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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Criminal Appeal No.24464-J of 2021

Muhammad Arshad & others Versus The State

Date of Hearing	06.06.2024
Appellant Muhammad Arshad by:	M/s Rashid Javed Lodhi, Ali Hussain, Muhammad Adnan Malik and Hafiz Sami-ur-Rehman, Advocates.
Appellants Maqsood Ahmad and Mudassar in person and by	Mr. Khurshid Anwar Bhindar, Advocate.
Complainant by:	Nemo.
State by:	Ms. Samra Irshad, Assistant District Public Prosecutor.

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Shakil Ahmad, J. Muhammad Arshad, Mudassar and Maqsood Ahmad appellants have preferred the instant Criminal Appeal through jail authorities, to challenge their conviction and sentences. They were indicted and tried by the learned Additional Sessions Judge, Depalpur along with co-accused Muhammad Din, Akram and Haq Nawaz on the charge under sections 302, 364, 109, 148, 149 PPC in private complaint titled *Muhammad Hussain vs. Muhammad Arshad and 05-others* relating to case FIR No.279 of 2014 dated 12.08.2014 registered at Police Station Mandi Ahmadabad, District Okara. Learned trial court, on conclusion of trial vide judgment dated 27.03.2021 (impugned judgment) convicted the appellants and sentenced them as under: -

Appellant Muhammad Arshad: -

- (i) *Convicted under Section 302(b) PPC and sentenced to undergo imprisonment for life and to pay compensation under section 544-A Cr.P.C. to the tune of Rs.4,00,000/- to legal heirs of the deceased and in case of default, to further undergo simple imprisonment for six months.*
- (ii) *Convicted under Section 364 PPC and sentenced to undergo rigorous imprisonment for ten years and to pay*

fine of Rs.100,000/- and in case of default, to further undergo simple imprisonment for three months.

Appellant Muhammad Maqsood Ahmad:-

Convicted under Section 364 PPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.100,000/- and in case of default, to further undergo simple imprisonment for three months.

Appellant Mudassar:-

Convicted under Section 364 PPC and sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.100,000/- and in case of default, to further undergo simple imprisonment for three months.

Co-accused Muhammad Din, Akram and Haq Nawaz were acquitted of the charge vide impugned judgment. Acquittal order of the said co-accused has not been challenged by the complainant and the same has attained finality.

2. Muhammad Hussain (PW-1) moved an application (Exh:PA) on 12.08.2014 before Station House Officer, Police Station Mandi Ahmadabad stating therein that he was cultivator by profession and his son Muhammad Amjad was doing labour in Lahore; that on 07.08.2014 at night time his son Muhammad Amjad reached at Mandi Ahmadabad after returning from Lahore and owing to his inability to find any conveyance from Mandi Ahmadabad due to his late arrival, he proceeded by foot towards the house of his sister situated at *Chah Doney-wala* and when his son reached near Head *Doney-wala*, accused persons namely Muhammad Arshad, Maqsood Ahmad, Mudassar along with two unknown persons while armed with firearm weapons riding on motorcycles came there and encircled his son; that his son Muhammad Amjad, in order to save his life, raised hue and cry, on which, Muhammad Ameer son of Muhammad Yar, Mubashar Ali son of Muhammad Zubair, Wattoo by caste and residents of *Chah Doney-wala* attracted there while having torches in their hands and accused persons abducted Muhammad Amjad with intention to kill him and took him on a motorcycle towards

Attari and the witnesses, above said, informed the complainant, whereupon the complainant convened a *Punchayat* for recovery of his son from the accused persons but they delayed the matter and did not return Muhammad Amjad; that on 12.08.2014, complainant gained a clue that his son Muhammad Amjad was confined in the house of Haq Nawaz accused whereupon complainant along with Nawab Ali son of Wali Muhammad and Muhammad Zubair son of Jan Muhammad, residents of the village, reached at *Fajar* time at the house of accused Haq Nawaz situated at *Sufaid Chowki in the area of Saddar Bala* and saw that Maqsood Ahmad, Mudassar, Haq Nawaz and two unknown accused were torturing his son by holding him from legs and arms whereas accused Arshad with *Safa* had tied *phanda* around the neck of complainant's son and pressed his neck; that on seeing the complainant and witnesses, accused persons fled away from the spot considering complainant's son as dead; that complainant and witnesses rescued his son but he succumbed to the injuries; that complainant and witnesses had witnessed the occurrence. Motive of the occurrence was stated to be previous enmity. It was further alleged that the occurrence was committed by the accused persons on the instigation of Muhammad Din and Muhammad Akram.

