

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Murder Reference No. 434 of 2010
(Ahmad Din v. Abdul Sattar alias Sattari etc)

Criminal Appeal No. 1207 of 2010
(Abdul Sattar alias Sattari etc v. The State)

JUDGMENT

Date of hearing: 01.04.2015.

Appellants by: Mr. Shahzad Saleem Warraich, Advocate.

Complainant by: Ch. Masood Ahmad Zafar, Advocate.

State by: Mr. Humayoun Aslam, Deputy Prosecutor General.

Aalia Neelum, J.- Abdul Sattar alias Sattari son of Safdar, Caste Rajpoot, resident of Chak No.17, Tehsil Chunian, District, Kasur, (2) Khalid alias Khaldi son of Ramzan alias Shida, Caste Rajpoot, resident of Wazirkey, Alipur Chattha, Gujranwala, (3) Nazir Ahmad alias Kali son of Safdar, Caste Rajpoot, resident of Chak No.17, Tehsil Chunian, District, Kasur and (4) Ebad Ali son of Muhammad Khan, Caste Rajpoot, resident of Lambay Khalsa, Tehsil Chunian, District, Kasur appeallants (Crl.Appeal No.1207 of 2010) along with Iqbal alias Bali (since acquitted), Shahra (since acquitted), Qasim Ali (since acquitted), Hakim Ali (since acquitted), Jabbar alias Baggi (since acquitted) and Rehmat alias Mhami (since acquitted) were involved in private complaint under Sections 302, 170, 148, 149 P.P.C., and were tried by Mr. Muhammad Ajmal Hussain, Additional Sessions Judge, Kasur. The learned

trial court seized with the matter in terms of judgment dated 04.05.2010 convicted the appellants as under:-

Sr.No.	Appellant	Conviction and Sentence.
1.	Abdul Sattar alias Sattari	Convicted under Section 302 (b) PPC and sentenced to <u>death on four counts</u> along with compensation of Rs.100000/-to the legal heirs of deceased and in default thereof, further undergo six months S.I. The compensation amount will be recoverable as arrears of land revenue. <u>Further convicted</u> under Section 302 (b) PPC read with Section 149 PPC and sentenced <u>to life imprisonment on four counts</u> along with compensation of Rs.100000/-on each count to the legal heirs of deceased persons and in default whereof, he will undergo six months S.I. The compensation will be recoverable as arrears of land. Benefit of Section 382-B of Cr.P.C. was also extended in his favour. All sentences will run consecutively.
2.	Khalid alias Khaldi	Convicted under Section 302 (b) PPC and sentenced to <u>death</u> along with compensation of Rs.100000/-to the legal heirs of deceased and in default thereof, further undergo six months S.I. The compensation amount will be recoverable as arrears of land revenue. <u>Further convicted</u> under Section 302 (b) PPC read with Section 149 PPC and sentenced <u>to life imprisonment on four counts</u> along with compensation of Rs.100000/-on each count to the legal heirs of deceased persons and in default whereof, he will undergo six months S.I. The compensation will be recoverable as arrears of land. Benefit of Section 382-B of Cr.P.C. was also extended in his favour.
3.	Ebad Ali	Convicted and sentenced under Section 302 (b) PPC read with Section 149 PPC and sentenced <u>to life imprisonment (R.I) on five counts</u> along with compensation of Rs.100000/-on each count to the legal heirs of deceased persons and in default whereof, he will undergo six months S.I. The compensation will be recoverable as arrears of land. Benefit of Section 382-B of Cr.P.C. was also extended in his favour.
4.	Nazir Ali alias Kali	Convicted and sentenced under Section 302 (b) PPC read with Section 149 PPC and sentenced <u>to life imprisonment (R.I) on five counts</u> along with compensation of Rs.100000/-on each count to the legal heirs of deceased persons and in default whereof, he will undergo six months S.I. The compensation will be recoverable as arrears of land. Benefit of Section 382-B of Cr.P.C. was also extended in his favour. All the sentences shall run consecutively.

2. Feeling aggrieved by the judgment of the learned trial court, Abdul Sattar alias Sattari, Khalid alias Khaldi, Nazir Ahmad alias Kali and Ebad Ali

have assailed their conviction through filing Crl. Appeal No.1207/2010. The learned trial court forwarded Murder Reference No.434/2010 for confirmation of death sentence inflicted upon the convicts, namely, Abdul Sattar alias Sattari and Khalid alias Khaldi. As all the matters are arising out of one and the same judgment of the learned trial court, therefore, these are being disposed of through single judgment.

3. Precisely, the story as contained in the private complaint (Exh.PB) lodged by Ahmad Din (PW-1) is that on the night of 03.8.2003 the complainant along with Ghulam Muhammad alias Gaman went to the house of Hassan Ahmad (*bhanja* of the complainant) and stayed over there for a night. In the morning of 04.08.2003 at 5.30 a.m. the complainant woke up for Fajjar prayer, meanwhile, the accused-appellants along with their companions, having worn police uniforms, equipped with firearm weapons entered into the Havili by scaling over the wall. The complainant made Hassan Ahmad and others woke up by informing that police had come. The complainant along with Hadayat and Ghulam Muhammad alias Gaman made them hide near a wall and saw that those are not police employees, rather those were (1) Abdul Sattar alias Sattari, (2) Nazir Ahmad alias Kali, (3) Iqbal alias Bali, (4) Khalid alias Khalidi, armed with .12-bore repeater (5) Ebad Ali, (6) Niaz Ahmad, (7) Sarfraz alias Seebha, armed with pump-action guns, (8) Shahra (9) Qasim Ali (10) Hakim Ali (11) Jabbar alias Baggi (12) Muhammad Altaf (13) Fayyaz (14) Sher alias Sheri armed with pump-action (15) Rehmat Ali alias Mahi armed with rifle and six other unknown persons while armed with deadly weapons were also remained standing outside the Haveli. Abdul Sattar alias Sattari made fire with repeater which hit Bhanja of the complainant, namely, Hassan Ahmad on right side of his head. Nazir alias Kali made fire with repeater gun which hit Idrees son of Hassan Ahmad on his left flank(*vakhi*). Iqbal alias Bali son of Safdar while armed with repeater also made fire with repeater gun which also hit Idrees on his left flank (*vaki*). Altaf and Sher alias Sheri made two fires with pump action guns which hit Shafique son of Hassan Ahmad. Ebad Ali, Sarfraz alias Sapha

and Niaz Ahmad accused made fires with pump action guns which hit Wazir Ali son of Hassan Ahmad on different parts of his body. Shahra made fire with .12 bore gun which hit Ghafooran Bibi daughter of Hassan Ahmad. Khalid alias Khalidi also made fire with repeater gun hitting Ghafoorn Bibi on different parts of her body. Hassan Ahmad, Idrees, Shafique, Wazir Ali and Ghafooran Bibi succumbed to injuries sustained by them at the spot. Ultimately, the accused persons fled away after making indiscriminate firing. The occurrence was seen by Khalil Ahmad and Jahangir Ali. The motive behind the alleged occurrence is that previous enmity exists between the parties.

