2023 Y L R 1595

[Balochistan]

Before Naeem Akhtar Afghan, C.J. and Rozi Khan Barrech, J

DAD MUHAMMAD ---Appellant

Versus

The STATE and another ---Respondents

Criminal (ATA) Appeal No. 99 and Murder Reference No. 2 of 2020, decided on 7th July,

JUDGMENT

ROZI KHAN BARRECH, J. ---The appellant Dad Muhammad, son of Khuda -e-
Dina, having been involved in case FIR No. 174/1995 dated 26.11.1995 registered under sections 302, 324, 147 and 149, P.P.C. at P.S. Civil Line Quetta District Quetta, was tried by learned Special Judge Anti -Terrorism Court -II, Quetta (hereinafter the "trial court") and on
completion thereof by means of the judgment dated 10.04.2020 ("impugned judgment") passed in Special Case No.29/2018, the appellant was convicted and sentenced in the following terms.

"31.....in view of above discussion and findings arrived at Point No.1, accused person Dad Muhammad son of Khuda -e-Dina is convicted, under section 6 (2), (a) of Anti-Terrorism Act, 1997 and sentenced under section 7(a) of Anti -Terrorism Act,
1997 to death as Tazir, with payment of fine of Rs.400,000/ (Rupees Four Hundred Thousand only) as compensation to legal heirs of deceased persons @ Rs.100,000/ -
(Rupees One Hundred Thousand Only) for one deceased as provided Under Section 544- A of Cr.P.C. and in default thereof to undergo further imprisonment for six
months (S.I).

i) The accused person is also convicted Under Section 6(2), (b) of Anti -Terrorism
Act, 1997 and sentenced Under Section 7(c) of Anti -Terrorism Act, 1997 to suffer
imprisonment for ten years (R.I) and to pay fine of Rs.100,000/ - (Rupees One
Hundred Thousand only) in default of which he shall suffer for six (06) months S.I. "

2. Feeling aggrieved, the appellant, Dad Muhammad, son of Khuda -i-Dina, filed
Criminal (ATA) Appeal No. 99 of 2020, assailing his conviction and sentence. The trial court submitted Murder Reference No. 02 of 2020 under section 374, Cr.P.C for confirmation or otherwise of the sentence of death awarded to the appellant. We intend to dispose of the aforesaid appeal along with the murder reference

through this single judgment.
3. Precisely, facts of the case as divulged from Fard -e-Bayan (Ex.P/3- A) of complainant
Moula Bakhsh, son of Pir Bakhsh (not produced before the trial court as a witness) are as
under:
"I reside with my children and relatives at Mengal Abad Quetta and have a shop at
Joint Road Sarawan Fish House. My brother Shah Muhammad, nephews Qalandar Bakhsh and Muhammad Ramzan and Arbab used to work at my shop, whereas Abdul Sattar Mastoi was also a laborer in the shop. Today, i.e. 26.11.1995, I was present at my house when I received information that at 9:30 am firing was made on my shop. On this information at 10:50 am, I immediately reached civil hospital Quetta, where I found my brother Shah Muhammad, nephews Qalandar Bakhsh and Muhammad Ramzan, as well as laborer Abdul Sattar Mastoi lying in a pool of blood; that my brother Arbab was lying unconscious in injured condition. There were firearm injuries on the person of the deceased and injured Arbab. On account of the murder of SDO Peera Khan, we had enmity with Zulfiqar alias Bhuttia, Ali Muhammad, Muhammad Waris, Dad Muhammad, Wali Muhammad alias Dilo all sons of Khuda -e-Dina by caste Peechuha and due to such enmity, we had left Chattar Naseerabad and were residing in Quetta. The aforesaid accused persons have committed the above- stated
crime either on their own or with the help of others which is unknown. I am gathering information on my own, and whenever I get any information, I will bring the same on record. The above -stated accused persons, on account of the previous enmity either on
their own or in connivance with others, have unjustly committed the murder of my brother, nephews and laborer of my shop."
The report of the complainant was reduced into Marasla (Ex.P/3- A) by the SHO, who
also prepared injury sheet and inquest report of the deceased and handed over the dead bodies to Dr. Fareed Ahmed (PW- 4) Medical Officer Sandeman Provincial Hospital Quetta,
who examined the deceased and prepared the reports (Ex.P/4- A to Ex.P/4 -D), according to
which the deceased received injuries on their bodies by means of firearms.
4. After registration of the formal FIR (Ex.P/3 -B), the investigation of the case was
entrusted to Muhammad Ilyas Jaffar DSP (PW -3). During the investigation of the case, he
visited the place of occurrence, where he prepared a site plan (Ex.P/3- O), and collected
blood- stained earth of the deceased and injured from the spot (Ex.P/3- J to Ex.P/3 -N). He

took into possession thirty bullet empties of Kalashnikov through a recovery memo (Ex.P/3-Q). He reached the civil hospital, and there, he took the blood -stained shirts of the deceased
into possession through the recovery memo (Ex.P/3- R). He prepared the inquest reports of
the deceased (Ex.P/3 -D to Ex.P/3- F). After medical examination of the deceased and injured
by the doctors, the investigation officer handed over the dead bodies of the deceased to their legal heirs after obtaining receipts (Ex. P/3 -G to Ex.P/3 -H).

