

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Murder Reference No. 256 of 2019
(The State vs. Ali Hassan alias Achoo)

&

Criminal Appeal No. 71917 of 2019
(Ali Hassan alias Achoo vs. The State etc.)

JUDGMENT

Date of hearing:	07-05-2024
Appellant by:	Mr. Qamar-uz-Zaman Cheema, Advocate (Defence counsel at State expense)
State by:	Rai Akhtar Hussain, Additional Prosecutor General
Complainant by:	Syed Qaiser Raza Rizvi, Advocate

Muhammad Tariq Nadeem, J.:- Through this single judgment, we intend to decide **Criminal Appeal No.71917 of 2019** filed by Ali Hassan alias Achoo appellant against his convictions and sentences along with **Murder Reference No.256 of 2019** transmitted by the trial court for confirmation or otherwise of death sentence of the appellant, being originated from the judgment dated 30-07-2019 passed by learned Additional Sessions Judge, Sargodha, in case FIR No.338, dated 27-06-2016, for the offences under sections 302, 324, 449, 337A(i), 449, 109 and 34 PPC, registered at Police Station Urban Area, District Sargodha, whereby the trial court, while acquitting rest of the accused namely Hafiz Muhammad Ibrahim, Khuram Shahzad, Mst. Zainab Bibi and Mst. Sidra, handed down the following guilty verdict to the appellant:-

Under Section 302 (b), PPC sentenced to death on two counts for committing qatl-i-amd of Mehmood-ur-Rasheed and Subhan, deceased with direction to pay compensation of Rs. 3,00,000/- each to the legal heirs of both the deceased as envisaged under section

544-A, Cr.P.C. recoverable as arrears of land revenue or in default thereof to undergo six months S.I.

Under Section 324 PPC, for attempting murderous assault upon Muhammad Mudassar, injured and sentenced to seven years R.I. along with fine of Rs.1,00,000/- in default thereof to further undergo six months S.I.

Under Section 449 PPC, for committing house trespass in order to commit offence punishable with death and sentenced to seven years R.I. along with fine of Rs.1,00,000/- in default thereof to further undergo six months S.I.

Under Section 337A(i) PPC, for causing injury on the person of Muhammad Mudassar injured and sentenced to one year S.I. along with payment of daman of Rs.50,000/- to Muhammad Mudassar injured.

The amount of fine for each sentence shall be recoverable as arrears of land revenue. All the sentences were ordered to run concurrently. Benefit of Section 382-B, Cr.P.C. was also extended to him.

2. The prosecution story as given in the judgment of the trial court reads as under:-

“...The foundation stone of instant felony found installed upon application Ex.PQ submitted by Muhammad Haroon complainant, with the contention that he is resident of Moazan Abad; that on 27.06.2016 he alongwith Muhammad Saeed his brother came to the house of Mehmood-ur-Rasheed to meet him in his house at New Madina colony street No. 5, Sargodha. Muhammad Amin resident of street No. 1 New Madina colony street No. 5, Sargodha also came at the house of Mehmood-ur-Rasheed and they were talking whereas Mst. Sobia wife of Mehmood-ur-Rasheed was preparing bedding; that in the meantime at about 08:30 p.m. Zainab mother of Ali Hassan accused and Sidra (Saba) sister of Ali Hassan accused being present on roof top of their house situated in front of house of his brother started abusing; that Mehmood-ur-Rasheed brother of complainant requested them for pardon and assured them that they will leave the house in the morning. Afterwards they both came down from the roof while abusing and instigated Ali Hassan alias Achoo accused to take revenge. Meanwhile, accused persons namely