3. After registration of case, investigation was conducted by Maqbool Hussain Inspector (CW-5) who claimed to have reached at *Attari Patan* where dead body of Muhammad Amjad was lying on a cot; he inspected the dead body, prepared the injury statement Exh.CW-5/A, inquest report Exh.CW-5/B and application for post mortem Exh.CW-5/C and sent the dead body for autopsy through Muhammad Amin 177/C. CW-5 claimed to have inspected the place of occurrence on the pointation of complainant and PWs, recorded statements of PWs u/s 161 Cr.P.C, prepared unscaled site plan of place of abduction of Muhammad Amjad Exh.CW-5/D and on the same day he also proceeded towards the residence of Rehmat Ali father of Haq Nawaz accused and prepared unscaled site plan of place of occurrence Exh.CW-5/E. CW-6 stated to have took into possession last worn clothes of deceased vide recovery memo Exh.CW-1/A. The Investigator claimed to

have made red notes on scaled site plan Exh.CW-4/A and Exh.CW-4/B. After transfer of this Investigator from the Police Station, investigation of the case was entrusted to Muhammad Munir S.I (CW-6) who claimed to have joined into investigation the accused persons Muhammad Akram and Haq Nawaz and held in abeyance their arrest. The second investigator claimed to have received Call Data Record of phone number of deceased Muhammad Amjad and conducted investigation on this point. CW-6 was of the opinion that accused persons Muhammad Arshad, Mudassar, Maqsood Ahmad, Haq Nawaz, Muhammad Din and Muhammad Akram were found not involved in the occurrence.

4. Being dissatisfied by the result of investigation, complainant filed private complaint Exh:PB asserting therein the version narrated in application Exh.PA regarding whole occurrence. After recording of cursory statements of PWs, accused were summoned to face trial. Appellants along with co-accused were indicted. They pleaded not guilty, thus trial commenced.

5. In order to prove the charge, complainant examined as many as six PWs whereas six witnesses were examined as CWs. Muhammad Hussain (PW-1) is complainant of the case. Muhammad Ameer (PW-2) and Mubashar Ali (PW-3) are witnesses of alleged abduction. Muhammad Zubair (PW-4) and Nawab Ali (PW-5) are witnesses of ocular account. Sarfraz (CW-1) claimed to have got conducted post mortem examination of the deceased and handed over the last worn clothes to the Investigator. Muhammad Nawaz 190/HC (CW-2), Khursheed Alam ASI (CW-3) are formal witnesses. Muhammad Ishaq Nasir Draftsman (CW-4) claimed to have prepared scaled site plan. Maqbool Hussain Inspector (CW-5) and Muhammad Munir S.I (CW-6) are investigators of the case.

Medical evidence was furnished by Dr. Saad Ali Khan (PW-6), who conducted postmortem examination on the dead body of Muhammad Amjad on 12.08.2014 at 10:00 P.M and observed following injuries on the dead body: -

1. *Contusion 6 x 2 cm at right side of the neck.*

2. *Contusion 4 x 3 cm at left eye.*
3. *Abrasion 2 x 1 cm at back of right elbow joint.*
4. *Abrasion 1 x 1 cm at back of left elbow joint.*
5. *Contusion 3 x 1 cm at right upper gums just above the right canine teeth.*
6. *Contusion 1 x 1 cm at bridge of nose.*

***Opinion.** According to PW-6, cause of death was asphyxia resulting from strangulation due to injury No.1 which was sufficient to cause death in an ordinary course of nature. Probable time between injuries and death was kept under observation whereas between death and postmortem was within 18 to 20 hours.*

6. Witness Muhammad Nawaz was given up being unnecessary and complainant's evidence was closed. Thereafter, statements of appellants and co-accused were recorded under Section 342 Cr.P.C. They controverted and denied the allegations of facts came on the record in the evidence of prosecution witnesses and professed their innocence. Appellants did not opt to appear in the witness box as per Section 340(2) Cr.P.C and except appellant Muhammad Arshad, also not opted to produce defence evidence. Appellant Muhammad Arshad has produced some documents in his defence.