4. Earlier on the oral complaint (Ex.PA) of the complainant-PW-1 FIR (Ex.PA/1) was lodged on 04.08.2003. On the receipt of information regarding the occurrence Muhammad Rafique, Inspector (PW-14) reached the place of occurrence along with other police officials and collected blood stained earth from five spots and sealed them through recovery memos Exh.DD to Exh.DH; recorded the statements of the witnesses, secured crime empties into possession through recovery memo Exh.PC, also prepared rough sketch map of the place of occurrence (Exh.CW-14/1). He also prepared injury statements of the deceased Ex.CW-14/13 to Ex.CW-14/13-17. He also prepared inquest reports Exh.CW14/2 to 6 regarding the deceased, Mst. Ghafooran Bibi, Muhammad Idrees, Hassan Ahmad, Wazir Ali and Muhammad Shafique respectively. The dead bodies were escorted to the THQ Hospital for its autopsy. After post mortem examination, last worn clothes of all the five dead bodies were taken into possession by the Investigating Officer through memos Exh.PJ, PK, Pl, PM & Exh.CW1/1. On 29.9.2003, the (CW-14) arrested accused Abdul Sattar, Rehmat alias Mahdi, Ebad Ali. During the course of interrogation after disclosure Abdul Sattar, Rehmat @ Mahdi, Ebad led to the recoveries of weapon of offence from the house of Abdul Ghaffar resident of Chunian. Abdul Sattar-accused led to the recovery of repeater (P-9) which he took into possession vide recovery Exh.PN, Rehmat-accused led to the recovery of 7-MM rifle (P-10) which he took into possession vide recovery Exh.PO, Ebad-accused

led to the recovery of pump action 12-bore (P-11), which he took into possession vide recovery memo Ex.PQ, After preparation of recovery memos, statements of the PWs were also recorded by the Investigating Officer besides sketch of map of the place of recoveries (Exh.CW-14/7). On 25.10.2003, during interrogation the Investigating Officer declared accused Shahnawaz, Sharafat Ali, Abdul Jabbar and Hakim Ali innocent.

5. Thereafter, on 22.11.2003 investigation came before Nasir Mahmood Bajwa, DSP, the then SHO, police station Chunian. On 24.11.2003 he arrested accused Khadim Hussain alias Khalid son of Muhammad Ramzan and effected recovery of pump action 12-bore (C-6) along with five cartridges (C6/1-5) from Khadim Hussain and took the same into possession vide recovery memo Exh.CW6/1. He prepared site plan of the place of the recovery. He also drafted complaint under section 13 of Arms Ordinance XX of 1965 and sent the same to police station for registration of case. After completion of the investigation, the Investigating Officer sent the accused to judicial lock up. Thereafter, on 10.02.2004, investigation came before Zulfiqar Ali, SI (CW-16), who recorded statement of Shaukat Ali, Moharrar and Abdul Karim, constable. He obtained warrants of arrest Exh.CW16/1-7 of accused Iqbal alias Bali, Nazir alias Kali, Sarfaz, Niaz Ahmad, Muhammad Altaf, Fayyaz and Sher @ Sheri and handed over the same to Irshad Ali, ASI for execution. He also obtained proclamation of above said accused and handed over to Irshad Ali, ASI for execution. He also recorded statement of Irshad Ali, ASI under section 161 Cr.P.C. He submitted challan against these accused under section 512 Cr.P.C. The complainant through written application (Ex.DD) nominated Iqbal and Tanveer Iqbal as accused in the FIR on 19.08.2004. He also recorded statement of complainant under section 161 Cr.P.C. On 20.8.2004 he recorded statement of PWs Irshad and Akbar under section 161 Cr.P.C. On 11.11.2004 he arrested accused Iqbal and interrogated him. On 17.11.2004 he also arrested accused Nazir alias Kali

and obtained his physical remand and found the accused innocent. On 31.12.2004 he got completed challan of these accused on the insistence of complainant.

6. Having found the appellants guilty, the Investigating Officer prepared report under section 173 Cr.P.C and sent the same to the Court of Session enrooted through the learned Illaqa Magistrate as provided under section 190 (2) Cr.P.C. Iqbal, Nazir Ahmad, Niaz Ahmad, Sarfraz, Muhammad Altaf, Fayyaz, Sher alias Sheri were declared proclaimed offender. Later on, Iqbal alias Bali, Nazir Ahmad alias Kali, proclaimed offender were arrested and the police submitted their supplementary challan. Dissatisfied with the result of investigation, the complainant filed a private complaint (Exh.PB) on 12.01.2010 in line with the FIR against the appellants and their co-accused, before the learned Illaqa Magistrate who sent the same to the worthy Sessions Judge, Kasur for its entrustment to the court of competent jurisdiction. The learned trial court after hearing preliminary arguments, summoned all the accused persons to face their trial.

7. After appearance of accused persons, they were formally charge sheeted by the learned trial court in terms of order dated 10.12.2005 respectively, to which they pleaded not guilty and claimed trial. The prosecution in order to advance its case, produced as many as four prosecution witnesses. Ocular account in this case is coming from the statements of Ahmad Din (PW-1), Ghulam Muhammad alias Gaman (PW-2) and Hadayat (CW-5). Khalil Ahmad (PW-3) and Jahangir (CW-3) are the witnesses of Waj-Takkar. Master Muhammad Sadiq Qamar, draftsman (CW-9) prepared scaled site plans Exh.CW-9/1-2 and handed over the same to the Investigating Officer on 08.08.2003.

8. Dr. Farzana Shaheen (CW-12) had conducted postmortem examination upon the dead body of deceased Mst. Ghafooran Bibi on 04.8.2003 and found the following injuries:-

INJURIES

1. *Two lacerated wounds each 1 x 1 cm on back of left elbow 5 cm apart from each other and communicated to each other.*
2. *Six penetrating wounds each 1 x 1 cm in an area of 15 x 8 cm on left side of abdomen in left iliac fossa 6.0 cm below and left to umbilicus. These were all ante-mortem wounds.*
3. *Two penetrating wounds each 2 x 2 cm x 3 cm apart from each other and communicating with each other on front of left thigh.*

OPINION.

According to her opinion, the cause of death was due to hemorrhage caused by abdominal injury which was sufficient to cause death in the ordinary course of nature. The probable time between injuries and death was immediate and between death and postmortem was 13 hours. Ex.CW-12/1 is carbon copy of postmortem report Ex.CW-12/1-A which is pictorial diagram of injuries which bear her signatures.