Ali Hassan alias Achoo, Khuram Shahzad alias Lahori and Hafiz Ibrahim residents of street No. 5, New Madina colony while armed with pistols 30-bore came there and started firing at the gate of the house while found that gate was closed. All the accused trespassed into the house forcibly; that Ali Hassan alias Achoo accused made a fire shot with intention to kill Mehmood-ur-Rasheed which hit him on right side of his neck; that Sobia wife of Mehmood-ur-Rasheed while taking her sons Subhan aged 2½ years and Muhammad Mudassar aged 8 years into the room then, Ali Hassan alias Achoo accused made two consecutive fire shots from his pistol 30-bore which fires hit Muhammad Subhan on backside of his left shoulder and on the right side of head of Muhammad Mudassar. Luckily, Sobia wife of Mehmood-ur-Rasheed remained save. Muhammad Amin informed at police 15 through telephone then Hafiz Ibrahim and Khuram Shahzad alias Lahori made fire shots from their respective pistols 30-bore at Muhammad Amin who took shelter behind the wall and fire shots hit at the wall. After hearing the firing report people of locality reached while accused succeeded in fleeing away. Complainant alongwith witnesses attended Mehmood-ur-Rasheed, Muhammad Subhan and Muhammad Mudassar whereas Mehmood-ur-Rasheed and Muhammad Subhan succumbed to the injured and Muhammad Mudassar was shifted to DHQ, Hospital, Sargodha.

2. The motive behind the occurrence was that a previous litigation was existing with Ali Hassan, Ali Hassan alias Achoo accused committed the instant occurrence on the instigation of her mother Zainab and sister Sidra in the company of accused persons Khuram and Muhammad Ibrahim....”

3. After completion of investigation, report under section 173 Cr.P.C. was prepared and submitted before the trial court. The trial court after observing all pre-trial formalities as provided under the Code of Criminal Procedure, 1898, framed charge against the appellant and his acquitted co-accused on 01-03-2017 under sections 109, 449, 302, 324, 337A(i), 34 PPC, to which they pleaded not guilty and claimed trial. In order to prove its case, the prosecution produced as many as fourteen witnesses during the

trial; Muhammad Haroon complainant (PW.10), Muhammad Saeed (PW.11) and Muhammad Mudassar injured (PW.12) have furnished the ocular account. Azmat Ullah 1151/C (PW.2) was the recovery witness of pistol 30 bore (P.4) at the instance of appellant *vide* seizure memo Exh.PB. Aman Ullah, S.I (PW.13) being investigating officer stated about various steps taken by him during the investigation of this case.

Medical evidence was furnished by Doctor Mohsin Abbas Malik (PW.9).

The remaining witnesses produced by the prosecution before the trial court are formal in nature.

The prosecution gave up PWs namely Abdul Khaliq, Muhammad Ishaq, Amin and Sobia being unnecessary and apart from oral evidence, the prosecution also produced documentary evidence in the shape of Exh.PA to Exh.PZ, Ex.PAA, Ex.PBB, Mark-A and Mark-B.

4. Thereafter, the statements under section 342 Cr. P.C. of the appellant and his co-accused were recorded wherein they refuted the allegations leveled against them and professed their innocence. While answering to a question, “*why this case is against you and why the PWs have deposed against you?*” the appellant responded as under: -

“All the PWs are closely related to each other and they belong to same family. All the PWs were summoned from different places including Khushab and Mouazam Abad which is situated 45 and 25 kilometers respectively away from the place of occurrence. I have been made escape goat in this case as some unknown persons has committed this occurrence at night time by firing at main gate of deceased and the fires hit deceased and his son. Since, police and complainant party was not able to trace out the real culprits so, I alongwith other co-accused were involved in this case falsely. I am innocent and was falsely involved due to false motive case. ...”

However, the accused neither opted to get themselves examined within the scope of section 340(2) Cr.P.C. nor produced any defence evidence.

5. Upon conclusion of trial, the trial court *vide* judgment dated 30-07-2019, while acquitting rest of the accused namely Hafiz Muhammad Ibrahim, Khuram Shahzad, Mst. Zainab Bibi and Mst. Sidra, convicted and sentenced the appellant as mentioned in paragraph No.1 above.

6. We have heard the arguments of learned counsel for the appellant as well as learned Additional Prosecutor General assisted by learned counsel for the complainant meticulously and also perused the record minutely with their able assistance.