7. On conclusion of trial, appellants were convicted and sentenced whereas co-accused Muhammad Din, Akram and Haq Nawaz were acquitted of the charge as detailed in the opening paragraph of this judgment, hence this appeal.

8. I have heard learned counsel for the appellants and learned Assistant District Public Prosecutor and have gone through the record with their able assistance.

9. Prosecution has introduced two different episodes of incidents that ultimately resulted in murder of complainant's son Muhammad Amjad. First incidence is alleging abduction of Muhammad Amjad by Muhammad Arshad, Maqsood, Mudassar and two unknown persons at 09:00 P.M on 07.08.2014 when he was going to *Chah Doney-wala*. The second episode presents the happening that culminated in the murder of Muhammad

Amjad by accused persons namely Maqsood Ahmad, Mudassar, Haq Nawaz, Muhammad Arshad and two unknown persons. The second episode was claimed to have been witnessed by complainant Muhammad Hussain (PW-1) along with Nawab Ali and Muhammad Zubair PWs. Before entering into the appraisal of prosecution evidence on both two accounts as hinted in the preceding lines, it seems apt to first of all discuss an important aspect of the matter relating to non-presence of complainant at the spot when first incident took place. The initial lines of the FIR as well as private complaint whereby Muhammad Amjad (deceased) was shown to be returning from Lahore on 07.08.2014 and his inability to find any conveyance from Mandi Ahmadabad due to his late arrival there, his decision to proceed by foot towards the house of his sister situated at *Chah Doney-wala* and reaching at Head *Doney-wala* at about 09:00 P.M and arrival of accused persons Muhammad Arshad, Maqsood Ahmad, Mudassar and two unknown persons duly armed with firearms on motorcycles and their encircling of Muhammad Amjad and raising of noise by Muhammad Amjad, is a narration qua which whole evidence of the prosecution is silent as to from which source and mode same came into the know of complainant when from the bare reading of application for registration of F.I.R. or even the contents of private complaint it stood established that he did not either witness those happenings nor he claimed to have received information qua pre-abduction happenings from anyone including the abductee either personally or through any telephonic message/conversation. In this backdrop, the mentioning of the above hinted narration in the FIR, appears to be a cock and bull story or to say the least, a fictional account.

10. Taking up now the worth of prosecution evidence qua the abduction of Muhammad Amjad on 07.08.2014 it has been observed that as per the case put forth by complainant, Muhammad Amjad was going by foot to the house of his sister at *Chah Doney-wala* from *Mandi Ahmadabad* and when he reached ahead of Head *Doney-wala*, five persons viz., Muhammad Arshad, Maqsood Ahmad, Mudassar and two unknown, armed with firearms, came there on motorcycles and they encircled Muhammad Amjad

and the latter raised noise to save his life, whereupon Muhammad Ameer (PW-2) and Mubashar Ali (PW-3) attracted there while having torches and on seeing them, accused persons abducted Muhammad Amjad with intention to kill him and took him on a motorcycle towards Attari and the above said witnesses claimed to have informed the complainant, whereupon the complainant convened *Punchayat* for recovery of his son from the accused persons but they delayed the matter and did not return Muhammad Amjad. Undeniably, the complainant having received so called information qua abduction of his son, did not report the matter to police and instead he claimed to have convened *Punchayat*. Non-reporting of the matter by complainant to police is simply beyond one's comprehension as if complainant's son in fact was abducted in the way as detailed in the F.I.R. and private complaint, normal and natural course available to complainant was to immediately report the matter to police in order to save the life of his son particularly when as per complainant's own version there existed previous enmity between the parties. Nothing plausible has been put forth by the complainant for not resorting to the appropriate mode of approaching the police for the recovery of his son. Explanation so put forth by complainant qua convening of *punchayat* hardly furnishes any plausible and reasonable ground for not reporting the matter to police. It may also be seen that in the complaint, no time whatsoever has been mentioned when PWs Muhammad Ameer and Mubashar Ali shown to have informed the complainant about the abduction of his son. While appearing in the witness box as PW-2, Ameer Ali in his examination-in-chief stated that they informed the complainant while reaching his home. This assertion of PW-2, however, was contradicted by Mubashar Ali (PW-3) in his cross-examination by stating that they told the matter to a passerby and the passerby informed the complainant about the abduction of his son. It may also be seen that as per own showing of complainant and his witnesses, Mubashar Ali (PW-3) is very close relative of the complainant whereas Ameer Ali PW-2 is from brotherhood of Mubashar Ali. Both these PWs made certain improvements in their statements which were alien to their earlier narrations before police. The

