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

Criminal Appeal No.204964/2018

Muhammad Anwar                      versus                      The State etc.

Criminal Appeal No.204976/2018

Abdul Rehman                      versus                      The State etc.

Criminal Appeal No.204979/2018

Muhammad Sarwar                      versus                      The State etc.

Criminal Appeal No.204982/2018

Muhammad Afzal @ Jalu                      versus                      The State etc.

Murder Reference No.189/2018

The State                      versus                      Abdul Rehman, etc.

Criminal Appeal No.204968/2018

Naseer Ahmed                      versus                      The State etc.

Criminal Appeal No.204969/2018

Muhammad Imran                      versus                      The State etc.

Criminal Appeal No.204973/2018

Shabbir Hussain                      versus                      The State etc.

Criminal Revision No.213819/2018

Mst. Rani Bibi                      versus                      Shabbir Hussain etc.

**Date of hearing**

**01.06.2023**

The Appellants by

M/s Mahram Ali Bali, Naveed  
Ahmed Khawaja, Muhammad  
Asjad Ch., Malik Usman  
Zafar, Rai Mohsin Iqbal, Ms.  
Asifa Manzoor, Muhammad  
Imran, Naseer Ahmed,  
Ghulam Kazim, Muhammad  
Nadeem Abbasi and Shah  
Nawaz Shah, Advocates.

The Complainant by

M/s Waqar Hassan Mir,  
Malik Ishrat Hussain, Rana  
Abrar Ahmed Khan, Rana  
Moazzam Abbas and Malik  
Hammad Akhtar, Advocates

The State by

Ms. Maida Sobia, Deputy  
Prosecutor General

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**Asjad Javaid Ghural, J.** Through the afore-titled criminal appeals under Section 410 Cr.P.C., appellants Muhammad Anwar, Abdul Rehman, Muhammad Sarwar, Muhammad Afzaal @ Jalu, Naseer Ahmad, Muhammad Imran and Shabbir Hussain have challenged the vires of judgment dated 21.04.2018 rendered by the learned Addl. Sessions Judge, Lahore in case FIR No.276/10, dated 23.06.2010, in respect of offence under Sections 302, 324, 148, 149, 427 & 109 PPC registered at Police Station, Manawan, Lahore whereby they were convicted and sentenced as under:-

- i) Appellants Muhammad Anwar, Abdul Rehman, Muhammad Sarwar and Muhammad Afzaal @ Jalu;

**Under Section 302/149 PPC**

*Death each, on four counts and to pay compensation of Rs.200,000/- to the legal heirs of all the deceased except Younis under Section 544-A Cr.P.C. each. In case of default, to further undergo simple imprisonment for six months on four counts each.*

**Under Section 324/149 PPC**

*Imprisonment for five years on two counts alongwith fine Rs.50,000/- on two counts each. In default thereof, to further undergo six months on two counts each. They were further directed to pay Rs.50,000/- each as compensation under Section 544-A Cr.P.C. and in default thereof, to further undergo simple imprisonment for six months two times each.*

**Under Section 148 PPC**

*For Rs.50,000/- and in default thereof, further undergo for two months each.*

*Appellant Anwar was further directed to pay the compensation of Rs.50,000/- and in default thereof, to further undergo simple imprisonment for six months two times.*

**Under Section 427 PPC**

*For Rs.50,000/- and in default thereof, further undergo for two months each.*

*Accused Anwar was further sentenced u/s 148 PPC to pay Rs.50,000/- each as compensation u/s 544-A Cr.P.C. and in default of payment further undergo for six months two times.*

ii) Appellants Naseer Ahmed, Muhammad Imran and Shabbir Hussain;

**Under Section 302/149 PPC**

*Imprisonment for life on five counts and to pay compensation of Rs.200,000/- to the legal heirs of deceased as required u/s 544-A Cr.P.C. each and in default thereof to further undergo simple imprisonment for six months on five counts each.*

**Under Section 324/149 PPC**

*Imprisonment for seven years on two counts each with fine Rs.50,000/- on two counts each. In default of payment, further undergo six months on two counts each and to pay Rs.50,000/- each as compensation u/s 544-A Cr.P.C. In default of payment, further undergo for the period of six months two times each.*

**Under Section 148 PPC**

*For Rs.50,000/- and in default of payment, further undergo simple imprisonment for two months each.*

**Under Section 427 PPC**

*For Rs.50,000/- and in default thereof, further undergo simple imprisonment for two months each.*

*Benefit of Section 382-B Cr.P.C. was extended to the appellants and all the sentences were directed to run concurrently.*

2. Murder Reference No.189 of 2018 sent up by the trial Court for confirmation or otherwise of death sentence of appellants Muhammad Anwar, Abdul Rehman, Muhammad Sarwar and Muhammad Afzaal @ Jalu and Criminal Revision No.213818/2018 preferred by complainant Mst. Rani Bibi seeking enhancement of sentence of respondents No.1 to 3 Shabbir Hussain, Muhammad Imran and Naseer Ahmed will also be decided through this common judgment.