7. According to the prosecution version, occurrence in this case had taken place on 27-06-2016 at about 8:30 p.m. within the area of New Madina Colony, situated at a distance of 03 kilometers from Police Station Urban Area, District Sargodha, while the machinery of criminal law was set into motion by Muhammad Haroon complainant (PW.10) through written application (Exh.PQ) submitted to Aman Ullah S.I/O (PW.13) on the same night at 10:00 p.m. and in consequence thereof, Muhammad Nawaz, the then ASI/Duty Officer (PW.3) chalked out the FIR (Exh.PY) at the aforementioned police station during the same night at 10:20 p.m. Keeping in view the above-noted circumstances of the case, we are quite confident to hold that the matter was reported to the police with sufficient promptitude. Reliance is placed upon the case law titled as “Shamsher Ahmad and another vs. The State and others” (2022 SCMR 1931).

8. It has vociferously been argued by learned counsel for the appellant that there is delay of about nine to ten hours in conducting post-mortem examinations on the dead bodies of the deceased persons for which the prosecution has not given any explanation, meaning thereby, the PWs were not present at the time and place of occurrence and prosecution remained busy in planning

the fake PWs and cooking up a false story, otherwise there was no reasoning for such delay. We are not in agreement with this contention, because, two persons lost their lives at the spot whereas a child was seriously injured in this case, therefore, the conduct of complainant party was quite natural as their first preference was to save the life of injured child. Moreover, time must have been consumed in arranging the vehicles and shifting the dead bodies as well as the injured child to the hospital. Keeping in view the circumstances of this case, we are of the view that no unusual time was consumed in conducting postmortem examinations on the dead bodies of the deceased persons. Guidance can be sought from the case laws titled as “Muhammad Asif and another vs. Mehboob Alam and others” (2020 SCMR 837) and “Maskeen Ullah and another vs. The State and another” (2023 SCMR 1568).

9. Ocular account of the incident has been furnished before the trial court by three eye witnesses namely Muhammad Haroon complainant (PW.10), Muhammad Saeed (PW.11) and Muhammad Mudassar, injured (PW.12). Muhammad Haroon complainant (PW.10) and Muhammad Saeed (PW.11) are real brothers of Mehmood-ur-Rasheed (deceased) and paternal uncles of Subhan (deceased) as well as Muhammad Mudassar, injured child (PW.12), who is also a real son of Mehmood-ur-Rasheed (deceased) and real brother of Subhan (deceased). Muhammad Haroon complainant (PW.10) throughout pointed his accusing fingers towards the appellant as the main perpetrator of the occurrence, who had caused firearm injuries to both the deceased persons namely Mehmood-ur-Rasheed and Subhan as well as Muhammad Mudassar, injured (PW.12) and his (PW.10) deposition is fully supported by the depositions of Muhammad Saeed (PW.11) and Muhammad Mudassar, injured (PW.12).

So far as the question raised by learned counsel for the appellant in respect of availability of eye witnesses at the scene of occurrence at relevant time is concerned, we have observed that

Muhammad Haroon complainant (PW.10) during his court statement stated the reason for his presence at the house of his deceased brother that he along with his deceased brother used to work as a mason in Block No.2 Sargodha city during the days of occurrence. He further stated in his cross-examination as under:-

“....On the alleged day of occurrence we were gathered in house of Mehmood ur Rasheed in order to consult regarding the previous motive case....”

Likewise, Muhammad Saeed (PW.11) also successfully proved his presence at the spot at the relevant time by stating that he had come to the house of his brother (Mehmood-ur-Rasheed) to discuss regarding an already registered case against the appellant for committing sodomy with his nephew. Copy of FIR pertaining to abovementioned incident has been produced by the prosecution as Exh.PBB, wherein it has been categorically mentioned that Ali Hassan alias Achoo (appellant) had committed sodomy with Muhammad Mudassar injured/child (PW.12). The reasoning describe by the above-mentioned PWs was not seriously cross-examined by the defence and it was only formally suggested to the witnesses that they had not witnessed the occurrence. Both the above PWs have described cogent explanations for their presence in the house of their brother Mehmood-ur-Rasheed (deceased) and their availability in the house of occurrence cannot be termed as unnatural. The house of real brother can be visited even without any task. Third eye witness namely Muhammad Mudassar (PW.12), who received firearm injury at the hands of the appellant during the incident and was medically examined on the same night at DHQ, Hospital Sargodha, was also a natural witness being resident of the house where the occurrence took place. They stood the test of lengthy cross-examination firmly by making consistent statements. Under the given circumstances, the presence of above mentioned prosecution witnesses cannot be termed as unusual or

unnatural, therefore, it can be easily comprehended that they were very much present at the relevant time and place of occurrence and had been seen the tragic incident with their own eyes.