9. On the same day, Dr. Muhammad Arif Mehmood had conducted postmortem examination on the dead body of the **deceased Wazir Ali** and found the following injuries:-

INJURIES

1. *The multiple lacerated wound $\frac{3}{4}$ cm diameter margins inverted and it was bond deep and present on the left upper and forearm. There was fracture of the left radius and ulna. One pellet was recovered from the left upper arm.*

2. *Lacerated wound two in numbers on the left side of the abdomen, lateral part wounds were abdominal cavity deep. Margins of the wounds were inverted.*
3. *Lacerated wound size $\frac{3}{4}$ cm diameter margins were inverted and it was chest cavity deep and it was present on the back of chest left side lateral part, 6 cm below the left axilla. One pellet was recovered from the chest cavity.*

OPINION.

As per his opinion death had occurred due to hemorrhagic due to injuries. The probable duration between injury and death was immediate and duration between death and postmortem was 6 to 12 hours. Ex. CW-13/1 is the correct carbon copy of postmortem report and Ex.CW-13/1-A is sketch of injuries which bore his signatures.

10. Similarly on the same day, Dr. Muhammad Arif Mehmood had conducted postmortem examination on the *dead body of deceased Idrees* and found the following injuries:-

INJURIES

1. *Lacerated wound 3 cm diameter, margins were inverted and it was chest abdominal cavity deep. Margins were blackened and it was present on the back of the lower part of the left side of the chest wound was directed to the right side.*
2. *Two lacerated wounds $\frac{3}{4}$ cm diameter each. Margins were everted on the right side of the abdomen 4 cm above the right iliac fossa. Injury No.1 entry wound and 2 was exit wound. Injuries No.1 & 2 were communicated each other.*

OPINION.

After thorough postmortem examination, the doctor has opined that death had occurred due to shock and hemorrhagic due to injuries. The probable time between injuries and death was immediate and duration between death and postmortem was 6 to 12 hours. Ex. CW-13/1 is the correct carbon copy of postmortem report and Ex. CW-13/1-A is the sketch of injuries which bore his signatures.

11. On the same day, Dr. Muhammad Arif Mehmood had conducted postmortem examination on the dead body of deceased Shafique and found as under:-

INJURIES

1. *Lacerated wound 3 cm diameter. Margins were inverted and blackened on the left side of the chest 3 cm left of mid line and 4 cm medial to left nipple. Wound was going invert and laterally. It was entry wound.*
2. *Lacerated wounds in numbers, $\frac{3}{4}$ cm x 1 cm. Margins were everted and were chest cavity deep on the left side of the chest lateral side and upper part of abdominal. Injuries 1 and 2 were communicated with each, so injury No.1 entry wound and injury No.2 was exit wound.*
3. *Lacerated wound $\frac{3}{4}$ cm diameter. Margins were inverted and it was skin deep on the left upper arm.*

OPINION.

After thorough postmortem examination, the doctor has opined that death was caused due to shock and hemorrhage due to injuries. The probable time between injuries and death was immediate and duration between death and postmortem was 6 to 12 hours. Ex. CW-13/3 is the correct carbon copy of postmortem report and Ex. CW-13/3-A is the sketch of injuries which bore his signatures.

12. On the same day, Dr. Muhammad Arif Mehmood also conducted postmortem examination on the dead body of deceased Hassan Ahmad and found the following injuries:-

INJURIES

1. *Lacerated wound 15 cm x 8 cm brain cavity deep on the right side of head. Margins were inverted and blackened. Right parietal and right occipital bones were fractured. Brain matter was damaged badly. One pellet was recovered from the brain cavity.*

OPINION.

After thorough postmortem examination, the doctor has opined that death had occurred due to shock and hemorrhage due to injury. The probable time between injuries and death was immediate and duration between death and postmortem was 6 to 12 hours. Ex. CW-13/4 is the correct carbon copy of postmortem report and Ex. CW-13/4-A is the pictorial diagram of injury which bore his signatures.

13. Rest of the prosecution witnesses are formal in nature.

14. On 08.03.2007 the complainant Ahmad Din has given up PWs Hadayat and Jehangir Ali whereas Muhammad Ramzan PW was given up on 21.03.2009 being un-necessary. On 25.07.2009, the complainant Ahmad Din closed his evidence while tendering the reports of Serologist Ex.PR, reports of Chemical Examiner as Ex.PS, Ex.PT, Ex.PU, Ex.PV, Ex.PW and reports of Forensic Science Laboratory as Ex.PX, Ex.PY and Ex.PZ.

15. The appellants were also examined under Section 342, Cr.P.C., wherein the appellants opted to produce defence evidence. The appellants also opted not to appear as their own witnesses in terms of Section 340(2) Cr.P.C., in disproof of the allegations levelled against them in the prosecution evidence.

16. While replying to a question, why this case and why the PWs and CWs have deposed against him, the appellant Abdul Sattar alias Sattari made the following deposition:-

“I adopt the same story as narrated by my co-accused Abdul Jabbar alias Baggi. I am innocent”.

17. Nazir Ahmad alias Kali appellant replied this particular question in the following terms:-

“I was declared innocent by the I.O during investigation since I was employee in shop of Rana Scrape situated at Chowk Yateem Khana Lahore. The PWs have deposed falsely against me being close relative to each other. Furthermore according to medical evidence there is no any entry wound on the right flank of the deceased, Muhammad Idrees. The prosecution story is totally false

and has been concocted and fabricated due to my previous enmity with the complainant party. According to the medical expert, fire arm injury could not be caused to the deceased while in lying position. Thus from it, it appears that none of the witnesses have witnessed the occurrence. In fact the complainant and the PWs had reached the place of occurrence after the occurrence. Hence, the medical sample has falsified the prosecution story”.

18. Khalid alias Khaldi appellant while replying to this particular question stated as under:-

“My original name is Khadim Hussain and I have been falsely implicated in this case without any cogent reason. PWs have deposed falsely against me since they are close relatives to each other. I am permanently residing at Gujranwala and I have been involved falsely in this case due to my relationship with my co-accused. In fact some other person was Khalid Hussain to whom the police did not trace out. So, I have been falsely implicated in this case by the police”.

19. Ebad Ali appellant while replying to this particular question stated as under:-

“I have been falsely involved in this case due to my relationship with my co-accused. Neither I committed the offence nor have any concern whatsoever with it. I am innocent. Moreover no weapon of offence has been recovered from me during investigation”.

20. In defence evidence, Zahoor Ahmad, Muhammad Akram, Muhammad Khalil and Muhammad Nadeem were produced as DW-1 to DW-4 respectively and thereafter closed the defence evidence on 17.10.2009.

21. Learned trial court after evaluating the evidence available on record in light of arguments advanced from both sides, found the prosecution version proved beyond shadow of reasonable doubt resulting into conviction of the appellants in the afore stated terms.