3. The prosecution story unfolded in the crime report (Ex.PA) registered on the complaint (Ex.PA) of complainant Mst. Rani Bibi (PW-1) was that in the morning on 23.06.2010, she as well as her brothers Allah Ditta, Muhammad Said, Zulfiqar Ali, Muhammad Yousaf, Muhammad Yaseen, nephew Younas and husband Bashir was on their way at Ring Road Lahore after attending their date at Sessions Court, Lahore in connection with trial of case FIR No.273/2007, in respect of offence under Sections 302, 148 & 149 PPC, registered at Police Station, Manawan, Lahore on their double cabin dala whereas Zubair Akhtar and Muhammad Asghar were in follow-up on their motorcycle. When they reached near Jehangir Cold Store

at Behni Road Jhugian at about 04:00/15 p.m., all of a sudden accused Muhammad Ashraf, Muhammad Sarwar, Muhammad Anwar, Abdul Rehman, Muhammad Ashraf, Muhammad Afzaal @ Jalu, Shabbir Hussain, Naseer Ahmed, Faqir Hussain and Imran alongwith 3/4 unknown accused while armed with fire arms emerged there from both sides of the road. Muhammad Ashraf raised a *lalkara* to kill all of them and opened firing upon Zulfiqar (deceased), which landed at various parts of his body. Accused Muhammad Sarwar opened straight fire shots with his firearm, which landed at the head and various parts of body of Allah Ditta (deceased) who succumbed to the injuries at the spot. The fire shot made by accused Anwar landed at different parts of the body of deceased Muhammad Said. The fire shots made by Abdul hit at different parts of the body of deceased Muhammad Younas. Accused Ashraf made fire shots upon Muhammad Yousaf, which landed at various parts of his body. The fire shots made by appellant Muhammad Afzaal @ Jalu hit at different parts of the body of Muhammad Yasin. Accused Shabbir Hussain made straight firing at Muhammad Bashir. Accused Naseer and Imran also caused fire arm injuries upon all the injured. Thereafter, all the accused persons after making random firing and causing damage to the vehicle, succeeded to flee away. Said and Zulfiqar succumbed to the injuries at the spot, injured Allah Ditta and Younas kissed the dust in the hospital, whereas injured Yousaf breathed his last after three days of occurrence in the hospital. Muhammad Yousaf, Muhammad Yasin and Muhammad Bashir luckily survived.

Motive behind the occurrence was that accused Muhammad Anwar got lodged a case FIR No.273/07 dated 03.06.2007, in respect of offence under Sections 302, 148 & 149 PPC, registered at Police Station Manawan, Lahore qua the murder of his brother Safdar and due to that reason the accused persons, in connivance with each other and with the active abetment of Sardar Ahmed, Faqir Hussain, Muhammad Asghar and Shah Muhammad committed this occurrence.

4. Muhammad Nawaz, SI (PW-26) prepared injury statements as well as inquest reports of deceased Zulfiqar, Muhammad Said, Muhammad Younis, Allah Ditta and escorted their dead bodies to the mortuary. He visited the place of occurrence on the same day, took all necessary steps of initial

investigation and also recorded the statements of the witnesses under Section 161 Cr.P.C. On 25.06.2010, he recorded the statement of injured witnesses namely, Muhammad Bashir, Muhammad Yousaf and Muhammad Yasin. On 17.03.2011 he joined appellant Abdul Rehman @ Abdul with the investigation of this case being arrested by the CIA Police. He also joined appellant Muhammad Sarwar with the investigation of this case on 02.06.2011 being arrested by the police at Police Station, Shah Kot District Sahiwal. After completion of investigation, he got prepared interim report under Section 173 Cr.P.C. He arrested accused Muhammad Iqbal in this case on 18.05.2016, who was subsequently discharged from the learned Magistrate.

Muhammad Aslam, Inspector (PW-29) arrested accused Bashir, Naseer Ahmed, Ashraf, Imran and Ashraf on 17.08.2010.

Khalid Jameel, ASI (PW-28) arrested appellant Muhammad Anwar on 19.10.2013, who during investigation led to the recovery of a Kalashnikov alongwith five alive bullets (P-25/1-5) on 01.11.2013, which was taken into possession through recovery memo (Ex.PEEE).

Sardar Ali Rtd. SI (PW-30) joined appellant Afzaal alias Jalu with the investigation of this case being arrested by the police of Police Statin Gujjarpura, Lahore and during investigation, he led to the recovery of Kalashnikov (P-2) alongwith live bullets which was taken into possession through recovery memo (Ex.PC) on 31.12.2011.

5. Dr. Muhammad Iqbal Ghani (PW-5) held autopsy on the dead body of deceased Allah Ditta on 24.06.2010 and observed injuries at various parts of his body being ante-mortem caused by fire arm weapon. Injury No.1 was sufficient to cause death in ordinary course of nature. Probable duration between injuries and death was immediate, whereas between death and post mortem examination, it was 17 to 24 hours.

On the same day, he also held autopsy on the dead body of deceased Muhammad Younis and observed ante-mortem injuries at different parts of his body, which were sufficient to cause death due to injuries to vital organs in chest. Probable duration between injuries and death was within few minutes, whereas, between death and post mortem examination, it was 18 to 24 hours.

Dr. Riasat Ali, (PW-16) conducted post mortem examination on the dead body of deceased Muhammad Yousaf on 29.06.2010 and observed fire arm injuries at his death body. All the injuries were anti-mortem being caused by fire arm weapons whereas, injuries No.3 & 4 were caused by blunt means. The cause of death in this case was damage to neck muscles, vessels, vertebra, (cervical) and T4, T5 vertebra under injury No.2 leading to hemorrhage, paraplegia and sensory loss below T4 and T5, shock and death. Death was occurred in hospital and probable duration between death and post mortem was 17-hours and 20-minutes.