10. Learned counsel for the appellant further emphasized that Muhammad Mudassar injured (PW.12), being a child, was not a reliable witness as he had deposed under the influence of his paternal uncles namely Muhammad Haroon complainant (PW.10) and Muhammad Saeed (PW.11), however, we are not in agreement with this assertion of learned counsel for the appellant. We are of the considered view that when a child witness responds intelligently to cross-examination by the defence, his testimony deserves credit and there remains no reason to believe that he had deposed under influence or instructions. We may also observe here that the child witness, if found intelligent enough, does not ordinarily tell lies and his evidence carries higher value than ordinary witnesses for the reason that he is generally considered to be innocent and obvious of motive and evil considerations. In this case, Muhammad Mudassar, injured (PW.12), who was examined by the trial court as a ‘child witness’, was found quite capable to make statement in accordance with the provision of Article 3 of the Qanoon-e-Shahadat Order, 1984 which envisages that ***“all persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind or any other cause of the same kind”***. A careful analysis of the statement of Muhammad Mudassar injured (PW.12) demonstrates that the trial court by questioning him had fully satisfied itself that he was capable of understanding the questions put to him and of giving rational answers to those questions. Indeed, the trial court had remarked that he also stood the cross-examination well and his evidence was in no way shaken by cross-examination. In the circumstances, we are of the view that Muhammad Mudassar

injured (PW.12) was a competent witness. Even otherwise, nothing has been pointed out by learned counsel for the appellant from his statement which could persuade us to hold that he (PW.12) should not have been relied upon merely because he was a child witness. Reliance is placed on the case-law titled as “Amjad Javed vs. The State” (2002 SCMR 1247), wherein the Supreme Court of Pakistan has been pleased to observe as under:-

“... We have carefully examined the contentions as agitated on behalf of petitioner in the light of relevant provisions of law and record of the case. We have minutely perused the judgment dated 21-6-2000 passed by the learned Special Court and the judgment impugned. The entire evidence has been evaluated with care and caution. We have not been persuaded to agree with the prime contention of Mr. Rab Nawaz Khan Niazi, learned Advocate Supreme Court who appeared on behalf of petitioner that the statement of Salman (P.W.14)- should have been discarded being a child witness coupled with the fact that he was not present at the spot for the reason that the said plea has been raised in oblivion of the reality as record is indicative of the fact that Salman (P.W.14) used to accompany his sister Kiran to the house of petitioner being their tutor as such the question of his absence from the place of occurrence does not arise by whom information of unfortunate incident was communicated to his father. A careful scrutiny of his statement would reveal that it is not only worthy of credence and confidence-inspiring but consistent and straightforward having the ring of truth and innocence. Salman (P.W.14) stood firm to the test of cross-examination in spite of various searching questions and nothing advantageous could be elicited. The learned trial Court has put various questions and on the basis of answers given by Salman (P.W.14) he was found intelligent enough to portraiture the facts of event and accordingly his statement was recorded. In such view of the matter we are of the considered view that the statement of Salman (P.W.14) has rightly been considered and relied upon by the learned trial Court as well, as learned Division Bench of the High Court. We have absolutely no hesitation in our mind that on the basis of such statement conviction could safely be awarded. In this regard we are fortified by the dictum

laid down in case titled Muhammad Ajmal v. The State (1997 SCMR 1595)....”

Further guidance can also be sought from the wisdom laid down by the Supreme Court of Pakistan in the case-law titled as “Mst. Razia alias Jia vs. The State” (2009 S C M R 1428).