5. On 29.11.1995, further investigation was conducted by Muhammad Tariq SI (PW -6).
During the investigation on 30.11.1995, he recorded statements of the eye -witnesses Malook
(PW -2), and Juma Khan (PW -3) under section 161 Cr.P.C. He arrested accused Muhammad
Waris and Ali Muhammad (acquitted accused), and Zulfiqar alias Bhuttia (convicted accused) from Naseerabad. He obtained death certificates of the deceased from Sandeman Provincial Hospital Quetta and also recorded the statement of injured Arbab under section 161, Cr.P.C.

6. On 05.06.1996, the then investigation officer prepared and submitted a challan before
the court of Special Judge under the Suppression of Terrorist Activities Act Balochistan
Quetta (in short, "STA court"). The appellant Dad Muhammad and co- accused Wali
Muhammad remained absconders, while co- accused Zulfiqar alias Bhuttia, acquitted accused
Muhammad Waris and Ali Muhammad faced trial.
A formal charge was framed against the convicted accused Zulfiqar alias Bhuttia and
acquitted accused Muhammad Waris and Ali Muhammad, to which they did not plead guilty and claimed trial, whereas a charge was framed against the absconding accused Wali Muhammad and appellant Dad Muhammad in their absence as it was a trial in absentia to their extent and it was presumed that they denied the charge.

7. The prosecution in order to prove its case before the STA court, produced Arbab
Khan as PW- 1, Malook (PW -2), Juma Khan (PW -3), Dr. Muhammad Amin Mengal (PW -4),
Abdul Ghani (PW5), Nabi (PW -6), Dr. Fareed Ahmed (PW- 7), Khudaidad (PW -8), Abdul
Jabbar (PW- 9), Muhammad Tufail (PW -10), Muhammad Ilyas Jaffar DSP (PW -11) and
Muhammad Tariq SI (PW -12).

8. The appellant and co -accused Wali Muhammad alias Dilo being

proclaimed
offenders, were represented in Special Case No. 51/1996 by Syed Nazeer Hussain Shah, as Advocate appointed by the STA court, and he cross -examined all the witnesses on behalf of
the absconding accused, i.e. appellant and co- accused Wali Muhammad alias Dilo. On
completion of the trial proceedings of Special Case No. 51/1996 vide judgment dated 10th September 1997, the STA court acquitted the accused Muhammad Waris and Ali Muhammad while the appellant Dad Muhammad and absconding accused Wali Muhammad alias Dilo were awarded the death penalty under section 302(b), P.P.C. in absentia with fine of
Rs.200,000/ - to be paid to the legal heirs of the deceased. The appellant and absconding
accused Wali Muhammad alias Dilo were also convicted and sentenced in absentia under section 324, P.P.C. to suffer two years' R.I with a fine of Rs.5000/ -.
The co -accused Zulfiqar was awarded a conviction of five years under sections 302
and 109, P.P.C. with a fine of Rs.5000/ -. He assailed his conviction and sentence through
Criminal Appeal No.09/1998 before this court, and later, on 24.04.1998, the same was dismissed, having not been pressed.
9. On 10.04.2014, the appellant was arrested by Naseerabad police for an offence under
section 13 -e of the Arms Ordinance, 1965. He was also arrested in the instant case and
shifted to Central Jail Mach. The appellant challenged his conviction and sentence awarded in absentia by the STA court by filing Criminal Appeal No. 32/2015 before this court, which was accepted vide judgment dated 19th March 2015, whereby after setting aside the judgment dated 10th December 1997 passed by the STA court to the extent of the appellant, the matter was remanded by this court to the court of Special Judge Anti -Terrorism Court -II,
Quetta for de novo trial of the appellant.
10. The appellant was put on de novo trial in Special Case No. 29/2018 before the trial
court. The charge was read over to the appellant by the trial court on 3rd June 2015 under
sections 302, 324, 147 and 149, P.P.C. read with Section 7 of the Anti -Terrorism Act, 1997
(hereinafter the "Act") to which the appellant did not plead guilty and claimed trial.
11. At trial, the prosecution produced Arbab (PW -1) injured/eye -witness, Abdul Nabi
(PW -2), who is the witness of circumstances, Muhammad Ilyas Jaffar (PW -3), who
conducted an investigation of the case. Dr. Fareed Ahmed (PW-

4), who examined the dead bodies of the deceased, Dr. Noor Baloch (PW -5), who produced a medical certificate of the injured Arbab, Muhammad Tariq SI (PW -6), the second investigation officer of the case and Javed Akhtar (PW- 7) who submitted supplementary challan against the appellant.