6. Muhammad Iqbal, Record Keeper (PW-31) furnished secondary evidence and verified the handwriting and signature of Dr. Mohsin Mukhtar regarding operation notes of deceased Muhammad Yousaf, injured Muhammad Yaseen and Muhammad Bashir. (Ex.PZZZ-11 to Ex.PZZZ-18)

7. At the commencement of trial, the trial Court framed a charge against the appellants to which they pleaded not guilty and claimed to be tried.

8. The prosecution examined 31-witnesses besides the reports of Punjab Forensic Science Agency Ex.PHHHH/1 to Ex.PHHHH/3 and Chemical Examiner Ex.PJJJJ/1 to Ex.PJJJJ/5. The appellants, in their statements recorded under Section 342 Cr.P.C., had denied and controverted all the allegations of facts leveled against them. They did not opt to make statement under Section 340(2) Cr.P.C., however, produced certain documents in their defence.

9. Learned trial Court, upon conclusion of the trial, proceed to acquit co-accused Sardar Ahmed, Faqir Hussain, Muhammad Asghar and Shah Muhammad whereas convicted and sentenced the appellants, as stated above, vide impugned judgment dated 21.04.2018. Hence, these criminal appeals as well as connected Murder Reference.

10. Learned counsels for the appellants have unanimously submitted that the appellants are quite innocent and have nothing to do with the alleged occurrence; that the complainant, being chance witness, could not establish her presence at the venue of occurrence, who had no occasion to be present there at the relevant time; that all the prosecution witnesses were closely related to the deceased persons and as such their testimony cannot be relied upon; that two independent witnesses namely, Zubair Akhtar and Asghar

were not produced and given up by the prosecution before the trial Court, which shows that they were not ready to support the prosecution version being false one; that all the eye witnesses including the injured witness, made material improvements in their statements before the trial Court and made contradicting statements, which is not worth reliance; that there was delay of 16-24-hours in conducting respective post mortem examination on the dead body of all the deceased and as such the inference could be drawn that the prosecution took such a long time in order to manage the eye witnesses; that there was delay of two days in recording statements of injured witnesses under Section 161 Cr.P.C., which has lost its credence; that the recovery of weapons of offence at the instance of appellants Muhammad Anwar, Abdul Rehman, Muhammad Afzal @ Jalu and Muhammad Sarwar remained inconsequential; that all the prosecution witnesses admitted during the course of cross-examination that both the parties were on visiting terms, as such the motive as set out by the prosecution has become immaterial. At the end, prayer has been made for acquittal of the appellants.

11. Conversely, learned Deputy Prosecutor General appearing for the State assisted by learned counsels for the complainant has vehemently contended that it was a broad-day light occurrence, which was promptly reported to the police containing names of the appellants with the specific role of committing murder of five innocent persons and causing injuries to two others; that the complainant has well explained her presence at the venue of occurrence, which could not be shattered by the defence during her cross-examination; that both the parties were previously known to each other and as such question of misidentification of the real culprits does not arise; that the injured witnesses were shifted to the hospital prior to the arrival of Investigating Officer as such their statements could not be recorded at the venue of occurrence; that the Investigating Officer did not visit the hospital where the injured PWs were admitted, as such delay in recording of their statements was not fatal in the instant case; that the eye witnesses remained firm and consistent on all material aspects of the case coupled with the medical evidence; that delay in conducting post mortem examination was due to non-availability of the doctors; that there was no occasion for the

prosecution to falsely involve the appellants while letting off the real culprits; that the prosecution produced cogent, convincing and confidence inspiring evidence and prove the charge against the appellants beyond shadow of reasonable doubt. In the end, a prayer has been made for dismissal of the appeals and confirmation of death sentence and also enhancement of sentence of appellants Shabbir Hussain, Muhammad Imran and Naseer Ahmad.

12. We have heard learned counsels for the appellants, learned Deputy Prosecutor General appearing for the State assisted by learned counsels for the complainant and perused the record with their able assistance.

13. This unfortunate incident took place on 23.06.2010 at about 04:15 p.m., which was reported to the police promptly on the same day at about 05:35 p.m. within one hour and twenty minutes and formal FIR (Ex.PV) was chalked out at 05:55 p.m., despite the fact that inter-se distance between the place of occurrence and the police station was seven kilometers containing names of the appellants with their specific role of making fire shots at the deceased as well as the injured witnesses, which not only confirms presence of the eye witnesses at the spot but also excludes every hypothesis of deliberation, consultation and fabrication prior to the registration of the case and also rules out the possibility of mistaken identification or substitution. Reliance is placed on case reported as **Noor Sultan and others ..Vs.. The State (2021 SCMR 176)**, wherein it has been laid down as under:-

“The instant occurrence has taken place on 6.15 p.m. while the matter was reported to the police within 2.15 hours whereas inter-se distance between the place of occurrence and police station is 16 kilometers. Promptness in reporting the matter to the police reflect that there is no chance of consultation or deliberation at the part of the prosecution.”