Relevant lines are reproduced as infra for facilitation: -

“..... As mentioned above, the trial Court had taken all possible and due steps to judge the level of their intelligence and maturity before proceeding to record their statements. Naveed was 12 years of age whereas Naheed Akhtar was of the age of 10 years. It may be observed that mere fact that a witness was of tender age does not ipso facto make his evidence unreliable. It is true that before acting upon the evidence of child witnesses, close and careful scrutiny is required which in the instant case was duly adopted by the trial Court and a note to that effect was also recorded by the trial Court about his satisfaction.....”

11. Learned counsel for the appellant also endeavored to contend before us that the statement under section 161 Cr.P.C. of said Muhammad Mudassar injured (PW.12) was recorded by the police with the delay of fifteen days after the occurrence, for the reason, his testimony is not reliable. We have observed in this context that the delay caused in recording the statement under section 161 Cr.P.C. of Muhammad Mudassar injured (PW.12) was sufficiently explained as he (PW.12) was admitted in the hospital in critical condition and there is absolutely no evidence on the file on the basis of which it could be construed that Muhammad Mudassar, injured (PW.12) was capable to get his statement recorded immediately after the occurrence. According to the testimony of Aman Ullah, SI/IO (PW.13), on 11-07-2016 he proceeded to Allied Hospital, Faisalabad and again made an application (Exh.PX) before the Medical Officer for recording the statement of Muhammad Mudassar injured (PW.12) which was allowed on 12-07-2016 and then he recorded the statement under section 161 Cr.P.C. of Muhammad Mudassar injured (PW.12). Even otherwise,

ordinarily if the name of an eye witness is mentioned in FIR but the investigating agency happens to record his statement after the lapse of some time, then it cannot be held that such eye witness is not reliable. Reliance is place upon the case titled as “Hamid Javed alias Hamidi vs. The State” (1988 SCMR 39).

12. Another objection raised by learned counsel for the appellant is that the ocular account in this case has been furnished by related and interested witnesses, however, he could not controvert that the law has been well-settled by now that an interested witness is one who is interested in the conviction of an accused for some ulterior motive, but in this case, the defence could not bring on record any ulterior motive of the complainant or witnesses to falsely implicate the appellant in this case, as observed in the cases titled as “Azhar Hussain and another vs. The State and others” (2022 SCMR 1907) and “Shamsher Ahmad and another vs. The State and others” (2022 SCMR 1931).

Similarly, we are of the unanimous view that due to close and blood relation of complainant and the witnesses with the deceased persons, they were in fact not likely to let off the actual perpetrator of the offence by falsely implicating the appellant, against whom they admittedly had no previous malice, ill-will, animosity or grudge. It is by now well settled law that substitution of real culprits especially in cases where the eye witnesses lost their kith and kin before their own eyes is a rare phenomenon. Reliance is placed on the cases of “Asfandiyar vs. The State and other” (2021 SCMR 2009) and “Muhammad Abbas & another vs. The State” (2023 SCMR 487).

13. Learned counsel for the appellant emphatically argued that there is a conflict between the ocular account and the medical evidence, because, as per the story of prosecution mentioned in crime report (Exh.PY), the appellant had made pistol fire shot which landed on right side of neck of Mehmood-ur-Rasheed (deceased) but

according the Doctor Mohsin Abbas Malik (PW.9) as well as autopsy report (Exh.PH), a firearm wound of entry measuring 1 cm x 1 cm has been noted on back of junction of head and neck left side with inverted margins and blackening. However, we are of the view that the deceased was not a static object and he might had changed his position during the occurrence and in the same way, when fire shots were being made in a turmoil then exact locale and distance could not have been described, thus, this minor variation is not helpful to the defence. Besides, medical evidence is in complete harmony with the consistent ocular account furnished by the eye-witnesses and no material conflict could be pointed out to create dent in the prosecution case as the ante-mortem firearm injuries on the bodies of both the deceased persons namely Mehmood-ur-Rasheed and Subhan attributed by the eye witnesses to appellant, are reflected in their postmortem reports (Exh.PH and Exh.PL). Similarly the injury attributed to appellant on the head of Muhammad Mudassar, injured (PW.12) is also categorically mentioned in his MLR (Exh.PO). While holding so, we fortify our view from the case law titled as “*Abdur Rauf Vs. The State and another*” (2003 SCMR 522) wherein it has been held as under:-

“....we may observe that the minor discrepancies in the medical evidence relating to the seat of injuries would also not negate the direct evidence as the witnesses are not supposed to give photo picture of each detail of injuries in such situation, therefore, the conflict of nature of ocular account with medical as pointed out being not material would have no adverse effect on the prosecution case....

