

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Justice Naeem Akhter Afghan
Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim

CrI.A.379/2021 IN CrI.P.L.A.801/2019

(On appeal from judgment dated 22.5.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI.A.No.961/2018 and M.R. No. 39/2018)

Fateh Khan v. The State etc.

CrI.A.380/2021 IN CrI.P.L.A.826/2019

(On appeal from judgment dated 22.5.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI.A.No.35/2016 and M.R. No. 14/2016)

Madad Khan etc. v. The State etc.

CrI.A.381/2021 IN CrI.P.L.A.827/2019

(On appeal from judgment dated 22.5.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI.A.No.485/2011 and M.R. No.90/2011)

Shaukat Ali etc. v. The State etc.

CrI.A.382/2021 IN CrI.P.L.A.828/2019

(On appeal from judgment dated 22.5.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI.A.No.961/2018 and M.R. No.39/2018)

Khalid Mehmood v. Fateh Khan & others

CrI.A.383/2021 IN CrI.P.L.A.829/2019

(On appeal from judgment dated 22.5.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI.A.No.35/2016 and M.R. No.14/2016)

Khalid Mehmood v. Madad Khan & others

CrI.A.384/2021 IN CrI.P.L.A.830/2019

(On appeal from judgment dated 22.5.2019 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI.A.No.485/2011 & M.R.No.90/2011)

Khalid Mehmood v. Shaukat Ali & others

...Appellant(s)/
...Respondent(s)

...

For the Appellant(s): Mr. Muhammad Latif Khan Khosa, ASC
Mr. Amjad Raza Bhatti, ASC
(In Crl.As.379 to 381/2021)

Mr. Ansar Nawaz Mirza, ASC
(In Crl.As.382 to 384/2021)

For the Respondent(s): Mr. Muhammad Latif Khan Khosa, ASC
Mr. Amjad Raza Bhatti, ASC
(In Crl.As.382 to 384/2021)

For Complainant: Mr. Ansar Nawaz Mirza, ASC
(In Crl.As.379 to 381/2021)

For State: Mr. Tariq Siddique, Addl. P.G. Punjab

Date of Hearing: 02.05.2025

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JUDGMENT

Naeem Akhter Afghan, J.- The accused Shaukat Ali, Ahmed Sher, Muhammad Riaz, Ehtebare Khan, Muhammad Hanif, Muhammad Irfan and Umer Farooq were put on trial before the learned Additional Sessions Judge, Chakwal (**the trial court**) in sessions trial No. 24/2010 in FIR No.12/2007 registered with Police Station (**PS**) Lawah, District Chakwal on 26th February 2007 by the complainant Khalid Mehmood under section 302, 324, 404, 427, 337-A(i), F(i),F(iii), F(v), 148 & 149 of Pakistan Penal Code (**PPC**).

2. On conclusion of the trial, *vide* judgment dated 31st October 2011 passed by the trial court, all the above named accused were convicted under section 302 read with section 149 PPC and were sentenced to death as Ta'zir on seven counts, to pay compensation of Rs.200,000/- each on seven counts to the legal heirs of deceased Muhammad Yar, Muhammad Ilyas, Muhammad Nasir, Muhammad Yaqoob, Khalid Saeed, Gohar and Lal Khan; in default of payment of compensation to further undergo six months SI each. The above named accused were also convicted under section 324 read with section 149 PPC for murderous assault upon the complainant Khalid Mehmood and prosecution witness Sajid Akhtar and they