Similarly, in case reported as **Shaheen Ijaz alias Babu ..Vs.. The State (2021 SCMR 500)**, it has been laid down as under:-

“.....petitioner’s nomination in a broad day light incident by resident witnesses hardly admits a space to entertain any hypothesis of mistaken identity or substitution. Prompt recourse to law straight at the police station excludes every possibility of deliberation or consultation.”

In case reported as **Muhammad Waris ..Vs.. The State (2008 SCMR 784)** it



has been laid down as under:-

“The names of the said two eye-witnesses could not have been mentioned in such a promptly lodged F.I.R. if they had not been with the deceased persons at the time of their death.”

14. The motive is considered as an essential ingredient to provide foundation to any crime. Admittedly, there was a previous murder enmity between the parties and prior to this incident, a case FIR No.273/07 dated 03.06.2007, in respect of offence under Sections 302, 148 & 149 PPC was got lodged by one of the appellants namely, Muhammad Anwar qua the murder of his brother Safdar against deceased Allah Ditta, Muhammad Younis, Muhammad Said, Zulfiqar Ali and injured Muhammad Yasin. During investigation of said case, all the deceased persons were found innocent and report under Section 173 Cr.P.C. (Ex.PKKK/1-4) was submitted by placing their names in column No.2 thereof, whereas, injured Muhammad Yasin (PW-3) was sent up to the Court for trial being sole perpetrator of the said murder. Being dissatisfied with the investigation, appellant Muhammad Anwar filed a private complaint (Ex.PLLL/1-13) against the deceased persons and injured PW. It is also an admitted fact that said case was pending adjudication before the trial Court and on the day of occurrence, the same was fixed for hearing. Learned counsels for the appellants has referred certain portions of admissions of the complainant (PW-1) during her cross-examination that *“We were on visiting terms with each other and in the said period there was no quarrel/difference inter-se.....The accused persons remained using the said passage in routine and no quarrel took place on the said passage in between my brothers and accused persons..... We all the family members i.e. sisters, brothers, parents, used to visit the complainant party of Safdar deceased. During our visits none of the accused ever assaulted us..... Zulfiqar was running an Agency of Fertilizer etc. Accused used to purchase agricultural commodities from Zulfiqar, amicably”* and argued that in the light of such admissions, it cannot be said that this incident was result of previous FIR. These admissions also raised our eye-brows for a moment but while going through the entire evidence, it came on surface that the learned defence counsel have skipped the most pivotal portion of the statement of the

complainant, whereby she explained that “*We sought pardon from the accused persons regarding the said murder soon after the occurrence and we remained seeking asking for pardon for about three years.*” It is a matter of record that request of the complainant party for pardon was never acceded to by the accused side. Had relationship between the parties was of such a pleasant nature, the parties would have been entered into compromise in the previous murder case. Developing cordial relations with the accused persons might be an effort of the complainant party in order to seek pardon from earlier case but it remained futile. It is important to note that in the aforesaid case, defence side booked five accused persons, out of which four were declared innocent at the stage of investigation and they were on bail, whereas, injured Muhammad Yasin (PW-3) was behind the bars, who was granted post arrest bail by this Court vide order dated 03.06.2010 passed in Crl.Misc.No.4398-B-2010 (Ex.PMMMM/1-1). This unfortunate occurrence took place just after twenty days of release of said Muhammad Yasin from the jail. We have entertained no manner of doubt in our mind that release of injured Muhammad Yasin (PW-3) added fuel to the fire and after this development, the appellants organized a plan and took revenge from the complainant party. No doubt previous enmity, being motive, is always considered as a double edged weapon but from the evidence available on record it has been established that it was the sole reason of this unfortunate incident. With this backdrop, we are persuaded to hold that the prosecution has successfully proved motive part of the occurrence through oral as well as documentary evidence.

15. Mst. Rani Bibi (PW-1)/complainant furnished the ocular account before the trial Court and reiterated the contents of the crime report deposing that on the fateful day she alongwith her brothers Allah Ditta, Muhammad Saif, Zulfiqar Ali, Muhammad Yousaf, Muhammad Yasin, nephew Younas and husband Bashir went to attend the court proceedings in a criminal case on a *Daala* (double cabin). Zubair Akhtar and Asghar PWs followed them on a motorcycle. After attending the court proceedings, on the way to home, when they reached near Jehangir Cold Store at Behni Road at about 04:00/15 p.m., all the accused persons 12/13 in numbers, including accused Ashraf s/o Asghar, (since acquitted on the basis of compromise) Ashraf s/o