improvements made by these PWs were duly confronted to them during cross-examination. The contents of complaint nowhere indicate that in the entire episode of abduction of Muhammad Amjad, he was subjected to physical torture by the accused persons. Mubashar Ali (PW-3) in his cross-examination, however, stated that Muhammad Amjad was also tortured by the accused persons. He stated that Muhammad Amjad was being beaten up by the accused for around four minutes. He also introduced a new stance by stating that *Sota* blows and *Butt* blows were received by Muhammad Amjad. This whole narration qua physical torture on Muhammad Amjad by accused persons during his alleged abduction, at one hand is in conflict with the contents of complaint and on the other a weapon like *Sota* has also been introduced which nowhere finds mention in the complaint. Another important discrepancy in the prosecution case that needs to be hinted is that according to the contents of complaint, when Muhammad Ameer and Mubashar Ali PWs attracted to the spot, on seeing them accused persons abducted Muhammad Amjad and took him towards Attari. However, complainant (PW-1) in his examination-in-chief introduced an altogether strange version that PWs (Muhammad Ameer and Mubashar Ali) identified the accused persons and warned them whereupon accused persons extended them threats. It would not be out of context to mention here that according to the contents of complaint, Muhammad Hussain complainant when received information from Muhammad Ameer and Mubashar Ali qua abduction of his son, he convened *Punchayat* for recovery of his son. In his examination-in-chief, complainant PW-1 however introduced a different version by stating that he demanded return of his son from Asghar son of Kareem in presence of Muhammad Ameer and Mubashar Ali PWs and he four times demanded return of his son from accused persons through *Punchayat*. It may also be seen that as per prosecution's case, Muhammad Ameer and Mubashar Ali PWs were shown to have attracted to the spot when Muhammad Amjad raised noise to save his life as he was encircled by five duly armed accused persons owing to previous enmity. The venue reflected by the prosecution as the place where Muhammad Amjad was abducted by the accused persons, as

per own showing of PWs, was at a distance of around three acres from the abode of PWs Muhammad Ameer and Mubashar Ali. Undeniably, 20-25 houses of other people were also situated near the place of alleged abduction but strangely enough, nobody except Muhammad Ameer and Mubashar Ali (both related to complainant) was shown to have attracted to the spot on hearing the noise raised by Muhammad Amjad.

11. In view of the discrepant version of the complainant and PWs as discussed in detail in the preceding two paragraphs, this Court is of the considered view that the first episode of crime introduced in this case qua abduction of Muhammad Amjad by the accused persons on 07.08.2014 in presence of Muhammad Ameer (PW-2) and Mubashar Ali (PW-3) is a highly doubtful affair and is not proved through confidence inspiring evidence.

12. Coming now to the second episode of occurrence whereby Muhammad Amjad son of the complainant was shown to have been done to death by accused persons on 12.08.2014, as discussed in the preceding paragraphs, the matter qua alleged abduction of complainant's son was not reported to police prior to 12.08.2014. It was claimed by the complainant that on 12.08.2014, he received a clue that his son was confined in house of Haq Nawaz accused situated in *Dhari Rehmat Ali Daakhli Saddar Bala Chowki Sufaid*, whereupon he along with Nawab Ali and Muhammad Zubair PWs reached the said place at *Fajar* time and saw that Maqsood Ahmad, Mudassar, Haq Nawaz and two unknown accused had overpowered Muhammad Amjad and they were torturing him whereas Muhammad Arshad had strangulated Muhammad Amjad with a cloth (*Safa*). The entire case of prosecution is silent as to from where the complainant received information that his son was confined in the house of Haq Nawaz. Likewise, none of the accused was shown to have been armed with any kind of weapon when they were inflicting torture and ultimately murdered Muhammad Amjad, yet no attempt whatsoever was shown to be made by the complainant or the PWs, who undeniably were closely related to the deceased, to save the life of Muhammad Amjad by practically restricting