12. When examined under section 342 Cr.P.C., the appellant negated the allegations levelled against him by the prosecution. The appellant opted not to record his statement on oath as envisaged under section 340(2), Cr.P.C. He did not produce any evidence in his defense.

13. Before pronouncement of the judgment, the complainant submitted an application through Special Public Prosecutor under Article 47 of Qanun-e-Shahadat Order, 1984 before the trial court for considering the statement of the witnesses Malook, Juma Khan, Abdul Ghani and Muhammad Tufail recorded by the STA court in Special Case No. 51/ 1996 as evidence against the appellant in Special Case No. 29/2018 on the ground that the witness Malook died on 5th October 2017, the witness Juma Khan has died on 3rd August 2011, the witness Abdul Ghani has died on 3rd February 2015 and the witness Tufail Ahmed was not traceable.

The death certificate of the witnesses Malook, Juma Khan and Abdul Ghani were produced by CW -3 Asif Rasheed SI/Investigation Officer on 6th March 2019 before the trial court.

14. After hearing the learned counsel for the parties as well as the learned Special Prosecutor, the trial court accepted the application of the complainant vide order dated 24th April 2019 and decided to consider the statements of Malook (PW -2), Juma Khan (PW -3) and Abdul Ghani (PW -5) recorded in Special Case No. 51/1996 as evidence against the appellant in Special Case No. 29/2018.

Feeling aggrieved from the order dated 24th April 2019, the appellant filed C.P. No. 745/2019, and the same was dismissed on 18.12.2019.

After hearing arguments advanced on behalf of the parties while evaluating the evidence on record, the trial court found the version of the prosecution proved beyond the shadow of reasonable doubt. Resultantly, vide judgment dated 10.04.2020, the trial court convicted and sentenced the appellant. A detail of the sentence has already been mentioned in the earlier part of this judgment. Hence, this appeal and connected murder reference.

15. The contention of learned counsel for the appellant precisely is that there was an unexplained delay of one and a half hours in filing the FIR, which led to its concoction; that the whole case is fabricated and false, and that the prosecution remained unable to prove the facts in issue and did not produce any unimpeachable, admissible and relevant evidence.

Learned counsel for the appellant in support of this appeal further contended that the story of the prosecution mentioned in the FIR, on the face of it, was highly improbable, and the reason assigned by the eye -witnesses for being present at the place of occurrence was without any justification. He further contended that when Arbab Khan appeared before the STA court as PW -1, he was declared a hostile witness, but subsequently, when he appeared before the trial court, he nominated the accused and made dishonest improvements in his statement deliberately and intentionally. He further argued that the statements of the eye-witnesses were not worthy of credence, and the statement of the injured witness was recorded with a delay of five months, and the statement of the other so- called eye- witnesses were also recorded with a delay of ten days. The learned counsel for the appellant finally submitted that the prosecution had totally failed to prove the case against the accused beyond the shadow of a doubt.

16. On the other hand, the learned APG assisted by the learned counsel for the complainant vehemently controverted the arguments advanced by the learned counsel for the appellant and submitted that the time, date, mode and manner of the offence were successfully established by the prosecution through the eye -witnesses and the injured/witness and despite lengthy cross -examination of the aforesaid witnesses by the defense there is no major contradiction in their statements to disbelieve them. He has further argued that, indeed it is the quality of the evidence which is required for the prosecution to establish the guilt of the accused and not the quantity of the evidence. He further argued that the medical evidence also corroborated the statement of the eye- witnesses. Learned APG contended that there was no occasion for the prosecution witnesses to substitute the real offender with the innocent in this case. Lastly, he prayed for the rejection of the appeal.

17. After cautious analysis of the evidence on record and considering the pros and cons so put forth by the learned counsel for the parties, we have

gathered that the prosecution's entire case rests upon ocular evidence, medical evidence as well as investigation besides other attending circumstance's. The unfortunate episode of murder of four persons for no valuable purposes a drastic and unbearable trauma, having a stigmatic effect upon their family members and society. However, the courts have to decide the fate of a crime committed by a felon on the basis of impeachable evidence and not at the cost of emotions.

18. As far as the merits of the case are concerned, we have observed that the prosecution produced Arbab Khan (PW -1), Malook (PW -2) and Juma Khan (PW -3) in support of the charge, but all the above witnesses are relatives (nephews) of the complainant; therefore, for safe administration of justice, their evidence will have to be appreciated with care and caution. No doubt, the evidence of the related witnesses cannot be discarded on the ground of its being related to the victim, but if it is found that the testimony of the related witness got no corroboration from attending circumstances of the case or the conduct shown by them at the time of occurrence or just thereafter as such, which cannot be expected from a prudent person, then under such circumstances the evidence furnished by related witnesses cannot be easily discarded. At the touchstone of the above, we now take into consideration the testimonies furnished by the above witnesses in the case.