were sentenced to suffer seven years rigorous imprisonment (**RI**) each with fine of Rs.25,000/- each on two counts and in default thereof to further suffer three months simple imprisonment (**SI**). They were acquitted of the charge under section 324 read with section 149 PPC to the extent of the alleged injured Ijaz and Muhammad Hanif due to their non-appearance in the witness box at the trial. All the above named accused were also convicted under section 337-F(v) read with section 149 PPC, were sentenced to suffer three years RI each, to pay *Daman* of Rs.25,000/- each and to remain in custody till realization of the amount of *Daman*. They were also convicted under section 337-F(iii) read with section 149 PPC for causing injuries to complainant Khalid Mehmood and prosecution witness Sajid Akhter and were sentenced to suffer two years RI each with *Daman* of Rs.20,000/- each on two counts and were ordered to remain in custody till realization of *Daman* amount. They were also convicted under section 337-F(i) read with section 149 PPC for causing injury to prosecution witness Sajid Akhter and were sentenced to suffer one year RI each with *Daman* of Rs.15,000/- each and were ordered to remain in custody till realization of the amount of *Daman*. They were also convicted under section 427 read with section 149 PPC and sentenced to suffer one year RI each with fine of Rs.20,000/- each and in default thereof to further suffer two months SI each. They were also convicted under section 148 PPC and were sentenced to suffer three years RI each with fine of Rs.20,000/- each and in default thereof to further suffer three months SI. While extending benefit of section 382-B Cr.P.C. all the sentences were ordered to run concurrently. The Kalashnikov with Magazine and live bullets (recovery whereof was shown from convict Shaukat Ali), Rifle .44 bore with Magazine and live bullets (recovery whereof was shown from convict Muhammad Hanif) and Rifle 8 mm alongwith live bullets (recovery whereof was shown from convict Ahmed Sher) were confiscated in favour of the State.

3. Feeling aggrieved of their conviction and sentences, the above named seven convicts filed Criminal Appeal No. 485/2001 before Lahore High Court, Rawalpindi Bench (**LHC**). Murder Reference No. 90/2011 was also forwarded to the LHC by the trial court.

4. During pendency of the above appeal and murder reference before LHC, the convicts Ehtebat Khan and Muhammad Hanif

passed away and to their extent the appeal was held abated by LHC vide orders dated 14th January 2019 and 8th April 2019 respectively.

5. LHC partly accepted the appeal *vide* judgment dated 22nd May 2019 to the extent of convicts Muhammad Riaz, Muhammad Irfan and Muhammad Umer Farooq and they were acquitted of the charge while extending the benefit of doubt. While answering murder reference in negative and dismissing the appeal to the extent of the convicts Shaukat Ali and Ahmad Sher, their conviction under section 302 (b)/149 PPC was maintained but their sentences were altered from death on seven counts to imprisonment for life on seven counts each. The compensation awarded and the sentence in default thereof was maintained by the LHC with benefit of section 382-B Cr.P.C. The remaining sentences of the convicts Shaukat Ali and Ahmed Sher were maintained by LHC with order to run concurrently.

6. Feeling aggrieved of their conviction and sentences, the convicts Shaukat Ali and Ahmed Sher filed Criminal Petition for Leave to Appeal (**Crl.P.L.A.**) No.827/2019 before this Court which, after granting leave to appeal, was converted into Criminal Appeal (**Crl.A.**) No. 381/2021. Feeling aggrieved of the alteration of the sentences of the convicts Shaukat Ali and Ahmed Sher from death to imprisonment for life and against acquittal of co-accused Muhammad Riaz, Muhammad Irfan and Muhammad Umer Farooq, the complainant Khalid Mehmood filed Crl. P.L.A. No. 830/2019 which, after granting leave to appeal, was converted into Crl. A. No.384/2021.

7. We have been informed by the learned counsel for the appellants that after passing judgment by LHC and during pendency of appeals before this Court, the acquitted accused Muhammad Riaz has passed away.

8. On their arrest, the absconding co-accused Madad Khan, Mehram Khan, Liaqat Ali and Habibullah were put on trial before the learned Additional Sessions Judge, Talagang (**the trial court**) in sessions trial No. 12/2014.

9. On conclusion of the above trial, *vide* judgment dated 22nd January 2016 passed by the trial court, the above named four