assailants or to the least making any sort of earnest supplication to the accused persons. It is also strange to note that when complainant as per his own version was aware of the fact qua the abduction of his son by the accused persons with whom he had previous animosity and he came to know about the presence of his son at a certain place, why did he not report the matter to police to take police officials with him to rescue his son, is a question that at one hand remained mystery and on the other, reflects that the story qua witnessing of the occurrence in the result of which Muhammad Amjad was done to death, was an after-thought idea to show presence of complainant and witnesses at the spot. The whole conduct of the complainant and prosecution witnesses can conveniently be counted as pathetic one and same runs counter to the natural human conduct and behavior in the ordinary course of events. Provisions of Article 129 of Qanun-e-Shahadat Order, 1984 allow the courts to presume the existence of any fact, which it thinks likely to have happened in the ordinary course of natural events and human conduct in relation to the facts of a particular case. The conduct of witnesses of ocular account in the instant case vividly was opposite to the common course of natural events and human conduct, further suggesting that the witnesses of ocular account were not present at the time of occurrence. I am fortified in my view from the principles laid down by the Supreme Court of Pakistan in case reported as “*Pathan v. the State*” (2015 SCMR 315) wherein it was observed that causing of large number of injuries one after another to the deceased with scissors must have consumed reasonable time due to pause in between the first injury and the last one but all the three PWs including the son with a strong stature and built remained as silent spectators and did not react or show any response when the accused was causing injuries. It was further observed in said case as under:-

“No man on the earth would believe that a close relative would remain silent spectator in a situation like this because their intervention was very natural to rescue the deceased but they did nothing---”

While the foregoing is sufficient, in itself, to cast doubt on the presence of PWs of ocular account at the spot, there is nonetheless another important aspect of the case that requires consideration that according to prosecution story, Muhammad Amjad was abducted by the accused persons on 07.08.2014 and accused persons started beating him in their house at Fajar time on 12.08.2014 when complainant and his witnesses who claimed to have reached at the spot. It would be hard to believe that assailants would have waited for arrival of PWs so as to enable them to witness the occurrence and on their arrival they started causing injuries on the person of Muhammad Amjad. Such a behavior on the part of assailants is not in consonance with the natural human behavior and it can very conveniently be inferred that PWs were not present at the spot and they have merely been introduced as witnesses of ocular account after due deliberations and consultation. Reliance in this respect may safely be placed on case reported as “The State through Advocate General Khyber Pakhtunkhwa, Peshawar v. Hassan Jalil and others” (2019 SCMR 1154), wherein it was observed that arrival of PWs at the venue exactly on a point of time when assailants allegedly did away with deceased, in itself is a circumstances that reflected on the very genesis of the prosecution case. Similar view was taken by august Supreme Court of Pakistan in case reported as “Muhammad Imran v The State” (2020 SCMR 857), wherein it was observed that arrival of witnesses exactly on a point of time when accused started inflicting blows to the deceased, with their inability to apprehend him, without there being any weapon to keep them away, casts shadows on the hypothesis of their presence during the fateful moments. This aspect of the matter when is seen in conjunction with above discussed aspect qua conduct of the PWs, they can conveniently be termed as chance witnesses.

13. It may also be seen that motive for commission of crime as asserted in the FIR is that there is enmity between complainant side and accused Arshad etc on a murder case. Muhammad Hussain complainant PW-1 in his examination in chief, however, stated the motive that accused persons Arshad etc had enmity with them for the murder of Ramzan. In