Muhammad Din (since dead), Afzaal @ Jaalo, Sarwar, Abdul, Anwar, Shabir, Naseer and Imran while armed with fire arm weapons, emerged there from both sides. Accused Ashraf s/o Asghar (since acquitted) raised a *Lalkara* to kill all of them and opened firing upon Zulfiqar deceased, which landed at various parts of his body. Appellant Afzaal @ Jalu, made fire shots upon Zulfiqar and Muhammad Yasin at different parts of their bodies, Accused Ashraf s/o Muhammad Din (since dead) made fire shots upon at different parts of body of deceased Muhammad Yousaf, appellant Abdul caused fire arm injuries to deceased Younas, appellant Sarwar caused fire arm injuries to deceased Allah Ditta, appellant Anwar made fire shots at deceased Said, appellant Shabbir caused fire arm injuries to injured Muhammad Bashir (PW-2), whereas appellants Naseer and Imran were collectively attributed the role of making fire shots upon all the above victims. The appellants, while making random firing upon vehicle of the complainant party, succeeded to flee away towards river Ravi. Said and Zulfiqar succumbed to the injuries at the spot, Allah Ditta and Younas at the hospital on the same day, while deceased Yousaf breathed his last after three days of occurrence in the hospital. Muhammad Bashir, (PW-2) and Muhammad Yaseen (PW-3)/injured witnesses deposed exactly in line and supplemented the complainant on each and every minute detail of the incident of murder in issue. In the course of cross-examination, all the witnesses of ocular account remained firm and consistent on all material aspects of the incident qua the date, time, place, mode and manner of the occurrence, names of the appellants, weapons of offence, role played by each and every accused for committing murder of the deceased and causing injuries to the injured witnesses and the defence could not extract any favourable material from their mouths.

Learned defence counsels laid much emphasis that the complainant was neither accused in the criminal case, which was fixed on the fateful day nor she sustained even a scratch on her body and as such her presence at the venue of occurrence was highly doubtful. We are not in agreement with the submission of learned defence counsels for the reason that during cross-examination, complainant explained that she alongwith her husband Bashir Ahmad (PW-2) intended to pay homage to Data Darbar at Lahore and as

such they accompanied the deceased, who had to attend the Court proceedings there. This is a very valid reason and cannot be sighted with doubt. Even otherwise, on this point the defence has questioned the complainant at a considerable length but she remained firm and consistent and even gave minute details of description of floor, mosque, path and even colour and height of shrine and the defence remained fail to shake her testimony on this point. So far as non-sustaining of injuries by the complainant lady while all other members present in the *Daala* had sustained injuries, is concerned, we have gone through the back-ground of the incident. Initially, brother of appellant Muhammad Anwar was murdered and four of the deceased persons as well as one injured (PW-3) were booked in the said case. The deceased persons were declared innocent by the police, whereas, injured Muhammad Yasin (PW-3) was released on post arrest bail after more than three years of his arrest. After his release, the appellants hatched a plan of taking revenge and tried to commit murder of entire male members of their opponents. Leaving the complainant scratchless, appears to be a calculated move on part of the appellants to make her an example and let her alone to feel the pain and misery of departure of her dear ones. They were very much aware that in our society, a female, howsoever strong may be, always remains unable to take them a task in the Courts and as such leaving her alive is not of significance for them. Even otherwise, if the prosecution intended to manage/procure a complainant, a male member ought to be given preference because generally, in our rural set up, people avoid to drag their females in criminal litigation. The crime report was lodged with sufficient promptitude, and the complainant faced the test of lengthy cross-examination from time to time spreading the period of over three years with full confidence and described the gruesome incident in a minute detail, which established her presence at the venue of occurrence at the relevant time without any doubt. Even if for the sake of arguments, testimony of the said witness is excluded from consideration even then it would not be helpful to the defence. In the matter of appreciation of the evidence it is not the number of witnesses rather quality of evidence is of importance. There is no requirement under the law that a particular number of witnesses are necessary to prove/disprove a fact. It is time honoured

principle that evidence must be weighed and not counted. Reliance is placed on case titled “NIAZ-UD-DIN and another Versus THE STATE and another” (2011 SCMR 725),

“The statement of Israel (PW.9) the eye-witness of the occurrence is confidence inspiring, which stand substantiated from the circumstances and other evidence. There is apt observations appearing in Allah Bakhsh v. Shammi and others (PLD 1980 SC 225) that even in a murder case conviction can be based on the testimony of a single witness, if the Court is satisfied that he is reliable. The reason being that it is the quality of evidence and not the quantity which matters.”

16. Muhammad Bashir (PW-2) and Muhammad Yasin (PW-3), sustained injuries during the occurrence and as such their presence at the venue of occurrence at the relevant time cannot be questioned in any manner. They appeared in the dock before the trial Court and categorically raised accusing finger towards none else but the appellants being responsible for the murder of five innocent persons and causing fire arm injuries to the injured witnesses. Both these witnesses faced the test of lengthy cross-examination with full confidence, which could not be crushed by the defence in any manner with even a slight difference. The statement of both the said witnesses rather is sufficient to believe the prosecution version and bring home guilt against the appellants beyond shadow of even slightest doubt.

17. Though all the witnesses of ocular account were closely related to the deceased inasmuch as the complainant is their real sister/aunt, whereas, Muhammad Yasin (PW-3), their real brother/uncle & Muhammad Bashir (PW-2), their brother-in-law/husband of complainant yet their testimony cannot be discarded merely on this score by treating them interested witnesses. Both the injured witnesses sustained injuries during the occurrence and as has been discussed supra the complainant has also established that she was accompanying the deceased at the relevant time, as such they were quite natural witnesses, who can conveniently describe the incident in the manner as it happened as compared to any other independent witness. There was no earthly reason for the eye witnesses to falsely implicate the appellants in substitution of the real culprits. Even otherwise,

substitution of the real culprits with an innocent one, in particular, where the eye-witnesses have lost their close kith and kin, is a rare phenomenon. It is well established principle in criminal administration of justice that mere relationship of the eye-witnesses with the deceased is not sufficient to discard their evidence, if the same was otherwise found confidence inspiring and trustworthy. Reliance is placed on case reported as “Ghulam Murtaza Versus. The State” (2021 SCMR 149).