22. Arguments advanced from both sides have been heard. We have also gone through the record available on file with the able assistance of learned counsel for the appellants and learned counsel for the complainant as well as Deputy Prosecutor General.

23. The occurrence according to the prosecution took place at 5.30 a.m. on 04.8.2003. It is the prosecution case that on the night of 03.8.2003 Ahmad Din-complainant went to the house of his bhanja, namely, Hassan Ahmad along with Ghulam Muhammad alias Gaman PW-2 and Hadayat CW-5 and thereafter they stayed there over night. On 04.8.2003 at about 5:30 A.M the complainant woke up to offer Fajjar prayer when all of sudden, some persons in police uniform equipped with fire arms entered into the Haveli by scaling over the wall. Upon which the complainant thought that police had arrived and he awakened Hassan etc. and informed them that police arrived. Thereafter Hassan Din along with Ghulam Muhammad alias Gaman PW-2 and Hadayat CW-5 concealed themselves behind the walls and they saw that the persons in police uniform were not police personals and rather those were Abdul Sattar alias Sattari (the appellant), Nazir Ahmed alias Kali (the appellant), Iqbal alias Bali (since acquitted) Khalid alias Khali (the appellant), all armed with repeater 12 bore guns, Ebad Ali (the appellant), Niaz Ahmed (Proclaimed offender), Sarfaraz alias Sapha (Proclaimed offender) all armed with pump action guns, Shahra (since acquitted), Qasim Ali (since acquitted), Hakim Ali (since acquitted), Jabbar alias Bagggi (since acquitted) all armed with double barrel .12 bore guns, Muhammad Altaf (Proclaimed offender), Fayyaz (Proclaimed offender), Sher alias Sheri (Proclaimed offender) all armed with pump action guns Rehmat Ali alias Mahi (since acquitted) armed with rifle along with six unknown accused persons armed with fire arms weapons who remained standing outside the Haveli. Abdul Sattar alias Sattari (the appellant) made fire with repeater which hit at the right side of head of Hassan Ahmed Bhanja of the complainant, Nazir Ahmed alias Kali (the appellant) made fire with repeater gun which hit at the left flank of Idrees (son of Hassan Ahmed), Iqbal alias Bali

(since acquitted) made fire with repeater gun which hit at the left side of flank of Idrees, Muhammad Altaf (Proclaimed offender) and Sher alias Sheri (Proclaimed offender) made two fires with pump action guns at Shafique and Muhammad Hassan, Ebad Ali (appellant), Niaz Ahmed (Proclaimed offender), Sarfaraz alias Sapha (Proclaimed offender) made fires with pump action guns which hit Wazir Ali (son of Hassan Ahmed) on different parts of his body, Shahra (since acquitted) made fire with 12 bore gun which hit Mst. Ghafooran Bibi (daughter of Hassan Ahmed), Khalid alias Khali (the appellant) made fire with repeater gun which hit Mst. Ghafooran Bibi (daughter of Hassan Ahmed) on different parts of her body. All the accused decamped from place of occurrence after making incriminating firing. Hassan Ahmed, Idrees, Wazir Ali, Shafique and Mst. Ghafooran Bibi succumbed to the injuries at the spot. The alleged occurrence was also witnessed by Khalil Ahmed P.W-3 and Jahangir Ahmed C.W. 3 (son of Hassan Ahmed). Thereafter the complainant Ahmad Din went to the police station Chunian and lodged the report about the occurrence at 7:10 A.M. PW-1 Ahmad Din (the complainant), during the cross-examination deposed that, “8/10 police officials came at the place of occurrence at 08-30 A.M. I myself had informed the police. I reached at P.S. at 06.30 A.M. Police reached the place of occurrence with me on police vehicle. Police stayed at the place of occurrence more than two hours.” PW-2 Ghulam Muhammad alias Gaman deposed during cross-examination that, “He left the place of occurrence to inform the police at 06:00 A.M. and came back after 2/ 2 ½ hours. Police sent us with the dead bodies at 10/10½ a.m. for autopsy.” PW-3 Khalil Ahmed deposed during cross-examination that, “Police reached the place of occurrence after about one hour and remained there for more than one hour.” CW-3 Jahangir Ali deposed during cross examination that, “Police reached the place of occurrence at 8:30 A.M.” CW-5 Hadayat deposed during examination-in-chief that, “soon after the occurrence the police reached there.” Whereas CW-5 Hadayat deposed during cross-examination that, “The police reached the place of occurrence at 8:30 A.M.” PW-4 Muhammad Rafique deposed during cross-examination that, “I received information in respect of the present occurrence at

about 5/5 ½ A.M. and then reached the scene of occurrence. As soon as I reached there, all the five persons had already expired. The dead bodies were lying on the cots. Police reached there after my arrival at the scene of occurrence. The police reached there at about 7:00 A.M.” Whereas, the investigating officer CW-14 Muhammad Rafique, Inspector deposed during cross-examination that, “I reached at the place of occurrence after 40/45 minutes of the occurrence. The time of occurrence as mentioned in the FIR is 5:30 A.M”. From the narration of deposition of the prosecution evidence it appears that the complainant left the place of occurrence at 06:00 A.M. for reporting the incident and he reached the police station at 06:30 A.M. within half hour but after reaching police station he took half hour in reporting the incident. Thereafter as per stance of eye witnesses police came to know about the occurrence at 7:10 A.M., they along with complainant took 2 ½ hours for reaching the place of occurrence on official vehicle. On the other hand investigating officer CW-14 deposed that he reached at the place of occurrence after 40/45 minutes of the occurrence. The prosecution has no sufficient proof with it that F.I.R. was lodged at the given time immediately after the occurrence. It is also not believable that the eye witnesses had witnessed the occurrence and without consultation and deliberation occurrence was reported to police. We also notice from the evidence of CW-12 Lady Doctor Farzana Shaheen and CW-13 Dr. Arif Mahmood that on external examination they found rigor mortis present on all dead bodies. As per inquest reports CW-14/C3 of Muhammad Idrees deceased, CW-14/C5 of Wazir Ali and CW-14/C6 of Muhammad Shafique deceased the CW-14 Muhammad Rafique Inspector-investigating officer found the blood frozen as mentioned in column No.11 and in the same column of inquest reports CW-14/C2 of Mst. Gafooran Bibi deceased and CW-14/C3 of Hassan Muhammad deceased fire armed injuries were mentioned. Rigor mortis begins within three to six hours of death in hot weather. Whereas in the instant case when CW-14 Muhammad Rafique Inspector inspected the dead bodies he found blood frozen and as per medical evidence rigor mortis were present on all dead bodies. CW-12 Lady Doctor Farzana Shaheen deposed