19. In the case in hand, the alleged occurrence took place on 26.11.1995 at 9:30 a.m., and the FIR was lodged on the same date at 11:00 am after one and a half hours of the occurrence, and the accused/appellant and co -accused were nominated on the basis of suspicion. The complainant, Moula Bakhsh son of Pir Bakhsh, was not produced before the court as a prosecution witness. The trial court issued the summons as well as warrants of the complainant, but despite that, the complainant was not traceable. It is worthwhile to mention here that the complainant Moula Bakhsh son of Pir Bakhsh, is the brother of the deceased Ramzan and uncle of the other deceased except deceased Abdul Sattar. He is not an eye-witness of the occurrence. According to his report on the day of occurrence, i.e. 26.11.1995, he was present in his house when he was informed about the incident which had taken place at his shop, i.e. Sarawan Fish House joint road Quetta. The complainant in his report was not sure about the assailants who had committed the said offence. Perusal of the FIR shows that at the time of registration of the FIR, the complainant was not even aware about the assailants, that is why he mentioned in his report that the crime had been committed by the nominated accused either on their own or with the help of

others is yet to be known.
20. The complainant had deliberately avoided appearing before the court in the first and
second rounds to the extent of the appellant. It is worthwhile to mention here that the basic
purpose of FIR is not meant to decide guilt or innocence but to activate the law enforcing
agencies to immediately move for collection/ preservation of evidence. The first information report is not substantive evidence, and a statement of first information, who is not an eye -
witness cannot be treated at par with the direct evidence of an eye- witness, but the same may
be used as corroborative evidence. In the case in hand, the evidence of the complainant was imported because the complainant did not mention in the FIR who informed him about the occurrence, and it is still shrouded in mysteries that who had told the names of the culprits to the complainant.
21. We have also noted that Arbab Khan (PW- 1), who appeared before the STA court in
the first round, recorded his statement before the court on 19.10.1996 as PW -1. In the said
statement, he stated that the assailants were three in number and were with muffled faces. The said witness did not mention the name of any accused in his previous statement recorded before the STA court; however, when the appellant was arrested the statement of Arbab Khan was recorded again as PW- 1 on 14.07.2015, wherein he stated that five persons came
to the shop. The accused/appellant Dad Muhammad, Wali Muhammad alias Dilo were armed with Kalashnikovs and made firing upon him and the deceased.
22. We have also observed that in the contents of the FIR the complainant stated that on
account of the murder of SDO Peera Khan, they have enmity with Zulfiqar alias Bhuttia, Ali Muhammad, Muhammad Waris, Dad Muhammad, Wali Muhammad alias Dilo all sons of Khuda -e-Dina by caste Peechuha and due to such enmity they have left Chattar Naseerabad
and are residing in Quetta. It is further mentioned in the FIR that the above -stated crime has
been committed by the above -stated accused either on their own or with t he help of others is
yet to be known; that he is gathering information on his own and whenever he gets any information, same will be brought on record. It is further contended in the FIR that the above -stated accused persons, on account of the previous enmity either on their own or in
connivance with others have committed the murder of the brother of the complainant,

nephews and laborer unjustifiably.
23. It was stated earlier that the complainant was not an eye-witness to the occurrence. It has also come on record that the dead bodies of the injured were shifted to the hospital by the police. On the day of occurrence, Arbab Khan (PW -1) neither told the name of the accused to the police nor to the complainant. According to the medical certificate of the injured/PW- 1 (Ex.P/3- A), he was discharged on 10.12.1995 from the hospital. His statement was recorded under section 161, Cr.P.C on 26.03.1996 after a delay of four months. When he appeared before the court as PW -1 in the trial of the appellant in absentia on 09.1.1996, he also did not mention the name of the appellant in his statement, and when after nineteen years, he appeared before the trial court as PW-1, he named the accused. PW -1, Arbab Khan had contradicted his own statement because when he appeared as PW- 1 in the first round, he stated that the assailants were three in number with muffled faces. Since the accused were booked in the instant case in the FIR on the basis of suspicion, therefore, the improvement made by PW -1 Arbab Khan was substantial and was made with regard to a crucial aspect of the prosecution evidence. By improving his previous statement, Arbab Khan (PW -1) impeached his own credit. Article 151 of the Qanun- e-Shahadat Order, 1984 provides as under: --

"151. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:
(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be un worthy of credit.
(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence.
(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