accused were convicted under section 302 (b) PPC and were sentenced to death as Ta'zir on seven counts, to pay compensation of Rs.200,000/- each on seven counts to the legal heirs of the deceased, in default of payment of compensation to further undergo six months SI each. The above named accused were also convicted under section 324 read with section 149 PPC for murderous assault upon the complainant Khalid Mehmood and prosecution witness Sajid Akhtar and they were sentenced to suffer seven years RI each with fine of Rs.25,000/- each on two counts and in default thereof to further suffer three months SI. They were also convicted under section 337-F(v) read with section 149 PPC, were sentenced to suffer three years RI each, to pay *Daman* of Rs.25,000/- each and to remain in custody till realization of the amount of *Daman*. They were also convicted under section 337-F(iii) read with section 149 PPC for causing injuries to complainant Khalid Mehmood and prosecution witness Sajid Akhtar and were sentenced to suffer two years RI each with *Daman* of Rs.20,000/- each on two counts and were ordered to remain in custody till realization of *Daman* amount. They were also convicted under section 337-F(i) read with section 149 PPC for causing injury to prosecution witness Sajid Akhtar and were sentenced to suffer one year RI each with *Daman* of Rs.15,000/- each and were ordered to remain in custody till realization of the amount of *Daman*. They were also convicted under section 427 read with section 149 PPC and sentenced to suffer one year RI each with fine of Rs.20,000/- each and in default thereof to further suffer two months SI each. They were also convicted under section 148 PPC and were sentenced to suffer three years RI each with fine of Rs.20,000/- each and in default thereof to further suffer three months SI. The Kalashnikov with four live bullets, Rifle 44 bore with five live cartridges and Rifle 44 bore with three live cartridges (shown recovered from the convicts Mehram Khan, Liaqat Ali and Habibullah) were confiscated in favour of the State.

10. Feeling aggrieved of their conviction and sentences, the above named four convicts filed Criminal Appeal No. 35/2016 before LHC. Murder Reference No. 14/2016 was also forwarded to the LHC by the trial court.

11. LHC partly accepted the appeal *vide* judgment dated 22nd May 2019 to the extent of convicts Mehram Khan and Habibullah and

they both were acquitted of the charge while extending the benefit of doubt. While answering murder reference in negative and dismissing the appeal to the extent of the convicts Madad Khan and Liaqat Ali, their conviction under section 302(b)/149 PPC was maintained but their sentences were altered from death on seven counts to imprisonment for life on seven counts each. The compensation awarded by the trial court and the sentence in default thereof were maintained by the LHC with benefit of section 382-B Cr.P.C. The remaining sentences of the convicts Madad Khan and Liaqat Ali were maintained by LHC with order to run concurrently.

12. Feeling aggrieved of their conviction and sentences, the convicts Madad Khan and Liaqat Ali filed Crl.P.L.A. No.826/2019 before this Court which, after granting leave to appeal, was converted into Crl.A. No. 380/2021. Feeling aggrieved of the alteration of the sentences of the convicts Madad Khan and Liaqat Ali from death to imprisonment for life and against acquittal of co-accused Mehram Khan and Habibullah, the complainant Khalid Mehmood filed Crl. P.L.A. No. 829/2019 which, after granting leave to appeal, was converted into Crl. A. No.383/2021.

13. On their arrest, the absconding co-accused Fateh Khan, Muhammad Saleem and Tariq Mehmood were put on trial before the learned Additional Sessions Judge, Talagang (Chakwal) Camp at District Jail, Jhelum (**the trial court**) in sessions trial No. 4/2018.

14. On conclusion of trial, *vide* judgment dated 22nd November 2018 passed by the trial court, the above named three accused were convicted under section 302 (b) read with section 149 PPC and were sentenced to death as Ta'zir on seven counts, to pay compensation of Rs.200,000/- on seven counts to the legal heirs of the deceased, in default of payment of compensation to further undergo six months SI each. The above named accused were also convicted under section 324 read with section 149 PPC for murderous assault upon the complainant Khalid Mehmood and prosecution witness Sajid Akhtar and they were sentenced to suffer seven years RI each with fine of Rs.30,000/- on two counts and in default thereof to further suffer three months SI. They were also convicted under section 337-F(i) read with section 149 PPC for causing injuries to prosecution witness Sajid Akhter, were sentenced to suffer one year