that duration between death and post mortem was within 13 hours and she conducted post mortem at 8.00 P.M on 04-08-2003. Whereas CW-13 Dr. Arif Mahmood conducted post mortem examination of the dead bodies of Wazir Ali at 2:30 P.M., Idrees at 3:00 P.M., Shafique at 3:30 P.M. and on the dead body of Hassan Muhammad at 4:30 P.M. and observed duration between death and post mortem was 6 to 12 hours respectively which create doubt about the time of occurrence. We also noted that inquest reports CW.14/C3 of Muhammad Idrees deceased, CW-14/C5 of Wazir Ali, CW-14/C6 of Muhammad Shafique and CW-14/C3 of Hassan Muhammad were not signed by the doctor (CW-13 Dr. Arif Mahmood) as well as all these inquest reports does not bear number of F.I.R. whereas only inquest report Ex-CW-14/C2 of Mst. Ghafooran Bibi bears F.I.R. number and signatures of lady doctor. This suggests that F.I.R. had been lodged after post mortem examinations conducted of the dead bodies of Wazir Ali, Idrees, Shafique and on the dead body of Hassan Muhammad at 4:30 P.M but before conducting post mortem examination of dead body of Mst. Ghafooran Bibi at 8:00 P.M. Thus we find that the incident in question did not take place as indicated by the prosecution as a probable one.

24. The learned counsel for the appellants submitted that PW-1, PW-2, PW-3, CW-3 and CW-5 are interested, inimical and chance witnesses and on this count their testimonies should be rejected and has no substance. It is a settled proposition of law that relationship is not a factor to affect the creditability of witnesses. The ocular account though may have been given by close relatives or family members; it does not by itself lose its evidentiary value unless some other factor is brought on record to discredit their creditworthiness. In such cases, the court has to adopt a careful approach and analyze evidence to find out whether it is cogent and reliable. A duty is cast upon the court to examine their testimonies with due caution and care. A chance witness must adequately explain his presence at the place of occurrence. In the present case the prosecution cited two categories of witnesses to the occurrence, one consisting of PW-1 Ahmad Din (the complainant), PW-2 Ghulam Muhammad

alias Gaman and CW-5 Hadayat of ocular account and the other consisting of PW-3 Khalil Ahmed and CW-3 Jahangir Ali of Waj Takkar. We have carefully examined the testimonies of both set of witnesses, namely, PW-1 Ahmad Din (the complainant), PW-2 Ghulam Muhammad alias Gaman, CW-5 Hadayat, PW-3 Khalil Ahmed and CW-3 Jahangir Ali, the complainant is maternal uncle of the deceased, real brother of Ghulam Muhammad is the complainant, Khalil is grandson of PW-2 Ghulam Muhammad alias Gaman, CW-3 Jahangir is son of the deceased and CW-5 Hadayat is son of Ghulam Muhammad alias Gaman respectively. Their presence at the time of occurrence is highly doubtful and testimony of the witnesses did not have the ring of truth for the following reasons:

25. Firstly, that PW-1 Ahmad Din deposed that, **“on 03-08-2003, I along with Ghulam Muhammad, and Hidayat went to the house of Hassan Ahmed and slept there.”** Whereas during close-examination he deposed that, **“I reside at the house of Hassan Muhammad deceased.”** He further deposed during close-examination that, **“In my statement before the police as well as before this court, I had got recorded that I was residing in the house of Hassan Ahmed. (Confronted with Ex. PB as well as examination-in-chief of the PW wherein it is not so recorded).”** Thereafter PW-1 Ahmad Din admitted during the cross-examination that, **“In FIR Ex-PA, complaint Ex-PB, and in my preliminary statement, I had got recorded that I had gone to the house of Hassan Ahmed to see him.”** P.W. 2 Ghulam Muhammad deposed that, **“on 03-08-2003, I, Hidayat and Ahmad Din went to the house of Hassan Ahmed where we remained busy in talking and then slept there.”** Whereas during close-examination he deposed that, **“Ahmed Din complainant used to live in the house of Hassan deceased.”** CW-5 Hadayat deposed during cross examination that, **“Complainant Ahmad Din did not accompany me to the house of Hassan Ahmed deceased. I did not get recorded in my statement under section 161 Cr.P.C that complainant Ahmed Din had accompanied me to the place of occurrence. (Confronted with Ex.DD where it is so recorded). I**

do not remember the time when I as well as my father Ghulam Muhammad alias Gaman reached the house of Hassan Ahmed deceased.” PW-2 Ghulam Muhammad deposed during examination-in-chief that, “on 03-08-2003, I, Hidayat and Ahmed Din went to the house of Hassan Ahmed where we remained busy in talking and then slept there.” CW-5 also deposed that, “usually we live in our house and not at the place of occurrence.” Whereas PW-2 Ghulam Muhammad deposed during cross-examination that, “we went to the house of Ahmed Hussain in the evening along with complainant Ahmad and Hidayat PW.” Whereas he denied the suggestion that they usually sleep in their own house. This witness failed to quote a single day when he slept in the house of Hassan Ahmad deceased, prior to the day of occurrence. The reason assigned by them for their alleged presence at the spot was farfetched and fabricated.

26. **Secondly,** the first information report (Ex-PA) as well as private complaint (Ex-PB) would go to show that CW-3 Jahangir Ali was also present in the haveli of deceased with the PW-1 Ahmad Din-the complainant, PW-2 Ghulam Muhammad and C.W. 5 Hidayat on 03-08-2003 and he (C.W.3 Jahangir Ali) went to mosque to offer Fajjar prayer. None of the eye-witnesses to the occurrence has stated about presence of CW-3 Jahangir Ali in the haveli at night before the occurrence. His presence along with PW-3 Khalil Ahmed is also doubtful. As PW-2 Ghulam Muhammad deposed that, “Khalil PW had a separate house from Hassan deceased but both are situated in one and the same Haveli.” PW-1 Ahmad Din deposed during close-examination that, “The house of Khalil and Hassan deceased are in front of each other, but a street intervening both the houses of Khalil is 15/16 Karams away from the place of occurrence -----.” PW-3 Khalil Ahmed deposed during cross-examination that, “My residence is situated in the haveli where the occurrence has taken place. However my residence is separate from Hassan, the deceased. My house is on southern side of the house of Hassan deceased.” Whereas C.W. 3 Jahangir Ali deposed during cross-examination that, “PW Khalil Ahmed is

residing adjacent to our house.” The site plan Ex.C.W.9/1 is absolutely silent about the surroundings of the havili and it is also not mentioned therein that who owned surrounding properties/houses. C.W.-14 Muhammad Rafique, Inspector, accepted that he did not investigate about the fact as to where the houses of the witnesses are located and where the house of the complainant was situated. There are clear contradictions in the deposition of the witnesses regarding presence of house of the witness of Waj Takkar namely PW-3 Khalil Ahmed.