18. Next objection of the defence was that two independent witnesses namely, Zubair Akhtar and Asghar mentioned in the crime report were given up by the prosecution, so the inference could be drawn that they were not ready to support the prosecution version. This submission is repelled. It is well settled by now that the prosecution is not bound to produce all the witnesses. If the appellants were sure that these witnesses were not ready to support the prosecution witnesses, they had ample opportunity rather at liberty to examine them in their defence or even submit application before the trial Court to summon them as Court Witnesses but merely on that basis other overwhelming and confidence inspiring prosecution evidence cannot be discarded. Reliance is placed on case reported as “Saeed Akhtar and others ..Vs.. The State” (2000 SCMR 383).

19. It has been emphatically argued by learned counsels for the appellants that there was delay of two days in recording the statements of the injured witnesses under Section 161 Cr.P.C., which impinges their credibility. No doubt delay in recording statements of the eye-witnesses is mostly seen with doubt but here in the instant case situation is quite different. In this unfortunate incident seven persons sustained fire arm injuries, out of which two breathed their last at the spot, whereas, rest were in semi-conscious condition. In such scenario, the natural human reaction should be to make all out efforts to save the lives of injured persons despite being in the condition of sorrow and anguish due to death of close kith and kin. The same has been done in the instant case and with the available opportunity all the five injured persons were shifted to the hospital. This fact was admitted by Muhammad Nawaz, SI/ Investigating Officer (PW-26) in the following terms:-

“When I reached the place of occurrence, two dead bodies were found lying in the double cabin Daala. It is correct that except these dead bodies, no other injured and deceased was lying there. Volunteered stated that rest of the injured persons were already shifted to the hospital prior to my arrival over there.”

We have minutely examined medico legal certificates of both the injured PWs. According to the MLC of injured Muhammad Bashir (Ex.PGGG), he was brought to the hospital in semi-conscious condition on the day of occurrence at about 05:26 p.m. Similarly, according to MLC of injured Muhammad Yaseen (Ex.PHHH), he was also brought to the hospital on the same day in semi-conscious condition. Though the time of his arrival does not find mentioned in the medical report yet keeping in view his semi-conscious condition, it can safely be presumed that he was also shifted to the hospital soon after the occurrence. Now, when the Investigating Officer admitted that both the injured persons were shifted to hospital prior to his arrival, it was his duty to visit the hospital for the purpose of recording their statements but he while appearing in the witness box conceded that he visited Mayo Hospital for the purpose of recording statements of the injured persons after two days of the occurrence. In this unfortunate case, all the male members of the complainant had either lost their lives or were admitted in the hospital being in injured condition and, thus, it is not expected for a sole female household lady to herself make arrangements for recording the statement of the injured witnesses. Even otherwise, neither the Medical Officer, who medically examined the injured PWs, observed any kind of fabrication or friendly-hand injury nor the appellants made any effort to challenge their medico-legal reports at any forum. It can be safely concluded that both the injured witnesses sustained injuries during the occurrence and if there was any lapse due to act of the investigating officer for recording their statements under Section 161 Cr.P.C. belatedly, its benefit cannot be extended to the defence in any eventuality. Reliance is placed on case reported as “*Sheraz Asghar ..Vs.. The State*” (1995 SCMR 1365), wherein it has been observed that

*“Besides any irregularity committed during the investigation of case would neither affect the trial of the case nor the judgment passed by the Courts.”*

20. Learned defence counsels have pointed out certain contradictions in the statements of the prosecution witnesses claiming it to be material one but the same cannot be taken as material. No doubt there are slight discrepancies amongst the statements of the PWs but the same are of no significance for the reasons that the first and foremost impression, which gathers from the testimonies of said witnesses is that they are rustic witnesses. They were subjected to cross-examination for a long period of eleven days, which span over three years. It is well settled principal of criminal administration of justice that the witnesses who were subjected to fatiguing, taxing and tiring cross-examination for days together are bound to get confused and made some inconsistent statements, therefore, discrepancies cited by learned defence counsels should not be blown out of proportion. Specific attribution against the appellants by the eye-witnesses in their statements and deposition was exactly the same as mentioned in the rough site plan prepared by the police at the spot in the first visit which means that they never changed their stance qua the role of the appellants played at the spot for committing murder of five innocent persons and injuries to two others. We are of the considered view that there is no contradiction amongst the statements of the PWs, which would shatter the case of the prosecution. It is well settled by now that the discrepancies of minor character which neither go to the root of the prosecution version nor shake its salient features are of no significance. Reliance in this regard is placed on case reported as *Ansar and others ..Vs.. The State and others* (2023 SCMR 929).

21. Dr. Muhammad Iqbal Ghani (PW-5) held autopsy on the dead body of deceased Allah Ditta on 24.06.2010 at about 12.15 p.m. and observed injuries at the top of head, front of right upper arm, front of abdomen, right iliac fossa, right hip and inner aspect of upper aspect of left leg. According to the opinion of medical expert, all the injuries were ante-mortem, caused by fire arm and injury No.1 was sufficient to cause death in ordinary course of nature. Probable duration between injuries and death was immediate, whereas, between death and post mortem examination, it was 17 to 24 hours.