RI each, to pay *Daman* of Rs.20,000/- for each injury and to remain in custody till realization of the amount of *Daman*. They were also convicted under section 337-F(iii) read with section 149 PPC for causing injuries to complainant Khalid Mehmood and prosecution witness Sajid Akhtar and were sentenced to suffer two years RI each with *Daman* of Rs.25,000/- for each injury and were ordered to remain in custody till realization of the amount of *Daman*. They were also convicted under section 337-F(v) read with section 149 PPC for causing injury to the complainant Khalid Mehmood and were sentenced to suffer three years RI each with *Daman* of Rs.25,000/- for each injury and were ordered to remain in custody till realization of the amount of *Daman*. They were also convicted under section 427 read with section 149 PPC and sentenced to suffer one year RI each with fine of Rs.20,000/- each and in default thereof to further suffer two months SI each. They were also convicted under section 148 PPC and were sentenced to suffer three years RI each with fine of Rs.20,000/- each and in default thereof to further suffer two months SI. All the sentences of imprisonment were ordered to run concurrently with benefit section 382-B Cr.P.C.

15. Feeling aggrieved of their conviction and sentences, the above three convicts filed Criminal Appeal No. 961/2018 before LHC. Murder Reference No. 39/2018 was also forwarded to the LHC by the trial court.

16. LHC partly accepted the appeal *vide* judgment dated 22nd May 2019 to the extent of the convicts Muhammad Saleem and Tariq Mehmood and they both were acquitted of the charge while extending the benefit of doubt. While answering murder reference in negative and dismissing the appeal to the extent of the convict Fateh Khan, his conviction under section 302(b)/149 PPC was maintained but his sentence of death on seven counts was altered to imprisonment for life on seven counts. The compensation awarded by the trial court and the sentence in default thereof was maintained by the LHC with benefit of section 382-B Cr.P.C. The remaining sentences of the convict Fateh Khan were maintained by LHC with order to run concurrently.

17. Feeling aggrieved of his conviction and sentences awarded by LHC, the convict Fateh Khan filed CrI.P.L.A. No.801/2019 before

this Court which, after granting leave to appeal, was converted into Crl.A. No. 379/2021. Feeling aggrieved of the alteration of the sentence of the convict Fateh Khan from death to imprisonment for life and against acquittal of co-accused Muhammad Saleem and Tariq Mehmood, the complainant Khalid Mehmood filed Crl. P.L.A. No. 828/2019 which, after granting leave to appeal, was converted into Crl. A. No.382/2021.

18. According to the prosecution version, as narrated by the complainant Khalid Mehmood in FIR No.12/2007, registered with PS Lawah, District Chakwal at 3:30 pm with reference to Report No.6, he alongwith other companions proceeded from their house (situated in *Muradond*) on three vehicles for attending the marriage ceremony of Malik Azmat Jamil, Nazim Union Council, Kot Gulla; the first vehicle (Toyota Corolla Car No.RIV-7744) was driven by driver Muhammad Hanif (allegedly injured but not produced at the trial) while Malik Gohar Khan (deceased) was sitting on the front seat with Muhammad Yar (deceased), Lal Khan (deceased) and Sajid Akhter (PW-6) sitting on the rear seat; the second vehicle (Pajero No.IDA-8964) was driven by driver Tanveer Aslam; Noor Muhammad (not produced at the trial) was sitting on the front seat of the Pajero and he (the complainant) alongwith Najaf Raza (not produced at the trial) and Gul Jahan (not produced at the trial) were sitting on the rear seat of the Pajero; the third vehicle (Toyota Pickup No. Kohat C-4187) was driven by Muhammad Ijaz (alleged injured not produced at the trial); Muhammad Nasir (deceased) was sitting on the front seat while Yaqoob Khan (deceased), Muhammad Ilyas (deceased), Khalid Saeed (deceased), minor Mohsin Masood (not produced at the trial) and Ehtebare Khan (not produced at the trial) were sitting on the back of the pickup; at about 12:30 pm when they reached *Hyder Colony* near Cattle Market, *Panjnad*, he saw accused Liaqat Ali, Shaukat Ali, Ahmed Sher (sons of Mahla Khan), Fateh Khan, Raees Khan, Muhammad Hanif (sons of Akbar Khan) standing armed with Kalashnikovs on the left side of the road towards *Kacha Passage* adjacent to the wall of the house of Mamraiz Khan; accused Muhammad Tariq (son of Meherban), Ehtebare Khan, Muhammad Riaz (sons of Amir Khan) and Habibullah (son of Muhammad Riaz) armed with Kalashnikovs were standing adjacent to the house of Bashir Ahmed on left side of the road; accused