27. **Thirdly**, the investigating officer also admitted that no one either the complainant nor the PWs told him as to whether the occurrence took place before the Fajjar prayer or after the Fajjar prayer. PW-1 Ahmad Din deposed that Fajjar prayer always took place at the time there is day light and he used to say fajjar prayer in day light. Whereas PW-2 Ghulam Muhammad alias Gaman during cross examination deposed that, **“Jahangir PW had gone to say Fajjar Prayer. On the day of occurrence the jamat of fajjar prayer was held at 5:30 A.m.”** whereas CW-3 Jahangir deposed during cross-examination that, **“We came out of the Mosque at about 5:30 A.M.”** In the month of August sun rises around 4.30 A.M. and 5:00 A.M. but fajjar prayer timing were always before sunrise. All prosecution witnesses deliberately had concealed timing of fajjar prayer. If occurrence took place at fajjar timing then the entire prosecution evidence is silent regarding source of light.

28. **Fourthly**, If they (PW-3 Khalil Ahmed and CW-3 Jahangir Ali) had seen or met with P.W.1 Ahmad Din-the complainant, PW-2 Ghulam Muhammad and CW-5 Hidayat on 03-08-2003 at the place of occurrence soon at the time of actual attack or after the occurrence they have to state this fact before the police in their statements under section 161 of criminal procedure code and preliminary statements made before court in the complaint case, they could have pinpointed the same. PW-3 Khalil Ahmed deposed during cross-examination that, **“I met PW Ghulam Muhammad and Hadayat 4/5 minutes after the occurrence. They were with me. Again he said that they were present inside the Havili while I as well as Jahangir PW entered the haveli thereafter.I**

had seen the accused coming out from the courtyard of the haveli.” PW-3 Khalil Ahmed admitted during cross-examination that, “In my preliminary statement dated 6.4.2005, I had not mentioned that the complainant, Ghulam Muhammad alias Gaman and Hadayat PWs were present at the place of occurrence. I had also not got recorded in my statement 6.4.2005 that as soon as the police reached there accompanied by complainant Ahmed Din, or not or any of the PWs was present there.” CW-3 Jahangir Ali is son of deceased Hassan Ahmed and he deposed during cross-examination that, “Neither in my statement before the court in my preliminary evidence nor in my examination-in-chief before this court, I have mentioned the name of any person who might be present at the scene of occurrence due to the reason all the persons present in the courtyard of the house of Hassan had died.” CW-3 Jahangir Ali stated during examination-in-chief that, “I as well as PW Khalil reached the spot and in our presence the accused continued making indiscriminate firing and then they came out of the house.” Whereas during cross-examination he deposed that, “In my statement before the police, I have got recorded that the accused Abdul Sattar etc. as stated by me in my examination-in-chief, armed with fire arms were present in the courtyard of the house of Hassan Muhammad deceased. (Confronted with Ex-DC, where it is not so recorded). I did not get recorded in my statement before the police that I as well as CW Khalil Ahmed had seen the accused coming out from the courtyard of the house of deceased Hassan Muhammad making fire shots.” If they were present at the time of occurrence or they reached soon after the occurrence they should have also been assaulted by the accused persons who were large in number and heavily armed. It is also important to mention here that these witnesses admitted their enmity with the accused persons. Their presence i.e. PW-1 Ahmad Din (the complainant), PW-2 Ghulam Muhammad alias Gaman and CW-5 Hadayat of ocular account and the presence of PW-3 Khalil Ahmed and CW-3 Jahangir Ali of Waj Takkar, are also doubtful.

29. **Fifthly**, It was the case of the prosecution that when some persons in police uniform entered by scaling over the wall of the haveli the complainant thought that police arrived there upon which he awakened Hassan Ahmed etc. The witnesses i.e. PW-1 Ahmad Din (the complainant) and PW-2 Ghulam Muhammad alias Gaman also stated that they saved themselves by concealing themselves behind the wall while six unknown persons were standing outside the Haveli armed with various weapons. Whereas during cross-examination PW-1 Ahmad Din (the complainant) deposed that, “I did not get recorded in Ex.PA and Ex.PB that as soon as the persons in police uniform came there, I got awakened Hassan Ahmed. (Confronted with both these documents where it is so recorded). I did not get recorded in Ex.PA and Ex.PB that on seeing persons in Police uniform, I accompanied by Ghulam Muhammad alias Gaman ran away and got ourselves hidden behind a wall. (Confronted with Ex.PA and Ex.PB where it is so recorded). In my preliminary statement dated 1.04.2005, I had not mentioned the name of person who was got awakened by me. It is incorrect that in my statement dated 1.4.2005 I had not got recorded the name of PW who was accompanying me and hidden at the back of wall. (Confronted with Ex.DB where the name of any PW is not mentioned). I had not got recorded in aforesaid statement as if six unknown persons were present out-side or inside the haveli. (Confronted with Ex.DB where the words out side or inside the Haveli are not recorded).” Whereas P.W. 2 Ghulam Muhammad alias Gaman deposed during cross-examination that, “In my preliminary statement, I had got recorded that we took shelter of the wall of kitchen. (Confronted with Ex.DC where the word kitchen is not recorded). I had also got recorded in my preliminary statement that the accused had entered into the house while six unknown accused remained present outside the wall. (Confronted with Ex. DC where presence of six unknown accused outside the wall is not recorded).” On a cumulative consideration of all these factors, a serious doubt arises as to the correctness of the prosecution case. The evidence of these witnesses was replete with discrepancies, contradictions and improbable versions, which renders prosecution case doubtful.

30. **Sixthly**, another improbability emerges from the testimony of PW-1 Ahmad Din (the complainant) is that he deposed during cross-examination that, “No person from the neighborhood came at the spot after hearing the first fire shot, because we had hidden ourselves in the kitchen. I cannot say whether any person came at the place of occurrence or not, because I was in the Kitchen.” This witness admitted that the boundary wall of the house of Hassan Muhammad deceased is four feet in height. After the admission of the witness that he could not see as if any one arrived at the place of occurrence then it was also improbable for the witness to witness that who caused injuries to the deceased. If really this witness was present at the position “N” as shown in site plan, from where he claimed to see occurrence should have been stated that whether people from surroundings emerged at the place of occurrence or not. Particularly, when the complainant gave specific roles to all the accused persons.

31. **Seventhly**, as per site plan Ex.CW9/1, which was prepared on the pointing of the complainant at the spot, it is not shown therein presence of all fifteen (15) nominated accused persons and presence of six (6) unknown accused persons, in the site plan, outside the Haveli. It is also admitted fact that PW-1 Ahmad Din (the complainant) has not pointed out that were he along with other eye witnesses had slept. He deposed during cross-examination that, “I had not shown to the place where I had slept at the time of occurrence. I had not told the police about the places where Hadayat and Ghulam Muhammad PWs were sleeping at the time of occurrence.” It gives a scent that actually PW-1 Ahmad Din was not at all present at the scene along with other prosecution witnesses.