cross examination, complainant PW-1 provided certain details of the criminal cases against both the parties. According to him, he was implicated by the accused side in a criminal case for the offence under section 324 PPC through supplementary statement. Complainant PW-1, however, admitted it correct during cross examination that no FIR was got registered by accused persons against his son Amjad (deceased). It was version of complainant PW-1 during cross examination that the accused persons being inimical to him, murdered his son. It is deduced in this backdrop that accused persons did not have any specific motive against the deceased, rather their hostility was with the whole kinfolk of complainant. If it is believed that the accused persons had criminal rivalry with the complainant's clan, then prime target of the assailants should have been complainant and PWs and not the deceased but strangely enough, the accused were shown to have targeted Muhammad Amjad son of the complainant opting not to cause any sort of harm to complainant and PWs. The motive set up by the complainant even if is taken as gospel truth there is no explanation on the record as to why only deceased from the complainant's side was targeted by the accused when the complainant against whom they had grudge, was also available at the place of occurrence along with his real brother Muhammad Zubair Ali (PW-4). Even it is highly unlikely that accused persons would have spared the witnesses of ocular account for allowing them to become witnesses and depose against them for sending them to gallows. So, the conduct of accused persons during the occurrence ran counter to natural human conduct and the behavior explained in the provisions of Article 129 of the Qanun-e-Shahadat, 1984. Guidance has been sought from the dicta laid down in cases Zahir Yousaf and another v. The State and another (2017 SCMR 2002) and Mst. Rukhsana Begum and others v. Sajjad and others (2017 SCMR 596). Legitimate and irresistible conclusion that may conveniently be drawn from the above discussed facts is that the occurrence in consequence of which Muhammad Amjad lost his life, did not take place in the mode and manner as stated by the witnesses of ocular account. It is also a settled principle of law that motive is always considered as a double

edged weapon which cuts both ways. It can be used by the accused to take revenge and at the same time can be a tool used by the complainant for false charge as well. There is also no cavil with the proposition that lack of motive, its weakness or even its non-proving is never fatal to prosecution case qua awarding conviction if a case otherwise stands proved through direct evidence with regard to the occurrence, however, at the same time the motive that is always considered a corroborative piece of evidence, even if is proved, the same alone cannot be made basis for conviction of an accused on capital charge particularly where evidence of ocular account is totally disbelieved inasmuch as in such eventuality worth of evidence of motive would stand reduced to nil. As the ocular account in this case has already been disbelieved, the evidence of motive would have no consequence qua conviction. It is an admitted rule of appreciation of evidence that motive is only corroborative piece of evidence and if the ocular account is found to be unreliable then motive alone would have no evidentiary value.

14. Looking the matter from a different angle, occurrence of murder of Amjad Iqbal, as per the contents of private complaint took place around Fajar time on 12.08.2014 whereas written application Ex.PA was claimed to have been moved at 01:05 P.M. In this way, crime alleged to have taken place around Fajar time (04:30 A.M to 05:30 A.M), was reported to police with delay of around 08 hours. No explanation whatsoever has been put forward by the prosecution for such inordinate delay. This being so, there could have been no reason for moving of application Ex.PA at 01:05 P.M, except preliminary investigation and prior consultation to nominate the accused and plant eyewitnesses of the crime. It may also be seen that autopsy in this case was conducted at 10:00 P.M. i.e. after around seventeen hours of the occurrence. According to post mortem examination report Ex.PC/2, dead body was received in hospital at 05:00 P.M. and police papers were received at 09:30 P.M. No plausible explanation is forthcoming by the prosecution to justify such a belated submission of police papers and post mortem examination and the same would give rise to a legitimate presumption that police papers were sent to hospital after deliberations and

consultation. Reliance in this regard may safely be placed on case reported as Muhammad Rafique alias Feeqa v. The State (2019 SCMR 1068), wherein following observation was made: -

“---Such unexplained delay in the post mortem of a deceased would surely put a prudent mind on guard to very cautiously assess and scrutinize the prosecution’s evidence---In such circumstances, the most natural inference would be that the delay so caused was for preliminary investigation and prior consultation to nominate the accused and plant eyewitnesses of the crime.”

