion reads as under:

> "*...Thus, the prosecution has failed to prove the motive. It has been held in the case of Muhammad Sadiq v. Muhammad Sarwar 1979 SCMR 214 that when motive is alleged but not proved then the ocular evidence required to be scrutinized with great caution. In the case of Hakim Ali v. The State 1971 SCMR 432 it has been held that the prosecution though not called upon to establish motive in every case, yet once it has set up a motive and failed to establish it, the prosecution must suffer consequence and not the defence. In the case of Ameenullah v. State PLD 1976 SC 629 it has been held that where motive is an important constituent and is found by the Court to be untrue, the Court should be on guard to accept prosecution story*".

11. PW-8 Muhammad Yaseen/complainant and PW-10 Nazir Ahmed are the real brothers of the deceased-Intizar Hussain

whereas PW-9 injured Mst. Shehnaz Bibi is sister-in-law of the deceased and wife of PW-10 Nazir Ahmad, therefore, closely related to the deceased; hence, are held to be interested witnesses, so, their testimony could not safely be believed inasmuch as, as per FIR as well as ocular version furnished by these three P.Ws., if to the fortune of the deceased brother, his three real brothers, i.e. Muhammad Yaseen, Nazir Ahmed and Qurban Ali, were present at the time and place of occurrence along with their closely related male family members i.e. Amanat Ali and Farooq Ahmed, both sons of Bashir Ahmad, they could have been helpful to the deceased instead of being mere spectators. Admittedly, they did not even make an attempt to raise alarm, rather gave a free hand to the accused to inflict as many as twelve injuries on the person of the deceased inasmuch as all the three P.Ws. are consistent on the point that they never received any injury, i.e. PW-8/Muhammad Yaseen deposed that, "*other than Shehnaz Bibi none of us was medically examined".* PW-9 Mst. Shehnaz Bibi admitted that,

> *"Apart from Intizar Hussain we were seven in numbers. None from the brothers of the deceased or witness was medically examined. Volunteered, but they received injuries. None from the brothers of deceased or any witness received any "Churri" blow on any part of their body."*

PW-10 Nazir Ahmed stated that, "*none from all the witnesses including me became slightly injured in this case."* Said PW went one step ahead by admitting that, "*after the occurrence police*

reached at the spot and he also reached there". Meaning thereby, he did not witness the occurrence.

12. Although it was alleged that PWs were closely related witnesses hence their testimony was inimical to implicate all the accused persons in this case falsely. There is no hard and fast rule to throw out the testimony of the interested relative witnesses merely for the reason of relationship but at the same time to give weight to that testimony, its credibility must be examined on the touchstone of free from doubt, infirmity or exclusion of possibility of implication of wrong person(s). What we have noted in preceding paras about the doubts, infirmity and deficiency in evidence, is sufficient to hold that the witnesses had not seen the occurrence, and had they been present at the spot, the occurrence might have not taken place in the manner as the prosecution flouted in its case.

13. In view of the evidence taken from record, it is held that as the ocular account was furnished by interested witnesses being the real brothers and sister-in-law of deceased-Intizar Hussain, therefore, statements of such interested witnesses cannot be taken into consideration when they do not inspire confidence about their presence at the spot. At the cost of repetition, obviously the three real brothers and closely related members assembled and accompanied the deceased to protect him. Their presence has become doubtful on account of insufficient and implausible

explanation not to participate/act/react to save the life of their real brother. And it is well settled that when the ocular evidence is held to be unreliable, the strongest corroborative evidence may not cure such deficiency/lacking inasmuch as when the direct evidence is unacceptable, the corroborative evidence becomes worthless. Reliance is placed on "*Noor Muhammad v. The State and another"* (**2010 SCMR 97)** and "*Dr. Israr-ul-Haq v. Muhammad Fayyaz and another".*

In case titled as **"***Dr. Israr-Ul-Haq Versus Muhammad Fayyaz and another***" (2007 SCMR 1427),** the august Supreme Court of Pakistan held that