Madad Khan (son of Mehboob Khan) Malik Khan (son of Aziz Khan) Mehram Khan (son of Muhammad Khan) were standing with Kalashnikovs on the right side of the road adjacent to the house of Javed Iqbal; accused Umer Farooq (son of Muhammad Nawaz), Muhammad Saleem (son of Ehtebare Khan), Muhammad Irfan (son of Malik Khan) with 7/8 unknown persons were sitting ambushed with Kalashnikovs; on seeing them coming, all the above accused started firing upon the three vehicles; accused Liaqat Ali, Shaukat Ali, Ahmed Sher, Fateh Khan, Raees Khan and Muhammad Hanif made firing on the first vehicle (Toyota Corolla Car) due to which Gohar Khan sitting on the front seat and Muhammad Yar sitting on the rear seat died and when Lal Khan came out of the car and started running, he was fired upon by the accused Umer Farooq, Muhammad Saleem and Mehram Khan due to which he died while driver Muhammad Hanif and Sajid Akhter got firearm injuries while sitting in the car; his Pajero vehicle was also hit with bullets and he received two firearm injuries on his both feet while the other persons sitting in his vehicle escaped any firearm injury; the accused Madam Khan, Malik Khan and Muhammad Irfan made indiscriminate firing on the third vehicle (Toyota Pickup) due to which Muhammad Yaqoob and Muhammad Ilyas died inside the pickup and when Khan Muhammad tried to save himself by getting down from the pickup, he died near the pickup after receiving bullets; when Muhammad Nasir sitting on the front seat of the pickup came out of the pickup and started running on the left side of the road, he also died after receiving bullets; Muhammad Ijaz, driver of the pickup, received firearm injury while Ehtebare Khan and Mohsin Masood escaped any firearm injury; the vehicles were badly damaged due to firing; after the occurrence, all the accused fled in different directions on Toyota-No.4019 and on five motorcycles. The motive of the occurrence was stated to be the previous enmity/blood feud in which five persons of both the parties were murdered.

19. After hearing learned counsel for the convicts and acquitted co-accused, learned counsel for the complainant and learned Additional Prosecutor General, we have perused the available record. In sessions trial No.24/2010, the complainant Khalid Mehmood appeared as PW.21, Muhammad Sajid Akhtar appeared as PW-19 and Tanveer Aslam appeared as PW-20. In sessions trial

Nos.12/2014 and 4/2018, the witness Tanveer Aslam did not appear. In sessions trial No.12/2014 the complainant Khalid Mehmood appeared as PW-16 and Muhammad Sajid Akhtar appeared as PW-15. In sessions trial No.4/2018 the complainant Khalid Mehmood appeared as PW-7 while Muhammad Sajid Akhtar appeared as PW-6.

20. Admittedly PW Tanveer Aslam (who had appeared as PW-20 in sessions trial No. 24/2010) was a close relative of the complainant Khalid Mehmood and all the deceased. Similarly Muhammad Sajid Akhtar who has appeared as an injured prosecution witness in all the three sessions trials is nephew of the complainant Khalid Mehmood and is close relative of all the deceased.

21. Due to the previous enmity/blood feud between the parties, for safe administration of justice, the statements of the above prosecution witnesses, being relatives inter-se and being relatives of all the deceased, have to be considered with great care and caution.

22. The evidence transpires that after registering FIR on 26th February, 2007, on the same day, the complainant Khalid Mehmood also made a supplementary statement whereby number of co-accused were added but the said supplementary statement was not produced/exhibited at the trial.

23. It transpires that despite meeting with the police officers and investigating officer at the place of occurrence in the noon of 26th February, 2007 (i.e. the day of occurrence), the statements of the witnesses Tanveer Aslam and Muhammad Sajid Akhtar under section 161 of the Criminal Procedure Code (**Cr.P.C.**) were not promptly recorded at the place of occurrence. The statement of Tanveer Aslam under section 161 Cr.P.C. was recorded in the evening of the day of occurrence at 7:30 pm and the statement of Muhammad Sajid Akhtar under section 161 Cr.P.C. was recorded in the night of the occurrence at about 8:00 pm. Neither both witnesses nor the investigating officer furnished any explanation for the delay in recording their 161 Cr.P.C. statements.