32. There is another aspect of the case which cannot be ignored and glaring difficulty in accepting the evidence of the eye-witnesses and it is that the version of the incident as put forward by these witnesses is in conflict with the medical evidence. According to the eye-witness account, given by prosecution witnesses makes their presence at the scene of occurrence highly doubtful. PW-1

Ahmad Din (the complainant), during the cross-examination deposed that, “These accused were standing on lower side of the cot of deceased. I did not get woke up the deceased. --- No one from the deceased persons woke up after the noise of fire shots.” PW-2 Ghulam Muhammad during the cross-examination deposed that, “The other persons remained sleeping on the cots. Fire shots hit Idrees, the deceased in lying position. The accused were present at foot side of the deceased.” CW-5 Hadayat during the cross-examination deposed that, “All the deceased were asleep when fire shots were made by the accused and none took the chance to run away. All the fire shots hit the deceased in lying position.” From perusal of the post-mortem examination Ex-CW13/4 of Hassan Muhammad it reflects that the only one fire arm injury on the head was found of the deceased. This injury had blackened around the wound and one pellet was recovered from the brain cavity. As per prosecution the injury was caused by the accused Abdul Sattar alias Sattari (appellant). CW-13 Dr. Muhammad Arif Mahmood deposed during cross examination that, “the said injury has been caused from a distance of six inches. The time of death of deceased Hassan is also mentioned 7:10 A.M. as per police.” He (CW-13) further deposed during cross examination that, “It is correct that in column No. 10 of the inquest report of Hassan Muhammad, it is mentioned that a wound lacerated badly on his head with fire. At the time of causing this injury on the person of the deceased the assailant would be on the right side of the deceased.” CW-14 Muhammad Rafique, Inspector admitted as correct that, “In the site plan the direction of their legs have not been shown.” PW-1 Ahmad Din (the complainant), during the cross-examination deposed that, “The distance between the assailants and the cots was different i.e. 1 ½ and 3 feet.” PW-1 Ahmad Din contradicted his own deposition by deposing that, “I had pin pointed the distance of presence of the assailants and the victims to the draftsman.” The site plan (Ex.CW9/1) shows that the distance between the deceased and accused was of six feet and position of the assailants was on southern side. All the three eyewitnesses have categorically stated that all the deceased received fire shots in lying position and they did not awake up. The

investigating officer CW-14 Muhammad Rafique, Inspector also deposed that he investigated the case but it has not come up before him nor there is his findings regarding the fact that whether the legs of the deceased were lying towards accused or head. CW-13 Dr. Muhammad Arif Mahmood who conducted the post-mortem examinations, in his statement before the Court stated that, “as per post-mortem examination and his opinion the deceased Idrees received only one fire arm injury. Said injury No. 1 is on the back of the deceased and exit wound is comparatively downward from the entry wound. That direction of injuries Nos. 1 and 2 was upwards. Injury No.1 could have been caused if the same had been caused from a range within 6 inches. None of the injuries on four dead bodies travelled upwards.” Said injury had been attributed to the accused Nazir Ahmed alias Kali (appellant). CW-13 Dr. Muhammad Arif Mahmood, in clear terms, opined that, “The seat of the injuries reflects that the assailants fired from left side of the deceased. At the time of receiving the injuries the left side of Wazir Ali deceased would be towards the assailants. The injury No.1 on the person of deceased Idrees, the said injury could be received on the person of the deceased in standing position in such a way that the bullet struck on the front side and went out from the other side.” If the assailants were in a standing position and the deceased were lying on the cots when the shots were fired, in that event above stated injuries could not be caused. We have given our anxious thoughts to this part of the statement of CW-13 Dr. Muhammad Arif Mahmood and find no good reason to differ from the opinion expressed by him. From the medical evidence available on the record it appears that the direction of injuries was not upwards as stated by Dr. Muhammad Arif Mahmood, as also is apparent from the perusal of the post-mortem reports. That being the position, we are of the view that the injuries stated above could not be caused in the manner as stated by the three eye-witnesses. It is also pertinent to note that injury No.1 found on the head of the deceased-Hassan Muhammad, injury No.1 found on the left side of the chest of the deceased-Shafique and injury No.1 found on the left side of the chest of the deceased-Idrees had blackened around the wound. These injuries were thus

caused from a close range. However, none of the accused persons is alleged to have fired from a close range of six inches. As far as role allegedly attributed to accused Khalid alias Khaldi and Ebad Ali (the appellants) is concerned PW-1 Ahmad Din (the complainant), PW-2 Ghulam Muhammad and CW-5 Hadayat during their examination-in-chief deposed in similar lines that, “*Thereafter accused Ebad Ali, Niaz Ahmed, Sarfaraz alias Sapha with their pump action fired at Wazir Ali hitting on his various parts of body. Shahra accused fired with his gun 12-bore hitting Mst. Ghafoorah Bibi. The accused Khalid alias Khaldi fired with his repeater gun at Mst. Ghafooran Bibi which hit her on various parts of body*”. We also noted that all above stated eye witnesses deposed that first Shahra (Proclaimed offender) accused fired with his gun 12-bore hitting Mst. Ghafoorah Bibi but none of the witness specified the injury or injuries caused by him (Shahra) and thereafter it is alleged that the accused Khalid alias Khaldi fired with his repeater gun at Mst. Ghafooran Bibi which hit on various parts of the body of Mst. Ghafoorah Bibi. The appellant- Khalid alias Khaldi could not be convicted as firstly his co-accused fired at the person of Mst. Ghafoorah Bibi and no specific injury was attributed to him. The ocular account does not get independent corroboration. After examining the entire matter carefully, we are of the opinion that injuries found on the dead bodies of Wazir Ali, Idrees, Shafique, Hassan Muhammad and Mst. Ghafooran Bibi could not be caused in the manner indicated by the prosecution witnesses in their evidence which makes their presence at the scene of occurrence highly doubtful. Not only this, the medical evidence is in sharp conflict with the ocular version of the occurrence. After examining the entire matter carefully, we are of the opinion that injuries found on the dead bodies of Wazir Ali, Idrees, Shafique, Hassan Muhammad could not be caused in the manner indicated by the prosecution witnesses in their evidence which makes their presence at the scene of occurrence highly doubtful. There is no independent piece of evidence to corroborate the evidence of the interested witnesses in this case.