24. Arbab Khan (PW -1) introduced a dishonest, blatant and substantial improvement to his previous statement and was duly confronted with his former statement; hence his credit stands impeached and cannot be relied upon on being proved to have deposed with a slant, intended to mislead the court. It is held in the case of Amir Zaman v. Mahboob and others (1985 SCMR 685) that the testimony of witnesses containing material improvements is not believable and trustworthy. The august Supreme Court of Pakistan, in the case of Muhammad Arif v. The State (2019 SCMR 631) has

enunciated the following principle:
"It is well established by now that when a witness improves his statement and moment it is observed that the said improvement was made dishonestly to strengthen the prosecution, such portion of his statement is to be discarded out of consideration. Having observed the improvements in the statements of both the witnesses of ocular account, we hold that it is not safe to rely on their testimony to maintain conviction and sentence of Muhammad Arif (appellant) on a capital charge."
25. The instant case was pending before the then STA court. The appellant Dad Muhammad and co -accused Wali Muhammad alias Dilo remained absconders at the trial before the STA court. The prosecution produced witnesses, including Malook as PW -2 on 09.10.1996 and Juma Khan as PW -3 on 21.11.1996. On 10.06.2014, the appellant, Dad Muhammad, was arrested when the case was fixed for final arguments before the trial court; learned Public Prosecutor submitted an application under Article 47 of Qanun- e-Shahadat Order, 1984 read with Section 512, Cr.P.C before the trial court for considering the statements of said witnesses recorded by the STA court in Special Case No. 51/1996 as evidence against the appellant/accused in Special Case No. 29/2018 on the ground that the witnesses Malook and Juma Khan have died. The trial court accepted the application of the learned Public Prosecutor on 24th April 20109 and decided to consider the statements of the above two witnesses recorded by the STA court in Special Case No. 51/1996 as evidence against the appellant in Special Case No. 29/2018.
26. The provisions of Article 47 of Qanun -e-Shahadat Order, 1984 are an exception, and the testimony of a witness becomes a legal piece of evidence; therefore, much care and caution are needed to be exercised by the court before placing reliance on it, particularly in the case of capital charge.
27. Malook and Juma Khan stated in their statements before the STA court that they were laborers with the complainant at his shop situated at joint road Quetta. On the day of occurrence, the accused/appellant, along with co- accused armed with Kalashnikovs, made firing upon the deceased and injured Arbab Khan, who received injuries. Both the above witnesses were highly interested and inimically deposed against the appellant. The first reason for disbelieving them is that their presence on the spot was unnatural because had they been present at the spot, they would

have received some injuries from the shots fired by the appellant. It appears that they have tried to suppress their interestedness. Both the above witnesses did not justify their presence at the place of occurrence. Suppose the statements of the above witnesses are believed to be true; in that case, the question arises as to why and how the appellant and co- accused spared them and did not try to kill them when they could have easily killed them because they were empty -handed and at their mercy, coupled with the fact that they could depose against them as eye -witnesses being relatives of the deceased.

The mode and manner of the occurrence advanced by the prosecution witnesses are not appealable to the prudent mind. Another interesting feature of the case is that the appellant had no motive to fire at one of the deceased, namely Abdul Sattar (laborer at the shop of the complainant). According to statements of the above so- called eye- witnesses, they were empty-handed, and they were totally at the mercy of the appellant, but they were left alive, and the appellant selected to kill one Abdul Sattar, who had no enmity with the accused/appellant. The complainant stated in his report that the accused had previous enmity with them. Both the above witnesses are nephews of the complainant, so it can be inferred that the incident did not take place in the way and manner as it was alleged. Neither there was any dearth of ammunition nor that of intent and opportunity on the part of the appellant or co -accused for not doing away with the witnesses, namely Malook (PW -2) and Juma Khan (PW -3), their main adversaries. In this scenario, it is hard to believe that the witnesses, namely Malook (PW -2) and Juma Khan (PW -3), would have been shown the courtesy of being not fired at all when they should have been the prime targets of the assailants. Further, it was claimed by the prosecution witnesses that as many as five accused persons in total and made firing with Kalashnikovs at the time of occurrence and in the midst of this indiscriminate firing, the witnesses, namely Malook (PW -2) and Juma Khan(PW -3) did not receive even a single scratch on their persons during the whole occurrence. If the witnesses, namely Malook (PW -2) and Juma Khan (PW -3), had been present in the view of the assailants, they would not have been spared.

28. We have noted with grave concern that it was claimed by the prosecution witnesses that they, namely Malook (PW -2) and Juma Khan (PW -3), were