24. In view of the above and keeping in view the previous enmity and blood feud between the parties, possibility of false implication of large number of accused by the complainant after consultation

and deliberation with PWs Tanveer Aslam and Muhammad Sajid Akhter, being relatives inter-se and being relatives of all the deceased, cannot be ruled out of consideration.

25. The crime empties shown recovered from the place of occurrence on the day of occurrence were not recovered by the police soon after reaching the place of occurrence. According to the prosecution witnesses, the crime empties were recovered by the police on their second visit of the place of occurrence and in this regard no explanation has been offered by the prosecution witnesses.

26. The exactitude and accurate details mentioned in the FIR and his statement at the trial by the complainant Khalid Mehmood as well as narrated by PW Tanveer Aslam and PW Muhammad Sajid Akhter about the position of each nominated accused with specific firearms at different locations of the place of occurrence and attribution of specific role of firing to each accused with reference to each deceased is highly improbable and unnatural in such like occurrence.

27. According to statement of PW Tanveer Aslam he was driving the Pajero vehicle at the time of occurrence and during the occurrence, despite heavy firing, he did not bend his head downwards to save himself. Non receiving of any firearm injury by PW Tanveer Aslam in the occurrence and his mentioning the whole episode of firing by the nominated accused on the deceased with specific firearms creates serious doubt about his presence in the Pajero vehicle at the time of occurrence. His plantation as an eye witness by the complainant with the connivance of investigating officer as an afterthought to strengthen the prosecution version cannot be ruled out of consideration.

28. It further reveals that the complainant Khalid Mehmood and the PWs Muhammad Sajid Akhtar and Tanveer Aslam made dishonest improvements in their statements recorded at the trial. Their statements recorded at the trial are also suffering from material contradictions and same are also in conflict with the medico legal evidence.

29. The statements of the complainant Khalid Mehmood and prosecution witnesses Tanveer Aslam and Muhammad Sajid Akhtar are also lacking independent corroboration in material aspects.

30. A Kalashnikov has been shown recovered on the pointation of the convict Shaukat Ali on 9th February 2009 and according to report of the Forensic Science Laboratory, Lahore six crime empties were fired from the same. To lend independent corroboration to the recovery of Kalashnikov on the alleged pointation of the convict Shaukat Ali, no private witness was associated by the investigating officer to attest the said recovery.

31. With regard to 8 mm rifle allegedly recovered from the convict Ahmed Sher, there is no report of the firearm expert about firing of any crime empty from the same due to which the said recovery has been held of no avail to the prosecution by the LHC. The recovery of .44 bore rifle from the convict Liaqat Ali has already been disbelieved and held inconsequential by the LHC. With regard to the Kalashnikov allegedly recovered from acquitted co-accused Mehram Khan, there is no report of the firearm expert to confirm that any crime empty was fired from the same.

32. According to the complainant and his MLC, during the occurrence, he had received firearm injuries on his both feet. According to PW Muhammad Sajid Akhtar and his MLC, he had received firearm injuries on his right forearm, his right thigh and his left hip. According to settled principles of law, mere stamp of a firearm injury on the person of a prosecution witness does not per se tantamount to a stamp of credence on his testimony¹.

33. According to settled principles of law, testimony of an interested witness should be scrutinized with care and caution and independent corroboration is essential to test the validity and credibility of the testimony of an interested witness².

The testimony of the complainant Khalid Mehmood, PWs Tanveer Aslam and Muhammad Sajid Akhtar, being relatives inter-

¹ Muhammad Hayat v. The State (1996 SCMR 1411)

² Muhammad Ramzan v. Khizar Hayat (2024 SCMR 1085)

Sajid Mehmood v. The State (2022 SCMR 1882)

Irfan Ali v. The State (2015 SCMR 840)

Muhammad Ilahi v. Muhammad Altaf (2011 SCMR 513)

Nazir v. The State (PLD 1962 SC 269)

se, being relatives of all the deceased, being interested witnesses, being inimical towards the convicts and acquitted co-accused due to previous enmity/blood feud, suffering from dishonest improvements and material contradictions is lacking independent corroboration in material aspects and same is not worthy of credence.