33. Moreover, it is noticed that CW-14 Muhammad Rafique Inspector-investigating officer admitted during cross-examination that he collected empties from the place of occurrence when he inspected the place of occurrence and he secured crime empties of 12 .bore gun P1/1-8 and empties of 7-MM P2/1-4 vide recovery memo Ex-PC. The empties recovered from the spot were not sent along with the weapons allegedly recoveries from the appellants Abdul Sattar of repeater P-9, Abad Ali of pump action 12 bore gun P-11 and Khalid alias Khaldi of repeater gun.12 bore C-5. The reports of Forensic Science Laboratory Punjab, Lahore, Ex.PX, Ex.PY and Ex.PZ are only to the effect that the weapons were allegedly recovered from accused/appellants were in working condition. So, the recoveries of the weapons from the accused are of no consequence.

34. As far as motive is concerned, it is fairly well settled that the motive is a double-edged weapon, which cuts on either side. From the evidence on record it appears that prosecution have motive to involve the appellants in the occurrence. PW-5 Hadayat deposed during cross examination that, **“I know safdar, but I do not know the name of his father. However the names of his sons are Sattar alias Stari, Nazir Alias Kali and Iqbal alias Bali, who are accused present in the court.---Safdar, father of all these accused was a PW in a murder case got registered against my father and others. There is enmity of murders between us and the aforesaid accused since last 10 years.”** He also admitted that he remained involved in some cases. However he denied that case F.I.R. No. 211/95 dated 30.4.1995, offence under section 302, 148, 149 P.P.C. dated 12.5.2000 at police station Chunian and F.I.R. No. 299/00, offence under section 302, 379, 148, 149 P.P.C. was registered at police station Chunian against him. Whereas, PW-2 Ghulam Muhammad alias Gaman admitted that F.I.R. No. 211/95 dated 30-04-1995, under section 302, 148,149 P.P.C. dated 12.05.2000 at police station Chuninan and F.I.R. No. 299/00, under section 302, 379,148, 149 P.P.C. was registered at police station Chunian against his son Hadayat. He also deposed that **“case F.I.R. No. 204/95, under section 302**

P.P.C. etc. was registered at police station Chuninan besides others accused Hassan Muhammad deceased was also nominated as an accused.” PW-1 Ahmad Din (the complainant) admitted during the cross-examination that, “It is correct that I and Hadayat PW were involved in criminal cases, but no case was registered against Ghulam Muhammad PW.” PW-1 Ahmad Din (the complainant) admitted during the cross-examination that Sughran Bibi got registered a case under section 302/379/148/149 P.P.C. dated 12.05.2000 at police station Chunian wherein he was accused. He also admitted that Muhammad Khan son of Ismail got registered a case F.I.R. No. 211/95 dated 30-04-1995; under section 302, 148, 149 P.P.C. dated 12.05.2000 at police station Chuninan wherein he was one of the accused. This witness also admitted that safdar father of Sattar alias Stari, Nazir Alias Kali and Iqbal alias Balia was a PW against them in case registered against them. It is true that there is no absolute rule that the evidence of an interested witness cannot be accepted without corroboration. But where the witnesses have admitted enmity with other side and have to their discredit involvement in criminal cases in antecedents, such as those of PWs 1, 3, and CW-5, having a possible motive to harm the appellants. The investigating officer CW-14 Muhammad Rafique, Inspector deposed that on his first visit at the place of occurrence the complainant party told him that they have enmity. During investigation CW-14 Muhammad Rafique, Inspector, also found that the complainant and the PWs were involved in many criminal cases and both parties have some enmity. The Investigating Officer (CW-14) Muhammad Rafique admitted it correct hat the complainant appeared before him on 29.10.2003 and in presence of the accused, he demanded that if the accused party effected compromise in respect of the persons who have been convicted in the murder case only then he would get these accused exonerated in this case. It is admitted fact that the relatives of the complainant Sher Muhammad, Riaz and Mushtaq were convicted and sentenced for life imprisonment for committing murder of Liaquat Ali and Khurshid, brothers of the accused Shahra (since acquitted) and Shahara was the complainant of the criminal case of murder of his brothers. If the complainant

(PW-1) can involve persons for gaining his ulterior motive for effecting compromise with the accused Shahra for releasing his relative then he can involve other accused persons for gaining his ulterior motive too. All these facts and circumstances conjointly, it does not appeal to person of an ordinary prudence that the prosecution witnesses were present at the spot at the relevant time. It would be hazardous to accept their testimony, in the absence of corroboration on crucial points from independent sources.

35. From the above detailed discussion, we are, however, convinced that the prosecution has failed to establish its case. It seems that the truth was seen buried under the debris and a different story was structured perhaps to lug the appellants into trial under the serious offence. It is often said “that Foulcr the crime higher the degree of proof” we have gone through the process of keen examination of the entire material and found compelling reasons as stated above to disagree with the conclusion reached recorded by the learned Addl. Sessions Judge and also found that the prosecution has miserably failed to prove the guilt of the accused-appellants beyond reasonable doubt. As per dictates of law benefit of every doubt is to be extended in favour of the accused. In the case of “Muhammad Akram v. The State” (2009 SCMR 230), it is held as under:-

“Benefit of doubt....Principles----For giving the benefit of doubt it is not necessary that there should be many circumstances creating doubts----Single circumstance creating reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit, not as a matter of grace and concession, but as a matter of right”.

36. We, therefore, accept in toto Criminal Appeal No.1207 of 2010 filed by Abdul Sattar alias Sattari son of Safdar, Caste Rajpoot, resident of Chak No.17, Tehsil Chunian, District, Kasur, (2) Khalid ali ias Khaldi son of Ramzan alias Shida, Caste Rajpoot, resident of Wazirkey, Alipur Chattha, Gujranwala, (3) Nazir Ahmad alias Kali son of Safdar, Caste Rajpoot, resident of Chak No.17, Tehsil Chunian, District, Kasur and (4) Ebad Ali son of Muhammad Khan, Caste Rajpoot, resident of Lambay Khalsa, Tehsil Chunian,

District, Kasur filed by Ghulam Mustafa, as a result whereof **conviction and sentence** recorded by the learned trial court vide judgment dated 04.5.2010 is **set aside** and the **appellants, namely, Abdul Sattar alias Sattari and Khalid alias Khaldi** are ordered to be **acquitted** of the charge in a private complaint filed under Sections 302, 170, 148, 149 P.P.C., in case F.I.R. No.406/2003 dated 04.8.2003, under Sections 302, 170, 148, 149 P.P.C., at Police Station, Chunian District, Kasur and they are directed to be released forthwith if not required in any other case whereas the other appellants, namely, Nazir Ahmed alias Kali and Ebad Ali are already on bail and are acquitted from the charge. Their surety bonds are discharged.

37. **Murder Reference No.434 of 2010** forwarded by the learned trial court for confirmation of sentence of death inflicted upon the convicts fails, which is answered in **NEGNATIVE**.

(SYED SHAHBAZ ALI RIZVI)
JUDGE

(AALIA NEELUM)
JUDGE

Approved for reporting.

JUDGE

JUDGE

Hamid/*