We have further noted that the ocular evidence about the kind of weapon used during the occurrence as well as the time of incident narrated by eye witnesses has fully tallied with medical evidence. Similarly ocular account is found trustworthy and confidence inspiring and for this reason, it is given preference over medical evidence and same alone is sufficient to sustain conviction of the appellant. Reliance is placed upon the case laws titled as “*Ali*

Taj and others vs. The State” (2023 SCMR 900) and “Muhammad Hanif vs. The State” (2023 SCMR 2016).

14. Emphasize has also been laid by learned counsel for the appellant that the occurrence had taken place at night time but the complainant and the PWs did not produce any source of light to the investigating officer and in the same way the investigating officer has also not taken into possession any source of light, for the reason, there was a chance of misidentification of the appellant. In this context, we have noted that as per site plan (Exh.PF), houses of appellant and Mehmood-ur-Rasheed (deceased) were in front of each other, in this way, the appellant was well-known to the complainant party, which eliminates the chance of misidentification of the appellant. In addition to the above, it has been specifically mentioned in FIR (Exh.PY) that the light was on in the house at the time of occurrence. It is also evident from site plan (Exh.PF) and the statements of eye witnesses that the occurrence had taken place in the house of deceased and injured and at point No.12 of the site plan (Exh.PF), it has been mentioned that electric bulb was installed and was lit. Besides, Muhammad Haroon, complainant (PW.10) and Muhammad Saeed (PW.11) have categorically stated in their examinations-in-chief that they had witnessed the tragedy in light of electric bulb, which was lit at the time and place of occurrence. In the same manner, Aman Ullah, SI (PW.13) has also stated in his examination-in-chief that he completed the whole proceedings at the spot in the light of electric bulb. In the backdrop of above circumstances, we are of the view that if the electric bulb (source of light) was not taken into possession by the investigating officer, even then it is no ground to discard the whole trustworthy and confidence inspiring evidence of the prosecution. Reliance is placed upon the case law titled as “Muhammad Yaqoob vs. The State and others” (2021 SCMR 1387) wherein the Supreme Court of Pakistan has observed as under:-

“....Presence of electric lights at the mosque presented ample opportunity for the identification of assailants, each named in the crime report. Darkness by itself does not provide immunity to an offender if the witnesses otherwise succeed to capture/ascertain his identity through available means, conspicuously mentioned in the crime report. On our independent analysis, the totality of circumstances does not space any hypothesis other than petitioner’s guilt and, thus, do not find ourselves in a position to take a view different than concurrently taken by the courts below...”

15. Apart from the above, the defence in statement under section 342 Cr.P.C. has seriously criticized that it was not the appellant, who committed this occurrence. According to him (appellant), he has been made a scapegoat in this case as some unknown persons had committed this occurrence at night time by firing at main gate of deceased. In this regard, we may observe here that all the eye witnesses i.e. Muhammad Haroon, complainant (PW.10), Muhammad Saeed (PW.11) and Muhammad Mudassar, injured (PW.12) have consistently deposed that the appellant was the actual perpetrator but on the contrary, the defence has miserably failed to shatter the evidence of above-said witnesses, therefore, the above version adopted by the appellant appears to us to be an afterthought story, fabricated by him in order to save his skin. We may also observe here that when an accused takes a particular stance, onus to prove such stance shifts on the shoulders of accused but in this case, the defence did not produce any evidence in support of the plea of appellant. Thus, we are quite confident to hold that the prosecution has proved the ocular account through sound, cogent, motivating, trustworthy, reliable and confidence inspiring eye witness account.