On the same day, he also held autopsy on the dead body of deceased Muhammad Younis at 01:15 p.m. and observed injuries on front of his left shoulder, front of left upper chest, front of root of neck, antero-latera part of



right upper chest, right upper arm, back of right chest, right upper chest, back of left chest, antero lateral part of right chest, back of left shoulder, front of neck in middle, front of neck on left side and under the chin. His ribs 2<sup>nd</sup> to 7<sup>th</sup> on right side were fractured. Plora was perforated. Pleural cavity contained 3 liters of blood. Trachea was traumatized. Both right and left lungs were traumatized and perforated. Both atria were perforated. Aorta was perforated. According to the opinion of medical expert, all the injuries were ante-mortem, caused by fire arm. Cause of death was injuries to vital organs in chest. Probable duration between injuries and death was within few minutes, whereas, between death and post mortem examination, it was 18 to 24 hours.

Dr. Riasat Ali, (PW-16) conducted post mortem examination on the dead body of deceased Muhammad Yousaf on 29.06.2010 at 09:30 a.m. and observed injuries on his postro lateral right aspect of neck, left side of face and lateral side of right chest. All the injuries were anti-mortem, injuries No.1 & 2 were caused by fire arms, whereas, injuries No.3 & 4 were caused by blunt means. The cause of death in this case was damage to neck muscles, vessels, vertebra, (cervical) and T-4 & T-5 vertebra under injury No.2 leading to hemorrhage, paraplegia and sensory loss below T4 and T5, shock and death. Death was occurred in hospital and probable duration between death and post mortem was 17 hours and 20 hours.

Dr. Mohsin Mukhtar held autopsy on the dead body of deceased Muhammad Saeed and Zulfiqar on 24.06.2010 at 09:30 a.m. & 10.30 a.m. respectively and issued their respective post mortem examination reports (Ex.PA & Ex.PB). He also conducted medico-legal examination of injured Muhammad Bashir and Muhammad Yasin on 23.06.2010 and issued their MLCs (Ex.PGGG & Ex.PHHH) respectively. Muhammad Iqbal, Record Keeper appeared as PW-21 & 31 and identified handwriting and signature of the doctor on the Post Mortem Examination Reports and Medico Legal Certificates.

The locale, number and nature of injuries, weapons of offence used for causing these injuries and the duration between injuries and death as well as death and post mortem examination, was exactly in line with the ocular

account and as such, the medical evidence lends full support to the prosecution version. Though there was delay ranging from 17 to 24 hours in conducting post mortem examination on the dead bodies of the deceased yet to our mind the same is not fatal for more than one reasons. *Firstly*, in this unfortunate incident five persons lost their lives, two sustained injuries and only a female remained safe. Muhammad Nawaz, SI (PW-26), who reached at the spot within 20/25 minutes after the occurrence stated that dead bodies of deceased Zulfiqar and Said were lying at the spot, whereas, rest of five injured persons had been shifted to the hospital and after fulfillment of codal formalities, he transmitted those two dead bodies to the mortuary without wastage of time. In this way, it can safely be concluded that the deceased, either in injured condition or dead, were shifted to the hospital soon after the occurrence and there was no deliberate delay in dispatching them to the mortuary/hospital and if afterwards the autopsy was held belatedly, the defence cannot claim its premium. *Secondly*, one of the deceased namely Muhammad Yousaf, while in injured condition was shifted to Mayo Hospital, Lahore where he remain admitted for five days and breathed his last on 28.06.2010, whereafter, his dead body was shifted to the KEMU for post mortem examination on the same day at 7.00 p.m. but even in that case, his autopsy was held with a delay of seventeen hours. We are unable to understand what kind of benefit the prosecution could achieve in delaying the post mortem examination of above deceased, as all the codal formalities including lodging of crime report, recording of statements of prosecution witnesses U/S 161 Cr.P.C. have already been completed. We can safely concluded that it was pattern of the hospital to conduct autopsy after a certain period either due to some administrative issue or non-availability of doctor, therefore, its benefit cannot be extended to the appellants. Reliance is placed on case reported as “Muhammad Asif ..Vs.. Mehboob Alam” (2020 SCMR 837), wherein, delay for conducting the postmortem examination was twelve to twenty hours and it has been laid down by the Apex Court that:-

“In a country where the medical facility cum availability of paramedics for the job assigned is not easy task, the consumption of such a time seems to be quite reasonable, hence the

prosecution evidence cannot be brush aside on this score alone to extent the benefit of doubt as claimed.”

Similarly, in case reported as “*Ghulam Rasool ..Vs.. The State*” (2010 SCMR 1579), it has been observed as under:-

“the dead body was brought to the hospital at 9.45 a.m. and if for some reason may be administrative or due to lack of the Doctors/ staff, the post mortem was conducted later, it would not render the case of doubtful in nature, so as to ignore strong ocular evidence.”