miraculously saved in the
midst of the firing. Blessing them with such an incredible consideration and showing them such favour is implausible and opposed to the natural behavior of any accused.
It is all the more illogical that being perceptive of the fact that if the witnesses were
left alive, they would depose against the accused; even then, the appellant and his co- accused
did not cause any injury to them. Such behavior, on the part of the accused, runs counter to natural human conduct and behavior.
29. Article 129 of the Qanun- e-Shahadat Order, 1984 allows the courts to presume the
existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events and human conduct in relation to the facts of the particular case. We thus trust the existence of this fact, by virtue of Article 129 of the Qanun- e-
Shahadat Order, 1984, that the conduct of the assailants, as deposed to by the witnesses, namely Malook (PW -2) and Juma Khan (PW -3), as opposed to the common course of natural
events and human conduct. Hence, we hold that both Malook (PW -2) and Juma Khan (PW -3)
were not present at the place of occurrence and did not witness the occurrence. The august Supreme Court of Pakistan, in the case Tariq Mehmood v. The State and others (2019 SCMR 1170), has observed as under:
"First sight cannot escape preponderance of evidence, however on a closer view, emerges a picture incompatible with the events, narrated in the crime report. The accused mounted assault, as per prosecution's own case to settle score with Muhammad Usman, PW for his alleged affair with the lady related to the
appellant; it is disgrace that brought the assailants, face to face, with Muhammad Usman, PW, well within their view and reach it is astonishing that while being merciless without restraint upon others they spared prime target of assault. There can be no other inference that either Muhammad Usman was not present at the scene or the occurrence took place in a backdrop other than asserted in the crime report."
30. We have also noted that the place of occurrence was a thickly populated area and was
surrounded by shops. According to the site plan of the place of occurrence (Ex.P/3- A) as
prepared by Muhammad Ilyas Jaffar, DSP/ Investigating Officer of the case there were shops, near the place of occurrence. None of those who had shops near the place of occurrence joined the investigation and appeared before the court to support the prosecution's case. The prosecution was duty -bound to produce the witnesses who were residents of the
place of occurrence. Article 129(g) of Qanun- e-Shahadat Order,

1984 provides that if any evidence available with the parties is not produced, then it shall be presumed that had that evidence been produced, the same would have been gone against the party producing the same.

31. The presence of the above two witnesses, namely Malook and Juma Khan, becomes further doubtful because they were chance witnesses and were residents of Dera Murad Jamali. According to the contents of the FIR, neither they informed the complainant about the occurrence, nor were their names mentioned in the report lodged by the complainant. Malook (PW -2) stated during cross -examination that he was studying in school at Dera Murad Jamali as a regular student in the fifth class. He further stated during cross - examination that the schools open from the month of September. He further stated during cross -examination that during November, he was a student at Dera Murad Jamali and voluntarily stated that he was on one month's leave December. On the other hand, the occurrence took place in the month of November.

32. Furthermore, both the said witnesses stated in their statements that after the occurrence, they went to the house of the complainant situated at Mengal Abad and informed the complainant about the occurrence, but on the other hand, the complainant did not state in his report that Malook and Juma Khan informed him about the occurrence. According to the medical report of the deceased, the dead bodies of the deceased were shifted to the hospital by traffic police. The conduct of Malook and Juma Khan, who were relatives of the deceased and injured, instead of shifting the deceased and the injured to the hospital went to the complainant's house, appeared to be highly unnatural. Had they been present on the spot at the time of the alleged occurrence, they must have taken the deceased and the injured to the hospital or police station, which admittedly was not done. For the sake of arguments even if it is presumed for a moment that personally they were unable to take the deceased and the injured to hospital or police station, then they could have at least deputed someone else for the purpose rather than going to the house of the complainant. Ordinarily, such conduct is not expected from Malook (PW -2) and Juma Khan (PW -3), being relatives of the deceased. It has been stated earlier that the complainant Moula Bakhsh is not an eye -witness to the alleged occurrence, but the FIR was lodged by the said Moula Bakhsh. For the sake of argument, if it is presumed that PWs Malook and Juma Khan were present at the place of occurrence, then naturally, they could have lodged the report promptly, but

they did not do so. It seems that they were not present at the place of occurrence; the FIR was lodged with a delay of one and a half hours without any plausible explanation, which too creates doubt on the credibility of the above eye -witnesses. Reliance in this behalf is placed on the case of Mehmood Ahmad and 3 others v. The State and another 1995 SCMR 127.

33. The alleged occurrence took place in Quetta city, whereas both the above witnesses were residing at Dera Murad Jamali, and the place of occurrence is at a distance of about 272 Kilometers. Both the above witnesses have not given any plausible explanation for their presence at the place and time of occurrence. They had no place of business near the place of occurrence; therefore, we hold that both the above witnesses are chance witnesses. Even otherwise, the statements of the above witnesses were not put to the accused/appellant while he was examined under section 342, Cr.P.C. by the trial court; therefore, the same cannot be used against the appellant.

34. The testimony of a chance witness ordinarily is not accepted unless justifiable reasons are shown to establish his presence at the crime scene at the relevant time. In the normal course, the presumption under the law would operate about his absence from the crime spot. The testimony of a chance witness may be relied upon, provided some convincing explanations appealing to a prudent mind for his presence on the crime spot are put forth when the occurrence took place; otherwise, his testimony would fall within the category of suspect evidence and cannot be accepted without a pinch of salt. Reliance may be placed on the cases reported as "Mst. Shazia Parveen v. The State" (2014 SCMR 1197) and "Muhammad Rafique v. The State" (2014 SCMR 1698).