It would not be out of context to mention here that according to the case put forth by complainant, death of Muhammad Amjad was result of physical torture on him by accused persons and strangulation caused by Arshad accused with a cloth (*safa*). Medical Officer PW-6 observed injury No.1 a contusion 6 x 2 CM at right side of neck of the deceased and opined that cause of death is asphyxia resulting from strangulation due to injury No.1. In cross examination, however, PW-6 admitted it correct that there was no contusion, laceration or abrasion present on the right side, backside or front side of neck. Medical Officer also admitted it correct in cross examination that if strangulation is committed by wrapping the rope, cord or *safa*, then injuries would be all around the neck. This admission on the part of Medical Officer, indeed contradicts the version of ocular account whereby Muhammad Arshad accused was shown to have strangled the deceased with a *safa*. Therefore, it can very conveniently be inferred that medical evidence in this case is in contradiction with the ocular account. Medical evidence although is corroboratory in nature, however, it is an established principle of law that corroborative piece of evidence is meant to test the veracity of ocular evidence and both corroborative and ocular testimonies are to be read together and not in isolation. Guidance has been sought from case “Noor Muhammad v. The State” (2010 SCMR 97). Had witnesses of ocular account been present at the spot and witnessed the occurrence as claimed by them, there could have been no possibility of conflict in between ocular account and medical evidence qua the mode of causing death of Muhammad Amjad. Where oral evidence is inconsistent with the medical

evidence, oral evidence cannot be accepted to be made basis for the conviction of an accused. Guidance has been sought from case “Barkat Ali v. Muhammad Asif and others” (2007 SCMR 1812). It has also been held in Abdul Subhan’s case PLD 1994 SC 178 that if medical evidence leaves room for doubt, benefit of that doubt should go to accused and not to prosecution. In view of glaring conflict in between ocular account and medical evidence that indeed belies the version of witnesses of ocular account of having witnessed the occurrence at the spot, their presence at the spot is not free from the doubts.

15. Adverting now to the investigation of this case, the same had negated the version of the complainant party and signaled about non-involvement of the accused in the alleged occurrence by giving detailed reasons qua the death of Muhammad Amjad and ultimately they were placed in column No.02 of the report under section 173 Cr.P.C. Opinion of police though is not binding upon the Court, yet in the backdrop of above hinted discrepancies in prosecution’s case, same had not been found to be biased and also creates doubt qua culpability of appellants. The appellants are, therefore, entitled to the benefit of doubt as a right. Reliance in this regard may safely be placed on case reported as “Khalid Mehmood and others v. The State” (2011 SCMR 664), wherein the Supreme Court of Pakistan held as under: -

“Adverting to the case of Abid Hussain appellant, it may be observed that no weapon of offence has been effected from his possession. He was found innocent by different police agencies including Ch. Akhtar Hussain, DSP, CIA, Sheikhpura and got discharged from the Court of the Magistrate, which order was not challenged by the complainant. We entertain serious doubt in our minds regarding participation of appellant Abid Hussain in the commission of crime. The evidence of the complainant and Nasir Ahmad P.Ws. qua appellant Abid Hussain is not credible and trustworthy.

(Underlining is to supply emphasis)

16. In view of peculiar facts and circumstances of this case, presence of witnesses of ocular account at the spot is highly doubtful and possibility of lodging of F.I.R. by nominating the accused persons after

some deliberation and consultation cannot be ruled out. Prosecution's case from its inception to end remained replete with doubts whereas as per established principle of law, when a single circumstance creating reasonable doubt in a prudent mind about the guilt of accused arises, he would be entitled to such benefit as a matter of right. Reliance in this regard may safely be placed on case reported as *Tariq Pervez v. The State* (1995 SCMR 1345).

17. Upshot of above discussion is that prosecution hopelessly failed to prove its case against appellants. The evidence produced in this case by complainant could not be relied upon for awarding conviction. Therefore, respectfully following the dicta laid down by the Supreme Court in above referred case findings of conviction recorded against appellants by learned Additional Sessions Judge, Depalpur in the impugned judgment are not sustainable, which are hereby set aside allowing the instant criminal appeal. Consequently, appellants **Muhammad Arshad, Mudassar and Maqsood Ahmad are acquitted of the charge** extending benefit of doubt to them. Appellant Muhammad Arshad is in jail. He is ordered to be released forthwith if not required to be detained in any other case. Appellants Maqsood Ahmad and Mudassar are on bail. Their bail bonds are cancelled and sureties stand discharged of the liability of bail bonds.

(Shakil Ahmad)
Judge

Approved for reporting

Judge

*Azhar**