> *4… It is also a settled law when ocular evidence is disbelieved in a criminal case then the recovery of an incriminating article in the nature of weapon of offence does not by itself prove the prosecution case…. It is also a settled law that the direct evidence having failed, the corroborative evidence is of no help.*

In case titled as **"***Yasir Versus The State***" (2010 Y R 2344),** the Hon'ble Lahore High Court held that

> *"Even otherwise, it is settled law that when the ocular account is not reliable then merely on the basis of supporting pieces of evidence, conviction cannot be made. Reliance has been placed on the case of Riaz Ahmad (Supra) (sic), wherein the Hon'ble apex Court has observed as under:*
>
> > *"The prosecution also produced the positive F.S.L. report meaning thereby the crime empties secured from place of incident matched with the gun recovered from the possession of the appellant. This being a corroborative piece of evidence, which by itself is insufficient to convict the appellant in absence of substantive piece of*

> *evidence. Reference is invited to Ijaz Ahmad v. State 1997 SCMR 1279. It was held in the case of Asadullah v. Muhammad Ali PLD 1971 SC 541, that corroborative evidence is meant to test the veracity of ocular evidence. Both corroborative and ocular testimony is to be read together and not in isolation. In the case of Saifullah v. the State 1985 SCMR 410, it was held that when there is no eye-witness to be relied upon then there is nothing, which can be corroborated by the recovery. It has been held in the case of Riaz Masih v. The State 1995 SCMR 1730 that recovery of crime weapon by itself is not sufficient for conviction on murder charge. In the case of Siraj v. Crown PLD 1956 Federal Court 123, it was held that recovery of the handle of blood-stained hatchet at the instance of the accused, when other evidence was disbelieved, then it was not enough for conviction".*

14. In view of the above, when prosecution evidence is not free from doubt then the defence version taken by the appellants in their statements under Section 342, Cr.P.C. is to be believed in total. In this view of the matter, the alleged recoveries of *Churras* from appellants are inconsequential. It is well settled law that when presence of the eye-witnesses is not found free from doubt and is not confidence inspiring, in such eventuality, the benefit of doubts goes to the accused as a matter of right and not as a grace and in granting such benefit, single circumstance is sufficient. In case titled as **"***Abdul Jabbar and another V. The State***" (2019 SCMR 129),** the August Supreme Court of Pakistan held that,

> "*11. Having concluded in such a manner, the learned High Court still went on to maintain the conviction of the appellants under section 302(b)/34, P.P.C. while converting their sentence of death into*

> *imprisonment for life. We are afraid this approach of the learned High Court is a complete departure from the principles settled for administration of justice in criminal cases. It is the settled principle of law that once a single loophole is observed in a case presented by the prosecution much less glaring conflict in the ocular account and medical evidence or for that matter where presence of eye-witnesses is not free from doubt, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an accused*."

15. For what has been discussed above, we have come to an irresistible conclusion that the prosecution had failed to prove the case against the appellants beyond any shadow of doubt. Hence, Criminal Appeal Nos. 54462/2019, 54463/2019 and 56789/2019 are hereby accepted, the impugned judgment of conviction and sentence recorded by the learned trial is set-aside and all the appellants namely, Muhammad Imran, Muhammad Shahzad, Muhammad Rizwan and Muhammad Naveed are acquitted of the charges by extending them the benefit of doubt.

16. Criminal Appeal No.54461/2019 filed by Muhammad Yaseen challenging acquittal of respondents No.2 to 5 namely Muhammad Hanif alias Arif, Muhammad Ramzan, Muhammad Ibraheem and Muhammad Shoban, is dismissed. Crl. Revision No.56788/2019 for enhancement of the sentence of Muhammad

Shahzad, Muhammad Rizwan and Muhammad Naveed/respondents No.2 to 4 is also hereby dismissed.

17. Consequently, the death sentence awarded to Muhammad Imran-convict is *not confirmed* and Murder Reference No.288 of 2019 is answered in the *negative*.

(TARIQ SALEEM SHEIKH) **(MUHAMMAD AMEER BHATTI)**
JUDGE CHIEF JUSTICE

JUDGE **CHIEF JUSTICE**

*Gull**