35. It is stated earlier that the alleged occurrence took place on 26.11.1995 at 9:30 am, and the FIR was lodged on the said date at 11:00 am with a delay of one and a half hours. The distance between the place of occurrence and the police station is about two and a half kilometers, but no explanation whatsoever has been furnished by the prosecution for such delay. Furthermore, it can be inferred from the circumstances and statements of the witnesses that it was only after consultation and concert that the oral statement (Exh. P/3- A) of the complainant, namely Moula Bakhsh, was prepared, and the same was neither prompt nor spontaneous, hence worthy of the no reliance. The alleged occurrence took place on 26.11.1995 at 9:30, and a post -mortem of the deceased were conducted at 10:15 am before the registration of the FIR.

36. Apart from the above, the statement under Section 161, Cr.P.C. of Arbab Khan (PW -
1) was recorded on 26.03.1996 after a delay of four months from the occurrence. The statements under section 161, Cr.P.C. of PWs Malook and Juma Khan were recorded on 05.12.1995 after a delay of ten days after the occurrence. The prosecution has failed to furnish any plausible explanation in this regard. This aspect of the case renders the case of the prosecution extremely doubtful. The above witnesses remained mum for a long time and
recorded their statements under section 161, Cr.P.C with considerable delay. The delay of even one or two days without explanation in recording the statements of witnesses has been found fatal for the prosecution and not worthy of reliance by the august Supreme Court in the case of Muhammad Asif v. The State reported as 2017 SCMR 486 as under:
"There is a long line of authorities/precedents of this court and the High courts that even one or two days unexplained delay in recording the statement of eye -witnesses
would be fatal and testimony of such witnesses cannot be safely relied upon."
In this regard, reliance can also be placed on "Muhammad Sadiq v. The State (PLD
1960 SC 223), Tariq Gul v. Ziarat Gul (1976 SCMR 236), Muhammad Iqbal v. The State (1984 SCMR 930) and Haroon alias Harooni v. The State and another (1995 SCMR 1627).
Similarly, it has been settled by the august Supreme Court of Pakistan in Muhammad
Khan v. Maula Bakhshah (1998 SCMR 570) that
"It is settled law that credibility of a witness is looked with serious suspicion if his statement under section 161, Cr.P.C is recorded with delay without offering any plausible explanation."
37. It is also admitted fact that Arbab Khan (PW -1) also received firearm injuries;
however, this witness failed to prove his truthfulness during the trial. It is settled law that the
stamps of injuries on the person of a witness may establish his presence at the relevant time
at a particular place of occurrence, but the injuries itself are not proof that whatever the witness is telling is the truth. In the case titled Shahidullah v. Eid Marjan and 2 others (2014 PCr.LJ 1684), it has been held that:
"Mere stamp of injuries on the person of a witness would not be a proof of the fact that, whatever he deposes would be the truthful account of the events. His veracity is to be tested from the circumstances of the case and his own statement whether it fits in the circumstances of the case or otherwise."
Reliance can also be placed upon the case titled "Amin Ali and another v. The
State"(2011 SCMR 323) that: -

12. Certainly, the presence of the injured witnesses cannot be doubted at the place of incident, but the question is as to whether they are truthful witnesses or otherwise, because merely the injuries on the persons of P. Ws. would not stamp them truthful witnesses.

38. So far as the remaining pieces of evidence relied upon by the prosecution against the appellant, which are medical evidence, motive and recovery of crime empty from the place of occurrence are concerned, it is by now well settled that the medical evidence can only confirm the ocular account with regard to seat, nature and duration of injuries and the kind of weapon used for causing such injuries but it cannot connect the accused with the commission of the crime in the absence of any trustworthy and confidence -inspiring direct evidence.

39. So far, the recovery of thirty -six bullet empties from the place of occurrence is concerned; the role of firing has been attributed to all the accused. According to the so- called eye-witnesses, all the accused persons were armed with Kalashnikovs and made firing upon the deceased persons and the injured Arbab Khan. The empties recovered from the place of occurrence were not sent to Forensic Science Laboratory to establish that whether the firing was made with one firearm or with different weapons, which makes the same further doubtful; therefore, the same cannot be relied upon for the purpose of conviction. More so, this piece of evidence is a corroborative one and in a case where direct evidence fails, a corroborative piece of evidence is of no avail as in the instant case, direct evidence of PWs has already been disbelieved. In a case titled Ghulam Akbar and another v. The State (2008 SCMR 1064), it was observed by the Hon'ble Supreme Court that law required that empty recovered from the spot should be sent to the laboratory without any delay, failing which such recovery evidence is not free from doubt and could not be used against the accused.