22. Learned defence counsels have laid much emphasis that the weapon of offence Kalashnikov (P-2), Kalashnikov (P-25) recovered at the instance of Afzaal alias Jalu and Muhammad Anwar respectively, did not match with the crime empties secured from the place of occurrence, whereas, nothing was recovered from the remaining death convicts/appellants, which fact alone is sufficient to take the same as a mitigating factor for awarding lessor punishment. As far as effect of inconsequential of weapon of offence shown to have been recovered at the instance of appellants Afzaal @ Jalu and Muhammad Anwar is concerned, we have observed that former was arrested after eighteen months, whereas, latter was after 36 months of the occurrence and in the intervening period, the weapons of offence used during the occurrence, are supposed to have not been preserved. There is every possibility that he handed over different weapon of offence, with the intention to claim benefit of its being inconsequential at a subsequent stage and as such, it cannot be taken as a mitigating factor for awarding lessor punishment. Similarly, rest of death convicts also remained fugitive from law for a considerable period ranging from 09 months to 3-years, therefore, non-recovery of weapons of offence from them after such a long period is immaterial. Even otherwise, it is well settled law that when the ocular account is found to be confidence inspiring and trustworthy, mere fact that recovery is inconsequential by itself could not be a ground for lessor punishment. Reliance is placed on case reported as “*Nasir Ahmed ..Vs.. The State*” (2023 SCMR 478).

23. All the death convicts namely, Abdul Rehman, Muhammad Sarwar, Muhammad Anwar and Muhammad Afzaal @ Jalu remained fugitive from law for a considerable period of time. No doubt absconsion is not a

conclusive proof of guilt of an accused but at the same time it cannot be overlooked when the evidence available on record suggests that the accused had deliberately and intentionally avoided to face the trial due to their guilty conscious. In case reported as “Ch. Muhammad Yaqoob and others ..Vs.. The State and others” (1992 SCMR 1982), it has been laid down that:-

*“Furthermore, a distinction is to be drawn between a case in which an accused person immediately after the commission of the offence absconds and a case in which he absconds at the stage of arguments in the trial Court. The former being close proximity with the commission of the offence would carry more evidentiary value as compared to the latter.”*

24. For what has been discussed above, we have entertained no manner of doubt in our mind that the prosecution has successfully proved the charge against the appellants for committing deliberate and premeditated murder of five innocent persons with common object and causing injuries to two others through cogent, reliable and confidence inspiring evidence. This unfortunate incident took place in a broad day light, the parties were already known to each other and in such situation, the question of miss-identification does not arise in any eventuality. The complainant has well explained her presence at the venue of occurrence, whereas, two other eye-witnesses being injured witnesses, also proved their presence at the spot through cogent and confidence inspiring evidence. Motive as set out by the prosecution has successfully been proved. The complainant lady would have been the last person to falsely implicate the appellants in case of murder of her four real brothers and one nephew in substitution of real culprits. Even otherwise, substitution is always considered to be a rare phenomenon in cases where the complainant lost his/her close kith and kin. The appellants have committed the murder of five persons of one family in a most gruesome and cold blooded manner. The persons responsible for committing such brutal, shocking, horrific and panic creating incident in the society deserve no leniency. We have observed, that appellants Muhammad Imran, Shabbir Hussain and Naseer Ahmed to whom no specific role was attributed and general role of causing fire arm injuries to the deceased and injured persons, has already been awarded imprisonment for life by the trial Court because of mitigating circumstances. However, learned defence counsels have failed to

bring on record any iota of circumstance, which may be taken as a mitigating circumstance for awarding lesser punishments to the death convicts to whom specific injuries at the deceased persons were not only attributed but also found existent. In case reported as 'Muhammad Sharif ..Vs.. The State' (1991 SCMR 1622), it has been laid down as under:-

“There can be no controversy that the normal penalty prescribed for the murder by the Divine Law as also the law of the land is death. A murderer is guilty of his act before The Almighty Allah. He is regarded as the murderer of humanity. A Judge is required to do justice on each and every aspect strictly in accordance with law and should not mould the alternatives to favour the guilty. It is the Divine will that we must be firm and resolute to do justice whether it be detrimental to our own interests or the interest of those who are near and dear to us. Mercy is the attribute of God but we are warned not to allow that which is otherwise unlawful--- moreover, we should now show mercy to those who themselves are proved to have acted mercilessly.”

Similarly, in Noor Muhammad .Vs. The State (1999 SCMR 2722), the Apex Court declined to reduce the sentence of the appellant as he committed the murder of two innocent girls in brutal and gruesome manner and observed that the people are losing faith in the Courts for the reason that they either acquit the accused persons on technical grounds or take a lenient view in awarding sentence. It was further observed that the Courts while deciding the question of guilt or innocence in murder and other heinous offences owe duty to the legal heirs/relations of the victim and also to the society and should award severer sentences to the act as a deterrent to the commission of offences.

25. In view of what has been discussed above, all the appeals in hand being meritless, stand dismissed.

26. **Murder Reference No.189 of 2018** is answered in the AFFIRMATIVE and the Death Sentence awarded to convicts Abdul Rehman, Muhammad Sarwar, Muhammad Anwar and Muhammad Afzaal @ Jalu are confirmed.

27. **Criminal Revision No.213819 of 2018** filed by the complainant seeking enhancement of sentence of appellants Muhammad Imran, Shabbir

Hussain and Naseer Ahmed to the capital punishment stands dismissed for the reasons enumerated hereinabove.

**(Aalia Neelum)**  
**Judge**

**(Asjad Javaid Ghural)**  
**Judge**

**Approved for Reporting**

**JUDGE**

*Azam\**