34. At the trial, the prosecution did not produce the injured driver Muhammad Hanif of Toyota Corolla Car, Noor Muhammad sitting on the front seat of Pajero, Najaf Raza and Gul Jahan sitting on the rear seat of the Pajero, Muhammad Ijaz injured driver of Toyota Pickup, minor Mohsin Masood and Ehtabar Khan sitting in the back of the pickup. An adverse inference is drawn under Article 129(g) of the Qanoon-e-Shahadat Order, 1984 to the effect that had the above witnesses been produced by the prosecution at the trial, they would have not supported the version of the prosecution³.

35. All the above infirmities in the case of the prosecution lead us to the conclusion that the prosecution has failed to prove the charge against the convicts beyond reasonable doubt and that the conviction and sentences awarded to the convicts by the trial court and altered/maintained by the LHC are result of misreading and mis-appreciation of the evidence available on the record. It is further concluded that the acquittal of the co-accused by the LHC is neither perverse nor contrary to the evidence available on record.

36. Abscondence *per se* is not a proof of the guilt of an accused person but it can be taken as corroborative piece of evidence⁴. In absence of trustworthy and confidence inspiring substantive incriminating evidence, conviction cannot be solely based upon abscondence of an accused⁵. Since the ocular testimony of the complainant Khalid Mehmood and PWs Tanveer Aslam and Muhammad Sajid Akhtar has been disbelieved by this Court in the instant appeals therefore, in view of the above principles, the conviction of the appellants cannot be based on abscondence alone.

³ Saima Noreen v. The State (2024 SCMR 1310)
Muhammad Ramzan v. The State (2025 SCMR 762)

⁴ Gul Khan v. The State (1999 SCMR 304)
Rasool Muhammad v. Asad Muhammad (1995 SCMR 1373)
Iftikhar Hussain alias Kharoo v. The State (2024 SCMR 1449)

⁵ Rohtas Khan v. The State (2010 SCMR 566)
Shafqat Abbas v. The State (2007 SCMR 162)
Barkat Ali v. Muhammad Asif (2007 SCMR 1812)

37. The cases of *Sahab Khan v. The State* (1997 SCMR 871), *Abdullah Jan v. The State* (2019 SCMR 1079) and *Bashir Ahmad v. The State* (2022 SCMR 1187) relied upon by learned Additional PG, Punjab and learned counsel for the complainant are distinguishable and same are not attracted to the facts and circumstances of the instant appeals.

38. For the above reasons, while accepting Criminal Appeal Nos. 379/2021, 380/2021 and 381/2021, the judgments dated 31st October 2011 passed by the trial court in sessions trial No. 24/2010, the judgment dated 22nd January 2016 passed by the trial court in sessions trial No. 12/2014, the judgment dated 22nd November 2018 passed by the trial court in sessions trial No. 4/2018 and the judgments dated 22nd May 2019 passed by LHC in Criminal Appeal Nos. 485/2011, 35/2016 and 961/2018 to the extent of the conviction and sentences of the convicts Fateh Khan son of Akbar Khan, Madad Khan son of Mehboob Khan, Liaqat Ali son of Mahla Khan, Shaukat Ali son of Mahla Khan and Ahmed Sher son of Mahla Khan are set aside and all the above named convicts are acquitted of all the charges in FIR No.12/2007 PS Lawah District Chakwal. The above named convicts, being in custody, are ordered to be released forthwith if not required in any other case.

Consequent to the above, Criminal Appeal Nos. 382/2021, 383/2021 and 384/2021, filed by the complainant Khalid Mehmood for enhancement of sentences of the convicts and against acquittal of co-accused, are dismissed.

Judge

Judge

Judge

Announced in open Court on 4th June 2025 at Islamabad

Judge

Islamabad

04.06.2025

Atif/Zohaib Afzal, LC

APPROVED FOR REPORTING