40. Learned APG, along with learned counsel for the complainant, has also relied upon the evidence of motive and submitted that it corroborated the ocular account. The motive of the occurrence, as stated by the complainant in his report Ex.P/3- A, is that on account of the murder of SDO Peera Khan, they had enmity with the accused Zulfiqar, Dad Muhammad Wali Muhammad alias Dilo son of Khuda -i-Dina by case Peechuha and due to that enmity they had left Chattar Naseerabad and were residing in Quetta city. The a bove -stated crime has been committed due to the previous enmity by the above said accused persons either on their own or with the help of others, which is yet to be known. As stated earlier, the

complainant Moula Bakhsh was not produced before the court as a witness. No strong piece
of evidence was produced by the prosecution to establish the motive alleged by the complainant in his report.
It is settled law that motive is a double -edged weapon, which can cut either way; if it
is the reason for the appellant to murder the deceased, it equally is a ground for the complainant to falsely implicate him in this case. The august Supreme Court of Pakistan has held in the case of Muhammad Ashraf Alias Acchu v. The State (2019 SCMR 652) as under: -
"7. The motive is always a double -edged weapon. The complainant Sultan Ahmad
(PW9) has admitted murder enmity between the parties and has also given details of the same in his statement recorded before the trial court. No doubt, previous enmity can be a reason for the appellant to commit the alleged crime, but it can equally be a reason for the complainant side to falsely implicate the appellant in this case for previous grouse."
Moreover, it is an admitted rule of appreciation of evidence that motive is only a
corroborative piece of evidence; if the ocular account is found to be unreliable, then motive alone cannot be made the basis of conviction.
41. Adverting next to the abscondence of the appellant, no doubt it is a relevant fact and
can be used as a corroborative piece of evidence, but it cannot be read in isolation, as it has to be read along with a substantive piece of evidence. The Hon'ble Supreme Court of Pakistan, in the case of Asad Ullah v. Muhammad Ali (PLD 1971 SC 541), held that corroborative and ocular evidence are to be read together and not in isolation. As regards abscondance, the Hon'ble Apex Court, in the case of Rasool Muhammad v. Asal Muhammad
1995 SCMR 1373, observed that abscondence is only a suspicious circumstance. In the case of Muhammad Sadiq v. Najeeb Ali (1995 SCMR 1632), the August Supreme Court held that abscondence itself has no value in the absence of any other evidence. It was also held in the case of Muhammad Khan v. The State (1999 SCMR 1220), that abscondence of the accused can never remedy the defects in the prosecution case. In the case of Gul Khan v. State (1999 SCMR 3004), it was observed that abscondence per se is not sufficient to prove the guilt of the accused but can be taken as a corroborative piece of evidence. In the cases of Muhammad Arshad v. Qasim Ali (1992 SCMR 814), Pir Badshah v. State (1985 SCMR 2070) and Amir Gul v. State (1981 SCMR 182), it was held by the Hon'ble Apex Court that conviction on abscondence alone cannot be sustained. In the present case, a substantive piece of evidence in the shape of an ocular account

has been disbelieved by us, therefore, no conviction can be based on abscondence alone. Even otherwise, when the appellant was examined under Section 342, Cr.P.C by the trial, court no question was put to him in respect of his alleged absconsion; therefore, this piece of evidence cannot be used against the appellant as a valid piece of evidence.

42. It was a case of spreading the net wide on maximum male members of their opponents' families by assigning the role of firing to each accused. Last but not least, mere heinous or gruesome nature of crime shall not detract the Court of law in any manner from the due course to judge and make the appraisal of evidence in a laid down manner and to extend the benefit of reasonable doubt to an accused person being indefeasible and inalienable right of an accused. Getting influenced by the nature of the crime and other extraneous considerations might lead the Judges to a patently wrong conclusion, and justice would be the casualty in that event.

43. The factum of the benefit of the doubt is very much lucid in its entirety that if there exists a reasonable ground to believe that the accused/appellant has not participated in the commission of the alleged crime in the mode and manner as advanced by the prosecution, then there is no need of numbers of circumstances to prove the innocence of accused even a single circumstance creating reasonable doubt is sufficient for the acquittal of the accused.

44. From the facts and circumstances narrated above, we are persuaded to hold that conviction passed by the trial court against the appellant in the circumstances is against all canons of law recognized for the safe dispensation of criminal justice. As per dictates of law benefit of doubt is to be extended in favour of the accused. Resultantly Criminal (ATA) Appeal No.99/2020 filed by the appellant is allowed and after setting aside the conviction and sentence recorded by the trial court in terms of the judgment dated 10.04.2020 passed in Special Case No. 29/2018, the appellant is acquitted of the charge in FIR No. 174/1995 PS Civil Line Quetta dated 26.11.1995 under sections 6 (2) (a), 7(a), 6 (2) (b) and 7 (c) of Anti - Terrorism Act, 1997. The appellant Dad Muhammad, son of Khuda -e-Dina, is ordered to be released forthwith if not required in any other case. The Murder Reference No. 02 of 2020 is answered in negative.

JK/117/Bal. Appeal allowed.