16. Insofar as the contention raised by the learned counsel for the appellant that co-accused Hafiz Muhammad Ibrahim, Khuram Shahzad alias Lahori, Mst. Zainab Bibi and Mst. Sidra Bibi stood acquitted by the trial court through the impugned judgment while disbelieving the same evidence which rendered the credibility of

prosecution evidence seriously doubtful even against the appellant is concerned, we have noted that the role attributed to the acquitted co-accused was entirely different as no overt act or injury qua the deceased persons or the injured was attributed to them. In our view, acquittal of co-accused, in the circumstances of this case, is not sufficient to discredit the prosecution evidence available against the appellant.

17. It is noteworthy that the ocular account is fully corroborated by the recovery of weapon of offence i.e. pistol 30 bore (P.4) from the possession of appellant *vide* recovery memo (Exh.PB) and positive report of Punjab Forensic Science Agency, Lahore (Exh.PAA). We have observed that Aman Ullah, SI (P.13) secured seven crime empties *vide* recovery memo (Exh.PU) during spot inspection on 27-06-2016 and according to the report (Exh.PAA), all the empties were found to have been fired in the weapon of offence i.e. pistol 30 bore (P.4) recovered at the instance of appellant, therefore, the prosecution has successfully proved the recovery of weapon of offence against the appellant.

18. We have also given due consideration to the prosecution evidence with regard to motive part of the occurrence and have observed that firstly, Muhammad Haroon, complainant (PW.10) in his statement (Exh.PQ) disclosed about the existence of previous litigation between the parties and then to prove the motive part of the occurrence, the prosecution also produced copy of FIR (Exh.PBB) bearing No.267 dated 22-05-2016, under section 377 PPC registered at Police Station Urban Area, Sargodh, which was got registered by Mehmood-ul-Rasheed (deceased) against the appellant with the accusation of committing sodomy with his son namely Muhammad Mudassar, injured (PW.12), who during his court statement also fully supported the motive part of the occurrence, therefore, the prosecution has also successfully proved the motive part of its case.

19. Aftermath of above discussion is that the prosecution, by producing cogent, concrete, consistent and trustworthy evidence, has quite comfortably established that Ali Hassan alias Achoo, appellant had committed brutal and merciless murders of two innocent persons who were father and son inter-se and amongst them the latter was just aged about two and half years. The prosecution has also successfully proved beyond any shadow of doubt that the victim of motive of the occurrence had also received injuries at the hands of appellant but luckily he survived. Therefore, all the charges under section 449 PPC for trespassing into the house of complainant party; under section 302(b) PPC (on two counts) for committing Qatl-e-Amd of Mehmood-ur-Rasheed and Subhan and under sections 324, 337A(i) PPC for causing murderous assault and firearm injury to Muhammad Mudassar injured (PW.12) are proved against the appellant. We, therefore, uphold his conviction under Sections 302(b), 324, 337A(i) and 449 PPC.

20. As regards the quantum of sentences, learned counsel for the appellant though prayed for altering death sentence of appellant with the sentence of imprisonment for life on the charge under section 302(b) PPC, but he has not been able to plead any mitigating circumstance for imposing lesser penalty of imprisonment for life. The appellant (Ali Hassan alias Achoo) has committed a cruel and wanton act by taking the lives of two innocent persons and injuring a child namely Muhammad Mudassar, injured (PW.12) with whom he had allegedly committed sodomy prior to the present incident and a criminal case of that offence already stood registered against him. We, therefore, see no extenuating or mitigating circumstances for altering the death sentence rather we are convinced that only the sentence of death would meet the ends of justice.

21. For the foregoing reasons, **Criminal Appeal No. 71917 of 2019** filed by Ali Hassan alias Achoo, appellant is **dismissed**, his sentence of death on the charge under Section 302(b) PPC, on two

counts, is **upheld** and the order of payment of compensation passed against him by the trial court is also **maintained**. In the same manner, his remaining sentences under sections 324, 337A(i), 449 PPC are also **maintained** and **upheld**.

22. As the sentence of death passed by the trial court against Ali Hassan alias Achoo appellant (on two counts) has been **confirmed** by us, therefore, **Murder Reference No.256 of 2019** is answered in **affirmative**.

(Malik Shahzad Ahmad Khan)
Chief Justice

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

Chief Justice

Judge

*Announced & dictated, on 07-05-2024
Prepared and singed on 14-05-2024.*

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